



Photo credit: Debra McEvoy

**A PUBLIC INQUIRY INTO THE
WINNIPEG POLICE SERVICE HEADQUARTERS REDEVELOPMENT PROJECT
AS ESTABLISHED BY
MANITOBA ORDER IN COUNCIL 26/2025**

FINAL REPORT:
***A SAD TALE OF MISMANAGEMENT, MISCONDUCT
AND MISREPRESENTATIONS***

GARTH SMORANG, K.C., Commissioner



Winnipeg Police Service Headquarters Inquiry

Garth Smorang, K.C., Commissioner

432-405 Broadway, Winnipeg, Manitoba R3C 3L6

October 13, 2026

The Honourable Matt Wiebe
Minister of Justice and Attorney General
Room 104 Legislative Building
405 Broadway
Winnipeg, Manitoba
R3C 0V8

The Honourable Glen Simard
Minister of Municipal and Northern Relations
Room 141 Legislative Building
405 Broadway
Winnipeg, Manitoba
R3C 0V8

Dear Ministers Wiebe and Simard,

Re: Winnipeg Police Service Headquarters Inquiry

Pursuant to Manitoba Order in Council 26/2025 I now submit to each of you five copies of my Report containing my findings regarding the ability of the City of Winnipeg to implement large-scale publicly funded construction projects, in particular replacement of the Winnipeg Police Service Headquarters building in a manner consistent with the public interest, and my recommendations in that regard. Also enclosed for each of you is a USB stick containing an electronic version of the Report.

Respectfully,

Garth Smorang, K.C.,
Inquiry Commissioner

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Preface and Acknowledgements

To begin, I acknowledge that this Inquiry was conducted in Winnipeg on Treaty 1 territory and the national homeland of the Red River Métis. These are the ancestral lands of the Anishinaabeg, Anishininew, Nehethowuk Oceti Sakowin/Dakota Oyate, and Michif peoples. The water we drink is sourced from Shoal Lake 40 First Nation in Treaty 3 Territory, and most of our hydroelectricity comes from Treaty 5 Territory in northern Manitoba.

On February 5, 2025, Manitoba Order in Council (26/2025) appointed me as commissioner to inquire into the ability of the City of Winnipeg to implement large-scale publicly funded construction projects in a manner consistent with the public interest. This appointment was made by the Lieutenant Governor in Council in accordance with powers set out in sections 83 and 96 of The Manitoba Evidence Act. The OIC can be found at appendix 1.

Now, 20 months later and after public hearings which spanned four months beginning in February 2026, I have completed my report, set out in three parts. Part I outlines the processes we undertook at this inquiry and will hopefully be of some use to those involved in organizing and conducting future public inquiries. Part II tells the story revealed by the evidence presented. Part III sets out my recommendations and the reasoning behind each, followed by relevant appendices, including a list of expert reports we received. Those reports are available on the inquiry website.

Although this is my report, as appointed commissioner, and the findings and recommendations are ultimately mine, the inquiry that was conducted, and the report I now submit, could not have been completed without the tremendous assistance, advice and support I received from the team of individuals who graciously agreed to defer their respective well-earned retirements and dedicate themselves to the work of this inquiry.

Heather Leonoff, K.C. acted in the role of commission counsel. Her formal credentials are set out in this report in appendix 2. Informally, I have known Ms. Leonoff as a fellow member of the Manitoba Bar for decades and had a significant opportunity, over a period of almost five years, to see and experience her immense legal talents on the opposite side of a constitutional challenge brought by the Manitoba Federation of Labour and 28 unions against the Manitoba government beginning in 2017. I was part of the team representing the plaintiffs and Ms. Leonoff led the team representing the government. It was a hard-fought battle, and I developed a great respect for her legal skills and professionalism by the end of it. As such, I was delighted when she agreed to take on the gargantuan role of commission counsel. In the finest traditions of the legal profession, we could be adversaries one day and colleagues the next.

Ms. Leonoff's work began almost immediately in March 2025, interviewing witnesses and reviewing innumerable documents and reports. She then organized the public hearings, communicated and collaborated with legal counsel representing parties with standing, and conducted the examinations of all the witnesses. Ultimately, she provided invaluable contributions to the content of this report. Without Ms. Leonoff's support, sage advice, and excellent writing and editing skills, I would not have been able to produce this report. I sincerely appreciate all of her assistance.

Inquiry Coordinator Stacy Nagle was also a key member of our team, and I was grateful that she agreed to participate in that role. Ms. Nagle performed a wide variety of important functions that are set out later in this report, but what stands out to me most is her ability to remain calm under pressure, and her rational approach to all the various hurdles we faced as we moved through the stages of the inquiry. Although she did not expect it to be part of her job duties, Ms. Nagle became our IT expert as we conducted public hearings at the Public Utilities Board, requiring her to nimbly wade through thousands of documents being referenced minute by minute throughout the course of the hearings, ensuring that the relevant document was always on the screen we were seeing, and at the same time checking to see that the live streaming of the hearings was functioning so members of the public viewing the proceedings through that vehicle were able to follow along. Ms. Nagle was also instrumental in proofreading and editing the report.

Debra McEvoy, who had recently retired from her 31 year career as a paralegal, agreed to join our team as administrative assistant. Her cheerful disposition and willingness to take on any and all necessary tasks (including taking the photo that appears on the front cover of this report!) made her indispensable throughout. Ms. McEvoy's input and skills were particularly critical in the editing, formatting and ultimate production of all parts of this report.

My appreciation is also extended to Nicholas Warsza, Crown Counsel with the Legal Services Branch of Manitoba Justice. At the outset Mr. Warsza was to be provided with a mentoring opportunity to attend the hearings and assist Ms. Leonoff as required. What became clear immediately was his willingness to go above and beyond a learning experience. He assisted significantly by providing legal research, evidence review, as well as his involvement in and contribution to team problem-solving discussions. It was a pleasure having him as part of our team.

I also acknowledge and thank the various experts who were retained to provide reports and testify or present at the inquiry. Although these individuals were paid for their service, each of them showed unwavering enthusiasm and dedication to their task and it is abundantly clear to me that we could not have made the findings we did and the corresponding recommendations that have resulted, without their expertise and commitment.

Assistance was sought throughout from Assistant Deputy Attorney General, Michael Conner, K.C., and I wish to acknowledge his availability and willingness to help regarding a variety of matters. Many government policies and processes were entirely foreign to me as commissioner when I began this inquiry, and Mr. Conner was an invaluable resource to me and my team.

I also wish to thank Maheshwor Adhikary, Assistant Deputy Minister, and many other staff at Manitoba Justice, Corporate & Strategic Services Branch, for their ongoing assistance to the inquiry.

We are very grateful to the staff and leadership at the Public Utilities Board for providing the hearing room where all public hearings were conducted, and their assistance and expertise, throughout the course of the hearings.

A number of lawyers representing parties with standing participated during the public hearings. Some were there for the entirety of the hearings and others appeared only during certain phases of the inquiry. I found that all legal counsel who participated exhibited the utmost professionalism, cooperation, and courtesy throughout, not only to me, Ms. Leonoff and Ms. Nagle, but to each other notwithstanding that many of their clients were diametrically opposed in interest. As a result, the public hearings ran as smoothly as possible without interruption. Legal counsel and their clients are each identified in appendix 3.

List of Abbreviations

AAR – Adjeleian Allen Rubeli

BIM – Building Information Modelling

CAJV – Caspian Akman Joint Venture

CAO – Chief Administrative Officer

CCDC – Canadian Construction Documents Committee

CCI – Caspian Construction Inc.

CCN – Contemplated Change Notice

CCO – Chief Construction Officer

CFO – Chief Financial Officer

CPI – Caspian Projects Inc.

DBB – Design-Bid-Build

DCAO – Deputy Chief Administrative Officer

EOI – Expression of Interest

EPC – Executive Policy Committee

FABCA – FABCA Projects Inc.

FF&E – Furniture, Fixtures and Equipment

FIPPA – The Freedom of Information and Protection of Privacy Act (Manitoba)

GMP – Guaranteed Maximum Price

HQ – Headquarters

JV – Joint Venture

LOI – Letter of Intent

M – Million

MPS – Manitoba Prosecution Service

OIC – Order in Council 26/2025

NEWPCC – North End Water Pollution Control Centre

PCN – Proposed Change Notice

PP&D – Planning, Property and Development

PR – Progress Claim

RFP – Request for Proposals

RFQ – Request for Qualifications

WCA – Winnipeg Construction Association

WCC – Winnipeg City Council

WPS – Winnipeg Police Service

WPSHQ – Winnipeg Police Service Headquarters

Recommendations Summary

Below is a list of the 25 recommendations I make in this report. Each recommendation, as well as the rationale for it, is reproduced in Part III.

PLANNING AND BUDGETING

Recommendation #1

On large-scale construction projects, the city should improve its RFP process by:

1. having lawyers as the primary drafters of the RFP documents;
2. engaging an external fairness monitor to supervise and provide independent advice on the RFP process;
3. retendering the project, if there are substantial changes to core terms in the RFP such as those dealing with budget, scope or delivery model;
4. in the rare situations where a JV partner withdraws, undertaking a best practice and business case review to determine next steps;
5. using an RFQ or similar process to ensure that only bidders with the necessary experience, personnel, financial resources and track records are considered eligible.

Recommendation #2

On large-scale construction projects, a lawyer from the City of Winnipeg Legal Services, should be assigned as a resource to the project governance and oversight committee to provide on-going legal supervision and advice.

Recommendation #3

The city should:

1. use CCDC standard form contracts for its large-scale construction projects;
2. work with the industry to develop supplementary terms to meet specific city requirements;
3. ensure that its contracts are dated to accurately state the date the contract came into effect, meaning all material terms have been agreed to, and the actual date of signing.

Recommendation #4

In establishing a budget for a large-scale construction project, city council should be provided with an estimate of:

1. internal human, technological and other resources that will be required to successfully deliver the project;
2. the type and cost of external resources that will need to be engaged.

Recommendation #5

The city should undertake market sounding and early industry engagement as part of its planning of large-scale construction projects in order to:

1. gain feedback from industry professionals regarding the project, gauge interest, and assess market capacity;
2. give the industry notice of potential projects so that it can allocate and manage its resources.

CONTRACT ADMINISTRATION FOR LARGE-SCALE PROJECTS

Recommendation #6

1. The city should refine its definition of major projects and adopt a category of large-scale construction projects, consistent with the definition used throughout this report, meaning projects with a budget of \$100M to \$499M.
2. Council oversight of large-scale construction projects should be assigned to the EPC in order to establish a locus of expertise for the review of high value construction projects.

Recommendation #7

The Government of Manitoba should undertake a consultation with Winnipeg City Council, former councillors, and the public regarding the composition and appointment process of EPC members and should consider whether amendments to the City of Winnipeg Charter dealing with these matters, would improve city government.

Recommendation #8

1. On all large-scale construction projects, the city should engage an independent quantity surveyor to set up and manage the payment certification process.
2. The payment certifiers should be required to obtain copies of all subtrade contracts detailing the scope of work in each, and copies of all subtrade invoices, in sufficient detail to accurately assess the work done, and properly allocate the cost.

Recommendation #9

The city's governance structure for large-scale construction projects should include an independent assurance advisor, with a mandate to:

1. provide impartial insight into project performance;
2. provide role-based training to councillors and city staff who are serving on the oversight and governance committees;
3. develop a best practices playbook that is updated regularly with lessons learned.

Recommendation #10

The city should prioritize hiring a consultant to do a requirements analysis across departments and to find, propose, and operationalize an enterprise-wide management information solution.

Recommendation #11

1. The Government of Manitoba should investigate BIM technology, including obtaining information from jurisdictions that have mandated BIM, with a view to considering whether to mandate its use in large-scale municipal construction projects in Manitoba.
2. The City of Winnipeg should include the use of BIM technology as a preference on RFPs for companies that will be retained to participate in large-scale construction projects.

CITY COUNCIL PRACTICES AND PROCEDURES

Recommendation #12

The Government of Manitoba seek amendments to s.76 of The City of Winnipeg Charter to specify:

1. the matters that may be the subject of closed council and committee meetings including, but not limited to,
 - a. that the disclosure of the information may be harmful to the economic interests of the city;
 - b. that the information to be discussed is privileged;
2. the process for moving into a closed session;
3. the requirement that any materials distributed and any matters discussed during a closed session are confidential;
4. that no resolutions or by-laws may be passed in closed session other than a resolution to return to a public meeting.

Recommendation #13

Winnipeg City Council should repeal by-law No. 21/2011, the In Camera By-law, and replace it with a by-law that authorizes council to proceed in closed session if:

1. the public disclosure of information under discussion may be harmful to the economic interests of the city;
2. the information to be discussed is privileged;
3. any other reason that city council deems appropriate.

Recommendation #14

Winnipeg City Council work with the city CAO to develop a protocol that will ensure that documents written by staff for council and committee meetings that contain confidential information remain confidential unless and until the document is edited to remove confidential information before it is made public.

INTEGRITY AND ETHICS

Recommendation #15

The Government of Manitoba seek amendments to The Municipal Council Conflict of Interest Act to require that a councillor, mayor or reeve participating on a hiring committee for any person applying for a position as an employee with the municipality/city, disclose any direct or indirect business or other pecuniary interests with that person.

Recommendation #16

Winnipeg City Council adopt a policy requiring all councillors who participate on selection panels to complete a conflict-of-interest declaration.

Recommendation #17

The City of Winnipeg should amend the Conflict of Interest Policy to require:

1. the four statutory officers as well as all department heads to complete a written statement of assets and interests upon being hired and annually thereafter;
2. city employees awarding a sole source contract (currently up to \$1 million) to complete a written statement declaring no relationship with the other party that would constitute a conflict of interest as defined within the policy;
3. city employees acting as project manager on construction projects requiring an RFP, (currently contracts valued at \$1 million or greater), to confirm in writing no relationship with all known external parties involved (professionals, contractors and subcontractors) that would constitute a conflict of interest as defined within the policy.

Recommendation #18

The Government of Manitoba seek amendments to The City of Winnipeg Charter to:

1. include the integrity commissioner as a statutory officer under section 96;
2. set a five-year term for the position, with the opportunity for renewal for a further five years;
3. provide the integrity commissioner with immunity from being sued for actions taken in the course of duties, and from being compelled to testify;
4. provide that that all communications with the integrity commissioner are strictly confidential and not subject to The Freedom of Information and Protection of Privacy Act (which may also require an amendment to FIPPA);
5. give the integrity commissioner powers under The Evidence Act to compel evidence under oath (which may also require an amendment to The Evidence Act);
6. add new provisions to allow Winnipeg City Council the authority to expand the list of current sanctions available to it under its own code of conduct.

Recommendation #19

The City of Winnipeg expand the integrity commissioner's mandate to include the senior members of the public service, specifically the statutory officers and the department heads.

Recommendation #20

The Government of Manitoba seek amendments to The Municipal Council Conflict of Interest Act to:

1. authorize City of Winnipeg residents to make a referral to the integrity commissioner requesting an investigation into alleged violations of the act and authorizing the integrity commissioner to bring matters forward to a judge, where warranted, on behalf of the public;
2. expand the scope of remedies available to a judge under the act where a violation has been found to have occurred.

CULTURE

Recommendation #21

The CAO ensure that senior staff are trained and encouraged to provide fair, full and truthful advice and that staff are assured that management will support them in fulfilling this expectation.

INTERPROVINCIAL SUBPOENA ACT

Recommendation #22

The Government of Manitoba seek amendments to The Interprovincial Subpoena Act to widen its scope beyond court issued subpoenas, to include other entities statutorily empowered to issue a subpoena or summons.

MUNICIPAL BOARD

Recommendation #23

The Municipal Board continue with its current role in adjudicating municipal planning decisions and that it not be given any additional role in overseeing large-scale publicly funded construction projects, undertaken by the City of Winnipeg or any other Manitoba municipality.

MANITOBA PROSECUTION SERVICE MEDIA RELEASES

Recommendation #24

It is recommended that Manitoba Prosecution Service seek to be more open and forthcoming in its media releases regarding its decisions not to lay charges, always with the objective of advancing the administration of justice by informing the public to the greatest extent possible, while equally protecting the rights of private citizens.

ESTABLISHING BUDGETS FOR PUBLIC INQUIRIES

Recommendation #25

The Government of Manitoba should:

1. prior to finalizing a financial budget for a public inquiry, make all reasonable inquiries as to what external costs might likely be required and the extent of those costs, over and above the cost of retaining a commissioner and an inquiry team of sufficient size and expertise;
2. be prepared, at the time the public inquiry is established, to acknowledge and publicly announce if necessary that the preliminary budget may need to be expanded as the investigative process unfolds, to ensure that the inquiry is ultimately able to perform its intended function and provide value to the taxpayers for the dollars expended.

PART 1 – INQUIRY PROCESS

Terms of Reference and Mandate

In the context of the redevelopment of the former Canada Post building on Graham Avenue in Winnipeg into the current Winnipeg Police Service Headquarters, I am tasked to inquire into the affairs of the City of Winnipeg and determine any measures necessary to restore public confidence in the ability of the City of Winnipeg to implement large-scale construction projects in a manner which is cost-effective, timely, efficient, and ethical.

As commissioner, I am to inquire into current and previous structures for the implementation of large-scale construction projects regarding governance, decision-making, accountability, and risk management and to determine whether these structures are in accordance with best practices to minimize cost increases and delays and to prevent dishonest practices or acceptance of inducements.

In doing so, I am to consider the dealings of previously elected officials including the mayor, and senior employees of the City of Winnipeg including the former CAO that occurred in respect of the renovations of the former post office on Graham Avenue to become the new headquarters for the Winnipeg Police Service.

I am also to consider the current and previous legislative framework in Manitoba pertaining to oversight of municipal planning for large-scale construction projects including the role of the Municipal Board.

There was significant activity regarding the issues to be considered by this inquiry prior to its establishment in 2025. In 2014, the RCMP seized documents from the main contractor, Caspian Projects Inc. A thorough investigation was conducted, and the matter was referred to the Manitoba Prosecution Service for consideration of the laying of criminal charges. A decision not to lay criminal charges was communicated to the public in December 2019. The City of Winnipeg initiated litigation in January 2020, a portion of which was resolved by way of settlement in March 2023, and the balance, specifically regarding one defendant, Philip (Phil) Sheegl, was determined in the Court of Queen's Bench in August 2020, and ultimately the Manitoba Court of Appeal in July 2023.

My mandate, as contained in the OIC, obliges me to avoid duplication of effort and enables me then to rely upon findings, recommendations and reports already made in relation to matters that fall within the scope of the inquiry. In the course of the litigation brought by the city, experts were retained and reports were prepared or were in the process of completion at the time the litigation was settled. We retained many of those experts to assist in this inquiry by completing their reports and attending to testify.

My mandate allowed me to hold proceedings in public or private as I considered advisable. Pursuant to the powers granted to a commissioner set out in The Manitoba Evidence Act, I exercised the power to subpoena witnesses situate in Manitoba to appear and testify under oath. I could issue a warrant for the arrest of any witness who either refused to be examined

under oath or, having taken the oath, refused to answer questions put to them, without reasonable excuse (although I did not have to exercise this power).

I was mandated to conduct the inquiry and make my findings and recommendations without expressing any conclusion or recommendation about the civil or criminal liability of any person or body. Further, all witnesses who testified at the inquiry were protected by both section 6 of The Manitoba Evidence Act and section 13 of the Canadian Charter of Rights and Freedoms which establish that such testimony cannot be used against a witness in any other proceedings except a prosecution for perjury.

Funding for the inquiry was initially set at \$2 million as a maximum with a provision that the Minister of Justice may, in consultation with the commissioner, revise the budget to accommodate any change in circumstances that arise during the inquiry. As will be explained in more detail below, a budgetary revision was required.

I was obliged to complete the inquiry and submit a final report to the Minister of Justice and the Minister of Municipal and Northern Relations by January 1, 2027.

In my report, I am also able to advise on whether the findings on any of the matters within the scope of the inquiry give rise to the need for further study, review or investigation and, if so, by whom.

Phases of the Inquiry

(a) Phase 1 – The Redevelopment Project

This phase encompassed the February 2026 hearing dates and examined events that occurred after the offer by the city to purchase the former Canada Post building, through the awarding of the redevelopment contract to Caspian Projects Inc., and the construction process itself, beginning in 2011 and ending in 2015.

A total of eleven witnesses testified in the following order:

February 10 to 13, 2026

Barbara (Barb) D’Avignon - City of Winnipeg, Manager of Purchasing
Jason Ruby - City of Winnipeg, Manager of Finance and Administration (Public Works)
Sean Barnes - PCL Construction
Eleanor Andres - Lawyer
Samuel (Sam) Katz - former Mayor

February 17 to 20, 2026

Phil Sheegl - former City of Winnipeg CAO
Armik Babakhanians - Caspian Projects Inc.

February 23 to 25, 2026

Abdul Aziz - Winnipeg Police Service

Randall (Randy) Benoit - Winnipeg Police Service (retired)

Ossama AbouZeid - Project Director

Myron Paryniuk - formerly of AECOM

(b) Phase 2 – The Money Trail

This phase encompassed the March hearing dates (with some overflow into April) and examined the money spent by the city to complete the redevelopment project, including the amounts paid to the general contractor Caspian Projects Inc.

A total of 13 witnesses testified in the following order:

March 9 to 12, 2026

Victor Neufeld - Prairie Forensic and Investigative Accounting

March 16 to 18, 2026

Gina Campbell - Deloitte LLP

David Kimber - Deloitte LLP

Sheldon Pitz - Tiger Ventures Demolition

Greg Fiorentino - FABCA Construction Ltd.

Peter Giannuzzi - G&G Interiors Ltd.

John Garcea - Strada Construction Ltd

John Schubert - McCaine Electric Ltd.

March 23 to 26, 2026

Armik Babakhanians - Caspian Projects Inc.

Pamela (Pam) Anderson - Caspian Projects Inc.

Shaun Babakhanians - Caspian Projects Inc.

April 14, 2026

Helder Cunha - Cunha Masonry

Ossama AbouZeid - Project Director

Peter Chang - Read-ins

Patrick Dubuc - Read-ins

Michael (Mike) Ruta - Affidavit filed

Deepak Joshi - Affidavit filed

Turner and Townsend - Report filed

(c) Phase 3 – City of Winnipeg Policies and Practices, Then and Now

This phase was in accordance with my mandate, as set out in the OIC, to inquire into the current and previous governance, decision-making, accountability and risk management structures of the City of Winnipeg for the implementation of large-scale publicly funded construction projects. In particular, I was obliged to inquire into the City of Winnipeg's current and previous policies, processes and procedures for the planning, approval, procurement, contract management and project management for such projects. As well, I was directed to inquire into the conflict of interest and disclosure obligations upon the mayor, other elected officials, the CAO and other senior employees as they relate to the implementation of such projects.

Five witnesses testified on behalf of the City of Winnipeg, in the following order:

April 15 to 17, 2026, and April 22, 2026

Danny Tooth - City of Winnipeg, Acting Manager of Major Capital Projects

Lisa Rowswell - City of Winnipeg, Deputy City Solicitor

Dave Clark - City of Winnipeg, Director, Human Resource Service

Tom Sparrow - City of Winnipeg, Chief Construction Officer

Geoff Mikolayenko - City of Winnipeg, Commercial Inspections Administrator

(d) Phase 4 – Recommendations for Change

In accordance with my mandate I inquired into the affairs of the City of Winnipeg to determine any measures that are necessary to restore public confidence in the ability of the city to implement large-scale publicly funded construction projects in a cost-effective, timely, efficient, and ethical manner. I also examined current structures within the city to determine whether they are in accordance with best practices to minimize cost and delay, and to prevent dishonest practices or the acceptance of inducements.

In order to fulfil this mandate, the inquiry sought and received evidence from a number of sources in May as follows:

May 12, 2026

Presentation regarding BIM technology by Daniel Kazado, ProCS Professional Construction Solutions

Testimony from Sherri Walsh, former City of Winnipeg Integrity Commissioner

May 13, 2026

Presentation by Lori Lavoie, Erin Wills, Celia Valel, and Max Schreckenbach – Municipal Board of Manitoba

May 20, 2026

Presentation by Ross Homeniuk, KPMG LLP, Partner, Infrastructure, Capital Projects, and Sustainability and by Nora Britney, KPMG LLP, Senior Manager, Major Project Advisory

May 22, 2026

Meeting with representatives from the Winnipeg Construction Association

Testimony from Joseph Dunford, City of Winnipeg, Chief Administrative Officer

(e) Phase 5 – Final Submissions

The original hearing schedule contemplated 8 days of hearing in June 2026 for all parties with standing, including commission counsel, to orally present submissions to me. However, budgetary restraints as well as efficiencies caused me to pivot away from that plan and to request and accept written submissions, all of which I was able to thoroughly review prior to writing my report. All submissions received by me have been posted on the inquiry website.

Public Inquiries

(a) Purpose and Nature

It is important to emphasize the difference between a public inquiry and a trial conducted in a court of law.

A trial in court, whether civil or criminal, is narrow and retrospective and examines specific events. Trials do not seek to explain why something occurred, except for the purpose of determining guilt or liability. By contrast, a public inquiry is a public investigation carried out in the public eye.

In our common law system, trials follow investigations. Parties are pitted against each other, and examinations and cross examinations are used to test the evidence and arrive at the truth. In a public inquiry, the investigation is part of the process; indeed, the whole purpose is to investigate and make public the results.

The whole of an inquiry is an investigation – before the hearings start, behind-the-scenes while hearings are ongoing, and in the hearing room itself. Further, the rules of evidence are significantly less restrictive than would be applied in a court of law. This allowed me to consider information from a variety of sources and give such weight to that information as I saw fit.

An inquiry is meant to be preventative in that it seeks to ensure that any mistakes uncovered will not be repeated. It is also meant to be restorative. As Justice Cory of the Supreme Court of Canada said in *Westray (Phillips v. Nova Scotia)*, [1995] 2 S.C.R. 97 at paras. 62,117:

Both the status and high public respect for the Commissioner and the open and public nature of the hearing help to restore public confidence not only in the institution or situation investigated but also in the process of government as a whole.

Open hearings function as a means of restoring the public confidence in the affected industry and in the regulations pertaining to it and their enforcement. It can channel the natural desire to assign blame and exact retribution into a constructive exercise providing recommendations for reform and improvement.

As set out in the OIC, I am to conduct this inquiry and make my findings and recommendations without expressing any conclusion or recommendation about the civil or criminal liability of any person or body. Although I can consider the evidence put before the inquiry and make findings of fact, I cannot go so far as to conclude that conduct has amounted to a criminal act or a civil wrong.

The nature of a public inquiry and its limited consequences were explained in the 1997 Federal Court of Canada decision, *Beno v. Canada*, [1997] 2 F.C. 527 (F.C.A), where the court said:

A public inquiry is not equivalent to a civil or criminal trial. In a trial, the judge sits as an adjudicator and it is the responsibility of the parties alone to present the evidence. In an inquiry, the Commissioners are endowed with wide-ranging investigative powers to fulfil their investigative mandate. The rules of evidence and procedure are therefore considerably less strict for an inquiry than for court. Judges determine rights as between parties; the commission can only “inquire” and “report”. Judges may impose monetary or penal sanctions; the only potential consequence of an adverse finding in an inquiry is that reputations could be tarnished.

As the commissioner, I am not deaf to questions raised in the community regarding the lack of criminal charges arising out of the Winnipeg Police Service Headquarters project. In December 2019, Manitoba Prosecution Service announced that it had concluded its five-year investigation and that no charges would be laid. The associated news release stated:

After a comprehensive review of the legal issues and foundational facts provided through the investigation, MPS has concluded that there is not sufficient evidence to approve any criminal charges as there is not a reasonable likelihood of conviction.

It is not for me to speculate as to the specific reasons why this decision was made. I simply say that it is imperative to recognize that the charging standard for a Crown prosecution requires a legal determination that there is a reasonable likelihood of conviction. This means that the Crown considers a myriad of issues including witness credibility, admissibility of evidence, and potential constitutional violations under the Canadian Charter of Rights and

Freedoms, in making its decision. For the most part, these were not matters that I needed to consider. Therefore, the facts that I was able to amass, and the conclusions that I was able to draw, may be very different than what might have occurred at a criminal trial. Some of the reasons for this are:

- First, as I set out above, The Manitoba Evidence Act empowers me to subpoena witnesses who must come and testify and must answer all questions asked of them, failing which I can have them arrested and jailed. In a criminal case in Canada, no person charged with a crime is obliged to testify in their own defence unless they choose to do so. The Crown must prove its case whether or not the accused testifies.
- Second, the standard of proof in Canada in a criminal court is “beyond a reasonable doubt.” That is the highest standard known to law and a much higher standard than applies to findings made in a public inquiry.
- Third, the rules of evidence in a public inquiry are considerably more relaxed and I can consider and accept as evidence documents obtained from any source, no matter how they were obtained. In a criminal case, section 8 of the Canadian Charter of Rights and Freedoms protects against unreasonable search and seizure, and documents that are found to be unconstitutionally obtained can be and are often excluded from evidence. To be clear, none of the parties to the inquiry raised any constitutional objections, given the jurisdiction of the inquiry versus what they may have raised in a criminal trial.
- Fourth, although witnesses subpoenaed must attend and testify at an inquiry, they are protected by section 6 of The Manitoba Evidence Act and section 13 of the Charter which provide that a witness who testifies in any proceedings has the right not to have any incriminating evidence given used to incriminate them in any other proceedings, except for a prosecution for perjury. None of the testimony given by a witness during this inquiry could later be used against that person, if subsequently charged with a criminal offence.

Thus, a very important reason for public inquiries is that they provide a means to shed light on issues of public importance, without the very exacting standards that shield an accused person during a criminal prosecution. My goal throughout this inquiry was to fulfil this objective; that is, to inform the public about what happened but not to make any findings regarding civil or criminal liability.

Manitoba Prosecution Service will now have full access to this report, transcripts of all evidence given at the public hearings, and the report of the expert forensic accountant Victor Neufeld, all of which were not available to it in 2019. What MPS makes of that new information is beyond my terms of reference and jurisdiction.

The OIC appointing me as Commissioner provides that, in addition to specific recommendations, I may also advise on whether the findings on any of the matters within the scope of the inquiry give rise to the need for further study, review or investigation and, if so, by whom.

In Part III, Recommendation #24, I address the issue of the public statement made by the prosecutions branch in this case in 2019 and whether it is sufficient to maintain public confidence in the discretion exercised by Manitoba Prosecution Service.

(b) Guiding Principles

Shortly after being appointed, I was directed to a report released in 2005 in Ontario entitled *Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry*, a public inquiry conducted by the Hon. Mme. Justice Bellamy. Her comprehensive and voluminous report includes an entire part entitled “Inquiry Process” which I would commend to any future inquiry commissioner as required reading.

In the early stages of setting up the structure of the inquiry including hiring commission counsel and staff, and considering the scope and nature of the hearings, I was guided by the principles set out in Justice Bellamy’s report. In her report, she reviews five basic guiding principles that she sought to observe throughout: fairness, thoroughness, efficiency, accessibility, and cost-effectiveness.

Fairness – because of the nature of this inquiry it was clear from the outset that I might make findings in my report concerning the conduct of certain individuals and that those comments might tarnish their reputations. As such, I adopted similar guidelines to those utilized by Justice Bellamy as follows:

- keep an open mind throughout;
- try not to surprise witnesses. Commission counsel and inquiry staff operated in an open, transparent and fair manner in terms of amassing and regularly disclosing documentation in advance of each witness testifying;
- be flexible in terms of the order of examination of witnesses and allow counsel representing the witness to choose when to question their own witness;

- if it appeared that I might make negative comments about a witness in my report I would, at the conclusion of their testimony, give them an opportunity to say anything further they may wish to add so that no one would leave feeling that they were not heard.

Thoroughness – I was appointed in February 2025, and I retained commission counsel and inquiry staff in March. A significant amount of preliminary work was required by commission counsel to meet with external counsel who had been involved in the City of Winnipeg litigation against Caspian, and others, to begin to understand the scope and breadth of the evidence that was available both documentary and potential witnesses. Ms. Leonoff met on many occasions with a variety of individuals, including experts, and began to shape the content of the upcoming public hearings. In regular consultation with me, many “rabbit holes” were identified and many were discarded as not directly relevant to the inquiry’s terms of reference. Over several months, phases of the hearing were developed and refined to the point where we were able, by the time that standing hearings were conducted in September 2025, to publicly announce the five distinct phases of the inquiry and that the hearing dates would begin in February 2026.

Efficiency – the public hearings, which encompassed 27.5 days of hearing and 30 witnesses, were entirely on schedule. Witnesses were not obliged to come and sit for days or even hours waiting to testify. Hearings began at 9:30 a.m. each day and finished at approximately 4:30 p.m., which was acceptable to all counsel involved. This allowed for a full day of hearing and made best use of our time and the facility in which the hearings were conducted.

Between hearing weeks, I used my time to make notes of evidence I had heard. Commission counsel and inquiry staff conducted witness interviews, amassed and disclosed documents, and ensured that the inquiry website was constantly updated.

Accessibility – one of the first decisions that we made as an inquiry team was to follow the lead of the *Commission of Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair* (“the Phoenix Sinclair Inquiry”) and establish a user-friendly website. We were able to obtain a hearing venue that allowed for live streaming. There were also daily transcripts produced by a court reporter posted on the website. These were important aspects of our commitment to accessibility.

Nearly all of the evidence I received was during the public hearings, notwithstanding that I had the power to hold proceedings in public or private as I considered advisable. Although the hearings were not attended by a significant number of public observers, we kept track of the numbers of individuals who were accessing the website, the particular pages being accessed and the geographical location (province/state/country) of individuals who were accessing the website (without identifying any particular individual or specific geographic location). During the four months public hearings were in session the website was accessed more than 23,400 times. The page containing the link to the live stream of the proceedings

was accessed over 8,200 times, and the page where one could access transcripts of evidence given during hearings was accessed over 3,000 times. The numbers suggest that the website was a very popular accessibility tool.

In formulating and publishing documents on the website such as the rules of procedure and information concerning standing applications, I tried to utilize plain language as much as possible.

Cost Effectiveness – A public inquiry initiated by the Government of Manitoba is funded by Manitoba taxpayers. This particular inquiry, which focuses to a large extent on unforeseen cost overruns, received an initial \$2 million operating budget. We were unable to stay within this budget primarily due to the extensive need for expert involvement both in providing finalized reports and testifying at the inquiry. The total cost alone of experts retained to provide reports and testimony and transcription services exceeded \$1 million.

We were fortunate in that the Public Utilities Board hearing room space was provided to us at no cost. Throughout the inquiry I kept a close watch on our budget and was provided with monthly reports from Financial and Administrative Services in Corporate and Strategic Services at Manitoba Justice which confirmed my assessment of our ongoing expenses. When it became clear in late 2025 that the \$2 million budget was not going to see us through, I sought and received from the Minister of Justice a budget increase of \$300,000.

The OIC entitled me, during the standing application process, to approve funding at reasonable rates for costs incurred by any individual having a substantial and direct interest in matters that fell within the scope of the Inquiry. Only one party seeking standing sought funding and I issued a decision declining that request (a copy of the decision is included as appendix 4). As such, no part of the inquiry budget was spent financing any individual who testified or was granted standing, except for the expert witnesses we retained.

Other budgetary decisions were made including the re-formation of Phase 5 – submissions by counsel for parties with standing, initially scheduled over eight hearing days in person. After considering the cost of that, I decided to cancel those hearing days and instead receive written submissions from counsel. Public accessibility to these submissions was satisfied by posting them on the inquiry website.

During phase 4 some evidence and information was received outside of the formal hearing process, where that made practical and financial sense.

In summary, the following decisions were made to stay within budget:

- The initial 48 date hearing schedule was reduced to a total of 27.5 public hearing days. This saved cost both in terms of the inquiry team and the costs of court reporting services.

- There were 34 witnesses originally scheduled to testify. This was reduced to 30, plus one off-site meeting with representatives from the Manitoba construction industry.
- We reduced the amount of time that counsel and inquiry staff could access over 1.7 million documents held on an external server, which was costing us approximately \$10,000 per month.
- One expert witness was cancelled entirely and a second was instructed to significantly reduce the scope of her work to reduce costs.

Attached as appendix 5 is a summary of the inquiry revenue and expenses.

In Part III, Recommendation #25, I further comment on governments setting budgets for public inquiries.

Role of Commission Counsel

In a public inquiry commission counsel is retained by the commissioner and as such the relationship between the two is significantly different than that of a judge and a lawyer in a trial court. Commission counsel acts as the lawyer for the commissioner and assists the commissioner in conducting the investigation and the inquiry, and in writing the final report. Commission counsel has been described as the “alter ego” of the commissioner. Throughout the process, commission counsel acts on behalf of and under the instructions of the commissioner. As such the commission counsel’s role is not to advance any particular point of view, but rather to be an advocate for the truth.

Madame Justice Steel, of the Manitoba Court of Appeal, ruling on a procedural question in the Phoenix Sinclair Inquiry (2012 MBCA 99), cited Commissioner Bellamy in the *Toronto Computer Leasing Inquiry* as follows, at paragraph 78:

Impartiality on the part of commission counsel is not to be confused with a lack of rigour and vigilance in seeking the truth. Commission counsel must still act forcefully whenever necessary to overcome resistance that could obscure truth. This persistence is particularly important whenever the transparency of public inquiries motivates resistance on the part of those with something to hide. What makes commission counsel’s role unique is that they must take into consideration the public interest, the interests of all parties, and furthermore, must explore conscientiously all plausible explanations and outcomes regardless of whose interests are advanced.

Justice Steel, continued:

It is commission counsel who has the primary responsibility to vigorously and completely represent the public interest, including the interests, issues and theories of all parties. In order to do so, commission counsel needs to foster effective communication with all of the parties to the inquiry. By way of illustration, the parties may be able to shed light on information not initially thought to be relevant or suggest additional fields of inquiry. Conversely, commission counsel should ensure that relevant information is getting to the parties on a timely basis, and should be available to discuss issues with other counsel.

In this case, I was fortunate that Heather Leonoff K.C., recently retired from the Constitutional Law Branch of the Manitoba Department of Justice, was willing to accept the role of commission counsel. As her biography attests, Ms. Leonoff has been active in all levels of court throughout her 40+ years of practice, appearing 16 times before the Supreme Court of Canada, lecturing at the Faculty of Law at the University of Manitoba, teaching evidence, criminal procedure, criminal law, advocacy and constitutional issues in criminal law, and was Manitoba's lead counsel on the National Inquiry into Missing and Murdered Indigenous Woman and Girls from 2016 to 2019.

Throughout, Ms. Leonoff has been extremely hard-working, thorough, fair, and has been an indispensable part of the inquiry team.

In addition, we had the benefit of significant assistance, both during the hearings and between hearing dates from Nicholas Warsza, Crown Counsel with the Legal Services Branch of Manitoba Justice. Mr. Warsza was extremely helpful in providing research when required, reviewing evidence, and generally being of assistance to Ms. Leonoff throughout. We are grateful to Manitoba Justice for availing us of this extra resource.

Administrative Staff

I was able to engage Stacy Nagle to take on the role of inquiry coordinator. Ms. Nagle is a former Executive Director of the Manitoba Bar Association, representing approximately 1,600 legal professionals in Manitoba. Her role at the Bar Association encompassed comprehensive management and administration, including staff supervision, overseeing financial operations and budgets, strategic planning, development of policies, technology implementation, moving and setting up new offices, website maintenance and responding to media inquiries. Through her leadership, she contributed significantly to the growth, development and influence of Manitoba's legal community.

Prior to that role, Ms. Nagle held leadership roles at the Court Challenges Program of Canada and the Community Legal Education Association where she managed administrative operations and developed programs.

In her role as Inquiry Coordinator, Ms. Nagle has performed a myriad of essential tasks that would not be financially efficient for either myself or commission counsel to undertake. These include arranging for and setting up office space, meeting with and delegating appropriate tasks to our administrative assistant, liaising with government regarding acquiring necessary hardware and software, development of a privacy and security policy for the inquiry, visiting a variety of potential sites for public hearings and finalizing arrangements for a location to host public hearings, establishing and updating the inquiry website, drafting and coordinating media bulletins through government Communications and Engagement and responding to media inquiries as well as inquiries from legal counsel throughout.

Ms. Nagle was primarily responsible for organizing electronic documents and disclosing relevant documents to counsel for parties with standing on a timely basis throughout the entire inquiry. She also attended at the hearings and was the person responsible for ensuring that documents being referenced during testimony appeared on everyone's monitor in the room and on the live stream and assisted in moving us through the documents as different portions of each were being focused upon.

In addition to Ms. Nagle, we retained Debra McEvoy, a paralegal who had recently retired from the Legal Services Branch, Manitoba Justice after 31 years of service. Ms. McEvoy came highly recommended, and she agreed to join the inquiry team to provide administrative support both in preparation for and during the entirety of the public hearings. She was also instrumental in reviewing transcripts which were received from our court reporter daily, to edit and ensure accuracy before those transcripts were published on our website. Finally, Ms. McEvoy was also of great assistance to me in producing and editing many drafts of and ultimately my final report.

Confidentiality

Pursuant to my Agreement with the Government of Manitoba, I was to ensure, for myself, commission counsel, staff, contractors, and legal counsel for parties with standing that the work of the commission would remain confidential unless and until becoming part of the public record at the inquiry's proceedings. Further, I was obliged to comply with the provisions of The Freedom of Information and Protection of Privacy Act (FIPPA) regarding information, documents and materials that came into our possession during the inquiry. This required the redaction of many documents admitted into evidence to ensure that personal private information that was not necessary to the inquiry was removed.

Documents Management

Virtually, all the documents that were disclosed to parties with standing and referenced at the public hearings were electronic in nature.

Relevant documents were collected from three major sources; all the documents and financial records seized by the RCMP from Caspian in 2017; documents disclosed by the City of Winnipeg; and documents produced and disclosed during the legal proceedings between the City of Winnipeg and Caspian and other defendants. In total, approximately 1.75 million documents were identified, individually assigned a unique identifying name/number, and saved.

These documents were electronically, stored by Deloitte, utilizing a search engine known as “Relativity.” This is a document review platform that can host a very large number of documents and can organize them into searchable databases.

Gina Campbell, from Deloitte, testified that all these documents were reviewed and slowly worked down to the most relevant documents by category. However, the search engine allowed keyword searches of the entire 1.75 million documents by anyone having access. This allowed the expert witnesses, commission counsel and counsel for the parties to conduct searches across the entire database.

All parties with standing, through their legal counsel, were given access to the database up to the end of January 2026. The cost of maintaining this database was not insignificant, approximating \$10,000 per month. As such, it was determined that by the end of January 2026, with hearings beginning in February, counsel would have had every opportunity to access these documents.

As the hearings were organized, inquiry coordinator, Stacy Nagle, frequently and routinely disclosed documents to counsel that were to be referenced at upcoming hearing dates utilizing a document management program called TitanFile. This is a document management tool used in Manitoba, notably by our Court of Appeal. Ms. Nagle was able to disclose and update disclosures regularly so that counsel would have access to documents before each witness testified and referred to them. All counsel had ongoing access to the primary documents contained in TitanFile throughout all stages of the inquiry up to and including the filing of final submissions. In total, over 6,000 documents were disclosed to parties and counsel. These documents included: emails, letters, notebooks, security clearances, various City of Winnipeg meeting agendas, minutes, notes, by-laws, administration reports, policies, presentations, job descriptions, job postings, employment contracts and other contracts, requests for proposals, change orders, progress claims, bids and evaluations, civil litigation materials including examinations for discovery, answers to undertakings, answers to interrogatories, affidavits of documents, cross examinations on affidavits, interviews, tax returns, notices of reassessments, RCMP files and interviews,

corporate documents including business registrations, articles of incorporation and expert reports.

During the hearing, whenever counsel or a witness referred to a document, Ms. Nagle was able to bring it up on computer monitors that were situated in front of all in attendance, so that the document could be seen and referenced. The document was also visible on the live stream via the website so that those watching the inquiry online could also see and understand the document that was being reviewed.

Website

Following on the lead of previous public inquiries in Manitoba, most notably the Phoenix Sinclair Inquiry, a comprehensive and accessible website was determined to be critical to our functioning and purpose.

Soon after engaging the services of inquiry coordinator Stacy Nagle, we began to discuss the need for a user-friendly website. From the outset Ms. Nagle was primarily responsible for inquiring into available website creators and ultimately making arrangements with Justice Information Services to both create and assist with frequent updates to our website throughout the course of the inquiry. Written requests for changes and additions were submitted and often completed in under 24 hours by the staff at Justice Information Services.

Although there was space in the hearing room for the public to attend, we also tracked the ongoing traffic on the website throughout and clearly members of the public utilized this tool. Appendix 6 summarizes the website usage traffic data. Not only was the website useful during the inquiry, but it is my understanding that it will remain available to all into the future, as is the Phoenix Sinclair Inquiry website.

Our [website](#) includes:

Homepage – the homepage contains all the links to the various sub-pages which provides specific and updated information about the inquiry. It also houses the link to the live stream, and a link to the OIC appointing the commissioner.

Purpose of the Inquiry and Terms of Reference – these pages set out what the inquiry was to examine and determine as mandated by the OIC.

Commissioner and inquiry staff – these pages set out biographies of the commissioner and commission counsel and identified the inquiry coordinator and administrative assistant.

Rules of Procedure – this page includes all the rules of procedure that applied to the inquiry, as set by the commissioner.

Applications for Standing – this page provides the details and guidelines for persons, organizations, or corporations seeking standing, in whole or in part, at the inquiry including deadlines for applying.

Parties and Intervenors – this is a listing of all parties granted standing (in whole or for certain phases).

Schedule and Witnesses – this page, updated regularly, set out the five phases of the inquiry, the dates of all public hearings, and a list of the witnesses who were testifying each week of the inquiry including, where appropriate, the employer or company with whom that witness was associated.

Transcripts – transcripts of each hearing date were posted on the website, usually the following working day, and are available for review by members of the public.

Expert Reports – the expert reports are fully available on the website.

Submissions – all written submissions provided by parties with standing have been posted.

Media – when media bulletins were issued, they were posted on the website and media were able to receive regular email updates by registering with the inquiry coordinator.

FAQ – this page consists of narrative answers to a list of 12 questions about the public inquiry.

Help – this page offers accommodated access to the website and provides further information regarding accessing the website and documents available on the website to those having difficulty accessing it.

Office Space and the Hearing Room

With the assistance of Assistant Deputy Attorney General, Michael Conner, K.C., we were able to secure sufficient office space in the Woodsworth Building, which had recently become available upon the departure of the Manitoba Law Reform Commission to an alternate location. This space served the inquiry staff well both in terms of providing office working space, secure storage for documents, materials and equipment, and providing a boardroom for meetings.

Ms. Nagle visited several potential facilities that might be appropriate for public hearings and was able to secure the hearing room and adjacent boardrooms at the Public Utilities Board at 400-330 Portage Avenue, which was utilized for 27.5 scheduled public hearing dates, from February to May 2026, at no cost to the inquiry.

The hearing room was more than suitable for our purposes. It housed two stationary cameras which facilitated live streaming the proceedings. Computer monitors were

situated in front of each participant, as well as large screens facing the public seating area of the room, which allowed for everyone, including the media in attendance, to have the ability to view all documents as they were being reviewed.

Counsel for one party with partial standing, Adjeleian Allen Rubeli Limited, are situated in Ottawa, Ontario and were able to attend the hearing entirely virtually via Teams. Local counsel also utilized virtual attendance via Teams from time to time.

Security was provided for the first two weeks of the public hearings through Manitoba Justice, Protective Services. Thereafter, it was decided that further security would not be required at the public hearing.

Media Access

Media were allowed full access to the public hearings and, as the space accommodated this, seating behind counsel at tables with computer monitors. Media were also provided with copies of many documents presented as evidence at the hearing, upon request.

Given that the public hearings were live streamed, and media could access the live stream at any time, cameras were not allowed in the hearing room when the hearings were in progress. This was a decision I made to ensure that there was no interference in the hearings running smoothly and so as not to cause distraction to the witnesses and parties.

Rules of Procedure

The guiding principles of fairness, accessibility and cost-effectiveness were top of mind when I created the Rules of Procedure. The rules can be found at appendix 7. I had reviewed similar documents created in previous public inquiries and was able to utilize much of what had been created previously.

The rules governed key aspects of the inquiry process, including:

- what would be required for a standing application, and then, subsequent to being granted standing, the obligations on parties to produce all relevant documents and meet with commission counsel to be interviewed;
- what evidence would be considered at the hearings, and the procedures by which witness evidence would be received;
- the process by which I would be issuing Notices of Alleged Misconduct prior to making any findings of misconduct against a person in this report.

Standing

“Standing” means the right to participate in the proceedings with an opportunity to give evidence and to examine or cross-examine witnesses on evidence relative to that party’s interest.

According to the Rules of Procedure, commission counsel, appointed to represent me and the public interest throughout, would have standing throughout the inquiry.

I was able to grant either full or partial standing to any person, organization or corporation wishing to participate. Those granted standing would be entitled, but not required, to have legal counsel present while being interviewed by commission counsel and when testifying. Unless otherwise approved by me in advance, counsel would be retained at the expense of the witness and people with standing.

On September 10, 2025, I held a standing hearing and granted standing as follows:

- City of Winnipeg represented by Michael Finlayson and Gabrielle Lisi from the firm Marr Finlayson LLP – granted standing for all phases of the inquiry.
- City of Winnipeg Police Service represented by City of Winnipeg Police Service legal counsel, Kimberly Carswell, Shannon Hanlin, and Allie Derwin – granted standing for phases 1, 2 & 3.
- Caspian Projects Inc., (“CPI”) Caspian Construction Inc., Armik Babakhanians, Shaun Andre Babakhanians, Triple D Consulting Services Inc., Pamela Anderson, 4816774 Manitoba Ltd. operating as Mountain Construction, JAGS Development Ltd. (the “Caspian Group”) all represented by Mr. George Orle K.C. from the firm GJO Law Corporation – granted standing for all phases of the inquiry.
- Phil Sheegl represented by Richard Wolson K.C. and Evan Roitenberg K.C. from the firm Wolson, Roitenberg, Robinson, Wolson – granted standing for phase 1.
- Sam Katz represented by Danny Gunn from the firm Campbell Gunn Seib Jones – granted standing for phase 1.
- John Garcea, Mabel Garcea, S & J Construction Ltd., Colour Design Decorating Inc., Granite Concrete Services Inc., Tuscany Construction Ltd. and Strada Construction Ltd. (collectively, the “Garcea Group”) represented by Timothy Fry, Kosta Vartsakis, and Jordan Kreml from the firm Merit Law Corporation – granted standing for phase 2.
- Greg Fiorentino and FABCA Construction Ltd. represented by Kevin Williams K.C. and Matthew Nordlund from the firm Taylor McCaffrey – granted standing for phase 2.

- G&G Interiors Ltd. represented by Richard Beamish from the firm Tapper Cuddy – granted standing for phase 2.
- Adjeleian Allen Rubeli Limited (AAR) represented by David Sherriff-Scott, Scott Pollock and Bethany Keeshan from the firm Borden Ladner Gervais in Ottawa ON – granted standing for phases 1 and 2.

As set out above, I had the authority pursuant to the OIC to approve funding for costs incurred by an individual with standing. Only one party, Adjeleian Allen Rubeli Limited, sought funding which request I did not grant.

Notices of Alleged Misconduct

Although the OIC requires me to conduct the inquiry and make my findings and recommendations without expressing any conclusion or recommendation about the civil or criminal liability of any person or body, I can make factual findings and conclusions that could negatively affect individual reputations. The Rules of Procedure provide that I may inquire into the conduct, character, and motives of any person whose actions are relevant to the scope of the inquiry.

Although I am not statutorily obliged to do so, the Supreme Court of Canada has made it clear that the principles of natural justice require notice to be given to persons against whom findings of misconduct may be made. The purpose of giving notice that I might make a finding of misconduct, is to allow the recipients an opportunity to fully address the issues referred to in the notice. I adopted a low threshold for giving such notices and directed inquiry counsel to give notice if there was any reasonable prospect that I might make a negative finding.

In accordance with the Rules of Procedure, notices of alleged misconduct were delivered on a confidential basis.

Commission counsel delivered 16 Notices of Alleged misconduct on my behalf, setting out in each, in as much detail as possible, the specific allegations that might attract a finding of misconduct. All notices except one were served prior to the commencement of public hearings. Generally, the notices read as follows:

The Government of Manitoba has called a public inquiry into the redevelopment of the Winnipeg Police Service Headquarters. A copy of the Order in Council establishing the inquiry is attached.

Mr. Garth Smorang, K.C. has been appointed the Commissioner to conduct the inquiry and report his findings. The undersigned has been appointed as counsel to the inquiry.

The Commissioner has no jurisdiction to make findings of criminal or civil liability. However, the Commissioner does have the jurisdiction to make findings of credibility and misconduct. In doing so, the Commissioner must afford those who may be impacted procedural fairness. This includes providing the parties affected with confidential and detailed notices setting out the potential misconduct.

In accordance with this requirement, this letter serves as notice that in his report, the Commissioner may make findings of misconduct against you, based on the following allegations:

- details of alleged misconduct set out here

Please be aware that this notice may be amended in the future if new information becomes available.

The Commissioner will be holding a hearing to determine standing to participate fully or partially in the inquiry. You can learn more about the process to apply for standing on the inquiry website at [Winnipeg Police Service Headquarters Inquiry](#).

If you or your counsel have any questions with respect to this notice or any other matter related to the inquiry, please contact me at the email address listed.

Conduct of Public Hearings

(a) Compelling the Attendance of Witnesses

The Manitoba Evidence Act empowers me as commissioner to subpoena witnesses to appear and to require those witnesses to give evidence and to produce such documents as I deem necessary to fully investigate the matter. However, I am unable to serve an enforceable subpoena on an individual who is not physically situated in the province of Manitoba. Three such individuals (two in Ontario and one in British Columbia) were served with Notices of Alleged Misconduct but could not be subpoenaed and did not voluntarily participate in the inquiry. In Part III of this report, I have made a specific recommendation to the government to amend existing legislation to remedy this inability; (see Recommendation #22).

A witness subpoenaed to testify is expected to answer all questions that are asked. The Manitoba Evidence Act specifically provides that no witness shall be excused from answering any question upon the ground that the answer to that question may incriminate the witness. However, both the act and the Canadian Charter of Rights establish that testimony at an inquiry cannot be used against an individual in any other proceedings except a prosecution for perjury.

The Manitoba Evidence Act also provides that where a witness refuses to answer questions put to them without lawful excuse, I may issue a warrant directing the police to arrest and

commit that person to a common jail, to remain and be imprisoned for a term not exceeding one month unless in the meantime the witness consents to answer the questions.

These are significant powers that, as I point out earlier in this report, do not exist in our criminal courts vis-à-vis those charged with criminal offences.

I served a total of 17 subpoenas. A number of witnesses, particularly the city witnesses and the experts, testified without having been subpoenaed to do so. Thankfully, I was not put in a position where I needed to exercise my power to issue a warrant for failure to attend or failure to answer proper questions.

(b) Examination of Witnesses

Pursuant to the Rules of Procedure, witnesses testified under oath or upon affirmation, and their evidence was transcribed with the assistance of a court reporter. All witnesses were entitled to have their own counsel present during testimony. The rules allowed me to call a witness to testify more than once, and two witnesses were called to testify twice.

Although the hearings were generally open to the public, I was empowered to close the hearing to the public if I concluded that the matter involved public security or intimate financial or personal matters such that the desirability of affording disclosure outweighed the desirability of adhering to the principle that hearings be open to the public. I was also able to receive applications from witnesses or people with standing to hold any part of the hearing in the absence of the public. Neither of those situations occurred and all hearings were held entirely in public.

Generally, commission counsel led evidence from each witness first, however, a number of witnesses with standing were examined by their own counsel first, followed by other counsel. I left it to the parties themselves to determine the order of cross-examination, with commission counsel having the right to re-examine last. In some cases, I also asked questions of the witness at the end, always reserving the right of any counsel to direct further questions to the witness if my questioning raised any issues or concerns.

I did not impose time limits on cross examination of witnesses, but I did seek an estimate from each of the counsel as to how long they might be, in the interests of efficiency. Counsel were very cooperative both in determining order of examination and in conducting their questioning within the reasonable limits of relevancy.

For several key witnesses, at the conclusion of their testimony, I specifically asked whether there was anything they would like to add that they had not already had the opportunity to say up until that point. Many witnesses took that opportunity.

(c) Other Evidence

In phases 3 and 4, some evidence was presented in a format other than by way of sworn testimony.

Evidence concerning the involvement of two individuals, Peter Chang and Patrick Dubuc, neither of whom appeared voluntarily to testify, was read in by commission counsel. Reference was made to several documents during that process, including examination for discovery testimony each had given under oath as part of the prior civil litigation brought by the City of Winnipeg.

Two affidavits sworn by former City of Winnipeg employees, Mike Ruta former CFO, and Deepak Joshi, former COO, were filed as evidence.

A report prepared by Turner and Townsend was submitted, entitled *Quantity Surveying and Cost Consulting Services (RFP #105-2014) Value Analysis Report for Winnipeg Police Service Headquarters*, dated July 2014.

A PowerPoint presentation was made by Daniel Kazado of ProCS Professional Construction Solutions on May 12, 2026, regarding the use of BIM technology to assist designing, constructing, and managing buildings.

Representatives from the Municipal Board attended the hearing on May 13, 2026, to discuss what potential role the Municipal Board might have in the oversight of municipal planning for large-scale publicly funded construction projects.

Finally, a meeting was held with representatives from the Winnipeg Construction Association on May 22, 2026. A variety of topics were discussed, and the Association has provided a written submission which I have reviewed, and which is available on the inquiry website.

(d) Transcripts

For court reporting services we chose to use Digi-Tran Inc., the reporting service currently being used by the Public Utilities Board for its hearings. Digi-Tran provided transcripts of the hearings to us, usually on the same day. These transcripts were then reviewed and edited for accuracy by Ms. McEvoy or Ms. Nagle, and the final versions were posted on the inquiry website.

Same-day service for receipt of transcripts was a valuable tool, and more than once during the hearings counsel were able to access the previous day's transcript to assist in the questioning of witnesses.

Experts – Reports and Testimony

In some cases, we were able to make use of work done by experts previously retained in the course of the litigation involving the City of Winnipeg, by having them continue and finalize reports that were already in progress at the time that the litigation was settled in 2023. Other experts were retained by me specifically to provide opinions and evidence to the inquiry.

The OIC appointing me as commissioner allowed for the payment of remuneration and expenses of technical advisors or other experts retained for the purposes of the inquiry. In retaining each of the experts who charged a fee for their services (six of the experts who provided evidence by way of a report and/or testimony), I inquired as to their usual billing rates for similar services in the last three years to ensure that the agreed-upon billing rates were fair, reasonable, and consistent with industry standards.

The areas in which experts testified or otherwise provided information to the Inquiry included:

- forensic accounting
 - Victor Neufeld – Prairie Forensic and Investigative Accounting
 - Gina Campbell – Deloitte LLP
- use of technology to improve building projects
 - Daniel Kazado – ProCS Professional Construction Solutions
- ethics for public servants
 - Sherri Walsh – Manitoba Ethics Commissioner
- procurement and construction law
 - Eleanor Andres – Lawyer
- planning, approval, procurement, governance and project management review
 - Ross Homeniuk – KPMG LLP
 - Nora Britney – KPMG LLP
- best project management practices in the construction industry for the completion of large-scale projects
 - David Kimber – Deloitte LLP

All expert reports have been posted on the inquiry website and are listed in appendix 8.

Closing Submissions

As outlined above, the initial hearing schedule provided for eight hearing dates in June 2026 for parties with standing to make oral submissions. For budgetary and efficiency purposes, a decision was made and communicated to counsel in early March 2026 to cancel those hearing dates. Instead, parties were afforded the opportunity to provide written submissions, that were due on or before June 18, 2026. I received eight submissions, all of which were very helpful to me in considering my recommendations and finalizing my report. All written submissions received have been posted on the inquiry website.

PART II – A SAD TALE UNFOLDS

1. INTRODUCTION

Large-Scale Construction Projects

The City of Winnipeg uses the term “mega” to describe construction projects with projected costs in excess of \$500 million dollars. It uses the term “major” to describe projects with estimated costs between \$25 million and \$499 million dollars.

Under the OIC establishing the inquiry we were directed to consider “measures that are necessary to restore public confidence in the ability of the City to implement large-scale publicly funded construction projects in a cost-effective, timely, efficient and ethical manner.”

For the purpose of this inquiry, we have chosen to define “large-scale” to mean projects with an estimated cost of \$100 million dollars to \$499 million dollars. We have done so because the WPSHQ project fell within this range. Further, we have been told that projects this size are rare for the city, usually only 3 to 5 occurring at any given time. Yet projects in excess of \$100M involve considerable expenditure of taxpayer funds and are deserving of the additional oversight and planning that are set out in the recommendations section of this report. Since the number of large-scale projects are small, the recommendations can be implemented without an undue strain on resources.

Thus, throughout the report, the term “large-scale” is to be understood to mean projects between \$100 to \$499 million dollars.

Abbreviations and Naming Protocol

This part of the report will be replete with acronyms. For ease of reading, oft-repeated names and terms will be abbreviated throughout. An abbreviation list can be found at the beginning of the report.

There were 30 witnesses called at the inquiry to give oral testimony. We also held three panel presentations: one from KPMG Canada providing expert testimony regarding recommendations for changes to the city’s management and oversight of large-scale construction projects; one from the Manitoba Municipal Board on its potential role in overseeing city projects; and a panel convened by the Winnipeg Construction Association to offer its advice on best practices and recommendations for change (with a written submission provided to the inquiry subsequently). In addition to those who testified, there were several other people who were identified as having a role in the WPSHQ redevelopment project.

Subject to two exceptions, throughout the report, individuals will be identified with their full name the first time they are referred to and mostly thereafter only by their surname. The two exceptions are father and son, Armik Babakhanians and Shaun Babakhanians. Without meaning any disrespect, these two individuals will generally be referred to as Armik and Shaun, in order to limit confusion.

Caspian will be used generically to refer to the group of companies owned by Armik, unless there is a need to specify one particular entity.

Special Recognition of the Contributions of Four Outstanding Public Servants

Throughout this report there will be several references to “city mismanagement”, “city failures”, or similar comments. These generic phrases should never be understood to include four public servants, Abdul Aziz, Barb D’Avignon, Jason Ruby and retired WPS Inspector, Randy Benoit. Their efforts to protect the city from the rash acts of others went ignored. They are deserving of special recognition for the efforts they made at the time of the headquarters project and, as to Aziz, D’Avignon and Ruby, for their continuing service to the city. Their efforts and contributions will be explained throughout this report.

Over a Decade Has Passed. . .

The events at issue took place primarily between 2010 to 2013. The inquiry was called in 2025, meaning that more than a decade had passed between the critical events and when the inquiry began its investigations. This delay did have consequences: witness memories were faulty; some potential witnesses had left their jobs years before and could no longer access their files or emails; in one case a potential witness had died. Thus, there were some avenues of investigation that could not be adequately reviewed. However, the fact that there had been a very thorough RCMP investigation and a civil lawsuit, meant there was an abundance of material that had been collected and was available to the inquiry. Thus, except in some limited circumstances, the inquiry was able to undertake a very comprehensive review.

The passage of time also legitimately gave rise to questions such as “why now and for what purpose”? These questions did influence the course of the investigations and the organization of the public hearings. Matters that had already been investigated were not re-examined. But the overarching principle that guided the public hearings was that the taxpayers of the City of Winnipeg had paid for the WPSHQ project and those taxpayers were entitled to a full and public accounting of how their money had been managed by their

elected representatives and city staff. This part of the report is directed at answering this fundamental question.

2. MISMANAGEMENT

The Project Begins

Opened in 1966, the former WPSHQ building was located on Princess Street in Winnipeg. There was an indoor shooting range located in the basement of the adjacent parking garage. By around 2000, it was recognized that the headquarters building was too small and could not accommodate changing police needs. Further, the Tyndall stone cladding on the building was falling off and was a significant danger to pedestrians. The parking garage had been closed due to safety concerns, and the police could no longer access their indoor range. An off-site outdoor shooting range was also set to close due to a new housing community planned for the area. In the circumstances there was urgency to find a solution that would give the police a proper 21st century headquarters building and a shooting range, to ensure that officers could undertake their training and maintain their yearly certifications.

Abdul Aziz is a mechanical engineer who began employment with the WPS in 2001. He is currently the director of services. His responsibilities include managing police facilities and overseeing capital construction projects. Beginning around 2005, Aziz was having some preliminary discussions with city staff about options for a new police facility. At least one option was to combine the existing building and the parking garage into one facility. However, no concrete plans were ever formulated.

Sometime in 2009, Mike Ruta, the city CFO, learned that Canada Post was intending to sell its 50-year-old mail processing facility located on a city block in downtown Winnipeg. The facility consisted of three components; the “box” mail sorting plant, an eleven-story office tower and a five-story link that connected the other two parts. Phil Sheegl had joined city government from the private sector in 2008 as the Director of PP&D. Ruta informed the city CAO, Glen Laubenstein, of the upcoming sale and Laubenstein assigned Sheegl to investigate the option of redeveloping the post office site into a new police headquarters.

Sheegl engaged Shindico Realty Inc. to coordinate a feasibility study. Several Manitoba firms worked on the report, including an architectural firm, three engineering firms, an acoustic consultant, an elevator consultant and a cost estimator from a national construction company. The final report, dated October 16, 2009, identified many significant issues, but the conclusion was that the box portion of the building had the necessary square footage and could be renovated to meet police needs. It was also determined that a new indoor shooting range could be added to the top of the box structure. A preliminary Class D cost estimate for direct redevelopment costs of \$97,534,735 was included with the feasibility study.

There will be several references throughout this report to Class cost estimates. These are estimates prepared by professionals with the expertise to provide guidance on the cost of construction projects. The estimates vary through four classes, from Class D to Class A, with Class D being a high-level figure based on limited information, and Class A being the most accurate and based on detailed drawings and pricing.

There were advantages for the city and police in acquiring the Canada Post facility. The new downtown location would increase police visibility in the heart of the city, and in the skywalk system, running through the downtown. It would move the police headquarters close to the courthouse and the Provincial Remand Centre. Thus, based on the Shindico study, together with the other advantages of a downtown location, the city administration sought city council approval to purchase the Canada Post facility for \$29,250,000. Of note, is that the only two options presented to council were to purchase the Canada Post building or to temporarily relocate police staff while the Princess Street building was reclad. Identifying potential locations and costing for the construction of a new facility was not put forward as an option.

The purchase of the Canada Post building was one of the subjects of a 2014 EY (formerly Ernst and Young) audit and was therefore not re-examined by the inquiry. The audit concluded:

No appraisal was performed by the City on the 266 Graham property and this was not specifically disclosed in the Administrative Reports recommending the acquisition to council. The Administrative Report presented to council recommending the acquisition of 266 Graham for the purposes of housing the new police headquarters did not mention that a comprehensive procurement process had not been undertaken. EY did not observe file documentation evidencing that a process was undertaken to identify other potential properties, and a procurement process, such as an EOI, was not undertaken to determine the options available.

On November 25, 2009, council approved the purchase and directed the administration to “issue a call for proposals to complete the \$105 million redevelopment” of the box portion of the building. The Canada Post purchase was completed on December 1, 2009. Now the attention of the city turned to the redevelopment project.

The \$105M figure is not explained in the administrative report submitted to council. Presumably, it is based on the \$98M Class D estimate plus \$7M for additional city “soft” costs such as legal, architectural and engineering fees. The need for fulsome and accurate administrative reports will be a theme throughout this report and will be discussed further in Part III – Recommendations #14 and #21.

On January 20, 2010, a meeting was held with several city staff to discuss next steps. Three key people at the meeting were Sheegl, who, in November 2008 had moved from PP&D into the role of DCAO, Aziz on behalf of the police, and Barb D’Avignon who was, and remains, the manager of purchasing for the city. The lead team for the project were identified as DCAO Sheegl, DCAO Alex Robinson and Director of PP&D, Deepak Joshi. It was determined that the city would follow its traditional DBB model and would hire a consultant to complete the design.

The steering committee was eventually expanded to five people: Sheegl, Robinson, Joshi, CFO Ruta and the Chief of Police McCaskill.

The city uses a competitive RFP process to hire design consultants. For the HQ project, the RFP was the responsibility of PP&D. Bonnie Konzelman, an engineer from that department, worked with Aziz and D’Avignon to complete RFP 66-2010. D’Avignon was responsible for issuing the RFP which occurred in late March 2010. The RFP sought services under a traditional DBB model whereby the successful candidate would complete the design, prepare the bid documents to be used to hire a contractor to do the redevelopment work, and then would administer the construction contract during the construction phase.

In February 2010, while RFP 66-2010 was being drafted, Aziz was appointed by Sheegl as the WPSHQ project manager. Aziz testified that he had worked on other community satellite police station builds for the city, but he had never been a project lead, and he had never worked on a project of the magnitude of the headquarters project. The largest project that he had worked on to that date was \$30M and he had had a team to assist.

Not unreasonably, when Aziz was appointed the lead for the HQ project by Sheegl, he assumed a team would be assigned to help. In March 2010, Aziz sent a memo to Sheegl to identify the people he required to flesh out the project management team. This included six additional people to be assigned to serve full or part time on the core project team, as well as many other people to assist as needed. The memo received no response. Moreover, Aziz was not relieved of his regular full-time job responsibilities until the end of 2010. Thus, the

project began under the direction of an individual who was dedicated to the success of the project, but who was put into an impossible situation by the lack of proper resources.

A further challenge for Aziz (and for everyone who would eventually be working on this project) was the very tight timeframe directed by senior management for the completion of the entire project. RFP 66-2010 contemplated a one-year timeframe for total completion of the shooting range and a three-year timeframe for substantial completion of the HQ project. Aziz described this timeframe as “very fast for a project this size”. Based on his experience working on the construction of community police satellite stations, Aziz would have expected a two-year design phase to complete a program of requirements that would set out the police needs and then incorporate those needs into the design. The project entailed moving nine separate and complex workplaces scattered throughout the city into one building equipped to hold over a thousand employees. Specifically, the new building would need to hold the police administration offices, the 911 communications centre, the WPS training academy, a jail facility, an evidence control unit, forensic labs, specialized investigative units and the Central District police division. Each of these required very specific needs for their safe, effective and lawful operation. Requiring all of this design work to be done in one year was a direct result of the failure of the city to start planning years in advance to replace a police headquarters building that was long past its safe and useful life. One can only speculate what would have happened if the Canada Post building had not become available, since no other options were ever investigated.

The lack of planning and understanding of the redevelopment project by the project steering committee can also be seen in the 18 addenda that were ultimately added to RFP 66-2010 to amend what was being requested from proponents. Eleanor Andres, an expert witness in procurement and contract law, described the 18 addenda as a “telling number for a procurement that should have been straightforward”. The constant changes caused confusion among potential proponents that were considering submitting a bid. There were multiple questions sent seeking clarification from the city on what delivery model the city was contemplating and what form of contract would be used with the contractor.

Aziz testified about addendum 9 issued June 8, 2010, and addendum 15, issued ten days later on June 18, 2010. Addendum 9 changed the scope of services being sought from 100% completed design drawings down to 30% completed drawings. Aziz explained that this change had been directed by the steering committee, presumably to speed things up, and that Aziz objected. He thought that requiring the designer to produce only 30% drawings at the time of engaging a contractor would cause significant problems for the city. Following the issuance of addendum 9, Aziz met with the Chief of Police to explain his concerns. The direction then came to issue addendum 15 and go back to 100% drawings. The obvious

inference is that the Chief intervened with the steering committee. This is one example of Aziz doing his best to try to keep the project on course.

The city does not regularly use lawyers to draft RFPs. These are legal documents with legal ramifications. While others will need to assist, particularly with technical requirements, having a lawyer as the primary drafts person will ensure the document meets all legal requirements and will reduce the need for multiple addenda. This is discussed further in Part III – Recommendation #1.

AECOM Canada Ltd. was the successful proponent under RFP 66-2010 and was issued a LOI from the city on August 19, 2010. The contract was for the first three phases of the project, meaning pre-design, schematic design and design development. Under its contract, AECOM agreed to the aggressive schedule set by the city for the completion of the design phase by August 8, 2011, subject to a proviso that AECOM receive its contract for phase 4 services (contract development) by October 11, 2010. The city missed this deadline and did not provide the necessary documents until January 4, 2011, a delay approaching three months. Further, the police were delayed in providing important planning information. As a result, on January 28, 2011, AECOM issued a formal letter of delay. Despite the delay, Aziz testified that he was working well with the AECOM team, that they were very professional, and that the team was making progress on the design.

As AECOM began its work in the summer of 2010, the city was also in the process of receiving bids in response to its RFP 516-2010 that had been issued on July 20, 2010. Since no internal resources had been directed to the project, RFP 516-2010 sought project management services in order to provide Aziz with some much-needed support. Unfortunately, when the bids were reviewed, Aziz did not believe that the proponents would be able to provide the type of assistance he was seeking. He believed that he needed five or six internal city staff who were familiar with city policies and practices.

On September 17, 2010, after AECOM had been on the project for approximately one month, a meeting was held between Sheegl, Joshi, Aziz and AECOM representatives, Myron Paryniuk and Steve Loomis. Paryniuk was the lead engineer on the project and Loomis was from the American offices of AECOM and had specialized expertise in designing police headquarters and other justice facilities.

One of the issues discussed at the meeting was the need for additional resources for Aziz. Paryniuk testified that between eight to ten people were needed to run the HQ project efficiently and effectively. While there was a commitment made to complement Aziz's staff, nothing transpired. A decision was also made to cancel RFP 516-2010 since Aziz did not believe he would benefit from external resources.

The failure of the city to commit proper resources to the project would reverberate throughout the project.

It is essential that the city properly assess internal resource needs before commencing large-scale construction projects and seek council approval for any necessary external resources.

The requirement that the city include a human resourcing plan as part of its business case for large-scale projects so that council is aware of the internal and external resource needs for the project, prior to its approval, is discussed in Part III – Recommendation #4.

A second issue discussed at the meeting was the recommendation by AECOM to hire someone to work with the design team on constructability. Constructability allows for an integrated design process so that the design is developed with a perspective on how it will be built. This recommendation was approved.

RFP 833-2010

On November 18, 2010, RFP 833-2010 was issued. The RFP went further than only seeking constructability services. It also covered construction (phase 2) and post-construction (phase 3) services. However, at this early stage, the construction drawings were not nearly far enough along for a reasonable cost of construction to be formulated, so an \$80M place holder was included. This was based on council's "working number" of \$105M and, according to Aziz, represented \$80M construction costs and \$25M for other project costs. The RFP did give the city flexibility in the award of phase 2 and 3 services, providing that the city could "award additional Phases to the Contractor awarded Phase 1" or could "issue a Bid Opportunity for Work required under Phases 2 and 3." Again, there was a lack of clarity in the RFP that generated numerous questions from proponents.

On December 3, 2010, a significant amendment was issued to RFP 833-2010. The amendment provided that the successful proponent should be prepared to:

Confirm and submit a Total Price for Construction, ie. GMP (guaranteed maximum price). **The Total Price for Construction (GMP) shall include a complete and detailed listing of all required construction costs to complete the Work. The Total Price for Construction (GMP) shall be based on the drawings and specifications developed and issued for construction of the Work by the design consultant. The Total Price for Construction (GMP) shall be open-book using competitive pricing based on actual Contractor and Subcontractor/subtrade/supplier prices** and shall be based on a thorough understanding of the Project gained through the collaborative first phase of the

Contractor's work and the Contractor's own experience. The Contractor shall consider in the Total Price for Construction (GMP): risks, Subcontractor/subtrade/supplier market and economic issues, construction methodology, and construction schedule to complete the Work by the specified milestone dates. (Emphasis added)

This was the first time that the concept of a GMP contract was raised as a possibility on the HQ project. Aziz testified that the instructions to issue the amendment came to him through the steering committee. Sheegl testified that he thought a GMP contract was a good idea because it would cap the city's exposure. The city had never used a GMP contract previously, and other than Sheegl having heard about them, no one at the city had any expertise on their drafting or use.

Aziz explained that when he drafted the amendment, he was trying to protect the city. He expected the GMP contract to be at the stage of the final completion of the design drawings. He wanted the price eventually agreed upon to be priced through a complete and detailed listing of all construction costs, as well as actual subcontractor pricing. He also sought a completely open book process to ensure transparency. In other words, if the city taxpayers were paying for the project, the city taxpayers needed to know that the price was fair.

RFP 833-2010 contained numerous industry standard terms including a standard requirement for a 10% bid bond and a standard requirement for a 50% performance bond. The RFP was scheduled to close on December 16, 2010, at 4:00 p.m. Two days prior, on December 14th, Armik Babakhanians from Caspian Projects Inc. reached out to the city to request a change to the bonding requirements. He was supported in this request by a letter from the Security Association of Canada that sought a change in the timing of the bond, not its amount. Armik acknowledged in his testimony that he could not meet the bonding requirements and was seeking a change. He further acknowledged that he had to borrow around a million dollars to shore up his personal finances in order to qualify for the bond.

When the request to change the bond provisions was made, city officials scrambled to address the issue. Ruta requested that D'Avignon issue an extension of the RFP deadline so that the matter could be considered. The deadline for submissions was then extended to January 6, 2011, and subsequently to January 18, 2011. Officials met on December 15th and on December 16th, Konzelman wrote to Armik's bonding company stating:

In response to your concern regarding bid security for 833/2010 we do not anticipate any bonding issues from potential bidders capable and qualified to complete the work for this Project. It has been determined that the bid security and an agreement to bond are mandatory and are based on the full contract value.

When Armik's son Shaun received Konzelman's reply, he forwarded it to Sheegl. Sheegl, Armik and Shaun knew each other. Sheegl had first been introduced to Armik at a reception held to celebrate the grand opening of the new Canada Post facility by the airport. This was

followed up at a dinner arranged by Caspian in October 2010, that was attended by Sheegl, Armik, Shaun and Mayor Sam Katz. While the participants were unable to provide any details about their conversation at the dinner during their testimony, Armik described the purpose of the dinner in an email to his son as being to “discuss possible business arrangements.” Sheegl had also visited Caspian’s offices on December 10, 2010, to learn more about the company. He could not recall what was discussed at the meeting but agreed that “it was probably not right” to meet with Armik or Caspian, given that Caspian was bidding on a city contract.

Upon receipt of Shaun’s email, Sheegl followed up with Robinson, Ruta and Joshi, asking: “Can you get whom ever (sic) made this unilateral decision to give us a briefing note explaining why “we” are taking this position . . .” Joshi explained in a follow-up email that the decision had not been unilateral but had been made the day before in a meeting between himself, Ruta, Robinson and D’Avignon. Later the same day, Sheegl followed up once again in an email with Robinson stating:

I just know his next call is to Sam and the comment to me from Sam will be “They are strong enough for Canada Post and the Department of National Defense (sic) but we can’t figure it out.” PLEASE make this thing work.

(The reference to Sam is to Mayor Sam Katz. The reference to Canada Post and Department of National Defence refers to previous work that Caspian had done for these departments.)

If there is any single event that might be seen as the event that changed the course of history in relation to this project, it would be this email. Without this email, the bonding requirements would not have been changed, and Caspian would not have been able to bid on the project. Instead, the bond was changed and the rest of the sad story unfolded.

Sheegl then forwarded his “next call to Sam” email to Armik, telling him “I am about to send you a blind copy of a confidential email. Please be careful with it, it’s part of my strategy to get this done for you.” In his testimony, Sheegl explained that he did this “because he didn’t want [Caspian] to get shut out” and “I thought he was a good choice.” Disclosing city internal communications with an outside party, communications that Sheegl himself referred to as “confidential”, was clearly improper and a violation of his duty of confidentiality.

Since Sheegl wanted the bonding requirements reconsidered, D’Avignon was asked for her opinion of possible options. She prepared a spreadsheet setting out various approaches and the risks associated with each, that was discussed at a December 22, 2010, meeting. One option was a \$25M flat amount bond. In describing the risks associated with lowering the bond, D’Avignon wrote that \$25M was “too low to cover the city in case of serious default in work.” D’Avignon followed up in a telephone conversation with Sheegl and confirmed that

the decision taken by senior management was to reduce the performance bond to a flat \$25M. In order to provide some additional protection to the city, D'Avignon recommended requiring subcontractors with contracts over \$100,000 to also be bonded. Sheegl concurred in this suggestion and an addendum incorporating these new bonding terms for RFP 833-2010 was issued January 12, 2011, six days before the new submission deadline. D'Avignon testified that this is the one and only time in her thirty-five years being involved in procurement that she has ever seen any bond requirement other than the industry standard 50% performance bond.

Following the award of RFP 833-2010, Sean Barnes of PCL Construction, wrote to the city to express his company's dissatisfaction with the last-minute change to the bonding requirements. He set up a meeting to explain to city officials how this change had impacted his, and presumably other companies, but nothing came out of the meeting. Fifteen years later, Barnes, now a Vice President with PCL, testified before the inquiry and explained how the change had negatively impacted PCL. First, he advised that the original bonding terms in the RFP were industry standard in 2010 and remain industry standard today. Second, he testified that major contractors do not buy bonds for fixed amounts but based on the value of the contract and that the bond price goes up if the contract price escalates. He did not know if his company could even purchase a fixed price bond. Third, he explained that his company had already priced its bid and it was way too late to try to change things. His bid price included \$611,000 in anticipated bonding costs, based on a 50% performance bond. Significantly, he also explained how this change in bonding put the city at risk:

So, in this case, [the city] capped it at 25 million, and it was never going to grow. So, the only beneficiary there, was the surety itself. The surety's liability was capped at 25 million instead of growing with the contract value. And so, the risk was increasing for the city as the contract value grows.

Finally, he testified that if the \$25M fixed performance bond had been in the original RFP, his company would never have bid because it could never be competitive on price.

There is no indication that a legal opinion was sought before this significant change to the RFP was made. Having a lawyer attend steering committee meetings for all large-scale construction projects would help to ensure that important decisions are not taken without needed advice. Also, an independent fairness monitor, to oversee the RFP process on large-scale projects, would not be financially onerous, given the small number of such projects, and would maintain the integrity of the process. These recommendations are discussed in Part III – Recommendations #1 and #2.

The change to the bonding requirements had irretrievably biased the RFP process in favour of Caspian, but those charged with its administration did not appreciate this consequence

and continued the process along its normal path. The city received four bids in response and proceeded through the evaluation process.

On January 15, 2011, three days before the bids were due, a meeting was held between city officials, police representatives and AECOM personnel. The basic message from the meeting was that the total budget for the HQ and shooting range project was capped at \$148M for all construction and other soft costs, so the AECOM team was instructed to report back on a design that would meet this budget. One idea that would eventually emerge a few weeks later was to scrap the idea of adding a shooting range to the top of the HQ building and instead construct an outdoor range on city-owned property on Wyper Road.

Once the bids were received on RFP 833-2010, Sheegl shared the names of the four bidders with Shaun, using his private email account. Shaun testified that the names of bidders are often known in the industry. Whether this is true or not is irrelevant. The information came to the city confidentially and Sheegl was duty-bound to keep it confidential. Sharing it was in violation of Sheegl's employment contract that stated:

All confidential information obtained by the Deputy CAO in the performance of his duties as Deputy CAO or (sic) shall be kept confidential except as reasonably required in the course of his duties and responsibilities as Deputy CAO and shall not, without written approval of the Chief Administrative Office, be revealed to anyone, in any manner, except as provided in City Policy, or as required by law after consultation with the City Solicitor.

The four bids were evaluated by a committee composed of Aziz, D'Avignon, Konzelman and an AECOM representative. Caspian's bid came in as part of a joint venture with Akman Construction, whose president was Richard Akman. A summary of the bids is set out in the table below:

Description	Caspian/Akman 1	Caspian/Akman 2	Company 3	Company 4	Company 5
Construction Management Fee for Phase 1 – Preconstruction	50,000	50,000	250,000	175,000	140,000
Construction Management Fee for Phase 2 – Construction	1,600,000	4,120,000	5,400,000	4,260,000	7,055,000
Construction Management Fee Phase 3 – Post Construction Phase	100,000	100,000	70,000	55,000	90,000
Percent mark up on Subcontractors based on the Estimated Construction Cost - % of 80 mil	1,200,000	1,200,000	800,000	1,600,000	2,400,00
Estimated Construction Cost	80 million	80 million	80 million	80 million	80 million
Total including \$80 million	82,950,000	85,470,000	86,520,000	86,090,000	89,685,000
Total price used in evaluation to determine points - excluding \$80 million	\$2,950,000	\$5,470,000	\$6,520,000	\$6,090,000	\$9,685,000

The committee evaluated the bids according to a matrix that assigned 40% of the total marks available to price. Experience of the bidder was evaluated at only 10%. D’Avignon testified that the city required 40% for price in 2010.

Placing too much emphasis on cost may sometimes turn out to be false economy. Experience and knowledge are vital to the success of complex construction projects.

As discussed in Part III – Recommendation #1, for large-scale construction projects, the city ought to require an RFQ or a similar process to ensure that only bidders with the necessary experience, personnel, financial resources and track records are considered eligible.

Given its significantly lower cost proposal, the CAJV (bid 1) was scored as the successful proponent by the evaluators. A meeting was then held with the steering committee to confirm the bid award. Aziz and D’Avignon attended the meeting and presented to the five-member committee of Ruta, Sheegl, Joshi, Robinson and Chief McCaskill. Aziz expressed his reservations about the CAJV bid and more particularly the low figure of \$50,000 for phase 1 constructability services. Aziz prepared a chart which showed, that based on the proposed six-month phase 1 contract, together with the suggested 4.25 personnel assigned to the project, the \$50,000 proposal translated to an effective wage of \$12.26 per hour. Since the proposal made no sense to him, Aziz recommended caution. However, the committee was enamoured with the JV price and instructed Aziz and D’Avignon to move forward with the CAJV, subject to obtaining clarification on one outstanding matter. Upon leaving the meeting, Sheegl emailed Armik to tell him, “I think we have some good news!!”, suggesting a bias by Sheegl in favour of Caspian, and once again violating his duty of confidentiality.

As instructed by the steering committee, the evaluation committee followed up with Shaun, on behalf of the JV, to clarify some numbers regarding general conditions. General conditions are expenses for such things as power, heating, security, cleaning, garbage disposal and other temporary services during the construction phase. This was clarified and the JV sent in its second proposal adding general conditions to its construction management fee for phase 2 (bid 2). This increased the CAJV total cost, but its proposal remained the most cost-advantageous and the JV was awarded the contract by LOI dated February 10, 2011.

Thus, at the end of the RFP process, the CAJV had committed to provide six months of constructability phase 1 services for \$50,000; and if (not guaranteed) awarded the contract for phase 2, to manage the project for the sum of \$4.120M including general conditions, plus a 1.5% markup on subcontractors construction costs, estimated to be \$80M; and a flat fee of \$100,000 for phase 3. Thus, the total for general conditions and profit, equalled \$5.470M for all 3 phases (column 3 above).

The 2 + 2 Email

On February 17, 2011, Armik wrote himself an email to record his memory of a conversation he had with Sheegl earlier that day. The partial text and formatting of the email is as follows:

Phil s. Feb 17, 2011@ 5:54 p.m.
Phil said he will get approval for 126m
However I think he wanted 2+2 for sam and phil but the rest for us,
He also wanted me to see if we can built across the street for city. This will remain
confidential for ever.
I asked 112 m plus 10 contingency he said he wants all in so he can go forward with
this.
I have to sell this to Richard [Akman] @112m all inclusive.

The critical line of the email is “I think he wanted 2+2 for sam and phil”.

In his testimony, Armik described the events leading up to this email. He said he was leaving a steering committee meeting at City Hall and encountered Sheegl on his way to the parking garage. He stated that Sheegl said something about two and two but never used the words “Sam and Phil.” He also stated: “The two and two I heard. But what [the] implications are, I don’t know.” Following this conversation, Armik testified he drove to his son Shaun’s house to report on the conversation because he “was not comfortable” and wanted to share the conversation with his son.

Shaun confirmed that his father came to see him to report on the conversation. He testified:

[Armik] came to my house and told me that Sam and Phil wanted \$4 million. And I said no, and he left.”

After further examination, Shaun was less clear about the exact words spoken but testified “that was the gist” of what was said.

Sheegl denied that any such conversation took place. All parties agree that nothing further ever transpired from this conversation. There was no steering committee meeting on February 17th according to Aziz’s diary, though Armik may have been in the city administrative building for some other reason.

It is clear that whatever conversation took place that date, it was significant to Armik and caused him discomfort. He both recorded it in a memorandum to himself and shared it immediately with his son. Yet even at the time, Armik was unsure as to exactly what was said, stating in the email “I think he wanted . . .” Now, fifteen years later, Armik was even less certain about what was said. Shaun did have a clear recollection of the essence of what his father had told him at the time, but Shaun was not privy to the original conversation and can only give a hearsay account of what his father had reported. Sheegl denied under oath that he had ever tried to solicit two million dollars, or any sum, for assisting Caspian to get the

HQ project. Nothing related to this conversation can have any implication for Katz since he was never part of the original conversation and there is no evidence that he knew anything about it.

The test for the evaluating of evidence on a public inquiry is proof on a balance of probabilities. This means, that in order to find that Sheegl attempted to solicit money from Armik for helping to secure the HQ contract, during a conversation that occurred on February 17, 2011, I must determine that, the evidence considered as a whole, leads to this as the more likely conclusion.

Having considered the evidence, I am unable to reach this conclusion. I do accept that a conversation took place but exactly what was said and what was intended is not clear. A very important fact in helping me reach my conclusion is that all parties testified that there was never any follow-up. This is inconsistent with an attempt to bribe.

In the circumstances, this email will play no further part in any of the other matters I am required to address.

Phase 1 and the Negotiation of the GMP

In being awarded the phase 1 contract, the CAJV was to perform pre-construction constructability services to assist in the design and development of the redevelopment project, working closely with Aziz and AECOM for a period of six months.

On February 18, 2011, just eight days after the CAJV, had been awarded the phase 1 contract, Armik and Shaun attended a meeting with Sheegl, Joshi and Aziz. The meeting, called by Sheegl, was for the purpose of discussing the GMP. The fact that Sheegl was already discussing a construction contract, shows a total disconnect between Sheegl's actions and what had in fact been awarded under the RFP. The JV had been contracted by the city in accordance with the RFP to provide phase 1 constructability services for a period of six months. Then, a construction contract might or might not have been offered to the JV. An alternative was a further RFP to hire a contractor, perhaps requiring bidders at that time to quote a price for a GMP contract. Rushing towards a construction contract only eight days following the phase 1 LOI meant that there was no opportunity to assess the work done by the JV under phase 1 before deciding whether to engage the JV for the remainder of the project. Further, the design documents were not sufficiently developed to negotiate a contract price. It is impossible to negotiate a price without knowing what is to be built. The need to rush to a construction contract was the direct result of the city failing to properly plan for a new police HQ facility, years in advance. Sheegl was intent on seeing the project rushed to its conclusion.

Aziz's minutes from the February 18th meeting show that Armik was already maneuvering to try to take control of the project. Rather than working collaboratively, which was the whole point of hiring someone to work on constructability, Armik, according to Aziz, "bashed" AECOM at the meeting and complained about AECOM being two-months behind in producing the drawings. Aziz pointed out that the city was responsible for the delay. There was also a request by Caspian to have AECOM report to them. While Aziz spoke against this, the direction given from the steering committee was for Aziz to bring AECOM in for a meeting and to tell them that they would be reporting to Caspian.

Aziz was astute enough to realize that the instruction he had been given had legal implications since AECOM had a contract. Moreover, the AECOM architects and engineers had professional obligations and had to exercise their own independent and professional judgment in providing their designs. Paryniuk testified that if AECOM had known at the time that the city senior administration was in favour of having AECOM report to Caspian, the company would never have agreed and would have walked away from the project.

Once again, Aziz saved the city from a decision that would have entirely derailed the project and could have potentially caused a lawsuit. Rather than blindly following what he knew was a very bad idea, Aziz got the necessary advice, including legal advice, and then wrote a detailed memo to Joshi explaining why the proposal was not recommended. The memo was sufficient to end the matter.

The memo is an example of "truth to power". It is essential that a professional public service provide decision-makers with complete and accurate information, even if sometimes that information is not what the decision-makers want to hear. It is necessary that managers, directors, and ultimately the CAO foster a culture that encourages "truth to power" and supports line workers who sometimes must be the deliverer of unwelcome news.

This will be discussed further in Part III – Recommendation #21.

On February 22, 2011, city council gave its first approval for funds to undertake the redevelopment project. The 2011 capital budget appropriated \$105M for redevelopment. Together with the \$30M already approved for the purchase of the Canada Post building, the original total project budget was \$135M.

As the project moved into the spring of 2011, the design work continued and the GMP negotiations were underway. On April 13, 2011, Aziz reported on the progress of the GMP discussions at a steering committee meeting. He outlined the process that would need to be gone through to ensure that the GMP price was complete and fair. Aziz wanted the detailed information, including subtrade quotations, that he had specified in the RFP

amendment. He also indicated a second option of going to market through public procurement if a GMP price could not be negotiated.

On April 27, 2011, Aziz sent Sheegl and the other steering committee members a memo setting out the status of the project. He was honest in advising that the police had not completed the program of requirements, which contained the details of the police needs, and as such, AECOM did not yet have all the information that it needed to complete the drawings. He acknowledged that the project was behind schedule.

Noting that the police were delayed in providing the necessary information is not to be taken as a criticism of the police. The police liaisons who needed to provide the information had their other job responsibilities to fulfil, many of which included providing frontline police services. Rather, the problem was that the city had set an unrealistic schedule of one year for design. Aziz, who had experience building satellite police offices, believed the design phase should have been two years long.

The Aziz memo also discussed the ongoing GMP negotiations. Aziz explained that Akman Construction was not prepared to negotiate a GMP contract until the drawings were 100% complete. He indicated that Caspian was prepared to proceed on its own. In the circumstances, Aziz recommended that the city proceed by public procurement for the construction contract by way of an RFP.

On April 29, 2011, Paryniuk from AECOM, wrote to Sheegl to express reservations about a GMP so early in the design phase. Paryniuk acknowledged that the design was behind schedule and that AECOM was now aiming for October 31, 2011, for a design completion date. This date reflected the delay caused by the city failing to get the phase 4 contract out as required and the formal letter of delay that was sent by AECOM to the city on January 28, 2011. In the April 29th memo, Paryniuk stated:

Frankly speaking and in my experience, I am unsure how Caspian can provide a GMP for this project at this time, without direct experience (as much as I am aware) with similar projects. Consequently, a GMP at this time will likely result in the project incurring additional (and possibly unwarranted) risk costs for unknowns. I would expect a true GMP could be provided once design is near or at 100% complete (being sometime between September and end of October 2011).

Despite the recommendation by Aziz that the city proceed through an RFP and the suggestion by Paryniuk that the city wait till later in the year to determine a GMP price, the city continued to negotiate a GMP. Richard Akman, of Akman Construction, also did not agree with a GMP and suggested that the city proceed with a Construction Management contract. Sheegl was very clear in his response to this suggestion using all capital letters to state "WE ARE NOT GOING CM!!". Thus, against all advice, the city, under Sheegl's

direction, kept moving forward on the GMP. With an impasse having been reached, Akman Construction advised that it was pulling out of the joint venture.

Aziz was the city official charged with negotiating the terms of the GMP contract. On April 27, 2011, Sheegl agreed to meet with Armik, without Aziz present. On May 4, 2011, Armik wrote to Sheegl to advise that Aziz wanted to meet to go over the cost. Sheegl responded to Armik, stating “tell Abdul (Aziz) you are busy this week.” This is a surprising response from a city DCAO regarding a key city employee. It undermined the credibility and authority of the city representative in front of the party with whom the city was negotiating a multi-million-dollar contract.

On May 25, 2011, Sheegl moved into the role of CAO following a competitive hiring process.

Beginning in late May, but officially commencing on June 1, 2011, Ossama AbouZeid joined the city team as project director. Sheegl had met AbouZeid when both had served on the board of directors of the Winnipeg Blue Bombers Football Club. AbouZeid had assisted the board during the construction of the new football stadium. AbouZeid was also well-known to Armik, and had, in fact, given Armik his first construction job, when Armik moved to Canada in 1981. AbouZeid had years of construction experience and Sheegl had asked him to join the WPSHQ project to help mentor Aziz and to take the lead in completing the GMP contract. In doing so, Sheegl did not follow city policies that dictated the requirement for a public procurement to hire a project director.

This is another example of where having a lawyer assigned to assist the project steering committee may have prevented a violation of city policy. Once the legal department became aware that the project director had been hired without a procurement process, it issued a memo that provided an unconvincing retroactive justification. However, the lawyers were put in a difficult situation. Six months had passed before they learned of the problem and undoing it would have been challenging. Nevertheless, the lawyers should have set out the true state of affairs and let CAO Sheegl determine what would occur.

With Akman Construction announcing its intention to withdraw from the WPSHQ project, the issue for the city became what to do going forward. The city legal department advised that the phase 1 contract could be assigned to Caspian, as the remaining JV partner. The memo did not address what should occur regarding the yet to be awarded phase 2 and phase 3 contracts for construction and post-construction services. AbouZeid opined that Caspian could meet the city’s required \$25M bond and was willing to carry forward with a GMP contract. There is no evidence that there was any consideration given to undertaking a public procurement process.

Even though the city had the right to undertake a procurement process, and even though Aziz had recommended a procurement be undertaken, and even though Paryniuk said it was too soon, the city moved forward with completing a GMP contract with Caspian.

There is no value at this late date to try to determine what the legal opinion on the assignment of phases 2 and 3 would have been if such an opinion had been requested. Much more important to the role of the inquiry, is not to ask what legally could have been done, but to ask what ought to have been done to properly protect the city.

Eleanor Andres, a legal expert in procurement and construction law, addressed this issue directly in her report and testimony. She explained that the city had the right under RFP 833-2010 to undertake a procurement process for construction and post-construction services. However, the need to rush the project because of the initial poor planning, meant that the steering committee did not do its job and reflect on how to best protect the city. If it had, it would have directed a public procurement to secure a contractor (on which Caspian could have bid). The changing circumstances called for a new procurement given:

1. The legal entity that was successful under the RFP no longer existed. It would have been fairer to the other bidders to start afresh.
2. Both JV partners had had to provide a performance bond. Now with only one party providing a fixed price \$25M bond, the city was at very high risk if the contractor should default.
3. The JV had been successful on an RFP using an \$80M place-holder construction price. The number now under consideration was around \$140M, or an increase of 75%. This much higher contract price may have attracted a different set of potential bidders.

As will be discussed in Part III – Recommendation #1, in the rare cases where a JV is no longer willing or able to proceed with a project, even if there is a legal right to assign, city policy should require a best practices and business case analysis, to determine next steps.

The GMP negotiations were centred around a target price of \$150M, over and above the \$30M purchase price. Sheegl had this amount as his goal for all redevelopment costs, meaning both construction costs and additional city costs. This was despite the fact that council had only authorized \$105M. This disconnect would contribute to the public's skepticism regarding the HQ project.

The changing budget numbers and the role of the administration in providing accurate costing information, is discussed in Part III – Recommendation #4.

Sheegl took an active role in the GMP negotiations. Armik, Sheegl and AbouZeid met May 28, 2011, to discuss numbers. On June 27, 2011, Armik shared a proposal with AbouZeid and Sheegl for \$140M for construction costs that included a Caspian fee of \$6.875M.

On July 20, 2011, city council voted to increase the capital budget for the WPSHQ project from the \$135M set on February 22, 2011, to \$193.567M, an increase of \$58.567M. Most of the increase was accounted for by an increase in the redevelopment budget by \$50M; up from \$105M to \$155M. The remainder related to interest costs and costs associated with managing the tower property that the city now owned (and still owns and still needs to figure out what it is going to do with it). The \$155M redevelopment budget was explained in the accompanying administrative report to include the redevelopment of the mail processing plant, the building of an outdoor shooting range and all additional city costs. Therefore, in just five months, and before a shovel hit the ground, the project budget increased by over \$58M.

As part of the approval of the new budget, council delegated to CAO Sheegl “the authority to award contracts for the redevelopment of the Winnipeg Police Service Headquarters.” Thus, while there had been earlier budgets approved by council, this budget was the first that authorized actual construction contracts to be awarded.

Very significant events would occur over the next few days following July 20th between Sheegl, Katz and Armik Babakhanians. A discussion of these events will be deferred to later in this part.

With the budget now approved, the GMP negotiations entered their final stages. On July 28, 2011, Caspian put forward a proposal for construction costs of \$137.1M that included a Caspian fee of \$6.975 M. The city then issued a non-binding letter dated August 8, 2011, that recognized these terms and acknowledged the city’s intent to proceed with the GMP negotiations based on the Caspian proposal. The letter also authorized Caspian to begin work on the shooting range.

Jason Ruby is a chartered professional accountant who began employment with the city in 2002. He was Manager of Capital Projects during the WPSHQ redevelopment project. He is currently the Manager of Finance and Administration for the City of Winnipeg Public Works Department. Throughout his employment, he has served in a variety of financial roles within the city administration.

In and around July 2011, Ruby was asked by CFO Ruta to review the cost estimates for the HQ project. The latest council budget had authorized a significant \$50M increase in the redevelopment budget. Aziz's suggestion, that he had written into RFP 833-2010, requiring the GMP figure be backed up with detailed cost information including subcontractor quotes, had gone nowhere. While there was still the option to tender the construction contract through a public procurement, that idea had long been abandoned in favour of negotiating only with Caspian. Thus, Ruby recommended getting a further quantity surveyor report from Hanscomb Limited before anything was finalized. The last Hanscomb report had been based on drawings from February 2011, so having a new report that considered more advanced drawings would have given the city assurance that the contract numbers it was negotiating were fair and accurate. However, Armik was opposed to a further Hanscomb report. He voiced his objections to Sheegl, emailing Sheegl on November 3, 2011, to complain that "somebody needs to tell Jason to stick to bean counting" and that "Hanscomb had 3 different budget[s] from 91M to 172M.[W]hat makes Jason think that they will get this time correct (sic)."

Armik's hyperbole was incorrect. The various estimates for the HQ construction costs, (excluding the shooting range), had been the Class D estimate in the original Shindico report of \$90M, a Hanscomb Class C estimate, dated December 22, 2010, of \$130M and an updated Hanscomb report dated April 1, 2011, for \$102.4M. Adding approximately \$7M for the outdoor shooting range adjusted the estimates accordingly. And what made Jason think that Hanscomb would get it right this time, is that the company offers professional construction cost estimates that are regularly obtained by governments and others, as a means to verify costs. Had management taken Ruby's advice, at least there would have been something independent to justify the numbers that would eventually be inserted into the GMP contract.

Instead, the negotiations continued towards the final document. The contract was drafted by external counsel for the city and a lawyer on behalf of Caspian. Shaun took an active role in negotiating the contract terms for Caspian Projects Inc., the Caspian company that was the signatory to the final agreement. The basic terms of the contract were as follows:

- The GMP of the contract was \$137.1M for both the HQ building and the outdoor shooting range unless that amount was increased by approved change orders.
- Included within the \$137.1M were the following:
 - Caspian's fee of \$6.975M
 - A contingency fund of \$5.830M to be used for specific purposes if necessary
 - An FF&E account of \$14.3M
- When the above three amounts, were subtracted from the GMP, this left a net of \$109.995M for the construction of the HQ building and the construction of the off-site shooting range, defined in the contract as the Net GMP.

- There was a shared cost-saving provision that provided that savings were to be shared 60% to Caspian and 40% to the city; (this clause will be reviewed in detail later in this part).
- Caspian had the right to add a markup on approved change order amounts.
- There were audit provisions that allowed the city to review Caspian project records and an overarching statement that the city “shall be entitled to rely upon the accuracy and completeness of the information furnished by Caspian”.

The contract is not a Canadian Construction Association standard contract. The benefit of using standard form contracts, with which the industry is familiar, is discussed in Part III – Recommendation #3.

The contract was signed by the parties on November 18, 2011, paving the way for the construction of the HQ building to begin. But before that got fully underway, there were significant changes in the project personnel.

Departures

Aziz had been one of the first people to join the HQ project team in February 2010, but by September 2011, he was ready to go back to his job with WPS. This is not surprising, given that he had been working gruelling hours with little support, trying to determine police requirements, and working with AECOM to incorporate those requirements into the design.

Aziz was also very cognizant of the need to ensure that the city paid a fair price for the HQ project, so he had specified in RFP 833-2010 the detailed materials that would be required in support of the GMP, including actual subcontractor prices. Alternatively, he had advocated for a public procurement. But his suggestions had been ignored. He also had a tense relationship with Armik, who was asking Aziz to blame AECOM for the delays, when it was the police who were struggling to get the program requirements to the designers in a timely fashion. Further, Armik was complaining directly to Sheegl about Aziz. I agree with the submission made by the Winnipeg Police Service that Aziz’s diligence made him a target for removal.

In the circumstances, Aziz determined he could no longer play a useful role on the project, and on September 2, 2011, he resigned and returned to his job with WPS.

Next to depart was AECOM.

AECOM had joined the project team in August 2010 and had issued a formal letter of delay in January 2011, due to the city not meeting certain milestones. The project was also

complicated, involving turning a 50-year-old mail processing plant into a 21st century police headquarters. Nevertheless, AECOM had been working diligently, using both its Canadian and American resources, to get the design to the point where construction could begin. The police were very pleased. For example, on February 17, 2011, the police liaison replied to AECOM's fifth floor design stating: "WOW! This is impressive. . . Well done all around!" AECOM also responded to the city's budgetary concerns by deleting the rooftop shooting range and moving the range offsite. Further, by April 2011 the cost for the HQ building renovations (excluding the shooting range) had actually decreased and was now priced by Hanscomb at \$102M, with a 5% contingency. Thus, the project was moving forward successfully.

But Armik did not like working with the AECOM team and on February 18, 2011, just a week after joining the HQ project, he was already complaining about their abilities. At that same meeting, Armik had convinced the steering committee to have AECOM report to Caspian, but Aziz had been successful in halting that demand.

Armik wanted to be in charge, but AECOM would not buckle to his demands. Paryniuk testified:

[It] began to erode, our relationship. There were times that seemed to grow -- the frequency seemed to grow of instances where Armik specifically would be challenging our design. And we would have to be in some cases defensive with our design 'cause we knew the design was right, but at that time, Armik was becoming more and more aggressive in trying to insist on his direction. And many of those directions we felt were inappropriate for both the project as well as meeting WPS needs. So, it became an increasingly more and more difficult relationship to work with, specifically Armik.

In order to get his way, Armik continued his negative campaign to undermine AECOM. On September 21, 2011, Armik wrote to Sheegl stating: "Phil, AECOM will need to be addressed. They will not deliver the project. I am not worried because I have plans already." Armik also spoke to Mayor Katz in his attempt to undermine AECOM. And Armik did have plans. By September 29, 2011, he was already telling Sheegl that he would be able to get a new design team for the city. This new design team were Armik's very close friends, people he considered his brothers, Peter Chang and Patrick Dubuc. Chang and Dubuc were also close friends of each other.

Sheegl bought in completely to Armik's negative campaign against AECOM. On September 30, 2011, Sheegl sent AECOM an email advising that the city was considering terminating its relationship with AECOM unless the design was completed. D'Avignon was told at this time to start an RFP to seek a replacement. AECOM responded to Sheegl's concerns by having its Canadian Vice President assure the city that the design drawings would be ready by November 1, 2011. On November 1, 2011, AECOM did deliver the drawings to the city. This date corresponds exactly with the timeframe that AECOM was entitled to under its contract,

plus the three months additional time that AECOM required, given the city delay in meeting its obligations. Thus, AECOM was completely professional in all of its dealings.

However, the city responded by treating AECOM in a manner that can only be described as humiliating. It had AECOM agree to have its drawings reviewed by outside consultants, two of whom were Armik's handpicked team of Chang and Dubuc. The conclusion was that the drawings were not yet at the "100% ready for construction" stage.

Paryniuk explained in his testimony that design drawings go through many iterations and are not finalized until the construction is fully completed. He advised that the drawings delivered on November 1, 2011, were ready to be submitted for the first building permit and were at a stage where contractors had sufficient information to prepare bids. This is exactly what AECOM had been contracted to do, since the RFP had contemplated a procurement as part of a DBB project. Paryniuk also said that he knew the city permitting department would not get to the drawings for many months, and that, if AECOM had stayed on the project, it would have continued designing the project while the permit was under consideration. Instead, having been treated very unprofessionally by the city, AECOM chose to turn its drawings over to the new design team and to walk away from the project. As Paryniuk explained in his testimony, AECOM cared more about its professional reputation than it did about the potential profit that would be made on the project.

The inquiry was able to confirm the state of the AECOM drawings through the testimony of Geoff Mikolayenko, who is the Commercial Inspections Administrator within Development and Inspections at the City of Winnipeg. Mr. Mikolayenko confirmed that the AECOM drawings were received in November 2011 and that shortly thereafter, Shaun applied on behalf of Caspian for a permit to allow for interior alterations and remediation of hazardous materials. This permit was issued in January 2012, and it allowed the first part of the HQ construction project to begin. By February 6, 2012, the permit department had completed its review of the AECOM drawings and confirmed that the mechanical and electrical drawings were incomplete. However, AECOM had not updated these drawings in the intervening three months because it had already left the project. Eventually, the new design team would submit its final drawings on July 24, 2012, around three months after it got fully up and running. It would then work with the permit department to address 47 building code and fire code deficiencies until the final building permit issued on August 12, 2013. The final occupancy permit was issued October 21, 2016.

Thus, there was no advantage to the city in parting ways with AECOM. The project got underway with the permit issued in January 2012, and had AECOM stayed, it would have continued working on the design. But by undermining AECOM and pushing the company out, Armik got his way. He was now able to handpick the design team. Further, he had created a scapegoat. Any delays in the project; any requirements for additional funding; anything that went wrong could now be blamed on AECOM. Even fifteen years later, this false narrative

remained, with Sheegl in his testimony continuing to blame AECOM for many of the problems that would occur.

It is not inference or speculation that Armik had a plan to get rid of those he saw as standing in his way and substituting them with his handpicked replacements. He set out his plan in an email sent to his son Shaun. The email dated January 22, 2012, reads in part (edited for clarity):

Remember who designed the JV with Akman to pre-qualify, then broke it up for the good of our company. . .
Then planned to dismiss AECOM because they are calling on us - challenging Caspian
. . .
Then replace city project director with a Caspian puppet ...
Then remove AECOM to have a Caspian design team.

Having completed his plan to have Akman, Aziz and AECOM leave the project, Armik turned his attention to the next step. Now the focus became having his favoured design team join the project.

Arrivals

As early as September 29, 2011, Armik was urging Sheegl to retain Chang and Dubuc. Armik was so confident that this would happen that on November 3, 2011, he completed their security checks, before the city had had any contact with them. Armik's persistence caused Sheegl to email him on that date telling Armik to "stop your over the top- guys will be suspicious." It is disturbing that Sheegl himself was not suspicious about Armik's relentless campaign to have AECOM pushed out and to have Chang and Dubuc retained.

Armik's involvement did cause suspicion. On November 23, 2011, AbouZeid emailed Armik to express concern that Chang was sharing the city's contract negotiations with Armik. AbouZeid indicated that the city might not be able to proceed with Chang given the conflict of interest between Chang and Armik. This panicked Armik who emailed Sheegl at 1:22 a.m. to try to smooth things over. Further, Aziz's replacement, WPS Inspector Randy Benoit, was also suspicious. He could not understand why security checks had been done before the city had started its negotiations. Benoit followed up regarding his concerns with Joshi, and the decision was made to continue moving forward with hiring Chang, but to monitor the situation.

On December 7, 2011, council gave authority to enter into negotiations with AAR, the Ontario engineering firm in which Chang was a partner, for a single-source contract not to exceed \$2.6M. The single-source contract was justified on the basis that this was necessary to keep

the project on schedule and within budget. This amount was later increased to \$4.4M to include additional scopes of work.

Too much time had passed for the inquiry to determine if it was feasible to conduct a procurement to replace AECOM. D'Avignon had started working on an RFP and had a first draft ready by September 30, 2011. There may have been Manitoba firms that were willing to take over the project. However, city management opted to employ the team recommended by Armik because of the urgent need to get the project completed. The failure to proceed by procurement meant there was no independent means to ensure that the contract price was fair. As will be seen later in this report, \$1.3M of the money paid to Chang was misappropriated, the logical inference being that the city overpaid for services by, at least, this amount.

As part of his contractual obligations to the city, Chang was responsible for hiring subconsultants to assist with the project. One of the subconsultants that he retained was GRC Architects, where Dubuc was employed as a senior architectural technologist. Dubuc joined the project in April 2012. It was GRC that submitted the plans to the city for permitting in July 2012.

Now the new project team was fully assembled. Gone were the JV and AECOM. In its place was Caspian, that had not been able to meet industry-standard bonding requirements, and a design team that had been hand-picked by the contractor. What could possibly go wrong?

3. MISCONDUCT

Conflicts of Interest

Mayor Katz was throughout his term of office bound by the City of Winnipeg, Council Code of Conduct. The Code included the requirement that:

Members must avoid knowingly placing themselves in a situation that may result in a conflict between, on the one hand, their personal interest and on the other, the duties of their office.

And further:

Members must disclose any business or interest which may give rise to a reasonable apprehension of conflict.

On May 25, 2011, Sheegl became the CAO of the city. This is the most senior position in the public service. On July 21, 2011, Sheegl signed his employment contract. The contract included the following provisions:

- 3(2) The Chief Administrative Officer acknowledges that he is in a fiduciary relationship with the City and that he shall act honestly, in good faith, without conflict of interest and in the best interests of the City. The Chief Administrative Officer shall abide by The City of Winnipeg Code of Conduct for Employees adopted from time to time by the City. Further, the Chief Administrative Officer hereby declares that he has no conflict of interest, which precludes him from accepting the position of Chief Administrative Officer.
- 3(3) The Chief Administrative Officer shall, during the term of this Agreement, diligently and faithfully devote substantially all of his working time, attention and best efforts to the business of the City and to the performance of his duties to the utmost of his ability. He shall not, without the written consent of the Mayor and Executive Policy Committee, actively engage in any other business or occupation and shall disclose in writing to the Mayor and Executive Policy Committee all of his conflicting outside commitments. The Chief Administrative Officer shall not carry on or undertake any activity during his off-duty hours, which would be inconsistent or conflict with his duties and obligations under the terms of this Agreement.

The Employee Code of Conduct, under which Sheegl was also bound, prohibited him from “represent[ing] the City in any dealing with any persons in which he or she has a direct or indirect pecuniary interest . . .”

On July 20, 2011, city council increased the budget for the HQ project to \$193.567M and delegated to the CAO the authority to award contracts to complete the project. Katz testified that he understood that the contract would be going to Caspian.

On July 22, 2011, just two days after the council meeting, Sheegl, Katz and Armik Babakhanians entered into a financial transaction. On that date, Armik, through one of his companies, Mountain Construction, transferred \$200,000 to Sheegl’s holding company FSS Financial Services Inc., with the “Re” line on the cheque marked “consultant services”. Eight days later, Sheegl sent Katz \$100,000 from his FSS account, with the “Re” line on the cheque marked “loan”. Neither of these references were sufficiently explained during testimony. A year later, on August 21, 2012, Armik transferred \$127,200 USD to one of Katz’s holding companies in the United States. Seven days later, Sheegl received one half of that amount, \$63,600 USD, from the Katz holding company into one of his company accounts. So, in total, each of Katz and Sheegl received from Armik Babakhanians \$163,600, not accounting for any differences in currency exchange.

The transfer of the money was explained by Sheegl, Katz and Armik as relating to the purchase by Armik of an interest in an investment property that Sheegl and Katz owned in Buckeye, Arizona, called Tartesso. According to the three participants, Armik purchased

1/24 of the interest held by Katz and Sheegl, for \$327,200. Thus, according to their evidence, on July 22, 2011, Armik became a co-investor with Katz and Sheegl in the Tartesso property, together with several other investors in both Winnipeg and Arizona. This transaction was later memorialized in a hand-written trust agreement prepared by Sheegl, purportedly on May 1, 2012.

This financial transaction was the subject of both a Manitoba Court of Queen's Bench and a Manitoba Court of Appeal decision, between the city and Sheegl (See [*Winnipeg v. Caspian*, 2022 MBQB 53](#); [*Winnipeg v. Sheegl*, 2023 MBCA 63](#)). Chief Justice Joyal (as he then was), of the Court of Queen's Bench (now the Court of King's Bench), concluded that Sheegl had accepted a civil bribe and ordered various damage and cost awards totalling in excess of \$1M. The decision was upheld in the Court of Appeal. Sheegl has paid the judgment in full.

The civil lawsuit only applied to Sheegl. Therefore, as part of my responsibilities on this inquiry, it is necessary for me to examine this transaction as it relates to Katz and Armik. Further, given the different context of an inquiry versus a court proceeding, I was willing to receive and consider any new evidence that might further explain the transaction and to offer my independent assessment of it, potentially coming to a different conclusion than that reached by the courts.

The evidence before the inquiry was largely the same as the evidence before Chief Justice Joyal, with two important exceptions. First, I heard evidence under oath from Katz and Armik that had not been available to the Chief Justice. They both confirmed that the transaction was for the purchase by Armik of an interest in the Tartesso investment. Second, during his exam-for-discovery in the civil proceeding, Sheegl had been confused as to the cost of the investment, having failed to account for the mortgage on the property, when stating the purchase price. This resulted in an erroneous conclusion that the \$327,200 that Armik paid for the investment in July 2011, was seven times what Sheegl and Katz had paid when they purchased the investment in 2005. At the inquiry, this was corrected and the parties agreed that the interest was worth about \$200,000 at the time that Armik paid \$327,200 for it.

All three of Armik, Katz and Sheegl described their agreement as a "handshake" agreement, meaning there was no written contract completed at the time of the sale. However, as was pointed out in both the Queen's Bench and Court of Appeal decisions, there was nothing produced in writing – no emails, texts, appraisals, tax documents – or any other document that contemporaneously evidenced the sale. Katz testified that there were tax implications for him in the United States, yet he failed to produce any documents sent to his accountant or filed with the American tax authorities, because, he said, too much time had passed for him to be able to obtain the documents. However, Katz had known since 2017 that this transaction was crucial to Sheegl's legal problems and his own reputation, yet no documents were ever retained or produced. He couldn't recall the name of the lawyer he had used and didn't name the accountant, both of whom could have added credibility to his

story. He also testified that he had not seen the May 2012 handwritten trust agreement that Sheegl drew up until shortly before his testimony.

Sheegl produced some new documentation which he obtained on February 14, 2026, from one of his partners in Arizona, to better show the value of an acre of land that was purchased by him and Katz and others in 2005. Both Justice Joyal and the Court of Appeal had accepted Sheegl's estimate that an acre of land was worth approximately \$47,000, at the time of purchase. The new documentation showed that an acre was worth considerably more than that. I accept the new evidence, but it does not particularly assist in considering the legitimacy of the transaction with Armik in 2011.

Armik also did not produce any written materials to verify the land sale. Importantly, the handwritten trust agreement that purportedly was drafted in 2012 to memorialize the sale, was not among the documents seized by the RCMP during the Caspian search conducted in December 2014, and the document was also not part of the production of all relevant documents by Caspian and Armik in the civil action. One email that was produced was inconsistent with a sale having taken place in 2011. Armik emailed Sheegl on May 11, 2018, seeking information including "financial statements for each year which I have been an investor in that property" and asking if there is "an annual maintenance fee, taxes or any other associated cost." This is exactly the type of email one would have expected to see dated in 2011. If, in fact, there had been a land transaction in 2011, why did it take seven years before Armik asked for basic information such as financial statements and annual costs? Armik also testified that he still wasn't sure to this day, which of his corporate entities owns the investment.

Further, as is pointed out by the city in its written submission, of over 90 emails between Sheegl and Armik between December 2010 and July 2011, none reference the Tartesso land deal.

The only two documents that can be verified as actually dating from the time of the transaction are the two cheques; one from Armik's company to Sheegl's company FSS that contained a reference to "consultant services" and a second from Sheegl's company to Katz personally, labelled a "loan". It is important to recognize that Sheegl's investment in Tartesso was owned by his corporation Winnix and Katz's investment was owned by his corporation Duddy Enterprises, neither of which were payees on the cheques.

So, three sophisticated businessmen, who knew that at some point, they were going to have to provide accurate paperwork to the tax authorities (Canadian, American or both), had no proper paperwork to document the sale and had cheques for the sale of the interest going to entities that had no interest in the property. Further, if the cheques were legitimately to pay for a land sale, why not mark them as such, instead of consulting services and a loan? None of the three participants could provide a reasonable explanation. In his written submission, Sheegl says that there was no advantage to writing "loan" on the cheque. If the

transaction was nefarious, he says, the money would have been paid in cash. I do not accept this argument. In fact, it would seem to me that a payment in cash would have appeared even more suspicious if discovered, than attempting to characterize the payment as a loan.

Another factor that I consider relevant is that there were four other Winnipeg investors in the property and two Arizona investors. According to Sheegl and Katz, they never told the other investors at the time, that they had divested a portion of their interest and brought a new partner into the consortium. It is worthy to note that the 2005 trust agreement between the initial investors and Sheegl and Katz prohibits any dealing with the property in any way without prior consent or direction of all five investors. Armik testified that he may have mentioned the purchase to one of the investors, but he never arranged to have this individual testify at the inquiry, so in the end, there was no independent party who could corroborate the sale as occurring in 2011.

Having considered the evidence, the lack of evidence, and the testimony of Sheegl, Katz and Armik, I am satisfied on a balance of probabilities that they entered into a financial transaction whereby Armik paid \$327,200 to Sheegl and Katz, which was then split equally between them. Armik identified the first \$200,000 payment as “consulting services” in his accounting of the money. Sheegl then passed on \$100,000 to Katz, which was stated to be a “loan”. This financial transaction was at some later time papered over and explained by all three as a land transaction.

Each of Sheegl, Katz and Armik, in their written submissions, have urged me to conclude on a balance of probabilities, based on their testimony, that a legitimate land transaction was entered into in 2011, essentially asking me to disagree entirely with the conclusion reached by the courts. In his written brief, Armik says:

This inquiry is obligated to find the truth based upon the facts presented to it. It cannot set aside a court order but for the purpose of this inquiry it can say that the truth and uncontradicted facts do not support a finding that Armik paid or colluded in the payment of a bribe.

I am unable to say that. I do not believe the testimony of the three participants as it pertains to the payments made in 2011 and 2012. To borrow from and modify an age-old adage, their actions, and their inactions, speak louder than their words.

But even if there was a land transaction, this does nothing to assist Katz and Sheegl. Both were fiduciaries and owed the city a duty of honesty and fair dealing. Any financial transaction between themselves and Armik Babakhanians, put them into a gross and obvious conflict of interest, that needed to be disclosed.

Katz voted in favour of two motions that directly benefited Armik and Caspian. First, he voted on July 20, 2011, to raise the redevelopment budget for the HQ project from \$105M to \$155M, substantially increasing the amount available to the contractor, Caspian. Ten days

later, on July 30, 2011, Katz received \$100,000 as his share of the first instalment paid by Armik. Second, as will be explained in more detail later in this report, on December 11, 2013, Katz voted in favour of a council motion that raised the HQ budget by a further \$16.2M. This money then flowed to Caspian.

In his testimony, Katz recognized that he had acted in a conflict of interest and acknowledged that he had a duty of disclosure. But he also failed to understand the seriousness of what had occurred, stating:

You know, it's – there was a lot obviously going on at the time. And it was, for me, it was a pretty minor deal, I didn't think would have any effect on anything. By the same token it – the right thing to do would've been to [disclose] . . .

But the facts are that's not going to have any impact on any decision that I make as far as my one vote's concerned. . .

It is not relevant that the amount of the investment was small from Katz's perspective or that Katz was adamant that his monetary relationship with Armik did not impact his vote. The ethical obligation to disclose a conflict is to ensure the public can have confidence in the integrity of their elective representatives. In failing to disclose that he had a monetary relationship with Armik, Katz violated the Council Code of Conduct, and he violated the public trust.

The same is true of Sheegl. The day after Sheegl signed his CAO employment contract, and two days after council gave Sheegl the authority to award the construction contract, Sheegl received a payment of \$100,000 from one of Armik's companies. In the months that followed, Sheegl participated in many decisions that benefited Armik, including not undertaking a public tender for a contractor after the JV fell apart, severing ties with AECOM, hiring Chang despite his closeness to Armik, and ultimately being the city's signatory on the \$137.1M construction contract that city entered into with Caspian.

In his testimony, Sheegl acknowledged that he was in a conflict of interest which he should have disclosed. He testified:

I thought at the onset of the deal, which was in 2010, I didn't even relate the two – doing business in Arizona with him and him building the police station.

So, I see in retrospect, I see it was a huge mistake and that I should have acknowledged it and should have disclosed it to the city, but I didn't because I didn't even relate the two that they were remotely considered. So, I do acknowledge that I should have disclosed it, but I did not.

Sheegl entered into a second transaction with Armik with financial consequences. In June 2013, at Sheegl's request, Armik arranged for a deck to be installed by a third party at Sheegl's home. The cost of the deck was \$8,534.41, which Armik (or Caspian) paid for in full. Sheegl did not reimburse Armik until October 15, 2017, over four years later, and only after

the matter was exposed in the media. His reasoning for this, he testified, was that there were all sorts of problems with the deck construction that he assumed would be addressed and never were. When it was pointed out to him that his wife had contacted Armik a year later in 2014 to ask for the name of the contractor who did the deck because she wanted to have a fence built, Sheegl could not explain why his wife would want the contractor who apparently did a terrible job on his deck to build her a fence a year later.

Sheegl's acceptance of a gift of over eight thousand dollars was directly contrary to the Employee Code of Conduct which prohibits an employee from accepting "any gift, favour, commission, reward, advantage or benefit of any kind from any person who is directly or indirectly involved in any business relationship whatsoever with the city. . ."

The timing of the construction of the deck is important. As will be explained later in this part, during the summer of 2013, Caspian was seeking an increase in the contract price of approximately \$17M. Sheegl was an active participant in the negotiations that resulted in the increase being approved.

Sheegl's two separate financial dealings with Armik, during the period of time that Armik was engaged in a multi-million-dollar business arrangement with the city, shows Sheegl's complete lack of a moral compass. As the CAO of the city, he was entrusted to set the highest ethical standards, instead he set the lowest. The conflict of interest was obvious. At the same time that Sheegl was directly involved in making decisions that significantly benefited Armik and Caspian, Sheegl received payments totalling \$163,600 from Armik. Moreover, accepting a free deck, valued at over eight thousand dollars, from someone who was currently engaged in city business, went beyond the pale. I have no hesitancy in finding that Sheegl breached multiple terms of his employment contract and multiple provisions of the Employee Code of Conduct by engaging in these financial transactions.

Further Ethical Breaches

Having concluded that Katz and Sheegl committed ethical breaches that violated city Codes of Conduct to which they were bound, I am compelled to go further and consider Armik Babakhanians' role.

In determining Armik's role, I am significantly influenced by the reasoning of Mr. Justice Mainella, in the Court of Appeal's decision in *Winnipeg v. Sheegl*, 2023 MBCA 63. My jurisdiction does not include making any findings of civil or criminal liability, and I will not do so. However, the principles and policies that underlie the tort of civil bribery, discussed by Justice Mainella, set standards of behaviour that govern **both** the conduct of public officials

and the people who do business with them. In explaining the tort of civil bribery, Mainella, J.A. stated at paragraphs, 34, 35, 36, 37 and 39 (citations omitted):

[34] The elements of a successful claim for the tort of bribery are three-fold and were explained by Slade J in *Industries and General Mortgage Co, Ltd v Lewis*,

... (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent. ...

[35] As Richards LJ explained in *Wood*, "The vice involved in the payment of a bribe, for the purpose of civil remedies, is that it may induce the payee to depart, consciously or otherwise, from the duty he owes to another person". As noted in *Otkritie International Investment Management Ltd & Ors v Urumov & Ors*, "The principal is entitled to be confident that the agent will act wholly in the principal's interests" ...

[36] The test for whether the payment, other benefit or promise amounts to a bribe depends on whether it creates the realistic prospect of a conflict of interest between the agent and their principal.

[37] For reasons of public policy, there are two "special rules" that apply to the tort of bribery as to what does not need to be proven: "First, the court does not inquire into the payer's motives in making the payment or allow evidence to be given as to motive. Second, the court will presume in favour of the principal and against the payer and the agent that the agent was influenced by the payment, and this presumption is irrebuttable". It is therefore not a requirement of the tort of bribery that either the payer or the payee acted with a corrupt motive or otherwise acted in bad faith. This is irrebuttably presumed if the tort is made out.

[39] Finally, ... the tort of bribery is not reserved for situations, ... where a fiduciary relationship exists between the payee and the plaintiff. All that must be shown is that the payee is under a "duty to provide information, advice or recommendation on an impartial or disinterested basis"; if that is established, "the payment of bribes or secret commissions exposes the payer and the payee to the applicable civil remedies. No further enquiry as to the legal nature of their relationship is required".

These legal principles, when considered in the context of this inquiry, give rise to concerns about public trust. While it may not be necessary to ask what motivated Armik to make the payments that he did, there was evidence at the inquiry that Armik coveted his access to both Sheegl and Katz. Armik was in regular contact with Sheegl, to the point that Sheegl became annoyed with the constant emails (yet never told him to stop sending them). Armik also contacted Katz when key matters were under discussion, including when Caspian was

seeking over \$17M in additional funding as the construction was drawing to a close. Further, whether it was true or not, Armik believed that Sheegl and Katz would assist Caspian, telling his son Shaun in an email “Phil and Sam are pulling for us.” Armik also expressed his view that things were not always above board when he was dealing with Sheegl and Katz, advising Shaun “Integrity well when we deal with politicians that tends to be compromised to a certain extent (sic).”

Sheegl and Katz were both adamant that the financial dealings that they had with Armik did not impact their decisions regarding the HQ project or impact city operations. However, the reason, that the Codes of Conduct that governed Sheegl and Katz required disclosure of conflicts of interest, and the reason that the tort of civil bribery does not require proof that decisions were influenced, is because of the need for public trust. The public can never be sure that the decisions taken by Sheegl and Katz were not consciously or unconsciously swayed by the relationship that they had with Armik. Similarly, the public can never be certain as to what motivated Armik to enter into financial dealings with Sheegl and Katz, including paying for the deck at Sheegl’s house, that Armik did not disclose to anyone else at the city. It is because of the need for public trust, that the tort of civil bribery applies equally to the payor and the payee.

Thus, my conclusion is that Armik Babakhanians engaged in unethical conduct when he sent money to Sheegl and Katz, and provided a gift of a deck, at the same time that his company was engaged in doing business with the city. The message is clear; those doing business with public entities should never engage in conduct that can be seen as an attempt to influence decision-making. This is why the tort of civil bribery applies to both the payor and the payee, and it is why I make a finding of misconduct that applies equally to Armik Babakhanians, Sheegl and Katz.

Before leaving this topic, I wish to say a few more words about these three principals. The findings of misconduct are severe and a stain on their reputations. Nevertheless, these three individuals ought not to be understood as being totally defined by the events of the WPSHQ project. All three have also made significant contributions to the city and province. Katz oversaw as mayor many important changes to the city including a new football stadium, the expansion of the convention centre, and changes to bridges, transit routes and community centres. Sheegl assisted the mayor in these projects, and he has also contributed greatly to the welfare of Winnipeg’s special needs community through his charitable work. Armik Babakhanians’ story is that of the immigrant dream, having arrived in this country with nothing and having built up a thriving business. Unfortunately, now they will be remembered in two ways; both for what they have accomplished and for how they have violated the public trust.

4. MISREPRESENTATIONS

Triple D

As the calendar turned from 2011 into 2012, construction on the WPSHQ redevelopment began in earnest. Peter Chang of AAR took over from AECOM as the chief engineer for the project. On an “effective date” of December 23, 2011, AAR and the city entered into a professional engineering services contract for \$4.4M. This number represented \$2.6M, authorized by EPC on December 7, 2011, for single-source engineering services, plus an additional \$1.8M authorized by the CFO to undertake the necessary work to complete the construction drawings that had been turned over by AECOM to Chang’s company.

The city’s practice of dating contracts with an “effective date” was seen throughout this inquiry. It caused significant confusion. For example, in the case of the AAR contract, there is a letter attached to the contract, dated after the “effective date” that sets out AAR’s fee proposal. This gave rise to questions about when the actual terms of the contract had been agreed upon.

The city’s dating practice did not just cause confusion at the inquiry. Chang was interviewed by the RCMP as part of a criminal investigation. He insisted during his interview that he had not started working on the HQ project until February or March 2012. He was challenged repeatedly by the RCMP officer who pointed to the “effective date” as showing that Chang had started his work in December.

At the inquiry, the city lawyer, Lisa Rowsell, did acknowledge that the city’s practice could lead to confusion and indicated that the city lawyers would now institute new practices.

The city’s practice of dating contracts will be discussed further in Part III – Recommendation #3.

Chang’s contract detailed the services he was to provide to include:

23. The Consultant ... is to provide the following professional services . . .
 - (a) (ii) Complete AECOM design as required to produce 100% drawings and specifications;
 - (a) (v) Lead the value engineering process to assist the City to achieve its budget, design and certify all revised drawings as required;
 - (c) Construction Services
 - Construction Contract Administration

- Prepare and review proposed Change Notices and Change Orders
- Review of Contractor PCN pricing

The contract contained a further term as follows:

32. The Consultant and any Subconsultant(s) for the major services (architectural, structural, electrical and mechanical) proposed under this Agreement shall not be eligible to provide services under any other contracts associated with the development of the WPS Headquarters.

Chang resides in Ontario and was not subject to subpoena. He was personally served with a letter, advising him that findings of misconduct could be made against him, and inviting him to contact the inquiry. He chose not to do so. In the circumstances he was not interviewed, nor did he testify. While there were questions that would have been helpful to have answered, the inquiry did have access to a significant amount of written material from Chang, including exam-for-discovery transcripts, police interviews and numerous documents and emails.

As part of his responsibilities, Chang put together a team of subconsultants to work on the HQ project. These included Manitoba firms Wolfrom Engineering and Nova 3 Engineering, as well as the Ontario firm of GRC Architects, where Patrick Dubuc was employed as an architectural technologist. Dubuc was not subject to subpoena by the inquiry, given his place of residence. While personally served with a letter advising that findings of misconduct could be made against him, he chose not to voluntarily contact the inquiry. However, the inquiry had access to his exam-for-discovery transcripts, police interviews, other documents and emails.

It is recommended that the Government of Manitoba should review current legislation to consider whether it should be expanded to include public inquiries.

This is discussed further in Part III – Recommendation #22.

The subconsultants were all paid directly by AAR. The GRC contract with AAR, dated April 5, 2012, was for \$850,000 divided between \$400,000 to complete the design drawings and \$450,000 to “review construction progress, progress billings, and issue Certificates for Payment”. Thus, Chang, with the assistance of Dubuc, was responsible for overseeing progress billing and payment certification on the HQ project.

Armik, Chang and Dubuc had worked together on other projects and considered each other close friends. For example, Chang wrote to Armik on February 3, 2012, telling Armik, “I know I have you watching my back. You truly are the brother I never had and I love you dearly.” Armik testified at the inquiry that he was very close to Chang and Dubuc.

On February 6, 2012, Chang contacted an Ontario lawyer for advice regarding how he and Dubuc could set up private companies. He also asked the lawyer for the name of an accountant who could assist with the companies and advised the lawyer that he did not want to use the AAR accountant because “I need this to be separate and **confidential** (emphasis in original). On February 8, 2012, Chang incorporated his company PJC Consulting and on April 12, 2012, Dubuc incorporated his company, PHGD Consulting.

The next company to be incorporated was Triple D Consulting Services Inc. which was incorporated in Manitoba on June 19, 2012, by Pamela Anderson, as the sole director and shareholder. Anderson is the office manager at Caspian and has been with the company for over thirty-three years. Anderson testified that she set up the company on the instructions of Chang, with Armik’s knowledge.

In the days preceding Triple D’s incorporation, Dubuc sent Armik draft wording of a contract for Triple D to send to Chang for consulting services that Triple D would supposedly be providing on the HQ project. The draft set out a host of services including technology services, review of asbestos abatement work, preparation of security documents and preparation of draft furniture layouts. Anderson had no expertise to provide any of the services set out in the draft contract, and Triple D had no employees who could undertake this work. The draft contract stipulated a fee of \$1.3 M for the services, to be paid by AAR. Armik acknowledged receipt of the draft wording and replied that he would “add about 2m to this to take care of some bills . . .” Dubuc amended the draft a few days later to change the contract price to \$1.2M, which he explained in an email (copied to Chang) as “\$600,000 special + \$300,000 PC + \$300,000 PD.” Had Dubuc testified at the inquiry, he would have been questioned about this email. Without his testimony, the conclusions I draw based on the available evidence is that Dubuc intended half of the money to be used by Anderson to hire specialty subcontractors and that the other half of the money would flow back to Chang and Dubuc.

By letter dated March 31, 2012, (even before Triple D was incorporated) Anderson sent a proposal for a consulting contract to AAR, in care of Chang. The letter was in the same wording as prepared by Dubuc, with some minor formatting changes and the addition of the Triple D logo. Thus, on the AAR file, there was now a seemingly legitimate proposal from a Manitoba company for consulting work to be done on the WPSHQ project in the sum of \$1.2M. On January 20, 2014, Chang wrote to Anderson with instructions that the Triple D contract be extended. Chang provided the wording and asked for a letter back from Anderson on Triple D letterhead. Anderson responded with her proposal letter on the same day in the same wording as set out by Chang. Thus, Chang and Dubuc drafted the first contract, and the extension contract, that Anderson was supposedly going to be fulfilling.

On July 10, 2012, Dubuc was in email contact with Armik, Anderson and Chang regarding Triple D. He asked that no further emails concerning Triple D be sent to his office email. He requested that an alternate email be used. In reply, Armik was concerned that one of

Dubuc's colleagues might "smell anything." The email is evidence that Armik, Chang and Dubuc knew that Triple D was being used for improper purposes.

Beginning on July 2, 2012, AAR began to flow funds to Triple D in accordance with the "consulting contract". The first payment was for \$262,500 for fictitious services provided for the first five months of 2012 at the rate of \$52,500 per month. There were 19 subsequent payments of \$52,500 each. There were 3 payments in 2014 of \$21,000 each, pursuant to the contract extension that Chang had drafted. In total AAR paid Triple D \$1,323,000. Of the 23 payments that were made, Chang co-signed 21 of the cheques.

Gina Campbell is a forensic accountant and partner in Deloitte. She was retained by the inquiry to trace the funds sent by AAR to Triple D. She confirmed that no money was paid into the Triple D bank account other than the funds from AAR. More particularly, Armik never did add "2m". From the funds sent by AAR, Triple D paid \$399,000 to Chang, through his company PJC. Triple D also paid \$462,000 to Dubuc, through his company, PHGD. The AAR funds were also used to pay some Triple D expenses including tax payments, incorporation fees and bank charges. This left \$419,955 of the city's money in the Triple D account, which Anderson testified she transferred to herself, with Armik's consent. Her justification for taking this money, she testified, was because it was her company and no one else was coming to retrieve it. Anderson confirmed that she did not do any of the work outlined in the Triple D proposals and that Triple D retained no subconsultants other than Chang and Dubuc through their respective companies.

Chang and Dubuc sought to explain the money as being for work they were doing for Caspian on other projects. This is inconsistent with the email setting out that each was intended to receive \$300,000 from the AAR payments. If they were doing other work for Caspian, their payments would have come from Caspian, not from AAR via Triple D. In the end each got more than the \$300,000 that is discussed in the email, and the remainder of the money, that perhaps was originally intended to be used for subconsultants (none of whom were ever hired by Triple D to do anything), ended up in Anderson's pocket.

Chang's position is also inconsistent with an email that Chang wrote on October 27, 2015, to internal sources at AAR. The email was prompted after questions were raised within Chang's firm about Triple D. In explaining Triple D, Chang stated:

In addition, Caspian (Triple D) paid for consultants for work completed at Wyper Road and Tower portion of 266 Graham, namely:

Civil Consultant for Wyper Road (Genivar)

Geotechnical Consultant for Wyper Road (AMEC)

Building Envelope report/design for WPSHQ (Crossier Kilgour)

Code review and analysis for the Tower (Morrison Hershfield)

All of the work done by sub-consultants under Triple D have been completed and signed and sealed drawings were received. And to the best of our knowledge all of the noted sub-consultants under Triple D's have been paid for their services.

This memo is false. Triple D did not pay any subconsultants. Also, nowhere in the memo, does Chang advise his partners at AAR that he had received \$399,000 from Triple D, through his personal company PJC Consulting. If the transactions had been legitimate, why the need for secrecy?

Further, neither Chang nor Dubuc ever told anyone at the city that they were doing additional work for Caspian and being paid by a Caspian related company. Under s.32 of Chang's contract with the city, set out above, Chang and any subconsultants were prohibited from providing any other services related to the HQ project. Therefore, either under the contract, or more generally their professional duties of loyalty to their client, Chang and Dubuc would have been expected to tell the city about any potential conflict of interest and obtain consent. The fact that neither did, again raises the question of why the need for secrecy?

Chang and Dubuc had the opportunity to voluntarily attend the inquiry and explain the money they received from Triple D. Neither took that opportunity. Therefore, relying on the written record before the inquiry, I am satisfied that Chang and Dubuc helped Anderson to create a false paper trail, whereby it appeared that Triple D was providing consulting services in support of the HQ project. Based on this "contract", Chang was able to requisition funds from AAR that had been paid by the city to retain consultants. A portion of the funds was then syphoned back to Chang and Dubuc through their personal companies. The remainder was paid out to Anderson with Armik's consent.

Thus, through the misrepresentations of Chang, Dubuc, Armik Babakhanians and Anderson, \$1.3M of the funds that the city paid for the WPSHQ project, was misappropriated and ended up in the pockets of Chang, Dubuc and Anderson.

It is important to note that AAR is entirely innocent in what occurred through Triple D. At its end, there was nothing to raise concerns. The money flowed to a subconsultant in the same manner that funds flowed to other subconsultants such as those retained to provide additional mechanical and electrical engineering advice.

Chang's contract was single-sourced. The city has strict policies on the use of single source contracts. This one was justified on the need for speed to keep the project on schedule. As discussed earlier in this report, too much time had passed for the inquiry to determine if this was in fact correct. However, the events surrounding this contract show one of the vulnerabilities of single-source contracts. There may be insufficient rigor brought to determining the contract price. In this case the evidence points to the city having overpaid for services by \$1.3M.

Payment Certification

While I have determined that Chang and Dubuc misappropriated city money for their own benefit, the city was, at the time of the construction project, entirely unaware of their conflicts. Thus, from the city's perspective, they were dealing with two qualified professionals, from two respected firms, to oversee the project through the construction phase.

One of Chang's primary responsibilities as the project progressed was to certify Caspian's monthly progress payments. The GMP contract specified that the city would pay Caspian "for the cost of the work, subject to submission by Caspian of all backup documentation as may be reasonably required . . . by the city." The cost of work was defined to include several categories including "payments made by Caspian to subcontractors." In order to ensure that the city could accurately track cost, Jason Ruby insisted that Caspian include its subtrade invoices with its monthly progress requests for payment. This then gave Ruby a running tabulation of what he understood to be the costs. Caspian objected to providing subtrade invoices, arguing that this was not how they had operated in the past, primarily under fixed price contracts. However, Ruby insisted that he required the invoices for audit purposes, so Caspian capitulated and agreed to submit its subtrade invoices with each payment request.

The GMP contract contained a very basic breakdown of the various items that made up the \$137.1M contract price. This breakdown was fleshed out by Armik and AbouZeid into a cost breakdown spreadsheet of approximately 150 lines. This spreadsheet was agreed between the city and Caspian as the basis for the progress payments and it accompanied all but the first payment application throughout the project.

Chang was adamant, in both his police interviews and his exam-for discovery, that he never looked at the invoices. He said that he looked solely at the percentage of work done and applied that percentage to the total amount budgeted for that line item. In other words, if a line item was budgeted at \$100,000 and 10% of the work was done that month, Chang would authorize a \$10,000 payment.

On May 2, 2012, PR 2 was filed for payment. This is the first progress payment signed by Chang, the previous one having been submitted before Chang joined the project. In his certificate of payment Chang stated:

This is to certify that in accordance with the Contract dated November 17th 2011, the Contractor Caspian Projects Inc. has completed work and delivered products to the Place of Work to the value of \$5,902,970.65 (net of valued added taxes - GST) to the end of March 2012.

There is a certificate of payment for progress payments 2 to 28, with the exception of progress claim 18, in the same wording as set out above, all signed by Chang. While there

were some questions raised at the inquiry as to whether Chang was responsible for payment certification, the certificate he signed with each progress payment is evidence that he understood his role was to confirm the value of work done each month.

David Kimber was engaged by the inquiry to provide expert testimony on payment certification and the role of quantity surveyors. Kimber has been a quantity surveyor since 1988 and is currently with Deloitte in its Capital Projects Group. He testified that as a quantity surveyor he is trained to help owners develop their projects including assisting with procurement, providing oversight of projects, and setting up and running the payment certification process. He explained that the basic role of a payment certifier is to “ensure that the contractor is paid in accordance with the terms of the particular contract that the project is being performed under.”

Kimber testified that the materials submitted by Caspian and reviewed by Chang, in support of payment requests, were inadequate. All that was generally included with the payment packages were subtrade invoices seeking payment of a certain amount but not providing any detail of what exactly had been done in the past month.

Kimber explained that the GMP contract that governed the HQ project was a cost basis contract. Thus, in order to properly pay the contractor, the certifier had to verify what costs had been incurred during the month. Kimber advised that he would have expected time sheets to detail the cost of labour, information on materials and equipment used, as well as detailed subtrade invoices for that month. None of this detailed information was contained in the payment packages submitted by Caspian and certified by Chang.

Kimber also testified that it is standard practice for payment certifiers to receive copies of the subtrade contracts since the contracts detail the scope of work. This then helps to manage how the project is progressing and to understand if the original scope of work needs to change because of changes to the project. The subtrade contracts were never provided to, nor requested by Chang, for the HQ project.

Further, Kimber testified that he would have expected the subtrade invoices to be very detailed so that it would be possible to allocate the cost incurred to the proper line on the cost breakdown spreadsheet. Kimber gave an example of an invoice for \$1.3M from a subcontractor named FABCA Projects Ltd. that was for “selective demolition” (much more will be said about FABCA later in this report). Kimber explained that if he had received this invoice as the payment certifier, he would not have known how to properly account for it. Did this include electrical and mechanical demolition, or were the electrical and mechanical subcontractors going to handle demolition of these components as part of their retainer? Kimber advised that important questions such as this were impossible to answer given the paucity of information.

Kimber also provided testimony about how a payment certifier establishes that the work has been done. This involves walking the site and checking off the work completed against the

payment application. Thus, there needs to be sufficient detail so that the payment certifier can be confident about what has been completed versus what has been claimed. Sometimes there may be questions and in those circumstances, Kimber advised that he would first follow-up with the contractor, but he added “if that wasn’t helpful, I would go and talk to the subcontractor themselves and say, look, help me out here because at the moment. I don’t know what you’ve done, and therefore, I can’t really certify it.”

Kimber reviewed the payment certification materials submitted by Caspian and certified by Chang on the HQ project. Chang authorized all of the requested payments, with some minor adjustments. As of progress claim 21, dated for work completed by October 31, 2013, everything appeared to be going smoothly. On paper, the project was still on budget. The change orders had been accommodated within the budget, there had been money used from the FFE and contingency budgets, and the project was still being shown as costing \$137.1M. Unfortunately, as discussed later in this part, this would soon change.

Having read Kimber’s report and having heard his testimony, I am satisfied that Chang did not perform the role of payment certifier in accordance with expected professional standards. While Chang was an engineer and not a quantity surveyor, he held himself out as being able to perform the payment certification role and was therefore expected to do it in accordance with professional standards. However, he did not do so. He did not follow the terms of the GMP contract and verify cost, even though his own engagement contract specified that he would be providing contract administration. He relied on inadequate documentation, did not obtain subtrade contracts and did not insist on detailed invoices. He signed a certification each month without sufficient information to verify the costs. In the circumstances, the city did not get the services for which it had contracted. The failure to have an independent and professional payment certifier would set the stage for Caspian to grossly misrepresent its costs and to obtain millions of dollars in excess claims, as discussed in the next section of this part.

It is recommended that on all large-scale construction projects, the city should engage an independent quantity surveyor to set up and manage the payment certification process. This will be discussed further in Part III – Recommendation #8.

Excess Claims

The inquiry benefited greatly from the expert report and testimony of forensic accounting specialist, Victor Neufeld. Mr. Neufeld also assisted the inquiry by reviewing a draft of this portion of the report and recommending edits to ensure that it accurately summarized his findings.

Mr. Neufeld has decades of experience in the forensic accounting field, having taught accounting since 1986 and having performed forensic audits on multiple investigations, including for the RCMP and the Manitoba Securities Commission. Neufeld was retained by the inquiry to provide an estimate of the excess claims made by Caspian, meaning the difference between the amounts claimed and paid by the city to Caspian, as compared to the amount Caspian actually paid for the work to its subtrades. The inquiry was able to piggyback on the work done by Neufeld and his team beginning in 2018 as part of the city's litigation against Caspian and others. The litigation was settled in March 2023 and the work on the forensic report was halted until July 2025 when Neufeld returned to it, at the inquiry's request.

Preparing the forensic audit was a massive task. Neufeld spent over 4,000 hours compiling the report and there were an additional 2,000 hours contributed by other team members. Neufeld and his team reviewed more than 14,000 documents. The final audit report provided to the inquiry was over 1,000 pages in length and cited 2,759 documents. There was very limited cross-examination of Mr. Neufeld during his inquiry testimony, meaning his evidence is virtually uncontroverted. Neufeld's ultimate conclusion was that Caspian had submitted and been paid between \$45M to \$50M in excess claims.

Neufeld calculated this staggering number using two different analytical methods. The first was a "global method" which reviewed subtrade invoices submitted by Caspian to the city for payment for various scopes of work. The second was the "cost ledger method" that used Caspian's own cost ledger, which was disclosed by Caspian in the civil lawsuit, to determine what Caspian had internally tracked as its cost of work. As will be explained further, the two methods gave almost identical results, thus mutually reinforcing that the calculation of excess claims was accurate.

(a) Global Method

Under the global method, Neufeld identified hundreds of examples of Caspian documents, forwarded to the city, that contained material financial misrepresentations. There were several different ways that Caspian falsified its documents during the HQ build, each method involving many documents and amounting to millions of dollars in false claims. While this report does not deal with every example of impropriety identified by Neufeld, some of the most egregious examples of are set out below.

(i) Demolition

Right from the beginning of the project, Caspian set out to falsify its costs with the assistance of Greg Fiorentino, the owner of FABCA Projects Ltd. The scheme concocted between Armik and Fiorentino was complex and involved 50 fabricated FABCA invoices submitted by Caspian for payment by the city, between March 2012 and July 2013. The

invoices purported to be primarily for demolition work, but FABCA did not do any of this work. The actual work was done by Tiger Ventures. The inquiry heard from the owner of Tiger Ventures, Sheldon Pitz, who testified that his company did the demolition work and asbestos abatement for the HQ project, for which his company was paid \$2.4M.

The scheme between Caspian and FABCA had several iterations, but the first version was the most elaborate and involved 15 matched pairs of invoices. Under the scheme, Caspian issued a purchase order to FABCA, purportedly retaining it to do certain work. FABCA then issued to Caspian an invoice for payment for that work (which it did not do), that Caspian paid. One of Caspian's related companies (JAGS, Logistic Holdings, Mountain Construction, JAW, CCI) then issued an invoice in the identical amount to FABCA, that FABCA paid. Caspian's office manager, Pam Anderson, coordinated the various cheque swaps that took place to facilitate the scheme. Since there were identical amounts of money flowing back and forth, FABCA netted no money and Caspian had no cost. However, Caspian submitted the FABCA invoices to the city for payment, representing that FABCA had worked on the HQ project. If Caspian's books were ever audited, they would have shown a seemingly usual transaction of an invoice issued for work done and paid in full. The return of the money by FABCA was recorded in a different company's set of books.

The second iteration of the scheme involved six invoices issued by FABCA to Caspian that Caspian did not pay. There was also a corresponding invoice from a related Caspian company to FABCA that FABCA did not pay. Thus, Anderson was relieved of the task of coordinating the cheque swaps. FABCA then reversed the entries in its books, cancelling the receivable and the payable. However, Caspian nonetheless submitted the FABCA invoices to the city for payment.

In the third iteration of the scheme, FABCA issued 29 invoices to Caspian and never entered them on its books. Caspian submitted the invoices to the city for payment. Fiorentino testified that this was done because the various accounting requirements were "getting ridiculous" so all the bookkeeping was replaced by just using fake invoices.

In total the FABCA scheme netted Caspian an excess claim of \$19M, paid by the taxpayers of Winnipeg.

Armik's scheme was calculated and premeditated. Not only did he arrange for the 50 invoices, but he also ensured that Fiorentino attended some weekly project meetings, to lead others in attendance to believe FABCA was actually involved in work being done on the project. Fiorentino stayed quiet at these meetings. When asked why he didn't point out at the meetings that FABCA had done no work on the project, he said that wasn't the forum to raise this.

Further, by email dated March 30, 2012, Armik advised his staff to be careful when preparing the minutes from the weekly meetings and to use the name FABCA when referencing anything to do with demolition. Armik also covered FABCA's increased insurance premium

of \$16,000 caused by FABCA's, on paper, multi-million-dollar sales increase. Thus, Armik set up all the props in his elaborate play so that to the outside world it appeared that FABCA was the legitimate demolition subcontractor.

While Armik was the mastermind of the scheme, the scheme would not have been possible without the cooperation of Fiorentino. Fiorentino testified at the inquiry and his answers were less than satisfactory. His explanation was that it was Armik's project and Armik's money and he just went along. He testified:

They'd pay us, yeah, without having done anything . . .

I mean, for me, it was his money to do what he wanted to, and it didn't matter to me. I just knew it wasn't mine to – to deal with and I was giving it back to him...

At the time, I didn't think about it at all. It was his project to run. He was running it how he wanted to run it, so I didn't question it.

Fiorentino also testified about what he thought was happening with the invoices:

I assumed that Caspian was putting them in their files. . . When I do projects, I don't submit my subtrade invoices to my clients. It's a contract. I invoice against the contract. So for me, the assumption is the same thing's happening here.

I find Fiorentino's answers to be the classic responses of someone who chooses to be willfully blind - "it didn't matter to me"; "I didn't question it"; "I didn't think about it"; "I assumed". Therefore, I find that there were sufficient suspicious circumstances that would cause anyone with high ethical standards to ask some probing questions. In failing to do so, Fiorentino either knowingly or through wilful blindness aided Armik in creating documents with material financial misrepresentations, to the detriment of the city and its taxpayers.

Further, Neufeld in his report noted that FABCA was paid a total of \$293,145 by Mountain Construction, \$200,000 of which was invoiced by FABCA as "Winnipeg Police Service Construction Management Services" and \$93,145 for "Winnipeg Police Service Construction Supervision Services." While there was evidence that FABCA did provide an on-site supervisor for a short time, Fiorentino acknowledged in his testimony that the \$200,000 was to manage a number of trades but that no such management was ever required as FABCA did not get any sub-trade contracts to manage. Fiorentino says Armik was okay with him keeping the money as a "fee." A fee for what, one might ask?

(ii) Doors, Hardware and Overhead Doors

Two companies, Shanahan's and Wallace were contracted by Caspian to provide doors, hardware and overhead doors, for the WPSHQ project. Together with their installers, they issued their invoices and were paid by Caspian in the ordinary course, in the amount of

\$3.2M. However, Caspian claimed \$9.9M from the city for these scopes of work, plus some additional drywall work, amounting to \$6.7M in excess claims.

Under these scopes of work, Caspian created 33 invoices from its related company Mountain Construction, that it submitted and claimed from the city. However, Mountain did not do any of the work set out in the invoices. Computer metadata shows that 19 of the 33 invoices were created by Anderson on the same day in March 2014, though they were dated over a period of months between July 2012 and March 2014. In other words, Anderson knowingly and willingly used her computer to create fictional documents. She admitted this when she testified.

Caspian also altered quotations received from Shanahan's in support of change orders that were authorized throughout the project. These quotations were changed on the computer so that \$5,200 became \$25,495; \$4,890 became \$8,890; and \$3,660 became \$8,660.

In total the city paid \$9.9M for work that cost \$3.2M for an excess claim of \$6.7M.

(iii) Drywall

G&G Interiors was the primary drywall subtrade. There were several G&G invoices that were paid by the city to Caspian, but Caspian did not pay these amounts (either fully or partially) to G&G.

G&G had a \$6M contract with Caspian to provide drywall services for the HQ project. It was paid this amount in full. However, the city paid Caspian almost \$8M for progress claims supported by 28 claimed G&G invoices. The \$2M difference resulted from money Caspian received from the city but did not forward to G&G.

Caspian was also paid an additional \$770,000 in extra funding for drywall as part of an approved change order during the construction. This additional money was kept by Caspian and not paid to G&G.

A further million dollars was paid to Caspian for increased drywall costs under the supplemental agreement that was signed between Caspian and the city, dated December 11, 2013. This additional million dollars was based on Caspian's assertion that it was owed this amount as a cost overage. Given that Caspian's actual cost for drywall work was only \$6M and not the \$9,223,014 that Caspian alleged, this extra one million dollars was an excess claim.

Thus, in total, Neufeld calculated that Caspian was paid an estimated \$3.7M in excess claims in the drywall scope of work.

The circumstances surrounding the supplemental agreement will be discussed in detail in the next section of this part. The basic facts are that, as result of Caspian's assertion that it required additional funds to complete the project, the city negotiated a revision to the GMP contract to raise the total guaranteed maximum amount to \$156.4M from its original \$137.1M.

(iv) Wyper Road Berm

The GMP contract also covered the construction of the outdoor gun range on Wyper Road. This included building an earth berm around the facility, as well as a road to the facility and a parking lot.

Bayview Construction was contracted by Caspian to construct the berm and the related roadwork. The berm was substantially completed by the end of October 2011. Caspian claimed and was paid by the city for six Bayview invoices totalling \$1.6M. Of this amount, \$1.4M was paid to Bayview.

Caspian also claimed for the exact same berm work, by using three invoices from Strada Construction, totalling \$2.66M. Strada did no work on the HQ project, and more particularly, no work on the berm.

Caspian submitted PR #1 to the city in November 2011, for work done up to October 31, 2011. The first line, on the first progress claim, is a Strada invoice for \$1.2M dated October 25, 2011. This amount was paid by the city to Caspian in December 2011.

John Garcea is the owner of Strada and testified at the inquiry. He stated that he was asked by Caspian in October 2011, to submit a quote for construction of the berm. He submitted a quote for \$2.66M which was accepted by Caspian. Garcea testified that he and his staff put together the quote without going to look at the jobsite. If he had, he would have seen that the berm was almost complete. Garcea then testified that he sent in the invoice for \$1.2M dated October 25, 2011, as an advance so he could purchase supplies. The invoice makes no mention of an advance and is just a one-line document for "construction based on the site plan" (exactly the wording of an invoice that Kimber testified was inadequate for proper payment certification). Caspian did not pay this invoice to Strada until August 2012 and on the same date issued an invoice to Strada for the same amount, which Strada paid. Thus, through this flow-through cheque exchange, Strada did not retain any of the \$1.2M and Caspian had no expense. Of course, in December 2011 the city had already paid the Strada invoice which had been submitted to it by Caspian.

Strada issued two additional invoices to Caspian for work that was never performed. The two invoices were dated July 25, 2012, and September 10, 2012, and totalled \$1.46M.

Neither Garcea nor his staff could provide a satisfactory answer as to why they had sent invoices for work never performed. In a written reply to questions, Garcea stated:

Mr. Garcea advised that [staff member] does not recall the specific details of any conversations regarding those invoices other than that she would have been directed by Caspian representatives at various times throughout the Project to issue paperwork in a specific manner in order to receive payment for work that Garcea Group entities completed on the Project.

Strada was never paid for these two invoices, but Caspian submitted both and was paid for both by the city.

Another way that Caspian inflated its costs on the HQ project was by submitting invoices to be paid through the HQ contract, for work done by its subcontractors on other Caspian projects. While the HQ project was ongoing, Bayview was also working for Caspian on a separate WPS project, the construction of a new Canine Unit. Bayview billed Caspian \$103,000 for work on the Canine Unit, but Caspian included this invoice in its progress claim for HQ.

In total, Neufeld calculated that Caspian received \$2.8M in excess claims for work related to the Wyper Road berm. This number primarily consists of the \$2.66M in entirely fictitious Strada invoices and Canine Unit costs that were improperly charged to the HQ project.

Armik Babakhanians' misconduct is made vividly clear by the fact that the very first line of the very first progress claim to the city seeks payment of a fictional invoice. Nothing that happened on the HQ project happened by accident. Armik set out right from the start of the HQ project to inflate Caspian's costs, to the detriment of the city.

I also find that Armik was aided in this endeavour by John Garcea. As a sophisticated businessman it makes no sense that Garcea would bid on a project without visiting the site or making any inquiries that would have shown that the berm project was almost complete. It makes no sense that Garcea would participate in a cheque swapping scheme and that this would raise no questions. It makes no sense that Garcea's company would submit three invoices totalling \$2.66M for work it never performed.

It was puzzling throughout this inquiry to hear from several small business owners who got caught up in Armik's schemes without receiving a tangible benefit. This is the situation with John Garcea. He appears to have received nothing for his participation, other than the potential for more work in the future. But his actions show a disregard for maintaining high ethical standards. There were too many warning signs that Armik's actions were not aboveboard and Garcea should have refused to cooperate. In failing to do so, notwithstanding that he did not receive any money for work he didn't do, he helped to facilitate Caspian's misrepresentations to the city.

(v) Garcea Group Scope of Work

In addition to Strada Construction, John Garcea had several other companies that did work on the HQ project, including Colour Design (painting), Tuscany (ceramic floors and tiles), Granite Concrete and S&J Construction (concrete work and labourers). In total, Neufeld calculated that Caspian received \$1.1M in excess claims related to the Garcea Group scope of work.

Included within the \$1.1M is \$230,000 in Colour Design work on the Soul Sanctuary church project, which was another project that Caspian was working on in Winnipeg while the WPSHQ project was ongoing. In order to obtain an invoice that could be submitted to the city for non-project costs, Anderson requested and received a revised invoice from Garcea staff. The new version of the invoice listed the description of the work as having been done on the WPSHQ project, when in reality it had been done on Soul Sanctuary. The invoice was sent to Anderson on January 20, 2014, attached to an email that read: "Please see the attached invoice, as per John and Armik. The invoice is to re-invoice the work done at Soul Sanctuary." This is another example of a suspicious circumstance that should have caused Garcea to ask questions and to refuse to assist Armik by providing him with false documents.

Caspian also received an extra \$185,000 for tile work as part of the supplemental contract negotiations. This amount was supported by a Tuscany Construction quotation of \$1,309,500. A Tuscany quotation in identical wording was located except the price was \$538,000. There was an email located from Tuscany that attached the lower cost quotation, but no email was located attaching the higher priced quotation. Neufeld concluded that the consultants reviewing the materials in support of the supplemental agreement were provided with inflated numbers by Caspian and that the \$185,000 that was received from the city was in excess of actual costs.

Garcea was asked about the Tuscany quotations and responded in writing as follows:

Mr. Garcea advised that he is unable to determine at this time which of the Tuscany Tile quotations were in fact issued by Tuscany Tile because the Garcea Group no longer has a copy of any quotations issued by Tuscany Tile on any of the projects. He advised that it appears that Caspian representatives created some of quotations bearing Tuscany Tile's name that are produced among the Inquiry documents, but he cannot tell which ones are genuine or fabricated at this time.

There were also one invoice and four change orders requested and approved for the S&J scope of work, totalling \$742,332. However, Neufeld could only identify \$51,412 that was paid for this work, resulting in an excess claim of \$690,920.

In total Neufeld calculated that through various means such as claiming for costs from other projects, creating false quotations, and not paying subcontractors the amounts paid by the

city, Caspian received an additional \$1.1M in excess claims related to work through the Garcea Group.

(vi) Electrical Scope of Work

McCaine was the electrical subcontractor on the WPSHQ project. Its contract on the project was for \$23.1M, reflecting that the project required significant and complex electrical work. McCaine was part of a national conglomerate and had a sophisticated accounting system. Armik was alive to this, telling Chang and Dubuc, by email dated March 12, 2012, that “McCain (sic) is a wild card because they are owned by Stuart Olson group so I have to watch my steps.”

The new police headquarters building required multiple backup systems to ensure that it would be able to operate without any interruption of services. One of the issues that needed to be addressed was the location and installation of a backup generator system (Genset Load Bank). Originally, the plan had been to put the genset in the basement, but this did not work due to space constraints. The solution was to move the genset to the roof, requiring additional electrical work. There was other additional electrical work required for the building including for additional locks and other security features. McCaine did receive some additional payments to cover some out-of-scope work.

Caspian sought a change order in the amount of \$4M to cover additional costs for McCaine’s electrical work on the genset. This amount was approved by the city. However, John Schubert, the former vice president at McCaine, testified at the inquiry that he had been advised by Armik that the city had denied the additional funding, so McCaine did the genset work as part of its original contract price.

Further, the negotiations of the supplemental agreement involved an additional \$3.3M for extra electrical work on the security system. Again, McCaine did not receive any of these funds, since Caspian took the position that it formed part of the original McCaine scope of work. There were other amounts sought through the supplemental agreement process, including for added network drops, motorized blinds and hand dryers, which Schubert testified McCaine covered within its original contract. The funds were ostensibly required to reimburse McCaine.

In total, 17 different amounts were approved, totalling about \$13.7M in additional funding. After McCaine was paid its full contract amount, Neufeld calculated that Caspian received from the city \$9.3M in excess claims. This money was kept by Caspian and did not flow through to McCaine.

(vii) Mechanical Scope of Work

Wes-Man Mechanical was the mechanical subcontractor on the HQ project. Within this scope of work, Wes-Man was also involved with the installation of the genset on the roof of the building. Caspian sought a change order and was paid \$1.386M for additional mechanical costs for the genset. However, Wes-Man's owner, Marc Phaneuf, advised the RCMP during its investigation, that he was told by Caspian that no additional funding had been approved. Phaneuf explained:

We had to do it because, you know what we're into the job . . . I'm into the job for millions of dollars already so . . . am I gonna say no and then they're going to get somebody else and then charge me back on it because . . . that's another way they do things ... So we went into it, we did it and they said it wasn't approved . . . So we never got paid for it.

Another change order that was requested by Caspian was for modifications to the interview rooms in the HQ building. Caspian sought and was approved for \$18,688 for work done by Wes-Man. Marc Phaneuf advised the RCMP that "nothing was invoiced to Caspian for this work". Thus, this amount was paid to and retained by Caspian.

Phaneuf was also asked by the RCMP to review quotations for several other change orders within the mechanical scope of work. Phaneuf identified four documents, originally provided by Wes-Man to Caspian, that had been altered by Caspian: \$3,869 had been changed to \$4,869; \$12,688 had been changed to \$18,688; \$21,034 had been changed to \$41,034; and \$9,813 had been changed to \$19,813. In total, the four invoices had been inflated by \$37,000.

There was also an email chain located where Armik emailed Shaun and asked: "Shaun can you chnage(sic) 33 444 to 63 444 please and forward it to me please". Shaun replied "Yup". There were Wes-Man invoices located with these numbers on them, but these were not used for change orders and what happened with them is unclear. The email conversation, however, captures the cavalier approach both Armik and Shaun took in altering documents.

Caspian also requested and received \$6.9M for mechanical work as part of the supplemental agreement negotiations, based on Caspian's assertion that the mechanical work had cost \$29.7M against a budget line of \$22.8M. Neufeld calculated that Wes-Man had in fact been paid only about \$26.4M by Caspian, resulting in an excess claim of \$3.3M.

In total, Neufeld calculated that through various methods – not paying the contractor the money received for change orders; inflating invoices; and falsifying the numbers used during the supplemental contract negotiations – Caspian generated \$4.7M in excess claims for the mechanical scope of work.

(viii) Structural Steel

Abesco Ltd. provided structural steel work on the WPSHQ project. During the same time that Abesco was working on HQ, it was also doing work for Caspian on two other projects, the police Canine Unit and a new Winnipeg Transit garage. Abesco had submitted multiple invoices to Caspian, covering the three projects. On July 31, 2013, Armik emailed Abesco offering to settle the outstanding accounts for a total of \$2.34M. This offer was accepted. The global settlement included \$1.5M for the canine and transit projects. All the invoices covered by the settlement were claimed by Caspian and paid by the city on the HQ project, resulting in \$1.5M in excess costs.

Abesco also worked on the Soul Sanctuary church project for Caspian. The \$450,000 invoice for that project was also claimed by Caspian and paid by the city as part of the HQ budget.

Thus, by including non project costs on the project, Caspian generated an excess claim of \$1.9M.

(ix) Selected Subtrades

In addition to the major scopes of work discussed above, Neufeld also reviewed selected financial transactions between Caspian and subtrades involved with smaller scopes of work.

Top Pro Roofing – Top Pro installed roofing on the HQ project. Caspian claimed about \$320,000 for two Top Pro invoices and the city paid this claim. However, Caspian never paid Top Pro for these claimed invoices. Two additional Top Pro invoices totalling \$510,000 were also claimed by Caspian and paid by the city. However, Top Pro told the RCMP that these claimed invoices related entirely to the transit garage project, not the HQ project.

In total, these invoices resulted in \$830,000 in excess claims.

Calado Crane Rentals – Calado provided crane services to install the genset on the roof. The RCMP interviewed Calado officials who advised that they invoiced and were paid \$39,000. Caspian submitted to the city and was paid \$89,000 for crane services based on a Calado invoice for that amount. Calado officials stated to the RCMP that they did not recognize the \$89,000 invoice and “that their work would never equal this amount”. Based on this, Neufeld concluded that Caspian had submitted for payment an inflated invoice that resulted in an excess claim of \$50,000. In comparing the “real” invoice submitted by Calado with the invoice Caspian submitted, they are identical except that \$39,000 has been changed to \$89,000.

Century Steel Fabrications – Century Steel Fabrications supplied and installed stairs for the HQ building. Century Steel staff were interviewed by the RCMP and confirmed that the invoices submitted by Caspian as part of their HQ project billings included costs

totalling \$53,800 that were actually for work done on the transit garage. This resulted in \$53,800 in excess costs that were claimed by Caspian and paid by the city.

Contempra Window Coverings – Contempra was the primary subtrade involved in the supply and installation of motorized window blinds for the HQ project. In support of a change order, Caspian submitted a \$495,080 Contempra quotation. The RCMP interviewed Contempra’s owner who confirmed that he did not prepare this quotation and that the document he did prepare was for \$357,550. There are emails between Anderson and Shaun that confirm the changes. On September 4, 2013, Anderson emailed Shaun and asked:

Can you change 357,550 to 495,080. All I have is a scanned copy.

Shaun replied later the same day:

Hows (sic) that for first page

The next day, Anderson replied:

Can you reduce the size a bit.

Anderson confirmed in her testimony that she was referring to font size.

The altered Contempra documents resulted in a \$137,530 excess claim to the benefit of Caspian.

Cunha Masonry – Helder Cunha testified at the inquiry and advised that his company did the masonry work for Caspian on the HQ project. He also worked for Caspian on the Canine Unit and Soul Sanctuary.

Cunha testified that he was asked by Caspian to supply three “dummy invoices” and he was confused by the request. He said that Armik had told him he needed the invoices because “he wasn’t getting enough approval to pay all the trades and – and he needed an invoice so he could get paid and it’d all get straightened out in the end.” He also testified that although he found Armik’s requests a “bit strange” he wasn’t too concerned “because I felt that if it was off the wall, that it would’ve been dealt with in the Owner’s Group.” Cunha explained in his testimony that he sent in his monthly progress claims like he always did and he expected the owner’s architect to only pay for work done. He did not understand what was being done with the false documents and could not conceive what could be done with them. He was also concerned about his own financial well-being. He described Armik as “not the type of person not to get what he wants, no matter what it takes.” He was concerned if he said anything Armik would shut him down, refuse to pay him, and force him into bankruptcy.

Neufeld identified a series of six Cunha invoices that were fully claimed by Caspian and paid by the city, but they were either not paid or only partially paid by Caspian to Cunha. This created additional excess claims of \$1,530,000. These six Cunha invoices included several

references to “dummy” invoices or “inflated” amounts. My conclusion is that Caspian submitted and received payment for the “dummy” invoices prepared by Cunha.

Neufeld also established that Caspian commingled Cunha’s invoices for its work on Soul Sanctuary and the Canine Unit and in so doing generated an additional excess claim of \$112,000.

I was impressed by Helder Cunha and found his testimony to be forthright and candid. He described how Armik had used him by asking him for invoices and feeding him stories about needing to pay the trades to justify the requests. Cunha testified that all he wanted to do was an honest day’s work. I find that Cunha turned his mind to what was going on and tried to understand it. He asked questions and was given an explanation by Armik that did not make total sense to him, but he expected the payment certifier (that he called the Owner group) to catch anything improper.

In the circumstances I make no finding of misconduct against Mr. Cunha.

PAL Distributors and Laird Plastics – PAL and Laird supplied bullet proof glass for the HQ project. Officials from both firms were interviewed by the RCMP. PAL’s owner explained that he was asked by Armik for an inflated version of a quotation because he was doing some “balancing of the job”. The inflated quotation was used during the change order process to support an excess claim of \$145,000. This is another example of business owners asking questions and trying to understand what Armik was doing.

Smikles and McEwen – Smikles did no landscaping work at Wyper Road. McEwen did the landscaping work and was paid \$121,000. Caspian claimed a Smikles invoice for landscaping and was paid \$280,000. Smikles’ staff was interviewed by the RCMP and stated that the Smikles invoice submitted by Caspian for payment “is a forged document”. In the circumstances, Caspian received an excess claim of \$159,000.

Terra Metals – Terra Metals supplied specialty metal work on the HQ project. Robert Kuziw, the owner of Terra Metals, was interviewed by the RCMP and shown three quotations in the name of Terra Metals that were submitted by Caspian in support of an increase sought through a change order. Mr. Kuziw was unable to identify the documents and could not locate them in his own files. Metadata for two documents showed that they were last modified and saved by Pamela Anderson. Anderson admitted in her testimony that she altered the Terra Metal quotations. Neufeld calculated that the altered documents resulted in an excess claim of \$265,000.

Troy Fire and Safety – Troy was the primary subtrade that supplied and installed fire suppression equipment for the HQ project. There were troubling emails between Anderson and a Troy staff member regarding “fudge” invoices”, suggesting that the employee was willingly providing false documents for the purpose of misleading the city. The employee no longer lives in Manitoba and was not subject to subpoena. He did cooperate in a telephone

interview and explained that Armik had requested various quotes based on different amounts of work and that he used the word “fudge” to mean that the prices were not yet firm. He explained that he had several conversations with Armik and could no longer recall details about the various quotes.

In the circumstances I am unable to make a finding of misconduct against the Troy employee. With the information I have before me, I cannot be confident of the meaning of the emails between Anderson and the Troy employee, on a balance of probabilities. Therefore, I conclude that Armik asked for a false document for his own purposes and that this was supplied by a Troy employee without an improper motivation.

Neufeld calculated that the false document was submitted by Caspian in support of an increase sought through the change order process, and that Caspian sought and received an estimated excess claim overpayment of \$126,000.

Western Industrial Services Ltd. (WISL) – WISL supplied fireproofing on the HQ project. As part of the change order process, Caspian submitted two WISL quotations for inflated sums. WISL officials were interviewed by the RCMP and confirmed that the documents submitted to the city were not theirs and that they had sent documents with lower figures to Caspian. WISL was paid the lower amounts in the quotations and Caspian was paid and retained the higher amounts. In total, the higher amounts resulted in \$567,000 as an excess claim.

(b) Summary of Global Method

The examples set out above explain the various schemes that Caspian employed to inflate its actual costs of work when submitting claims to the city or when providing backup quotations and other cost support for change order requests.

Armik Babakhanians, Shaun Babakhanians and Pam Anderson, either directly or through instructions to subtrades, created false invoices and false quotations with inflated amounts, claimed for invoices that they did not pay to their subtrades, included costs for other projects as part of their HQ claims, and claimed invoices from subtrades that didn't do the invoiced work. Neufeld's audit report identified hundreds of such examples.

I accept in its entirety Neufeld's audit report that calculates that these various schemes resulted in Caspian claiming and being paid, by the taxpayers of Winnipeg, \$45M to \$50M over and above Caspian's actual cost of work.

(c) Cost Ledger Method

Neufeld used a second method that relied on Caspian's own cost ledger to calculate the excess claims. The cost ledger was over 200 pages in length and detailed all the costs that Caspian was charging to the HQ project in its internal accounting records, including the subtrade costs, between November 17, 2011 (one day before the GMP contract was signed) until December 31, 2016. Caspian's calculations of its total costs equalled \$140,173,649.48.

The global calculation method involved Neufeld adding together the inflated or otherwise improper amounts that Caspian claimed from the city. The cost ledger method proceeded in the opposite direction. Neufeld subtracted from the Caspian total cost amount, set out above, all costs that Neufeld could identify recorded on the ledger that Neufeld determined were improperly included as project costs. This included all the FABCA invoices, the Mountain invoices, identified non-project costs (such as Canine Unit, Transit Garage, Soul Sanctuary), identified costs claimed but not paid by Caspian to the subtrades, and other issues detailed throughout the audit report.

Neufeld also subtracted from the cost ledger total non-project costs that were recorded on the Caspian cost ledger but had not been claimed from the city. Examples of this are the amounts recorded for the subtrades AMC and Top Pro Roofing.

AMC provided the foam that was installed on the HQ roof by Top Pro Roofing. The RCMP identified 46 examples of AMC invoices, totalling approximately \$187,000, which were altered by Anderson to change the original transit garage project to the WPSHQ project. Anderson explained in an email, dated April 8, 2013: "Our internal issue is this: All but one invoice makes reference to Transit. We can't post Transit invoices into HQ because it is an obvious flag for the auditors."

Anderson admitted in her evidence that she altered these invoices by placing paper over the "Ship to" address and photocopying the document. The invoices were then recorded internally on the Caspian cost ledger as being HQ costs (but were not submitted to the city).

Neufeld also found examples of Top Pro invoices totalling over \$900,000 that were recorded in the Caspian cost ledger as HQ costs that related to other projects including a hotel complex being constructed by Caspian in Saskatchewan. In respect of this project, Anderson sent an email dated April 28, 2014, to Top Pro stating: "See attached change order 2 on your WPS contract. In reality this is work MainStay SK (sic) ..."

In total, Neufeld identified \$40,792,716 of costs that in his expert opinion were improperly included as part of the HQ project costs and, therefore, were deducted from the total. Neufeld also deducted \$396,724 of costs recorded on the Caspian cost ledger that were redacted by Caspian. I fully accept Neufeld's calculations of these two totals and their deduction from the Caspian cost ledger amounts.

Additional amounts recorded on the Caspian cost ledger were then agreed between counsel as being non-claimable costs, such as entertainment costs, head office administration and overhead costs. When all of the various amounts, identified by Neufeld and agreed by counsel were deducted, Caspian's claimable costs for the project, meaning amounts that Caspian was legitimately entitled to reimbursement from the city, equalled \$98,339,210 (A).

At the request of the inquiry, Jason Ruby reviewed the city's project ledger and determined that the city had paid to Caspian \$156.2M for the GMP contract. Neufeld then made various adjustments to this amount, including deducting Caspian's \$6.975M fee and approved markups on change orders, to arrive at a total of \$146,266,090 (B) as being the total accountable claims. This means the project costs paid by the city to Caspian that required either invoices or quotations to support the actual costs for these claimed amounts. I completely accept Neufeld's calculation of this total of accountable claims.

Therefore, using the cost ledger method and the above totals, Caspian was required to account for \$146.2M (B) of claims paid by the city, but Neufeld could only identify \$98.3M (A) of actual costs to support these claims. This resulted in an excess claim of approximately \$47.9M (B-A). This falls within the global range of \$45M to \$50M calculated using the global method.

Thus, I fully accept Neufeld's expert opinion that the total excess claims made by Caspian and paid by the city ranged from \$45M to \$50M, all paid for by the taxpayers of Winnipeg directly into the pocket of Armik Babakhanians.

The Supplemental Agreement

As the project moved into the spring of 2013, Armik began to make it known that he would need more money to finish the project. There was a meeting held on March 14, 2013, between CAO Sheegl and several other city officials. Benoit, who was the police liaison on the project, reported that Caspian was seeking an additional \$1.8M towards the security budget. Sheegl advised that it was not feasible to go to council multiple times for budget increases. He indicated that now that the drawings were complete and the project was entering its final stage, Caspian should be asked to give a global number for its cost overages and then the city would negotiate a deal.

Benoit testified at the inquiry and explained that throughout the spring, Armik was repeatedly coming to see him to request more money, complaining that multiple areas were over budget. There was a follow-up meeting with Sheegl and other city officials on May 1, 2013, and Benoit advised that Armik was now seeking an additional \$5M. Sheegl reiterated that he would go to council once he knew the final number and instructed staff to work with Caspian to determine the overage.

On August 7, 2013, a meeting was held at Caspian's offices. The city was represented at the meeting by Sheegl, Benoit, Ruby and AbouZeid. Chang and Dubuc were also in attendance. Benoit had asked Sheegl to attend the meeting, as he put it "to lay the hammer down" because months had gone by, costs were escalating and there were no accurate budget numbers. According to Benoit, Sheegl was blunt with Armik, telling him that the city needed full numbers in order to make an informed decision. It was agreed that Armik would send the necessary backup information to Chang in support of the change orders he was asking to have approved.

Around the middle of August, Armik contacted Mayor Katz to let him know that Caspian was seeking an increase in the GMP contract price. Katz testified that he followed up with CFO Ruta and asked that the city administration investigate options.

But as time marched on into September, the numbers that city wanted to see had still not arrived. On September 12, 2013, the city called an internal meeting to decide on next steps. In addition to Benoit, several other police representatives were in attendance, as well as AbouZeid, Sheegl, Joshi and Ruta. Benoit explained that Armik was now saying he required \$15M to finish the project. The decision was made to issue a stop work order so that no more costs would be incurred until there were firm budget numbers. Following the meeting, AbouZeid called Armik on speakerphone so that Sheegl and Benoit could hear. AbouZeid told Armik that a stop work order was coming and that if he continued to work it was at his own risk. The legal department was then instructed to begin work on a stop work letter.

The next day, Armik came to see Benoit. Armik insisted that there was just a misunderstanding. He suggested that city staff walk through the building with him, and he could point out the changes. Benoit was clear with Armik, telling him that the city needed numbers on everything, not just visual confirmation. Armik told Benoit he would not abide with a stop work order and that he was going to finish the building. Benoit reiterated that any work done was at Caspian's risk.

On September 26, 2013, Chang met with Benoit. Chang told Benoit that now Armik was asking for \$23M. The city had still not seen any backup documents.

Finally, on October 1, 2013, the city was advised by Chang, that Chang was now in possession of a binder containing Caspian's backup materials and that it would take three to four weeks to review the materials and provide advice on next steps. What the city did not know was that Chang and Dubuc were compromised and could not be trusted to act in the city's best interests. The city had no idea about Triple D and that city money had been diverted through Triple D back to Chang and Dubuc.

The city also did not know that Chang and Dubuc were helping Armik prepare the very materials that they would then "independently" review on behalf of the city. For example, on September 5, 2013, Chang emailed Armik, stating:

Hi Buddy;

Here's a preliminary draft that I promised you for the genset costs. We can add more numbers after you review.

Chang continued to assist Caspian in preparing its materials in support of the overage claim. On September 6, 2013, Chang drafted and forwarded a claim to Armik for Caspian to submit to the city regarding a change to the type of cable used in the project. In an email dated September 20, 2013, Chang provided his comments on several of the change notices that Armik was compiling. Chang noted that many of the requests were high even when Chang factored in a "generous markup for extras".

On September 25, 2013, Chang responded to Shaun Babakhanians regarding what Caspian needed to provide to justify the overage costs. Chang stated:

Shaun,

You need to elaborate a bit more, all you have a (sic) very very brief points that we talked about yesterday. You have to remember that Ossama [AbouZeid] will review and then ask consultants to comment before forwarding to Finance, so the points have to be a little more precise.

...

Shaun, you really need to beef up the explanations. You are trying to get \$21M plus for the GMP, they/we need a bit more meat/BS, you have to sell it. Add quantities to back up the claims. Point form is fine, but needs to be clear to un-initiated reader. Consultants will be asking for more info as well, we need to get enough info so that if a third party reviewer audits our "assessments", we can justify our recommendations.

It bears repeating, that when Chang wrote this email and put the word "assessments" in quotation marks, he was a fiduciary who owed a duty of honesty and loyalty to the city. He violated his professional obligations in the extreme. He never intended to undertake a critical analysis of the materials. Rather, it was all a charade.

The same can be said of Dubuc. On September 25, 2013, Dubuc provided detailed information to Armik on amounts Caspian could claim due to changes between the May 27, 2011, design documents upon which Armik had priced the GMP and the final design documents the were completed by Dubuc on behalf of GRC in April 2013. In respect of millwork costs, Dubuc prepared a spreadsheet for Caspian that set out the additional funds. In the accompanying email, Dubuc suggested that Shaun revise the spreadsheet to add a Caspian logo, so that the document would look like it originated with Caspian. Thus, Dubuc held out to the city that he would be doing an independent analysis of documents that he had written in the first place. His lack of candor was a violation of his professional responsibilities.

But the city knew none of this and trusted Chang and Dubuc to provide it with honest and independent advice.

In light of these violations, but for the fact that Chang is no longer a licensed professional engineer governed by the Professional Engineers Ontario regulator, and that Dubuc, as an architectural technologist, is not subject to a mandatory regulatory body in Ontario, I would have included a recommendation that the Ministers forward my report to the relevant Ontario regulatory bodies for whatever further action those bodies may wish to take.

We now know through the audit done by Neufeld, that many of the documents submitted by Caspian and “assessed” by Chang and Dubuc were falsified. It can be inferred that it took so long for Armik to comply with the city request to send in his backup documents because he first had to fake them. In fact, one of the exhibits filed in evidence at the inquiry was a binder seized by the RCMP from Caspian that was divided into two sections. The second half of the binder had a red tab at the front labelled in all capitals “ORIGINAL ESTIMATES FOR CASPIAN ONLY”. The front half of the binder contained the documents that were sent to the consultants and AbouZeid at the city. It was in this set of documents that Neufeld located many inflated quotations.

As part of his retainer with the inquiry, David Kimber reviewed the materials submitted in support of the supplementary funding. The basic premise upon which Armik sought an increase was that the project had changed substantially from the early AECOM design documents, dated May 27, 2011, that been used to price the GMP, to the final design. AbouZeid explained during his testimony that the May documents were used because those were the ones available during the negotiations. They are described in the GMP contract as the “concept drawings” and the “30% drawings”. AbouZeid advised that this percentage was a misnomer and the date of the documents is the best descriptor. Whatever the descriptor, the design documents used to price the GMP were very early and were not the set of documents submitted by AECOM on November 1, 2011.

Kimber explained during his testimony that there are three requirements before a change order is approved; contractual entitlement, causation and quantum.

Contractual entitlement requires an assessment of what the original contract covered and what, if anything, has changed. This was a complicated process on the HQ project since it involved comparing the change that was being requested against three standards. The first standard was the May 27, 2011, design drawings, the second was the program of requirements that Aziz had prepared, and the third was the finishings used on a recently constructed satellite police station. The second requirement is to look at the impact of the change, that is, the cause-and-effect relationship, since not all changes affect the ability to complete the project as originally contracted. Only after these first two questions are

considered, should quantum be assessed. However, Kimber saw no evidence that Chang and Dubuc went through this exercise.

Rather, the only thing that was considered was price. Both Kimber and Neufeld noted that the analysis done on the change order documents was limited to determining what Caspian said it had spent on a scope of work versus what was in the original budget. The consultants then approved the difference. There are many examples of this. For example, the cost overage on gypsum board, signed by Dubuc and Chang reads:

Caspian's contractual amount carried for Gypsum Board as per their progress billing cost breakdown was \$8,215,269, their Cost Overages request brings this amount up to \$9,223,014 for a delta of \$1,007,745. The amount of the contract sum is changed by the sum of **\$1,007,745 Extra** (emphasis in original).

Another example for McCaine Electric signed by Dubuc and Chang, reads:

Caspian's contractual amount carried for FFE Security Work as per the FFE cost breakdown was \$1,500,000, their Cost Overages request brings this amount up to \$3,857,095.76 based on their quotation submitted February 19th 2013 by Caspian Projects for a delta of \$2,357,095. The amount of the contract sum is changed by the sum of **\$2,357,095 Extra** (emphasis in original).

A third example for Wes-Man Mechanical, also signed by Dubuc and Chang reads:

Caspian's contractual amount carried for Mechanical Work as per their progress billing cost breakdown was \$22,796,000, their Cost Overages request brings this amount up to \$29,716,310 for a delta of \$6,920,310. The amount of the contract sum is changed by the sum of **\$6,920,310 Extra** (emphasis in original).

Thus, it was Kimber's opinion that based on the materials submitted by Caspian, that the increase to the GMP ought not to have been approved. He testified:

My overriding reaction to – to all of those binders is it – it doesn't get me past the first two questions . . . [It's] not telling me what the change actually is specifically. It doesn't tell me what has changed. It is just telling me that is how much it cost and this is how much is allowed for, and, therefore, I'm entitled to the difference, and that isn't how a GMP works.

Kimber's position, that the material was insufficient, was (rather surprisingly) backed up by Dubuc who testified on his exam-for-discovery that "What we received from Caspian for those [change orders] was garbage in my mind, and that's being polite." Yet Dubuc signed the change orders, based on "garbage" materials and, with the assistance of Chang, misled the city into believing that \$17M to \$19M was properly due to Caspian.

Kimber went further in his testimony regarding the change orders. He testified that change orders coming in together in one batch and late in the project, made no sense. He stated:

I've never seen that. They . . . the project is being built at this point in time. So, you're having construction drawings that are being issued - that and are detailing what is to be built. And so, they will know and the subcontractors will know what has changed from the original - that baseline scope back in . . . late 2011, early 2012, where that baseline scope was.

Those changes will have - as drawings get developed and - if they are changing things, it - it doesn't just happen. It happens over a period of time...

[W]hen I was reviewing some of the changes, you know some of the - subcontractor prices exceeded the original GMP line item for that amount in the tail end of 2012...

What is different here is - and - and again, I can certainly have - have seen in the documents, is that this should have been apparent in mid-2012 that - that this was—something happened. So, it is - I've never come across—we're talking multiple cost categories. We're talking electrical. We're talking mechanical. We have big numbers. That doesn't happen overnight.

I've never seen that before. It would trigger a whole bunch of questions that - that well, how—how can this happen? Why don't I know anything about this up until this point? So, I am—I am going to look super, super closely at everything because it is - it is just so unusual.

Thus, Kimber expected alarm bells to be sounding that something was not right. While it appears that Chang and Dubuc were deaf to what was occurring, there were questions raised by others. Benoit raised concerns about the demolition, millwork and drywall amounts with Chang and Dubuc, but his concerns seemed not to have had any impact. We now know from Neufeld that the costs reported by Caspian to the consultants in support of the supplementary contract negotiations, for these scopes of work, were grossly inflated. AbouZeid also raised concerns with Armik about the subtrade overruns. We now know that the subtrade numbers were inflated by claiming on other projects and falsifying invoices. But Chang and Dubuc brought no critical analysis to any of these concerns.

Rather, Chang did the opposite. He advised the city that Caspian's claims ought to be accepted. He justified the need for the increase on the poor quality of the AECOM "30% drawings" and all the significant changes to the designs that needed to be made as the building progressed. No one ever explained to city council that the GMP contract had been priced using an early set of AECOM drawings from May 2011 and not the final set of AECOM drawings from November 1, 2011. Of course, there were changes in the design from May 2011, many of which AECOM had made and incorporated into their November set. But Sheegl's fixation on having a GMP contract despite warnings from others, meant that the pricing of the contract had been rushed, using very early drawings. Ruby's suggestion of getting a Hanscomb report to independently verify the cost, had been ignored.

Whether it was caused by the budget overrun on the HQ project, or whether other factors were at issue is unclear, but for whatever reason on October 2, 2013, several councillors

wrote to Mayor Katz requesting that Sheegl be terminated as CAO. Sheegl negotiated a \$250,000 severance package and resigned effective October 17, 2013. This money was eventually recovered by the city through a civil lawsuit and has been repaid by Sheegl.

With Sheegl gone, the city administration still had to figure out how to address the Caspian claim for added funding. Since no one at the city knew that Chang was giving a biased and unprofessional assessment, his recommendation carried a great deal of weight. Based on his recommendation, city officials appeared before EPC in late October, and on November 1, 2013, briefed councillors to request additional funding. AbouZeid gave a PowerPoint presentation that explained that the original GMP contract was subject to change orders and that additional funding was needed to cover these costs. Further, AbouZeid recommended a rigorous process be followed before any final decisions were taken. He stated in his presentation that it was necessary:

To establish that each claim is truly justified and is not covered by the GMP; and
That, the price submitted is fair and reasonable.

In other words, AbouZeid recommended that the depth of analysis that Kimber had testified was required, needed to be done. Unfortunately, several councillors, including Mayor Katz, chose to blame AbouZeid in the media for the cost overrun and he resigned immediately. This meant that someone who would have brought a critical eye to the cost overages was gone. Thus, city administration, being totally unaware of how compromised Chang's ethics were, accepted Chang's recommendation that around \$17-\$19M was due and payable to Caspian.

On December 11, 2013, city council approved a budget increase of \$16.2M for the WPSHQ project. With the money now approved, the supplemental agreement was developed with an "effective date" of December 11, 2013. It increased the GMP in the contract from the original \$137.1M to \$156.3M, or an increase of \$19.3M. This figure was an all-inclusive settlement of Caspian's change orders (many of which were based on falsified quotations) and an outstanding claim by Caspian against the city under its contract for delay.

Following the "effective date" of the contract, several important terms were added to it. Caspian was adamant that it no longer wished to supply copies of its subtrade invoices. Given what we now know, it would seem that this request was motivated by the time and effort that was being expended at Caspian to create and falsify the invoices. City officials wanted to continue to receive the invoices as they were seen as an important audit tool.

There was a meeting held on January 23, 2014, between the two sides, attended by their lawyers, to discuss a compromise. A portion of the meeting was secretly recorded by Shaun, and a copy of the transcription was filed at the inquiry. At this meeting, Armik, in trying to justify his claim for extra costs, made the following statement regarding the documentation he had recently submitted:

We price those things. We are painful examination of your consultant, your project director, all this. It's been reviewed over reviewed cutback pushback and agreed upon (sic.)

In referring to “your consultant” he was referencing Chang. So, Armik’s position at the meeting was that there was no need for invoices because the quotations used to support the increase had been painfully examined by Chang.

The decision taken at the meeting was that Caspian would be relieved of the obligation to provide subtrade invoices for the work completed under the supplemental agreement.

As explained earlier, the city’s practice of using “effective dates” for its contracts caused confusion throughout the inquiry. The supplemental agreement was another example. It was puzzling how important terms of a contract regarding backup materials could be added after the contract was supposedly finalized.

The city has committed to changing its practices and this will be discussed further in Part III – Recommendation #3.

Before leaving this topic of the supplementary agreement, it is important to put its negotiation into context. We now know from the Neufeld audit that Caspian claimed between \$45M to \$50M in excess claims. Included in this amount is the additional \$19.3M that Caspian negotiated as a settlement. Thus, at the time that Caspian was asking for additional funds it already had \$25M to \$30M of excess claims “in the bank”. Or putting it another way, Caspian assured the city there were no cost savings when, in fact, Caspian was able to reduce the cost of the project by millions of dollars. Those cost savings were retained entirely by Caspian and were never reported to, nor shared with, the city.

Having successfully negotiated the additional funds, Armik returned to completing the project. The building was days away from occupancy when a rainstorm on August 21, 2014, caused significant damage and delayed the move-in date. The renovation costs attributed to the rain damage were covered by an insurance settlement. The building was finally occupied in September 2016 and has been serving the residents of Winnipeg since that time, albeit under a very large and dark storm cloud of suspicion.

Caspian’s Response

The placement of Caspian’s response towards the end of this part should not be understood as meaning it was an afterthought. To the contrary, the evidence I received from Armik

Babakhanians, Shaun Babakhanians and Pamela Anderson was very important to my understanding of the financial transactions that had occurred throughout the HQ project.

Armik Babakhanians was the first witness to testify on behalf of Caspian. I quote extensively from his evidence, as elicited by commission counsel, to put his position forward as fairly and accurately, as possible.

Q: ...you admit that the invoices that you attached from your subtrades, that they were – they were altered at your office.

A: Yes.

Q: Hundreds of them?

A: Yes.

Q: ... you acknowledge ... that the city saw different numbers than you actually paid to the subtrades?

A: That would be true, yes.

Q: And you admit that when you were putting in quotes to support change orders that you altered the quotes to reflect ... not what you thought it was actually going to cost, but in fact to work a profit in for you as well?

A: Yes.

Q: And you chose to change those numbers on those invoices - -

A: I did.

Q: - - on the basis that - - your understanding was that you were entitled to receive a hundred and thirty-seven point one dollars (\$137.1) under this contract?

A: That was my contract.

Q: Then that's why you did it. You wanted those numbers to add up to \$137.1?

A: That was the contract, yes.

Q: You have \$137.1, what you call a fixed price contract?

A: Yes, ma'am.

Q: . . . instead of sending [the city] your actual invoices, you sent them all these falsified ones?

A: Say that, yes.

Q: ... Because in your mind, you were entitled to \$137.1, correct?

A: I am operating a fixed price contract, ma'am.

Q: Okay. So if you send them a hundred million dollars worth of invoices, you still get \$137.1?

A: That's what my price is.

Q: And if you send them \$200 million worth of invoices, you get \$137.1?

A: That's what my price is.

Q: ... So, you say to him [John Garcea] early on, John, my pal, my friend, I've known you for years. Send me a million-dollar invoice so I can put it on my line. That's what you say to him?

A: They did that, yeah.

Q: And you did some demolition. But you needed line items, so you call Mr. Fiorentino and you say to him, Greg, my good buddy, I need \$20 million worth of invoices. Can we - - can we do some cheque exchanges and stuff? And he says, Sure. Is that what happens?

A: Yes.

Q: You determined that if the city entered into a contract with you for a hundred and thirty-seven point one (\$137.1), you could make a profit?

A: Yes, of course.

Q: And you could make a profit over and above your management fee of \$6.975 million?

A: It's a fee. . . but that fee is for what?

Q: All right. So you're saying you got a fee plus a profit?

A: Yes.

Q: - - in your mind, you were looking to walk away from the headquarters project with around \$13, maybe \$15 million - -

A: Yes.

Q: - - as profit to Caspian - -

A: Yes.

Q: . . . You had to have Greg Fiorentino, who wasn't doing anything except a cheque exchange with you, to come sit at meetings so that somebody could see his face, right?

A: Yes.

Q: And that was his sole purpose of being there, was so somebody could see his face, right?

A: Yes, ma'am.

Q: Did you say to ... the people at McCaine, the city told me I can't get any more money for the genset. Sorry, I can't pay you this, any additional amounts. Did you say those words?

A: I may have.

Q: You did not want to make a \$7 million profit?

A: No, I wouldn't have commit myself to that (sic).

Q: So, you - - at no time when you signed this project expected your profit to be \$7 million? You always thought it was going to be more than that.

A: That's what I'm going with, yes.

Q: But, in your mind, this building and all the aggravation it caused you and all the work it was, you told me before and you just repeated it now. You were looking to make around a seventeen to eighteen million profit on it.

A: That was the target.

Q: That was your target?

A: Yes.

Q: And do you think you hit that target?

A: I - again with all my documents gone, I don't even know what I got.

These passages reflect Armik's testimony on behalf of Caspian. He fully accepted that the invoices and quotations were altered by him and his staff. He explained that he did so on the basis that he understood that he had a fixed price contract that paid Caspian \$137.1M regardless of the actual cost of the project. He did not want to supply invoices to the city because he saw them as pointless. He, Shaun and Anderson altered the invoices so that they added up to \$137.1M and filled in the line items on the progress payment spreadsheet. He also altered the quotations used to justify the change orders to add additional profit. He did not accept that the \$6.975M "fee" set out in the contract was meant to be his total profit. He was clear that he would not have undertaken the project if \$6.975M was intended as his total profit. He offered different estimates of his expected profit ranging between \$13M to \$18M.

Armik was also pressed by commission counsel to estimate his total costs for the project. He did not accept Neufeld's estimate that the actual project costs were approximately \$100M. He offered an estimate that the actual costs paid to subtrades was around \$117M to \$120M and that additional Caspian costs may have been around \$10M to \$12M. So, Armik estimated the cost of the project at approximately \$130M.

Armik was also adamant in his testimony that the city got good value and that a national contractor would have charged millions of dollars more to complete the project. He also placed significant reliance on a 2014 report that the city had commissioned from the firm of Turner and Townsend, a well-respected quantity surveying and cost consulting company. Turner and Townsend had estimated the cost of the project at \$153,030,000 or within 2.2% of the GMP amount. Thus, Armik's overarching position as stated to his lawyer was, "I billed what I was guaranteed. That's it."

Pam Anderson also testified on behalf of Caspian. She acknowledged that:

- She helped to facilitate the scheme with FABCA by preparing false purchase orders from Caspian, getting the false invoices from FABCA, and then swapping cheques.
- She created multiple Mountain invoices on her computer spanning many months, on one date, and that this was done to support line items on the progress payment reports.
- She created G&G quotations using a copy of a blank G&G form that Caspian had in its file.
- She altered invoices submitted by subtrades for work done at Soul Sanctuary and the Canine Unit to make them appear to be for the HQ project. She did not recall changing any transit garage invoices.
- She sent the city blended invoices that included work done on other projects.
- She changed multiple quotations included in support of the supplemental contract, sometimes with the help of Shaun.
- She covered up addresses, photocopied the document and changed the address to HQ "sometimes".
- She asked Strada for invoices for the berm contract and that she knew Strada did no work on the berm.
- She changed numbers on invoices, sometimes with Shaun's help because she did not know how to alter a PDF, with the new numbers to be inserted coming from Armik.
- She requested and received "dummy" invoices from some trades.
- She requested and received invoices from trades that changed the name of the project from its correct name to HQ.

Shaun Babakhanians also testified on behalf of Caspian. His evidence was important because he was the person who negotiated the terms of the GMP contract for the company. He acknowledged that there were numerous meetings, telephone calls and emails between himself and his lawyer as the terms of the contract were developed.

Shaun testified that the joint venture with Akman Construction broke apart in the spring of 2011 because Richard Akman was not prepared to quote a GMP price, given the early state

of the design drawings. However, Caspian was prepared to go forward because pricing a contract based on the May 2011, “30%” drawings, fell within Caspian’s risk tolerance profile.”

Shaun testified that he negotiated a price of \$137.1M on the basis that this was a fixed price contract that provided Caspian a sufficient cushion to accept the risk of a contract based on limited drawings. He stated: “We were comfortable with that number on the assumption that we were getting all of it.”

Shaun also testified regarding the shared cost saving provision in the contract. He advised that he did not understand it as applying to the whole contract cost, but only to savings from the contingency fund that might be realized through a value engineering process. He stated:

So, it’s 100 percent mine if it goes over, 100 percent if it goes under, I get it. So, I’m okay with that at 30 percent because I feel I have a good enough handle. If you look at the GMP contract and if you approach the cost saving clause holistically and say it’s - - everything is going to be cost shared, under what world would I give up that profit and cap my earnings, especially as a design-build contractor where you deal with the highest amount of risk? Like, we’re very aware of the risk threshold.

Why would I offer to share the savings if I can - - I’m at risk of going over and we’re at 30 percent on a hundred million dollar project? It makes no sense.

Shaun also explained how Caspian approached progress billings. He explained that the \$137.1M contract amount had been divided up between line items on the spreadsheet and that each month Caspian submitted its request for payment based on the percentage of work performed. He said that Caspian had never provided invoices on past projects it had done and that:

“It’s none of [the owner’s] business, as in what I’m paying my subtrade is irrelevant to [the owner]. [The owner] negotiated a number with me overall. That is what I’ve allocated to this line item. What we’re understanding is you are paying for what you are getting . . .

Shaun further testified about how Caspian interpreted the “cost of work” provisions in the contract. He advised that Caspian’s understanding was that “cost” meant the cost that the owner was paying for the scope of work, not the price that Caspian paid to purchase that scope of work. He stated: “So, in our head, it was never ever actual costs of our work. It was the cost that I had committed to you. The cost was the line item.”

Further, Shaun testified that when he negotiated the contract, he understood the “fee” in the contract set at \$6.975M was to be for general conditions (heating, cleaning, etc.) and other Caspian costs such as bonding and insurance. He never understood that contract term to have anything to do with profit. Rather, he understood that profit “would essentially be dispersed throughout the subtrades.”

Shaun took full ownership of how Caspian chose to respond to what was in his mind a contract interpretation dispute by altering and falsifying hundreds of documents. He described Caspian's actions as "unacceptable", "not ideal", "I will never say that's correct", and "that was clearly not the right way to go." He was pushed to explain why he did not call his lawyers, seek a contract amendment, have a meeting to discuss the issues, or exercise the arbitration clause in the contract. He explained that the job was very important to Caspian and that he did not want city officials such as Sheegl and Joshi to think that at the first sign of a problem, Caspian was already involving its lawyers. He said Caspian felt pressure to deliver the project on time because of the critical need for a new gun range and headquarters building. So, Caspian reacted in what Shaun acknowledged "was clearly not the right way to go". And once the train had left the station there was no turning back.

Thus, to summarize Caspian's position:

- Armik Babakhanians and Shaun Babakhanians, were of the opinion that their contract was a fixed price contract that guaranteed Caspian \$137.1M, plus approved change orders.
- They understood the cost-saving provision in the contract to relate only to money saved during a value engineering process for items in the contingency fund.
- They claimed that the term of the contract that set the Caspian "fee" at \$6.975M referred to general conditions and other expenses and had nothing to do with profit.
- They testified that had never submitted invoices on any of their other projects and that the invoices were irrelevant.
- They explained that they never understood the "cost" to be what Caspian was paying its subtrades for the service but rather what Caspian was charging the city for its services. This second number included Casian's profit margin and that was why the invoices had been altered and falsified. The numbers submitted included profit.
- Armik was clear that he would never have undertaken the HQ project for a profit of \$6.975M and he offered various numbers as to what profit he would have expected, ranging from \$13M to \$18M.

The Caspian witnesses also acknowledged that creating the false documents was a completely inappropriate means for handling a contract dispute and that speaking to their lawyer, amending the contract, arbitrating the disagreements, were all options that could have been followed. However, the option they chose was to surreptitiously change the documents.

In the end, Caspian's position as set out in its written submission is that the city got good value for its money, as supported by the Turner and Townsend report.

Reconciling the Evidence

It would not be common for an inquiry commissioner to have to resolve a contract interpretation dispute, but given the various positions, I find myself having to undertake this task.

The GMP contract, signed by city and Caspian representatives on November 18, 2011, was a new form of contract, both for the city and for Caspian. It was not a standard form CCDC contract. While there are some terms that could have been drafted more clearly, I find that the overall intent of the contract is clear.

First, I do not accept Caspian's assertion that the contract was for a fixed sum. The words "fixed price" appear nowhere in the contract. The relevant contract provision reads:

. . . the City shall pay to Caspian a contract price **not to exceed** the GMP of one hundred and thirty seven million one hundred thousand (\$137,100,000) dollars, unless increased by Change Orders . . . (emphasis added).

The words "not to exceed" and "fixed" are not synonymous. Armik was a sophisticated businessman who had done multiple fixed price contracts in his career. He would have known what the terms in those contracts looked like. This contract was clearly stated to be a guaranteed maximum price contract and not a fixed price contract.

Second, I do not accept that Caspian was entitled to inflate its invoices to add a profit. The contract stated that Caspian would be paid "for the Cost of Work". This phrase was defined generally to mean "reasonable costs necessarily **incurred** in the performance of the work (emphasis added). The "Cost of Work" was then more specifically defined in seventeen separate subclauses. These subclauses included wages for employees working on the project, rental charges for machinery and equipment, costs for bonds and insurance payments, and any other costs incurred if approved by the city. Most importantly, in reference to subtrades, the contract stipulated that Cost of Work included "**payments made** by Caspian to subcontractors for Work entered into in the performance of this Contract (emphasis added)."

Further, the contract stated that Caspian would be paid monthly and that each request "shall seek payment for the costs **incurred** not to exceed the percentage completed of the final breakdown of costs for that item of Work performed during the previous month. . . (emphasis added)."

The words "incurred" and "payments made" are clear. The contract was a cost-plus contract. Caspian was required to tell the city what costs **it had incurred** and what payments **it had made**. Caspian was entitled to claim for many of its own costs, provided the costs were specified as recoverable in the contract or it sought approval. The words of the contract do not support an interpretation that Caspian was entitled to add a profit to its

monthly progress claims. Caspian was required by the contract to submit a payment request for the “costs incurred”, not the cost that it thought the client ought to be paying for the service.

Third, while I find that the shared cost savings provision of the contract is not well-drafted, I also find that the interpretation offered by Shaun is not reasonable. The provision reads in part:

Should the Net GMP be less than one hundred and nine million, nine hundred and ninety five thousand (\$109,995,000) dollars, the difference shall be shared between the City and Caspian on a 40% to the City and 60% to Caspian. . .

The problem with the drafting is that Net GMP is a defined term in the contract and it equals \$109,995,000. Therefore, the clause as drafted reads “should the Net GMP be less than the Net GMP.” Nevertheless, it is my conclusion that if the clause had been arbitrated or referred to the courts, the clause would have been interpreted to mean “Should the Cost of Work be less than the NET GMP . . .” However, for the purposes of this inquiry, it is sufficient to say that the inclusion of a shared cost provision in the contract is further evidence that this was never a fixed price contract. There is nothing to share if the price is fixed. In addition, the contract does refer to “value engineering” in a separate section but limits it to items covered by the construction contingency fund. Therefore, it is reasonable to interpret the two sections, one about value engineering and one about cost savings, as covering different things.

Thus, while it may not have been advantageous for Caspian to sign a contract whereby it assumed all the risk if the contract went over the guaranteed amount, but it got only 60% of the benefit, if it went under, that is exactly the contract that it signed, and with the benefit of legal representation throughout the negotiations that led to the final document.

Finally, and perhaps most importantly, it is necessary to consider what was included in the \$6.975M fee. This number is found in the provision that defines the Net GMP and reads:

The Net GMP is calculated by subtracting from the GMP the following items:

- (a) Caspian’s fee which is not to exceed six million nine hundred and seventy five thousand (\$6,975,000) dollars (the Caspian Fee).

Unfortunately, this very important clause contains no specifics about what is covered by this fee. Shaun thought it referred to general conditions and perhaps some additional Caspian costs, but not to profit. AbouZeid understood it to be general conditions, plus profit. It is listed on the progress claim spreadsheet as “General Requirements and Fees”, which does add support that both the city and Caspian accepted that general conditions were included. But what else?

The best evidence about what this term encompassed, goes all the way back to RFP 833-2010. At that time the bidders were asked to state their management fee for the phase two construction. Shaun was called to a meeting on behalf of the Caspian/Akman Joint Venture to clarify how the JV proposed to deal with general conditions. The JV then submitted a second proposal that added the general conditions into the management fee. Thus, at the time of the RFP, the word “fee” was used to mean a management fee plus general conditions costs.

It is my conclusion, that this is how “fee” is to be interpreted in the GMP contract; a management fee, plus general conditions costs. This interpretation is supported by the payment procedure set out in the GMP contract. The clause provides that each month Caspian would be entitled to “the percentage of the Caspian Fee earned and unpaid as of the date of the request.” In other words, the fee is something earned and is not merely a reimbursement of costs. It is earned by managing the project.

Further, the change order provisions in the contract allow for additional fees and markups on the Caspian costs related to change orders. The fact that there is no equivalent term regarding the base contract supports that what was being paid under the contract was the actual costs incurred and paid by Caspian to its subtrades and suppliers. If there was to be a markup it would have been specified in the contract, as it was for the change orders. Thus, I find that the contract was a cost-plus contract that gave the contractor \$6.975M to manage the project and to cover its general conditions. While Armik may have found this amount to be unreasonably low, that is the amount he agreed to when the contract was signed.

However, even if Caspian honestly believed that it was entitled to add an additional profit on its invoices and quotations, its way of handling its dispute with the city was outrageous in the extreme. In what world is it acceptable to lie to and mislead your contracting partner? The Supreme Court of Canada in *Bhasin v. Hrynew*, 2014 SCC 71, recognized an obligation of good faith in the performance of contractual obligations. This governing principle includes honest, candid, forthright and reasonable contractual performance. It does not include underhanded manipulation of hundreds of documents for the sole purpose of misleading your contracting partner and enhancing your own profits. There are many ways to resolve a contract dispute. Lying and cheating is not one of them.

Expert Eleanor Andres also confirmed in her report and during her testimony that there was a duty of good faith that existed between the city and Caspian in connection with the GMP contract, and that in accordance with that duty, notwithstanding any ambiguity in the contract, Caspian would be in breach of that duty if it submitted invoices in support of progress payments that were entirely made up, or purportedly from companies that actually did no work, or for work on other jobs.

The inquiry also benefited from a meeting with a construction industry panel, that was arranged and hosted by the Winnipeg Construction Association (more on this panel in

Part III – Recommendations). The panel participants were asked whether it was usual for contractors to supply the owner with subtrade invoices. They all agreed that this was common practice and that Caspian's insistence that this was not industry practice was incorrect. They also discussed profit margins and suggested that a range of 2% to 4% of the contract value was usual. This equates to \$2.7M to \$5.5M based on a contract value of \$137.1M, or commensurate with the \$6.975M (covering both profit and general conditions) in the GMP contract. None of the panel members accepted Armik's profit margin of \$13M to \$18M as reasonable within industry standards. The information provided by the construction industry panel supports the interpretation of the contract that the Caspian fee was for construction management and general conditions.

I acknowledge that the Turner and Townsend value analysis report, received by the city in July 2014, concluded that the amount paid by the city for the redevelopment was fair and was within 2.2% of the calculated value. Unfortunately, the passage of time between the preparation of the report and the calling of the inquiry, made it difficult to follow-up on the report.

I accept that Turner and Townsend did a thoroughly professional job in the preparation of the report, but it is possible that they were misled by Chang. This concern arises because of an email, dated April 12, 2014, that Chang sent to Armik that reads:

The worse thing that the City Auditor did was to give the QS [Quantity Surveyor] the final \$156M GMP price, I just hope that the QS doesn't use that as a "target" and bring the cost to somewhere in that neighborhood. I will try to push them closer to \$180M, but will do it in a professional and transparent way.

There is a further email, albeit after the Turner and Townsend report was completed, that is worth including in this report for what it says about Chang and his lack of professionalism. By email dated November 18, 2014, Chang wrote to Armik and stated:

I couldn't care less about the City . . . [I]f this was another contractor and not you guys, it would be a whole lot easier and I would have crucified you guys for your lack of paperwork/ backup!

Turner and Townsend did need to receive material from Chang to complete its report. Given that Chang was going to "push" for an inflated number and that he "couldn't care less about the city", there is a question about whether Chang provided false or misleading information that then found its way into the report. So, while I accept that Turner and Townsend used its best efforts to provide an accurate quantity survey report, I do not find that the report changes any of my views about Caspian's conduct during the construction project.

Thus, I conclude that Caspian, through its principals and employees, Armik Babakhanians, Shaun Babakhanians and Pamela Anderson, engaged in a planned and systematic process of creating false and misleading documents, for the purpose of improperly inflating

Caspian's purported costs and increasing Caspian's profits. The three did so surreptitiously and underhandedly. They acted in bad faith and in complete disregard of their obligation to treat the City of Winnipeg with candor and honesty.

Conflicts of Interest Revisited

Before the sad story of this construction project comes to an end, it is necessary to return once more to the financial relationships between Armik Babakhanians, Sheegl and Katz and the resulting conflicts of interest.

As discussed above, beginning in March 2013 Caspian made it known that it was seeking an increase of the GMP amount. Both Sheegl and Katz participated in the finalization of the supplemental contract that would eventually pay Caspian an additional \$19.3M. At the same time that Sheegl was having a free deck installed at his house, the city that Sheegl led as the CAO, was negotiating a multi-million dollar increase to a contract, to the benefit of the person who had paid for that deck. At the same time that Katz was a co-investor with Armik, he spoke in favour and voted to approve multi-millions of dollars for the benefit of his co-investor.

Both Sheegl and Katz testified that their relationships with Armik had no impact on their decisions. However, it bears repeating that the reason that conflicts of interest are so insidious is that the public can never be confident that the decisions taken were free from bias. We can never know, that if Sheegl had recused himself from any of the discussions regarding the supplemental agreement, someone in the administration might have suggested an alternative to settling the amount such as exercising the right to arbitration under the GMP contract. We can never know, that if Katz had recused himself from the vote, if a councillor might have recommended that AbouZeid's advice be taken and that there be further scrutiny of the claimed amount. Perhaps these outcomes would never have come to pass; but perhaps they might have.

The conflicts of interest under which Katz and Sheegl operated were so blatant that there will always be questions. Unfortunately, those questions will never be able to be answered.

It is vital that city council ensure that its own members and city staff are fully educated about conflicts of interest so that the public can be confident that what occurred on the WPSHQ project is not repeated.

Sherri Walsh, former City of Winnipeg Integrity Commissioner, provided useful recommendations in this regard which will be discussed in Part III – Recommendations #18, 19 and 20.

5. PROJECT COSTS

Having laid out the story of the WPSHQ project, beginning with the purchase of the Canada Post building, through the RFP process that led to selection of Caspian as the contractor, through the conflicts of interest that tainted the events, through the forensic audit that uncovered \$45M to \$50M in excess claimed costs, and through the supplemental agreement that further enriched Caspian, two fundamental questions remain:

What did the city pay for the WPSHQ project? and

How much of that money was misappropriated by others?

The OIC establishing the inquiry stated that the original estimate of the project was \$135M but its final cost had grown to \$214M.

The figure of \$135M can be traced back to the city capital budget, from February 22, 2011. The budget set the acquisition costs for the building at \$30M and the redevelopment budget at \$105M. There was little if any rigour brought to this number. The Hanscomb Class C estimate from December 22, 2010, had put the building construction budget at \$135M, suggesting that council approved a figure that was unrealistically low. Of course, when this happens, it leads to public cynicism. Having under-budgeted from the beginning, city council and the public service wear forever their initial lack of planning.

Given that the original budget was inadequate, it is not surprising that only five months later, on July 20, 2011, council needed to increase the budget to \$193.567M, which included \$155M for redevelopment. This remained the budget until December 11, 2013, when council approved a further \$16.2M to fund the supplemental agreement. This brought the total approved budget to \$209.767M.

At the request of the inquiry, Jason Ruby did a thorough review of the city's costs for the WPSHQ project. He looked at all amounts charged against the city's project ledger, including professional fees paid to AAR, AECOM, external legal counsel and AbouZeid, as well as other expenses such as hydro, telephone and printing costs. He determined that the redevelopment costs totalled \$177,450,065.20. The largest portion of this amount was paid to Caspian for the GMP contract and totalled \$156,196,754.10 (rounded to \$156.2M below).

In addition to the redevelopment costs, Ruby determined that the costs to purchase the Canada Post building totaled \$31,567,586.53. This included the purchase price of \$29,250,000, plus additional fees and taxes.

Together, the purchase costs and redevelopment costs, totalled \$209,017,651.73. While the OIC references a figure of \$214M, the inquiry was unable to verify this number. Our finding is that the project cost the city \$209.018M.

Unfortunately, included within this number is money that was improperly misappropriated by others. In order to approximate this amount, it is necessary to return to the Neufeld forensic audit and to the Caspian cost ledger. Neufeld determined, through Caspian's own ledger, that Caspian's costs, properly reimbursed by the city, were \$98.3M or rounded to \$100M. Armik disputed this number during his testimony, suggesting that Caspian's costs were approximately \$130M.

I prefer Neufeld's estimate of cost over Armik's. Armik is a savvy business owner, with a thorough understanding of his projects. His company has a sophisticated accounting system and employs a professional accounting staff. He had more than a decade before the inquiry commenced to put together his project records and to come to the inquiry with the detailed backup information necessary to support his claims regarding cost. He did not do so. Instead, he offered an off-the-cuff estimate during his testimony. In the circumstances, I do not accept his estimate but prefer the careful analysis done by Neufeld that relied on Caspian's own records. Thus, I conclude that Caspian's project costs equalled \$100M.

If Caspian had, in fact, charged the city \$100M to complete the project, not only would Armik have been hailed a hero, but Caspian would have been entitled to a bonus under the GMP contract of 60% of the savings below the Net GMP amount of \$109,995,000 (rounded to \$110M). This amounts to approximately \$10M in saving and therefore a \$6M bonus. Further, Caspian properly received \$1.2M as a markup on the regular change orders that were approved by AbouZeid during the construction (not those included in the supplemental contract settlement). Also, Caspian was entitled to its \$6.975M fee. In total, Caspian would have received \$114,175,000 (\$114.2M) in payments from the city which would have included \$100M reimbursement of its costs plus \$14.175M in profit ($6 + 6.975 + 1.2$). In other words, if Caspian had followed the rules, Caspian would have received a profit of \$14.175M, a number that Armik testified was in the range of what he thought was appropriate.

However, Caspian did not follow the rules, and it did not receive \$114.2M for its work. Rather, Ruby testified that Caspian received \$156.2M under the GMP contract. Thus, I conclude that the city paid Caspian approximately \$42M more than Caspian was entitled to if Caspian had complied with the contract provisions.

The inquiry had neither sufficient time, given the duration of its mandate, nor the budget to undertake a Caspian/Armik net-worth analysis. However, I received some evidence that supports the conclusion that Caspian received significantly more money on the HQ project than it required to reimburse its subtrades and suppliers. Recall that at the beginning of the project, in order to meet his bonding requirements, Armik needed to borrow money. However, as of December 31, 2013, Caspian had accumulated guaranteed investment certificates totalling \$30M. Caspian was also still due a further \$10M under the supplemental agreement, the first half of the amount having already been paid. While I recognize that Caspian did have other projects that could help explain the cash accumulation, all of the evidence considered together, including Armik's admission that he

changed documents to make them add to \$137.1M, Neufeld's extensive analysis proving \$45M to \$50M of excess claims, and the evidence that Caspian had accumulated \$30M cash over the lifetime of the project, has satisfied me on a balance of probabilities, that Caspian received approximately \$42M more than it was entitled to under its contract.

However, this was not the only overpayment that occurred on this project. As explained earlier in this part, the city paid Chang \$1.3M, to be used on project costs. Instead, this money was diverted through Triple D back to Chang, Dubuc and Anderson.

Therefore, based on the evidence I received on this inquiry, I conclude that the city was overcharged and overpaid approximately \$43.3M for the project, because of the many financial misrepresentations made by Armik Babakhanians, Shaun Babakhanians, Pam Anderson, Peter Chang and Patrick Dubuc.

While discussed in Part I, it bears repeating that in reaching this conclusion, I was able to rely on evidence that was available to the inquiry, some of which would not have been available in the criminal or civil courts, given the more stringent evidentiary rules in those fora. Moreover, the people against whom I have made findings of misconduct would have been afforded the constitutional protections guaranteed to them under the Canadian Charter of Rights and Freedoms. I have no jurisdiction to make findings of criminal or civil liability, and I have not done so. Rather, I have set out to fulfil what I consider to be a vitally important part of my mandate; that is to give the residents of Winnipeg insight into the events surrounding the construction of the WPSHQ. That insight is not complete without learning that I have concluded that the city was overcharged and overpaid approximately \$43.3M for the project.

Recognizing that the city was overcharged \$43.3M, explains the escalating costs that saw the project costs increase from \$135M to \$209M. Without this overpayment, the project would have cost a more reasonable \$166M, or well within the \$193.567 amount that was approved by council in July 2011.

The inquiry did receive evidence that the city has recouped approximately \$29.6M towards its overpayment, from Sheegl, Caspian, AAR and GRC. This repayment is important, not only in contributing to the city finances, but in helping to assure the residents of Winnipeg that both its city council and its city administration take very seriously their responsibility to manage public funds. There was great determination showed by city officials, both elected and appointed, who pursued multiple legal avenues to recover the money that was owed. They are rightly deserving of both congratulations and thanks.

PART III – RECOMMENDATIONS

Planning and Budgeting

Recommendation #1

On large-scale construction projects, the city should improve its RFP process by:

- 1. having lawyers as the primary drafters of the RFP documents;**
- 2. engaging an external fairness monitor to supervise and provide independent advice on the RFP process;**
- 3. retendering the project, if there are substantial changes to core terms in the RFP such as those dealing with budget, scope or delivery model;**
- 4. in the rare situations where a JV partner withdraws, undertaking a best practice and business case review to determine next steps;**
- 5. using an RFQ or similar process to ensure that only bidders with the necessary experience, personnel, financial resources and track records are considered eligible.**

The inquiry benefited from the report and evidence of Eleanor Andres, who was engaged by the inquiry to provide expert evidence on issues of procurement law and construction law. Andres explained that RFPs are legal documents and that rights and obligations flow out of these documents. In her experience, lawyers are generally the lead drafters on RFPs for large-scale projects in order to ensure that the RFP documents meet all necessary legal requirements. She pointed out multiple deficiencies in the RFPs drafted for the WPSHQ project and the confusion that the documents caused potential proponents.

The inquiry also heard from a panel of members from the Winnipeg Construction Association. Their hands-on insight was very valuable in helping me to formulate my recommendations. They explained that maintaining procurement integrity throughout the process ensures the industry that the process will be fair. Material changes to delivery models, risk allocation, and contractual requirements (all of which occurred on the HQ RFPs), cause uncertainty and may discourage participation. Thus, they supported the need for well-drafted RFP documents. It can never be known if, what one inquiry witness called the “discombobulated” documents on the HQ RFPs, may have deterred some potential bidders.

The evidence from the city witnesses was that lawyers are always available to assist, if their advice is sought, but in my opinion this is insufficient. RFPs are legal documents and should be under the control and direction of lawyers, obviously with the assistance of others, particularly technical people who can provide specific details. Having a lawyer draft the RFP also means that there is someone on the project from the beginning who can give advice on

the conduct of the entire procurement process to ensure it meets legal requirements, including any national requirements respecting free trade. Relying on staff to hopefully recognize that they may need a lawyer is insufficient, since if an error is made in the RFP process, there is the potential for lawsuits and delays.

While I recognize that there are only a finite number of city lawyers, with a large portfolio of matters, it is my opinion that the limited number of large-scale projects that the city is working on at any given time, makes the use of lawyers for drafting the RFPs for these projects cost-effective and valuable.

Further, I also recommend that the city engage an independent fairness monitor to supervise the RFP process on large-scale construction projects.

We learned throughout the inquiry that reputable construction companies expend significant cost and effort in preparing a bid package in response to an RFP. Thus, they are selective, focusing their resources on the projects on which they believe that they have a realistic opportunity to successfully compete. In exchange for their efforts in putting together comprehensive bid packages, they expect the owner to undertake a fair and transparent bid evaluation. As discussed in Part II, the RFP process used to select the contractor for the WPSHQ project, did not meet this standard, given that the bonding requirement was changed at the last minute, to the detriment of the companies that had already prepared their bid submissions and priced their bonding.

Ms. Andres recommended that a common and best practice is for governments to engage a fairness monitor to advise them on ways in which the procurement process can unfold in a fair, open and transparent manner, so as to maintain its integrity. For example, RFP 833-2010 (the contractor RFP), provided that that the city might conduct negotiations with one or more proponent, “without being obligated to offer the same opportunity to any other Bidders.” Ms. Andres pointed out that implementing such a provision fairly is complex and would benefit from written terms and conditions that explained how such negotiations would take place and what terms were non-negotiable. She opined that a fairness monitor would assure bidders that the negotiations would be undertaken fairly and would give every proponent an equal opportunity to be selected.

While I respect the city’s budgetary restraints, I recommend that the city engage an independent fairness monitor to supervise the procurement process on large-scale projects. The cost to hire a fairness monitor is money well spent, in that it will assure the construction industry that the process is fair and that their bids will be treated equally. The more the industry trusts the process, the more willing it will be to participate. Further, the cost is minimal compared to the potential for lawsuits and the resultant delays, if the procurement process is challenged as not complying with fairness standards.

I also recognize that addenda to RFPs are common but if the addendum is significant, such as making a material change to the project budget, scope, or the delivery model, I

recommend the city cancel the RFP and retender the project. I heard from the WCA panel members that constant changes to fundamental terms, undermines the industry's faith in the transparency, fairness and competitive integrity of the process. Therefore, if there is a legitimate reason to change core terms of the RFP, I recommend that this should be done by retendering and not by addenda.

Further, while I recognize it is rare, I also recommend that if a JV partner withdraws, that a best practice and business case analysis be undertaken to determine next steps. We heard from the WCA panel that they are still puzzled, years after the fact, by how a legal entity that did not even bid for a project (Caspian alone) ended up with the construction contract. While it may have been legally permissible to award Caspian the contract (very questionable), that is not the only question that should have been considered. Other factors, most importantly the city's reputation for fairness within the Manitoba construction community, should have been addressed. That, together with the changing contract value and the problems with the bonding, made retendering the project the much-preferred practice. While retendering may not always be the best answer, the need to thoroughly consider all options is essential in the rare circumstances where a JV partnership dissolves.

Finally, I also recommend that for large-scale construction projects, the city use an RFQ or similar pre-qualification process to ensure that only bidders with the necessary experience, personnel, financial resources and track records are considered eligible. Relying too heavily on price may turn out to be false economy.

An RFQ or similar process helps to improve the likelihood that the city will receive quality proposals from entities that have demonstrated that they are capable of completing the project. Using an RFQ, allows the city to do a thorough review of resumes and references and then to create a short list of proponents who are then invited to the second stage, RFP process. Only at the second stage does price become a deciding factor. Ms. Andres indicated that it is common for governments to provide an honorarium for companies that are short-listed and submit a compliant proposal in response to the RFP. While, the honoraria may be a significant cost to the city, it is necessary to motivate bidders to participate. But a significant honorarium also ensures good quality candidates, who are willing to expend the time and effort, to participate in the process. Also, the subsequent RFP process requires less resources and time because the number of participants has been reduced.

The inquiry saw the impact of relying too heavily on price in the evaluation of RFP 833-2010. Since price was weighted at 40%, there was an incentive to "low-ball" the price for phase one of the project in order to be selected as the successful candidate. As explained in Part II, Abdul Aziz pointed this out to the steering committee, but to no avail.

Current city practice does allow the city to depart from the 40% weighting standard for price in its RFPs, but I do not consider having that option to be sufficient to ensure that a highly

capable and professional construction company is chosen for large-scale projects. These projects are usually more complex, and the reliability and professionalism of the contractor is key to the project's success. Thus, I recommend that for all large-scale construction projects, the city undertake an RFQ or similar two-stage process to ensure that only qualified companies that have been extensively vetted are invited to participate in the RFP. The additional time and expense for conducting a two-stage process will help to ensure that the project is successfully completed.

Recommendation #2

On large-scale construction projects, a lawyer from the City of Winnipeg Legal Services, should be assigned as a resource to the project governance and oversight committee to provide on-going legal supervision and advice.

Following the WPSHQ fiasco, the city engaged KPMG in 2014 to assist the city in developing a governance structure for capital projects. KPMG was called upon again in 2024 to help the city improve its structures in advance of undertaking its extensive and complex upgrades to its NEWPCC. The KPMG audits have resulted in many significant changes to city policies and procedures. One of the main changes has been for the city to develop a clear process for project governance and oversight for its NEWPCC projects. This replaces the ad hoc steering committee that was responsible for the HQ project. The current process has a project steering committee, that reports to a subcommittee of council, that then reports to council.

During the inquiry, I heard of two occasions where the steering committee for the HQ project took actions without obtaining legal advice. The first was when the bonding requirement was changed on the RFP and the second was when the project director was hired through a sole-source contract and not through public procurement, contrary to city policy. I also heard of a third situation where the steering committee had ordered that the designer AECOM would report to the contractor Caspian. This very problematic decision was stopped only by the actions of Aziz, who recognized that legal advice was necessary, and was able to overturn this highly improper decision.

While I am well-aware that Legal Services is always available to provide advice on request, the problem is that someone on the steering committee needs to understand the issue and initiate the request. Of course, this is true regarding a myriad of city issues, but large-scale construction projects are unique in that the amount of money at issue is substantial and there can be significant negative impact on the city's reputation if the project should derail. For this reason, I recommend that the city ensure that there is on-going legal oversight of all large-scale projects.

Recommendation #1 has already set out my opinion that lawyers should be the drafters of the RFP documents. This recommendation continues legal oversight throughout the construction phase. It is my view that lawyers should attend the steering committee meetings, or review the meeting minutes, so as to be up to date on what is occurring and be able to identify matters that require legal scrutiny. I do not recommend that the lawyer sit as a member of the steering committee, but rather as a resource to it. This ensures that the client-committee and the lawyer maintain their separate roles.

Recommendation #3

The city should:

- 1. use CCDC standard form contracts for its large-scale construction projects;**
- 2. work with the industry to develop supplementary terms to meet specific city requirements;**
- 3. ensure that its contracts are dated to accurately state the date the contract came into effect, meaning all material terms have been agreed to, and the actual date of signing.**

The inquiry was advised by both Andres and the WCA panel that the standard form contracts, developed by the Canadian Construction Documents Committee, are helpful to ensure the successful delivery of large-scale projects. Andres explained that there always needs to be some amendments made to the standard contracts to address specific issues relevant to government, but generally the contracts are a good foundation for the successful delivery of a project. This is because they are widely understood by the Canadian construction industry and this helps to reduce ambiguity, administrative inefficiency and disputes. I note that when RFP 66-2010 was issued for the HQ project, one of the questions asked by potential bidders, was what form of contract the city intended to use for the construction. The industry wanted this information to better understand the project.

The city never answered the question, showing its lack of understanding of its own project.

I heard evidence during the inquiry, that the city has been working to improve its construction contracts and has had precedents developed by a national law firm. I support this effort. Nevertheless, I recommend that when a large-scale project is in the planning stages (and I take it as a given that there should be a planning stage, even though there was not one for the HQ project), that the default position should be the use of a CCDC standard contract. Individually developed contracts should be used for projects that are unique and require very specific terms. CCDC contracts are the better choice for projects that are more common, since they have wide industry support.

I was advised during the inquiry that the city has now agreed to do a pilot project using CCDC standard form contracts. I congratulate the city on its willingness to try something new. I have high expectations that this pilot project will be successful and that my recommendation to make greater use of CCDC contracts will be adopted.

I do understand that governments will require some specific terms in their contracts. However, excessive customization that heavily alters the contracts, defeats the purpose. Contractors are looking for certainty, which helps them to understand the risk allocation and to then properly price their contracts. This improves competition and ultimately benefits government. Thus, I recommend that the city work with the industry representatives, including architects, engineers and contractors, to develop a reasonable set of supplementary terms. There will be industry buy-in, if the terms are developed through a team approach. The supplementary terms that are developed will be of value to municipalities throughout the province.

I further recommend that all city contracts, not only those for construction projects, be properly dated so that there is no confusion as to the date the contract actually came into effect, meaning all material terms have been agreed to, and the actual date of signing.

As discussed in Part II, there was a great deal of confusion caused by the practice of the city dating its contracts on an “effective date”, meaning the date that city council authorized funding. It is axiomatic that contracts are important documents and that the reader is not always a city employee who may be familiar with the city dating practice. Having city council authority to enter into a contract and actually having a legally enforceable contract are two totally different things. If it is valuable to record that council has approved funding, then that is properly included in a preamble. But every reader of the contract, both internal at the city and external from the city, should be able to read a contract and know the date all material terms were agreed to, that there was funding in place to permit the contract to be completed and the date that signatures were affixed.

Lisa Rowsell, on behalf of Legal Services, testified that, as a result of the inquiry, the city lawyers now understood the problem caused by how they had been dating their contracts and that the city would be adopting a new practice. In its written brief, the city said that the issue is now moot.

I am pleased that the city has recognized the issue and has committed to changing its practices. Nevertheless, I include this as a recommendation to ensure that there is appropriate follow-up.

Recommendation #4

In establishing a budget for a large-scale construction project, city council should be provided with an estimate of:

- 1. internal human, technological and other resources that will be required to successfully deliver the project;**
- 2. the type and cost of external resources that will need to be engaged.**

The OIC establishing the inquiry, includes a reference to the project's escalating budget that grew from its original \$135M to over \$200M. As thoroughly explained in Part II, much of the escalation was due to excess claims by the contractor and other misappropriations. But not all. What we learned during the inquiry was that the original \$135M budget, that included \$105M for redevelopment, was not established with any rigour and was increased by \$50M just five months after it was first approved. A change of \$50M before the project gets up and running shows that the first budget was never realistic. Yet council and the administration are judged by the public based on this figure, meaning that there is no advantage to anyone in not providing well-researched and realistic budget numbers.

I learned through the evidence at the inquiry that the city now requires a Class C, or what the city calls a Class 3, estimate of construction costs, before a project goes forward for budget approval from council. I also heard from Danny Tooth, who is the Acting Manager of Major Capital Projects Oversight, that he works with departments to provide an independent review of the proposed budget, including ensuring that the budget has an adequate contingency. Given that the city has put in place a procedure to obtain a reasonable estimate of construction costs, I will not make a recommendation on this issue.

However, the inquiry also heard from KPMG representatives Ross Homeniuk and Nora Britney. Since KPMG had done two previous audits for the city, Mr. Homeniuk and Ms. Britney were able to draw on their familiarity with city practices to provide very valuable expert evidence to the inquiry.

One matter that the KPMG panel members stressed was the importance of the owner properly resourcing a construction project. Ms. Britney stated in her testimony:

Nothing replaces the owner managing the job and managing the contractor and they have to be resourced to do it because the owner holds the ultimate reputational risk of project failure.

Mr. Homeniuk added:

When we talk about capacity, the capacity of the organization needs to be based on the scale and complexity of the project. Again, it's great that we've defined we need

all these roles, but unless we have people that are able to fulfill those roles, it's not really going to help us out at the end of the day. . .

But again, having that plan or formal assessment of risks and gaps beforehand helps us ensure that we're able to position that project for success before we even get going.

The need for the city to properly resource its projects was also a matter raised by the WCA panel. They stressed the importance of the owner being able to provide real-time communications regarding issues such as cost impacts, schedule changes, quality issues and evolving risks. The WCA echoed the words of KPMG by stating in its written submission that no construction model "can compensate for insufficient owner capacity ..."

The inquiry saw the impact of the lack of city resources assigned to the HQ project. Aziz asked at the beginning of the project for additional support to no avail. The lack of city resources delayed AECOM which then angered city officials and resulted in AECOM's departure. AbouZeid struggled to manage multiple design changes during the construction and then was blamed by some councillors and resigned when the additional funding was requested.

The experts we heard from were unanimous in stressing the importance of identifying resources before the project begins, ensuring that there are people in place with the necessary skills, and purchasing external resources in the community, if needed. This is not optional; it is essential. We learned that the city did not do this before beginning its over billion-dollar NEWPCC project, which it began without an information management system in place that could track relevant metrics. While the city has now committed funds to purchase a project information system, this will take many more months to become operational. In place of a proper system, three people are taking 28 days to prepare the monthly reporting materials on NEWPCC. Danny Tooth also acknowledged in his testimony that resourcing is something "that is being looked at" for major city capital projects. There is, of course, a significant difference between "being looked at" and being operational.

Thus, it is my conclusion that the Class C/3 estimate that the city requires for budget approval is not adequate, in and of itself. It is also necessary for the city to include a resource plan as a part of a budget request for a large-scale construction project. It is then up to council to decide whether to proceed with the project, armed with full knowledge of the project's real cost.

Recommendation #5

The city should undertake market sounding and early industry engagement as part of its planning of large-scale construction projects in order to:

- 1. gain feedback from industry professionals regarding the project, gauge interest, and assess market capacity;**
- 2. give the industry notice of potential projects so that it can allocate and manage its resources.**

The inquiry learned through Danny Tooth's evidence that the city has implemented policies that authorize departments to apply for preliminary funding to undertake initial planning in advance of seeking final budget approval for a project. This is a significant improvement over what occurred on the headquarters project, where no resources were ever allocated to investigate options.

The WCA panel advocated that part of the initial planning process for large-scale projects should include early industry engagement and market soundings. Meeting with industry early on allows owners to assess market capacity, identify procurement risks, understand contractor concerns and get advice on appropriate delivery models. This is all information that can feed into the development of the project and the budget estimate that is ultimately presented to council.

Early industry engagement has a second benefit in that it informs the industry of potential upcoming projects. This helps to improve the industry's planning and resource allocation. The WCA panel also advised that knowing about potential public projects greatly enhances workforce recruitment and retention and contributes to long-term market stability. Lack of transparency can contribute to skilled labour migration, reduced local capacity, and escalating costs.

One concern that was raised during our discussions with the WCA was the balance between maintaining the city's (and other government's) desire for confidentiality regarding projects that have not yet received council approval, and getting advice from multiple industry sources. While there may be some risk from premature disclosure of a potential project, I am of the opinion that the benefits of keeping the industry informed outweigh those risks. Well-drafted confidentiality agreements that delineate what can and cannot be shared and with whom, can be used to further limit the risk. I am prepared to place trust in the professionals that are consulted that they will abide by confidentiality agreements. Therefore, I accept and adopt this recommendation as put forward by the WCA.

Contract Administration for Large-Scale Projects

Recommendation #6

- 1. The city should refine its definition of major projects and adopt a category of large-scale construction projects, consistent with the definition used throughout this report, meaning projects with a budget of \$100M to \$499M.**
- 2. Council oversight of large-scale construction projects should be assigned to the Executive Policy Committee (EPC) in order to establish a locus of expertise for the review of high value construction projects.**

Recommendation #7

The Government of Manitoba should undertake a consultation with Winnipeg City Council, former councillors, and the public regarding the composition and appointment process of EPC members and should consider whether amendments to the City of Winnipeg Charter dealing with these matters, would improve city government.

The city defines all of its construction projects between \$25M to \$499M as major projects. This is obviously a very wide range. Given the inquiry mandate to investigate “large-scale” projects, we defined this term to be projects between \$100M to \$499M. I recommend that the city refine its definition of major projects and adopt a category of large-scale projects, consistent with the definition used throughout this report, so that it can scale its governance of these projects appropriately.

One of KPMG’s recommendations regarding the NEWPCC mega-project was that council oversight be delegated to EPC in order to place oversight within a senior committee. Other major city projects are overseen by the committee responsible for the department in charge of the project.

Danny Tooth testified that the city is now considering how to scale the KPMG audit recommendations to manage other city projects. The inquiry also heard from the KPMG panel members, Mr. Homeniuk and Ms. Britney, as well as CCO, Tom Sparrow, that there is a steep learning curve in being able to oversee complex, high value construction projects.

Having heard the evidence, it is my recommendation that EPC be delegated responsibility for large-scale projects. As mentioned previously in this report, there are only a few such projects at any given time. Therefore, it would not be unduly onerous for the members of

EPC to be providing oversight for these projects. The major advantage of housing both large-scale and mega projects within EPC would be creating a locus of expertise of the skills and knowledge on how to provide effective and meaningful oversight. These are not intuitive skills; they need to be learned. Specialized training needs to be offered, available to all, but particularly relevant to the members of EPC.

What flows from this, is that EPC would have a significant role in the city's governance of its large-scale and mega construction projects. This means, that the members of the committee must be chosen with consideration of this important function.

While the overarching structure of city government is far outside this inquiry's mandate, given the recommendation that EPC have a major role in large-scale project oversight, it follows that how its members are chosen, is something I can consider. It is my position that the committee must be chosen in a manner that allows it to be effective in performing its oversight function on large-scale construction projects.

I was advised that in 2014, city council made a recommendation to the government to amend the city charter to change the composition and appointment process of EPC members. The recommendation was for a seven-member committee, consisting of the mayor, three members appointed by the mayor, and three members elected by council. This recommendation was never implemented by government; see [City of Winnipeg Council Minutes, June 25, 2014, Minute Number 562](#).

Thus, I recommend that the provincial government revisit this issue. I recommend the government undertake consultations with city council, former councillors and the public and consider if amendments to the city charter regarding the composition and appointment process of EPC members, would improve city government. The model suggested in 2014 is one possibility, but there are other options that can be explored through consultations. The goal is to make EPC an effective voice on behalf of the residents of Winnipeg, and dealing specifically with the mandate of this inquiry, ensure that its members can provide high-quality oversight of large-scale construction projects.

Recommendation #8

- 1. On all large-scale construction projects, the city should engage an independent quantity surveyor to set up and manage the payment certification process.**
- 2. The payment certifiers should be required to obtain copies of all subtrade contracts detailing the scope of work in each, and copies of all subtrade invoices, in sufficient detail to accurately assess the work done, and properly allocate the cost.**

David Kimber's qualifications and testimony are set out in the Payment Certification section of Part II of this report. He outlined the significant inadequacies in the payment certification process used throughout the WPS Headquarters redevelopment project and recommended a rigorous protection process by always engaging an independent payment certifier on large-scale construction projects. He testified that it is standard practice for payment certifiers to be retained on such projects, and to receive copies not only of detailed subtrade invoices as they are submitted, but also the subtrade contracts setting out the scope of work contemplated by the contract.

The inquiry heard from two witnesses, whose companies had worked on the WPSHQ project, that their companies routinely submit their paperwork to either a payment certifier or the owner, in addition to the general contractor:

- Helder Cunha of Cunha Masonry testified that in his business it is normal for him to submit his subcontract and copies of all invoices not only to the contractor but also to the owners' group. He further testified that he would have expected that false invoices submitted by CPI would be caught by the project manager or the architect.
- John Schubert of McCaine Electric Ltd. testified that it would be usual to have direct contact with the payment certifier. His company would routinely send a copy of its invoices to the payment certifier at the same time that the invoices were submitted to the general contractor.

During our discussion with the WCA, the panel members made it clear that their companies are always willing to provide copies of all necessary documents and that they fully support an open book and transparent system. (This was very different from what we heard from Armik and Shaun who both testified that the owner was not entitled to see the subtrade contracts.) The WCA emphasized that public infrastructure projects require robust governance frameworks built on ethics, transparency, accountability, and clearly defined responsibilities. They fully supported the benefits of payment certifiers to independently review and certify payment applications based on completed work and contractual entitlement. Two of its recommendations are that:

- owners require independent contract administration, specialized project accounting, and clearly defined project controls on large-scale or high-risk projects; and
- owners establish clear reporting, billing and change management expectations at project outset.

It is clear to me that had such practices as are set out above been in place throughout the redevelopment project, the altered invoices submitted by Caspian would have been quickly revealed as inauthentic. Unfortunately, Chang was neither independent nor was he asking

for or receiving sufficient documentation to justify the subtrade invoices and quotations being submitted by Caspian.

Kimber testified that one of the roles of a payment certifier is to assist owners to put in place the financial controls recommended by the WCA, and that in the end, this saves money. Thus, I recommend that an independent payment certifier be used on all large-scale construction projects.

Recommendation #9

The city's governance structure for large-scale construction projects should include an independent assurance advisor, with a mandate to:

- 1. provide impartial insight into project performance;**
- 2. provide role-based training to councillors and city staff who are serving on the oversight and governance committees;**
- 3. develop a best practices playbook that is updated regularly with lessons learned.**

Tom Sparrow, the city's first CCO testified at the inquiry about his new and evolving role. A few months following his testimony he resigned from his position, having served in his job for 15 months. This vacancy now gives the city the opportunity to reflect on the role of the CCO going forward.

The position of CCO was created to respond to a KPMG audit recommendation that the governance structure for the city's NEWPCC mega-projects, should include an independent assurance and advisory role. It was explained during the inquiry that a robust assurance framework has become an industry standard for the successful delivery of complex projects, in the private and public sector.

The primary objective of an independent assurance framework is to provide impartial insights into project performance. By operating outside the delivery team structure, third-party assurance personnel can offer a fresh perspective without any potential biases or conflicts. Thus, in their evidence at the inquiry, the KPMG panel members supported the importance of including an independent assurance role in the city's governance structure for large-scale construction projects. I accept this recommendation. The objective would be to provide the project steering committee, the council oversight committee, and city council, with independent advice. I leave it to council to determine if the best model is to provide this through a fulltime CCO or through external advisors, hired on a per-project basis.

Further, KPMG representatives Mr. Homeniuk and Ms. Britney saw a role for an independent assurance advisor to assist city council members and the administration improve their skills so that they can more effectively provide quality oversight and governance. I strongly support this recommendation. While private corporations may be able to recruit members of their boards of directors with specific educational background, skills and experience, elected council members come to their positions from varied backgrounds and not necessarily with the skills to undertake oversight and governance of complex large-scale projects. There may be a very steep learning curve before they feel confident that they can provide effective oversight. Often, people are reluctant to ask questions that reveal their lack of understanding. Thus, training is essential. Moreover, city staff may also benefit from training since they too may not have had experience with these responsibilities.

KPMG also suggested a role-based playbook that would set out the basic information for each person in the governance hierarchy. This might include:

- What happens at the oversight meeting?
- What do I need to have read?
- What do I have to be prepared for?
- What does “good” look like?
- What decisions will I be asked to make?

Since one of the purposes of the independent assurance advisor is to be a trusted resource for oversight committees, it makes sense to include within that role an education component.

Recommendation #10

The city should prioritize hiring a consultant to do a requirements analysis across departments and to find, propose, and operationalize an enterprise-wide management information solution.

Although the public service within the City of Winnipeg is fully computerized, it lacks access to sophisticated and specialized systems that would greatly assist in managing large-scale construction projects.

In their PowerPoint presentation to the inquiry, KPMG experts Ross Hominiuk and Nora Britney emphasized that project information systems can create a single source of truth for planning, delivery, reporting, and portfolio decisions across the enterprise. Such a system allows for standardization of stage gates, dashboards, resource and capacity views, cost and schedule controls, risk tracking, and automated reporting. It improves forecast accuracy, it supports decision-making, strengthens transparent reporting, reduces

potential for propagating errors, and can increase confidence in project progress and delivery outcomes, all of which increases executive visibility.

In particular, KPMG recommended strengthening reporting and controls within the city including establishing audience appropriate monthly project reports and requiring monthly risk reviews on large-scale projects.

Danny Tooth, acting manager of major capital projects, provided information regarding the current reporting system for the NEWPCC mega-project. He advised that without a proper management system it is virtually impossible to properly and regularly report on a number of key performance indicators. Pursuant to the city's new governance framework, mega-projects require monthly reports, and it is Tooth's group that provides these reports. The goal is to provide the reports in a "dashboard" format so that elected officials are regularly able to see, understand, and interpret reports quickly and effectively.

However, under the current system, without project management software and utilizing only Word and PeopleSoft, as explained earlier, three city employees work full-time simply preparing a single report each month.

Tooth advised that a budget was recently approved to hire a consultant to do a requirements analysis across departments and to find, propose, and develop an enterprise-wide management information solution, but that the consultant had not yet been retained.

Lisa Rowswell, acting department director of legal services, has been an in-house lawyer with the city for 26 years. She told us that for many years, the public service had been advocating for a project management information system that would allow for effective monitoring and oversight of construction projects. It was only after CCO Sparrow joined the city and made the same recommendation, that council approved a budget to initiate the purchase. This means that the city began its over billion-dollar NEWPCC project, without a proper information management system in place. Beginning the NEWPCC project without being able to gather and analyze the data necessary for proper oversight shows the same lack of planning that plagued the headquarters project. While, the city is now taking steps to remedy this problem, it will still be many more months before a new system can be identified, ordered, installed and become operational. Thus, I heard evidence that EPC and city council are not at this time, providing optimal oversight of NEWPCC.

There is a lesson here for councillors. Speaking plainly, it should not take advocacy from someone coming from the outside before council acts when the city's own employees have been making the same recommendations for years. There is also a lesson here for the CAO. One important aspect of this position is to make sure that the public service has the tools it needs to effectively do its work and to advocate on behalf of city employees before council. Mr. Sparrow had only a short tenure with the city as CCO but if one outcome of his employment is that he spurred city council to act on an information management system,

then he made a meaningful contribution to the city's ability to manage large-scale and mega construction projects, going forward.

Recommendation #11

- 1. The Government of Manitoba should investigate BIM technology, including obtaining information from jurisdictions that have mandated BIM, with a view to considering whether to mandate its use in large-scale municipal construction projects in Manitoba.**
- 2. The City of Winnipeg should include the use of BIM technology as a preference on RFPs for companies that will be retained to participate in large-scale construction projects.**

Daniel Kazado, managing partner of ProCS Professional Construction Solutions, provided the inquiry with a very interesting and informative presentation regarding the use of BIM technology in large-scale construction projects. Kazado went through a comprehensive and active PowerPoint presentation regarding the use of BIM as a rapidly growing digital process tool that integrates design, construction, and operational data to improve collaboration, efficiency, and decision-making on construction projects.

Kazado identified many countries across the world that utilize and in fact mandate BIM use in major construction projects. He also noted that although it is not mandated by provincial legislation in Manitoba, BIM is being used currently by a number of school divisions in our province as well as on major construction projects such as the Winnipeg James Richardson International Airport and the True North downtown development of Portage Place.

Kazado estimated that in Manitoba 60 to 70 percent of architects, 80 to 90 percent of engineers, and 50 percent of mechanical and electrical contractors use BIM. He indicated that not all trades currently have the capability to use this process.

Kazado advised that no provinces/territories in Canada have yet mandated the use of BIM but that this is likely to change in the foreseeable future. The BIM process is taught at post secondary institutions such as Red River College and the University of Manitoba, so there are many Manitobans working in the construction field with knowledge of its use.

BIM is a process not a software, and various software products are utilized as part of it. BIM creates a digital representation of a building or infrastructure encompassing both its physical and functional characteristics. Unlike traditional computer design systems, BIM

goes beyond 2D architectural drawings to produce enhanced 3D models for use by all stakeholders (architects, engineers, contractors, project managers, and owners). A BIM model can also be enhanced beyond 3D to include readily available information as to time and scheduling, cost, environmental sustainability, and operational information that will be of use to the owner throughout the life of the building.

The BIM process allows for integration of information and enables all project participants to work from a single source of truth, reducing errors and miscommunication.

Although BIM is expensive to set up initially, once set up it can be utilized repeatedly, and the cost is borne by the professionals engaged on the project, not by the owner.

By using illustrations throughout his presentation, Kazado made a convincing case for the use of BIM on major construction projects as an important tool not only to reduce cost and delay, but also to allow for immediate and accurate monitoring of construction progress, quantity surveying, payment certification, and whether change orders are legitimately required. Had such a process been in place during the construction of the police headquarters building, serious issues would have been identified very early on in the construction process and much better cost information would have been available.

The Winnipeg Construction Association, in its written submission:

- acknowledges the growing role of BIM and related digital construction technologies in improving project design and delivery coordination, transparency, and efficiency;
- recommends that consideration should be given to broader adoption of BIM requirements on large or complex public projects where appropriate owner capability exists;
- outlined the importance of modern project controls software systems that integrate cost management, scheduling, document control, reporting, forecasting, and risk management, and notes that large public projects generate significant volumes of information that can be difficult to monitor through manual reporting processes alone;
- encourages broader use of BIM and digital project controls where appropriate to catch design interference early.

I recommend that the Government of Manitoba, through an appropriate department, seek out and consider further information regarding BIM, including from countries that have mandated its use, with a view to considering whether to require its use by municipalities undertaking large-scale construction projects. Retaining Mr. Kazado to provide guidance in that regard would be an excellent first step.

I further recommend that the City of Winnipeg include the use of BIM technology as a preference on RFPs for companies that will be retained to participate in large-scale construction projects. This will help to encourage its adoption across the industry.

City Council Practices and Procedures

Recommendation #12

The Government of Manitoba seek amendments to s.76 of The City of Winnipeg Charter to specify:

- 1. the matters that may be the subject of closed council and committee meetings including, but not limited to,
 - a. that the disclosure of the information may be harmful to the economic interests of the city;**
 - b. that the information to be discussed is privileged;****
- 2. the process for moving into a closed session;**
- 3. the requirement that any materials distributed and any matters discussed during a closed session are confidential;**
- 4. that no resolutions or by-laws may be passed in closed session other than a resolution to return to a public meeting.**

Recommendation #13

Winnipeg City Council should repeal by-law No. 21/2011, the In Camera By-law, and replace it with a by-law that authorizes council to proceed in closed session if:

- 1. the public disclosure of information under discussion may be harmful to the economic interests of the city;**
- 2. the information to be discussed is privileged;**
- 3. any other reason that city council deems appropriate.**

Recommendation #14

Winnipeg City Council work with the city CAO to develop a protocol that will ensure that documents written by staff for council and committee meetings that contain confidential information remain confidential unless and until the document is edited to remove confidential information before it is made public.

The City of Winnipeg Charter, s.76(1) states:

76(1) Council may by by-law specify categories of matters that may be considered at in camera meetings of council or a committee of council or a subcommittee thereof.

In accordance with this authority, council passed [In Camera By-law No. 21/2011](#) which states that:

3.1 Council may meet in camera to consider internal performance reviews of the City Auditor.

In other words, council has virtually eliminated its authority to proceed in closed session; (I have chosen to use the term “closed” as a plain language synonym for “in camera”).

Section 2 of the In Camera By-law does authorize committees to proceed in closed session for several reasons, including if disclosure of the information under discussion:

- (b) could prejudice contractual or other negotiations being carried on by the City of Winnipeg; or
- (d) would violate solicitor-client privilege.

Nevertheless, the inquiry was told by several city witnesses that committees rarely go into closed session. Furthermore, the evidence of the CAO, the CCO, the deputy city solicitor, and the KPMG experts, was that council’s self-imposed inability to go into closed session, was negatively impacting council’s ability to manage the NEWPCC project.

The inquiry saw directly the problems caused by council members’ lack of understanding of the value of private discussions regarding sensitive issues. Staff are forced to write their administrative reports, which are documents that set out information for council and committee consideration, knowing that they will be made public. This has a chilling effect on what is included in the report and what is left out. It does not foster a culture of “truth to power”. Rather, it restrains the public service and may result in council making decisions without a full understanding of the issues.

The inquiry saw multiple examples of the reports failing to include information that we would have expected to see in a well-written report. For example, the administrative report seeking to purchase the Canada Post building had nothing in it setting out the history of the negotiations. We do not know if the city paid Canada Post’s full asking price or a lesser

amount. This information may have been left out so as not to make public, business information respecting a third party. Similarly, the administrative report that sought council approval for the \$135M HQ redevelopment budget had no explanation where that number came from, putting council in the position of approving a budget with no understanding of the potential contingencies.

Most importantly, however, was the administrative report written in July 2011, that sought council approval to increase the redevelopment budget to \$155M and sought approval for the CAO to enter into a construction contract. While the city was actively engaged in negotiating a contract, it provided public information of exactly how much money council was authorizing for the project. Not surprising, the contractor offered a contract price, that fit precisely the amount of money the city was authorized to spend. This is not an appropriate way to undertake a commercial negotiation. As the CCO Tom Sparrow colourfully explained during his testimony:

We're actually playing poker with an open deck, but we can't see our adversary's cards. They can fully see ours. So, I've never, in my lifetime, ever seen projects delivered this way.

The inquiry was advised that the city administration sometimes sets up something it euphemistically calls a "council seminar" if there is a need for a confidential discussion. There are several problems with this back-door approach. First, if council recognizes the need for a confidential meeting, then why hide that this is occurring. The process of moving into closed session and documenting that this has been done in council minutes, is much more transparent than an off-the-record "seminar". Second, council meetings are set in advance, and all councillors are aware of the dates. An ad hoc seminar may result in fewer attendees, due to councillors having prior commitments. Third, we were told that paperwork distributed during the seminars is often collected at the end to prevent it being improperly disclosed. There is nothing that can be done to prevent a councillor choosing to inform the media of what went on during the seminar. This once again hampers staff in their ability to provide fulsome information and impedes councillors, who are forced to give back documents, that they may wish to take away for later review. A closed committee or council session would be subject to rules regarding confidentiality that do not exist at a seminar.

I have written my recommendation directed to the government and not merely to city council. I have done this because multiple city witnesses testified before me that successive city councils have shown no willingness to alter their current practices. I can only surmise that this is because there is a mistaken belief amongst elected officials that closed committee and council sessions are or would be seen as anti-democratic. This is not true. There are many legitimate reasons for having confidential discussions so that elected representatives can be better informed before they make their final on-the-record decisions. It is my opinion that more robust provincial legislation will impress on councillors the value of closed sessions in specific situations.

The onus, however, will always fall to city council and to its committees to recognize the need and to move into closed session. Thus, Recommendation #13 calls for an amendment to the by-law that currently restricts this option. It is important for council to recognize that not only is it a legislative body, but it also functions as the board of directors of one of Manitoba's largest corporations. As a board of directors, it sits at the top of the governance structure that oversees large-scale construction projects. Part of governing these projects includes having confidential briefings that allow for fulsome discussions of issues, problems and next steps. The fact that council has tied its hand and that committees have chosen to follow suit, is why both the CCO and the KPMG panel testified that the governance model the city is using for its NEWPCC project is not operating optimally. Thus, I would stress the importance of this recommendation.

Further, I recommend that city council and the CAO work together to develop a protocol that will allow for confidential administrative reports to be prepared, and to remain confidential, until appropriately edited. In making this recommendation, I am envisioning a process that is similar to "cabinet confidence" documents that exist at the federal and provincial levels. I believe that being able to produce confidential documents will help to foster a culture of more open and truthful dialogue. This is not intended to be undemocratic. It is intended to draw a distinction between when city council acts as the board of directors of a large corporation that is carrying on projects in excess of \$100M and when it is legislating. It is my position that the first will sometimes require a closed-door session to consider confidential materials, while the second will always occur in public.

Integrity and Ethics

Recommendation #15

The Government of Manitoba seek amendments to The Municipal Council Conflict of Interest Act to require that a councillor, mayor or reeve participating on a hiring committee for any person applying for a position as an employee with the municipality/city, disclose any direct or indirect business or other pecuniary interests with that person.

Recommendation #16

Winnipeg City Council adopt a policy requiring all councillors who participate on selection panels to complete a conflict-of-interest declaration.

During his testimony Katz acknowledged that Sheegl had been a friend of his for many years and they had been involved together in at least three real estate projects (Sheegl testified it was five to ten projects), including being business partners in Tartesso since 2005. Katz acknowledged that he was chair of the EPC that appointed Sheegl as CAO in May 2011 and, that at no time during the CAO selection process, did he ever disclose his personal and business relationships with Sheegl to anyone on EPC or to anyone else within the city.

Further, Katz did not disclose that Sheegl was then negotiating, on his and Sheegl's behalf with Armik, regarding their sale of an interest in Tartesso. Katz agreed that the Tartesso transaction should have been disclosed. He did not indicate why he did not disclose the transaction, but he did say there was a lot going on at the time, and Tartesso was, for him, a minor deal.

Sheegl testified that it was a huge mistake in retrospect not to have disclosed his and Katz's business relationship with Armik. His only excuse was that he didn't relate that business relationship to the business Caspian was trying to do with the city. Sheegl testified "... it was stupid of me not to realize that..." "Mayor Katz was involved, not that that's an excuse, but he knew. It didn't even enter my mind."

Dave Clark, the city's director of human resources, advised that in the fall of 2024 EPC struck a recruitment committee to hire a new CAO. The hiring committee included the mayor, two members of EPC and two other members of council. This was the process that led to the ultimate hiring of the city's current CAO, Joe Dunford. No conflict-of-interest document was completed by anyone on that recruitment committee regarding any possible conflict with any of the applicants who applied to be CAO.

Clark testified that when the city hires an employee, the city employees participating on the hiring committees must complete a conflict-of-interest declaration confirming no relationship with any applicant that would constitute a conflict of interest. However, Clark confirmed that this practice does not apply to elected city councillors. Those individuals are governed entirely by either policies council enacts for its members or by The Municipal Council Conflict of Interest Act. Clark confirmed that, to his knowledge that act did not address the question of a potential conflict of interest involving an elected official participating in the hiring of an employee.

Upon my review of the act, I agree that it does not require any councillor (defined as a member of a council, including a mayor or reeve) to declare a conflict of interest when participating in the hiring of a new employee.

I recommend that the act be amended to include a requirement that an elected official must complete a conflict-of-interest declaration at the time of a hiring process. It is important to recognize that declaring a conflict does not automatically mean that a person is disqualified from participating in the proceedings. It means that the conflict is known and can be addressed appropriately. This distinction is important, particularly in smaller municipalities,

where there may be overlapping relationships between elected officials and potential new hires. It is then up to the municipality to decide how to address the conflict, but requiring the disclosure brings it to light.

I further acknowledge that an individual intent on hiding such a relationship could make a false declaration, however, in situations where a subsequent conflicting relationship is discovered, at the very least that individual would not be able to say, with any credibility, that the conflict simply didn't enter their mind at the time.

While the recommendation set out above would apply province-wide, Winnipeg City Council ought not to wait to learn what steps the provincial government might take.

We heard from several employees that Sheegl's friendship with Katz was well-known among senior city employees and that this had a negative impact on the work environment. Fairly, or unfairly, Sheegl was not seen by many staff as an independent liaison between the public service and the mayor, which is a fundamental role for the city CAO. Thus, I recommend that WCC adopt its own policy that would require a conflict-of-interest declaration to be completed by all council members who sit on selection committees. To repeat, this does not mean that the person would automatically be excluded from sitting on the committee. Rather, it would be an issue to be addressed by council. This did not happen when Sheegl was hired as CAO and it impacted his credibility among some senior staff.

Recommendation #17

The City of Winnipeg should amend the Conflict of Interest Policy to require:

- 1. the four statutory officers as well as all department heads to complete a written statement of assets and interests upon being hired and annually thereafter;**
- 2. city employees awarding a sole source contract (currently up to \$1 million) to complete a written statement declaring no relationship with the other party that would constitute a conflict of interest as defined within the policy;**
- 3. city employees acting as project manager on construction projects requiring an RFP, (currently contracts valued at \$1 million or greater), to confirm in writing no relationship with all known external parties involved (professionals, contractors and subcontractors) that would constitute a conflict of interest as defined within the policy.**

The city has a Conflict of Interest policy that requires employees to acknowledge on being hired, and annually thereafter, that they are aware of the policy. Nevertheless, I heard evidence that leads me to conclude that people need to be reminded about potential conflicts. Katz's position was that he had failed to disclose a conflict because "there was a lot going on at the time" and Sheegl testified, "it didn't even enter my mind."

Whether these statements are true or not, they illustrate that hindsight is often invoked in situations where something is initially missed and ends up leading to a bad result. These three recommendations to amend the Conflict of Interest policy are made with a view to reducing the possibility of a city employee not recognizing, at a critical time in the process, that a conflict of interest exists.

Clark testified that under current city policy (last updated in 2023), upon being hired, the four statutory officers and all department heads (about 20 positions in total) must sign a statement of assets and interests. The statement is submitted once upon being hired and is not thereafter updated. Clark agreed that, over time, people's assets and interests change and therefore requiring those individuals to resubmit an updated statement annually would not be onerous. This would give the city current information regarding these key individuals and might prevent a conflict of interest from going unnoticed.

Current city policy allows for sole-sourced contracts to be awarded with a value not exceeding \$1 million. As such, the individual designated by the city with the authority to award that contract can do so without going through a public RFP tendering process. Clark testified that there is no requirement that the city employee granting the sole source contract declare that no conflict of interest exists as between that individual and the entity awarded the contract (including the individuals involved in that entity if it is a corporation). This seems to me to be particularly risky given the exclusive authority held by the city employee to grant a contract that can be worth several hundred thousand dollars. A declaration signed by the city employee would both bring the question of conflict to the top of that individual's mind at a critical stage in the process and would provide the city with written evidence that the question of conflict was specifically addressed.

Clark also agreed that city project managers in charge of construction projects awarded by RFP with a value greater than \$1 million could be required to sign a document listing the primary parties involved in the project (professionals, contractors and subcontractors) and confirming no relationship with any of them that would constitute a conflict of interest as defined within the policy. Once again, this would require the project manager to review a list of companies and individuals involved, bringing the question of a possible conflict of interest to top of that person's mind at the outset. Although the current Conflict of Interest policy requires all employees to "immediately disclose when a real or perceived Conflict of Interest arises", in my view this would be stronger protection for the city, if done on a project-by-project basis.

Recommendation #18

The Government of Manitoba seek amendments to The City of Winnipeg Charter to:

- 1. include the integrity commissioner as a statutory officer under section 96;**
- 2. set a five-year term for the position, with the opportunity for renewal for a further five years;**
- 3. provide the integrity commissioner with immunity from being sued for actions taken in the course of duties, and from being compelled to testify;**
- 4. provide that that all communications with the integrity commissioner are strictly confidential and not subject to the Freedom of Information and Protection of Privacy Act (which may also require an amendment to FIPPA);**
- 5. give the integrity commissioner powers under The Evidence Act to compel evidence under oath (which may also require an amendment to The Evidence Act);**
- 6. add new provisions to allow Winnipeg City Council the authority to expand the list of current sanctions available to it under its own code of conduct.**

Recommendation #19

The City of Winnipeg expand the integrity commissioner's mandate to include the senior members of the public service, specifically the statutory officers and the department heads.

Recommendation #20

The Government of Manitoba seek amendments to The Municipal Council Conflict of Interest Act to:

- 1. authorize City of Winnipeg residents to make a referral to the integrity commissioner requesting an investigation into alleged violations of the act and authorizing the integrity commissioner to bring matters forward to a judge, where warranted, on behalf of the public;**
- 2. expand the scope of remedies available to a judge under the act where a violation has been found to have occurred.**

Winnipeg City Council first passed a Code of Conduct for Members of Council (the “code”) in 1994. It was amended in 2018. In 2017 the city hired Sherri Walsh as its first integrity commissioner. Ms. Walsh remained in that position until 2026, when she left to become the Ethics Commissioner for Manitoba. The city has subsequently retained a new integrity commissioner.

The integrity commissioner’s role is to ensure that clear and consistent ethical standards and expectations are set out for elected officials, to give city councillors advice proactively, and to provide training and education to councillors. A prominent feature of the role is to be readily available to answer questions posed by city councillors on a timely basis. Every member of WCC is required to meet with the integrity commissioner at least once annually.

Walsh, who has been a practising lawyer since 1986, testified before the inquiry as to her experiences as integrity commissioner, and her expertise in the areas of ethics and conflicts of interest in the public sector. She emphasized that the primary responsibility of elected officials, including members of WCC, is to put the public’s interest before their own private interests in everything they do.

Since being hired in 2017 Walsh has sought to enhance the role of integrity commissioner for the benefit of city council members. One valuable role that she performs is to give advice to councillors on a proactive basis regarding best practices to comply with the code. Provided that all relevant facts are disclosed to the integrity commissioner, a councillor relying on the advice would be protected against any subsequent complaint regarding the councillor’s conduct.

Another role that Walsh has performed as integrity commissioner is to educate councillors about their responsibilities under the code. Walsh advised that she published advisory bulletins on specific topics which are posted on the integrity commissioner’s page on the city website and that she would from time to time email all members of WCC with information. In addition, she held regular education sessions for council members. Walsh has also given presentations to members of the city’s public service about the role of the integrity commissioner and what civil servants should expect in their interactions with members of WCC. Walsh opined that a mutually respectful relationship between the public service and elected officials is critical to good governance, and that she has sought to strengthen this relationship throughout her tenure as integrity commissioner.

In her testimony, Walsh described the process of investigation when a complaint comes forward. Following a preliminary assessment as to whether the complaint justifies an investigation, a process is outlined in the code for a thorough and fair investigation, culminating in a report by the integrity commissioner setting out the facts that have been determined and indicating the integrity commissioner’s opinion as to whether the code has been breached. If so, it is then up to WCC to adjudicate whether to accept the opinion and whether to impose sanctions.

Based on the testimony provided by Ms. Walsh, it is clear that the position of integrity commissioner is a significant step forward in ensuring appropriate conduct by the city's elected officials. The proactive advice, education, investigation and reporting process set out in the code, all serve to ensure that councillors meet the high ethical standards that the public rightfully deserves.

However, Ms. Walsh testified that there are shortcomings in the current act that she would like to see amended in order to strengthen the role of the integrity commissioner and enhance council's oversight. She made the following suggestions for amendments to The City of Winnipeg Charter, as follows:

- amend s. 96 of the Charter to add the integrity commissioner as a statutory officer appointed by council;
- set five-year term, with the opportunity for renewal for a further five years;
- provide immunity from being sued for actions taken in the course of duties;
- provide immunity from being compelled to testify;
- provide that all communications with the Integrity Commissioner are strictly confidential and not subject to The Freedom of Information and Protection of Privacy Act (which may also require an amendment to FIPPA);
- give the integrity commissioner powers under the Evidence Act to compel evidence under oath.

I accept these suggestions by Ms. Walsh and endorse them as recommendations in this report.

Identifying the integrity commissioner as a statutory officer reporting directly to council, enhances the role and recognizes the independence of the office. It ensures that the integrity commissioner is understood as a significant part of the city's overall governance structure. Further, providing a five-year term ensures that there is adequate time to learn the job, gain the trust of councillors, and put one's mark on the job. The immunity provisions are common fixtures of independent statutory offices that allow the person performing the role to do so without concern of outside influences. Regarding confidentiality, Walsh advised that although the code provides that the integrity commissioner and everyone working with the commissioner must maintain confidentiality, the records created are still within the city's custody and may be subject to disclosure under FIPPA. This may result in self-censoring or in information that people shared believing it to be in confidence, becoming public. Further, Walsh advised that the city's integrity commissioner does not have powers to subpoena evidence under oath or the power to order production of documents which severely hampers the ability to undertake fulsome investigations.

Walsh further pointed out that in her current role as Ethics Commissioner for Manitoba, all these protections and powers are in place for her position, under the Conflict of Interest (Members and Ministers) Act and under FIPPA. Thus, they are seen as important protections

at the provincial level, and I would recommend that they should apply equally at the city level.

Walsh also testified that the current code is limited in terms of sanctions available to WCC where a breach of the code has been found to have occurred. Currently the code only provides for the following sanctions:

- the member be reprimanded;
- the member be required to make a public apology;
- the member be requested to return a gift or benefit or, where the gift or benefit cannot be returned, reimburse the donor for the value of the gift or benefit;
- the member be removed from a committee;
- the mayor be requested to remove the member from their position as chair of a committee.

Walsh suggested adding further sanctions such as a suspension of duties or remuneration, or both, for a specified period of time. She pointed out during her testimony that the Council Members' Codes of Conduct Regulation under The Municipal Act, which applies to all Manitoba municipalities, except Winnipeg, contains the following sanctions for municipal council members found to have violated their codes of conduct:

- (a) censuring the member;
- (b) reprimanding the member;
- (c) requiring the member to issue a letter of apology within 30 days after being directed to do so;
- (d) requiring the member to attend training as directed by the council;
- (e) suspending or removing the member's presiding duties under subsection 83(2) of the Act, if applicable;
- (f) suspending or removing the member as the deputy head of the council, if applicable;
- (g) suspending or removing the member as chair of a committee, if applicable;
- (h) suspending or removing the member from any or all council committees or bodies on which the member serves;
- (i) suspending the member from carrying out a power, duty or function as a member for a period not exceeding 90 days;
- (j) reducing or suspending the member's compensation for the duration of any suspension imposed under clause (i);
- (k) imposing a fine of not more than \$1,000, to be paid within 30 days after being imposed.

Walsh recommended that the City of Winnipeg Charter be amended by adding new provisions to allow WCC authority to expand the list of current sanctions available to it under its own code. I accept this as a recommendation. It is illogical that the city has less powers than the other municipalities in the province.

It is also recommended that council expand the integrity commissioner's mandate to include the senior members of the public service, specifically the statutory officers and department heads.

There are important policy reasons for this proposal. The CAO, as the most senior public servant, is ultimately responsible for enforcement of the city's Code of Conduct for its employees. Giving the CAO access to the integrity commissioner provides an important resource to assist the CAO in fulfilling his or her role vis-a-vis the public service. It also ensures that there is an independent officer with a mandate to investigate the most senior members of the public service in the event that there is an allegation of a code violation. Further, it provides a safe and confidential route for employees to report concerns. This would have been very helpful at the time of the headquarters project. There were city employees who had concerns about Sheegl's relationship with Armik. Had there been a route to report their concerns to someone in authority over Sheegl, the entire headquarters fiasco may have been avoided.

Finally, Walsh reviewed the provisions of the Municipal Council Conflict of Interest Act. This act applies to all municipal council members across Manitoba including the City of Winnipeg and regulates only pecuniary conflicts of interest.

Under that legislation either council or a member of the public within that municipality can apply to a judge to have a councillor found guilty by the judge of violating the legislation, removed from their seat. This very significant remedy is the only remedy available to the judge other than finding no violation or an inadvertent violation. Further, when an application is brought by a member of the public there are certain preliminary hurdles that must be overcome including paying \$300 into court as security for costs. This may deter private individuals from bringing an application under the act.

Walsh cited similar legislation in Ontario (Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50) which allows any member of the public in Ontario to apply to the Ontario Integrity Commissioner to initially determine whether a complaint merits being taken to court and, if so, the integrity commissioner can take conduct of the matter and can bring it forward to court on behalf of the complainant.

I recommend that the Government of Manitoba seek amendments to The Municipal Act to parallel the Ontario legislation. This takes the burden off an individual resident of undertaking a court case with all the resulting legal hurdles and costs.

I appreciate that my recommendation would only be of benefit to the residents of the City of Winnipeg where the position of integrity commissioner exists and not to Manitobans residing in municipalities without such a commissioner. However, my mandate pursuant to the OIC restricts my recommendations to the City of Winnipeg. Perhaps Manitoba could study the Ontario model and consider whether a provincewide integrity commissioner would be a useful addition to the current legislation, to provide advice and guidance to other Manitoba municipalities.

I also note that, in contrast to the only remedy available to a judge under the Manitoba legislation (remove the councillor from their seat), an Ontario judge has wider powers under section 9 of that act upon finding a violation of the act, including:

- reprimand the member or former member;
- suspend the remuneration paid to the member for a period of up to 90 days;
- declare the member's seat vacant;
- disqualify the member or former member from being a member during a period of not more than seven years after the date of the order;
- if the contravention has resulted in personal financial gain, require the member or former member to make restitution to the party suffering the loss, or, if the party's identity is not readily ascertainable, to the municipality or local board, as the case may be.

In summary, I found Walsh's testimony to be extremely helpful and practical. Her nearly 10 years in the newly created position not only allowed her to thoroughly understand the value of the role but also to note key areas that could be improved. I am pleased to include many of her suggested improvements as my recommendations in this report.

Culture

Recommendation #21

The CAO ensure that senior staff are trained and encouraged to provide fair, full and truthful advice and that staff are assured that management will support them in fulfilling this expectation.

The phrase "speaking truth to power" is heard often in various government institutions, and of course, elsewhere within the community. Within the government context, I understand the phrase to have two components. First, it speaks to the expectation that public servants will provide the senior echelons within government with full and truthful advice, even if that advice includes bad or unwelcome news. Second, it includes an understanding, that while

the advice may not be taken, there will be no retaliatory action for providing an honest and fair opinion.

As detailed in Part II of this report, there were several examples of city employees speaking truth to power, albeit their advice was often not taken. Barb D'Avignon pointed out the risks of a flat \$25M flat bonding requirement. Inspector Randy Benoit stated his concerns about the relationship between Armik and Chang. Jason Ruby suggested an independent cost assessment from Hanscomb before completing the GMP contract. Abdul Aziz made many efforts to keep the headquarters project on track, only to be undermined in those efforts by his own CAO, Sheegl.

In its submission, the Winnipeg Police Service requested that a recommendation be included in this report to provide an "avenue for employees of the City of Winnipeg who, like Mr. Aziz and Inspector Benoit, are not only disregarded in bringing forward their concerns regarding a project but are actively undermined by the Chief Administrative Officer of the City of Winnipeg."

I have already recommended above that the role of the integrity commissioner be expanded to include the city's statutory officers and department heads, and I reiterate that recommendation here. I believe that having access to someone independent, with the authority to assess and investigate credible complaints, would be valuable in ensuring city employees that they are safe in providing fulsome and truthful advice.

Joseph Dunford became the city's CAO in August 2025. He described the current culture within the city as very positive. He testified that he has received feedback from long-term staff comparing the culture today versus 10 to 15 years ago as being like the difference between night and day. He described the current culture as a very open, collaborative, supportive, and a respectful environment where individuals can share ideas, concepts and problem solve challenges together. He shared details of his vision for the public service and his engagement plan, as well as other initiatives which will continue to evolve, to implement that vision.

The picture being portrayed currently at the city is vastly different than the picture described by those who were involved in the WPS headquarters project from 2011 to 2014. Dunford's PowerPoint presentation boldly stated, "It's not the same culture as it was in 2014." I have no reason to doubt the information provided by the current CAO and note that he has over 20 years of employment within public service, so he understands its dynamics. However, I know personally from having been a partner in two law firms over 40 years, and the managing partner of one of them, that organizational culture is not organically grown. It must be fostered and maintained and can be lost quickly, particularly when changes occur in those tasked with making leadership and policy decisions.

Certainly, actions will always speak louder than words. It is up to those in leadership positions to set a respectful and collaborative workplace environment. But my

recommendation goes farther and includes education that stresses the need for public servants to always provide fair, full and truthful advice and assures those staff members that management will support them in fulfilling this expectation.

Those public servants within the city, below the positions of statutory officers and department heads, who are regularly charged with either giving advice to others regarding compliance with policies, administrative standards, legislation or implementing instructions that may violate city policies or other rules, must be acutely aware of their role and obligation to speak out vehemently where appropriate. This would include city employees within legal, finance, procurement and HR. I am not satisfied that the current Administrative Standards, HR – 017, Whistleblower & Public Interest Disclosure, and HR – 008, City of Winnipeg Fraud, Theft, Misappropriation or Related Irregularities, and the Fraud and Waste hotline are sufficient in that regard.

As an example, I note that the city currently employs 29 practising lawyers in-house (26 permanent and 3 on a term position). Nearly half (13) of these lawyers would be characterized as junior counsel having 10 years or less experience. Ongoing training and mentoring for these individuals would best ensure that they will gain the confidence to speak and act completely independently in providing critical advice to others within the city, including individuals to whom they may directly report.

Thus, my recommendation is made with the aim of giving senior staff the confidence to provide city council and their managers with the best possible advice, as many tried to do during the WPSHQ project.

Interprovincial Subpoena Act

Recommendation #22

The Government of Manitoba seek amendments to The Interprovincial Subpoena Act to widen its scope beyond court issued subpoenas, to include other entities statutorily empowered to issue a subpoena or summons.

As is noted elsewhere in this report, I, as commissioner, was unable to subpoena three witnesses who would otherwise have been subpoenaed to appear and testify at the inquiry, because those three witnesses reside outside of Manitoba. Had I been able to compel their testimony, I would have undoubtedly benefited from hearing from them directly.

The Manitoba Evidence Act confers upon a commissioner of a public inquiry the power to compel the attendance of witnesses by a subpoena or summons (the two terms are

essentially synonymous) requiring the witness to give evidence and to produce relevant documents. However, given that this is provincial legislation, it has no application outside of the geographic boundaries of the Province of Manitoba.

Manitoba, along with many other provinces, has enacted legislation, The Interprovincial Subpoena Act, to allow for enforcement in Manitoba of a subpoena or other document issued by a court outside of Manitoba, to attend as a witness before the issuing court.

The act also sets out a process for a party to a proceeding in any court in Manitoba, that issues a subpoena for service outside of Manitoba, to have a Manitoba judge certify that subpoena so that it can be enforced in another province with similar legislation.

The current Manitoba legislation is limited in that it only applies to subpoenas issued either by a court outside of Manitoba, sought to be enforced here, or to subpoenas issued here in a court proceeding, sought to be enforced elsewhere. It does not extend beyond “court” issued subpoenas to other entities or individuals who have the statutory power to subpoena witnesses, such as a commissioner appointed under The Manitoba Evidence Act.

In contrast, the Interprovincial Summonses Act of Ontario allows for such enforcement of subpoenas issued by “a court, **an agency, board or commission, or another person authorized to issue summonses...**” (Emphasis added)

Justice K. Peter Richard, the commissioner who authored the 1997 Report of the Westray Mine Public Inquiry in Nova Scotia, called after the death of 26 miners in Nova Scotia following an explosion, expressed frustration with his inability to subpoena 3 key company witnesses who resided in Ontario. Ultimately, he was unable to force them to appear and issued his report without the benefit of their evidence. In his report (The Westray Story, A Predictable Path to Disaster, Volume 2, p.600-601), he said:

After much consideration, I have decided to complete this Report at this time without hearing directly from several Westray executives. They have all been invited to attend at hearings, and they have all steadfastly refused.

In my view, this lack of accountability indicates a weakness in our system. That weakness should not be permitted to persist.

What the Westray Report shows is that this issue is not new. With the ease of travel and communication it is to be expected that there will be people from across Canada involved in many activities that may give rise to investigations and inquiries that are conducted outside of traditional court proceedings. Therefore, I recommend that the government seek to amend The Interprovincial Subpoena Act to expand the matters covered so that Manitoba inquiries and other related proceedings may have the benefit of the best evidence and equally that Manitoba can assist the other provinces and territories that seek to compel witnesses resident in this province.

Municipal Board

Recommendation #23

The Municipal Board continue with its current role in adjudicating municipal planning decisions and that it not be given any additional role in overseeing large-scale publicly funded construction projects, undertaken by the City of Winnipeg or any other Manitoba municipality.

The terms of reference contained in the OIC establishing this inquiry includes an obligation on me as Commissioner to:

consider the current and previous legislative framework for oversight of municipal planning for large scale publicly funded construction projects, including the role of the Municipal Board.

Four representatives from the Municipal Board presented to the inquiry by way of a panel discussion on May 13, 2026. The individuals who attended and presented were Lori Lavoie, Chair, Celia Valel, Vice Chair, Erin Wills, Secretary, and Max Schreckenbach, Senior Policy Analyst.

The presentation format was by way of PowerPoint, and Ms. Lavoie was the main presenter. Questions were asked throughout and were answered by all members of the panel.

During the presentation Ms. Lavoie presented detailed information under the general heading “who we are and what we do”. This information included:

- Board objectives
- Formation of the Board
- Board composition
- Board responsibilities
- Hearing process under The Municipal Board Act
- Board decision making process
- Board jurisdictional responsibilities, including;
 - Assessment appeals
 - Planning and Land Use appeals
 - Municipal Finance
 - Land Value Appraisal Commission

- Disaster Assistance Appeal Board
- Pending additional workload pursuant to Bill 31 (The Property Controls for Grocery Stores and Supermarkets Act) and Bill 33 (The Planning Amendment and City of Winnipeg Charter Amendment Act)

Ms. Lavoie emphasized that the board's primary responsibility in all its work is as an appeal body for assessment and planning matters, with limited oversight of municipal borrowing and taxation. The board is a quasi-judicial administrative tribunal comprised of a chair, vice chair, and 18 part-time board members, all appointed by the province. Board members are from various regions within Manitoba and come from a wide background (former assessors, former municipal and provincial administrators, former municipal councillors, accountants, planners, business owners, lawyers).

The work of the board is supported by a 10-member Board Secretariat, although three of those 10 positions are currently vacant. The Secretariat also assists two other Manitoba administrative boards.

The primary responsibility of the board is to hear appeals of municipal planning and tax assessment decisions through the process of filing appeals, scheduling and conducting hearings, and issuing final decisions. The board is extremely busy and significantly backlogged. Ms. Lavoie advised that there are currently 2,335 assessment appeals in the system filed by a landowner or an assessor, the oldest of which was filed in 2024 and has yet to proceed to an appeal hearing.

The main message conveyed by the panel and accepted by me, is that the board is significantly understaffed given the amount of work that it is currently expected to process under jurisdiction that is conferred upon it by 16 separate provincial statutory enactments.

The jurisdiction of the board is very much focussed on how an owner of land can use it in terms of zoning and planning requirements, and about taxation of landowners based on assessed land value.

The phrase "oversight of municipal planning" as it appears in my terms of reference can have two distinct meanings. The first meaning is municipal planning as it pertains to the various pieces of legislation that confer upon the Municipal Board its appellate jurisdiction. The second meaning could refer generically to a municipality that is currently planning a large-scale construction project.

Ms. Lavoie agreed that the proper role of the Municipal Board, in terms of its structure, composition, and the skill set of its members and staff, is to serve as an appeal body for assessment and planning matters, as it currently does. She stressed in the PowerPoint presentation that the board lacks the necessary resources, technical expertise and

structure essential to provide meaningful oversight of capital projects including such components as project delivery and financial management, procurement methods and project delivery models, investigative or audit functions, and ongoing monitoring for compliance.

Ms. Lavoie emphasized that the board is already struggling to fulfil its existing very broad mandate due to resource constraints, which further highlights its unsuitability for expanded oversight responsibilities.

Overall, the evidence provided to the inquiry makes it clear that the Municipal Board, as it is currently constituted under existing legislative framework, has no role to play in the oversight of municipalities, including the City of Winnipeg, undertaking large-scale publicly funded construction projects, outside of the jurisdiction it currently exercises as an appellate administrative tribunal. As such I recommend that no additional jurisdiction be conferred upon it.

Manitoba Prosecution Service Media Releases

Recommendation #24

It is recommended that Manitoba Prosecution Service seek to be more open and forthcoming in its media releases regarding its decisions not to lay charges, always with the objective of advancing the administration of justice by informing the public to the greatest extent possible, while equally protecting the rights of private citizens.

In December 2014, the RCMP executed a search warrant at Caspian Construction, seized 46 boxes of documents and computers, and began a criminal investigation. Five years later, in December 2019, MPS issued the following statement:

After a comprehensive review of the legal issues and foundational facts provided through the investigation, MPS has concluded that there is not sufficient evidence to approve any criminal charges as there is not a reasonable likelihood of conviction.

No further information was provided to the public at that time or since by MPS.

Since being appointed in February 2025, no other question has been asked of me more often by friends, neighbours, former colleagues, lawyers and judges than - why weren't criminal charges laid in this case? This is particularly so since the media has ably reported the evidence heard at the public hearings.

As I indicated in Part I, I cannot and will not speculate as to why charges were not laid and I accept that the review set out in the MPS statement was properly done at the time, based on the evidence it had available. I have no reason to conclude otherwise. I accept that the lawyers at MPS are the professionals with a complete understanding of all of the legal tests. I also accept, that while I am often asked the question, it is not a question I have any jurisdiction or expertise to answer.

Part of the purpose of a public inquiry is to shed light on a matter, to bring some level of confidence to the public that, if mistakes were made, they will not be made again. Yet one of the most significant questions that has been asked over and over, I cannot answer. I cannot shed any light on the decision not to prosecute in this case.

Crown prosecutors serve the public. Courts have reinforced this principle for many years. Recently, the Supreme Court of Canada in *R. v. Varennnes*, 2025 SCC 22, in considering the constitutional role of the Attorney General, emphasized that crown prosecutors must consider the broad public interest throughout the conduct of criminal proceedings and that it is a principle of fundamental justice that prosecutors serve the public interest. When prosecutors exercise discretion, they are presumed to do so in good faith and for the public benefit.

The effective and ongoing functioning of a prosecutions branch depends on its independence, which can be compromised when there are public doubts as to how its discretion is being exercised. As is the case regarding judicial independence, there must be public confidence in those who are making decisions.

On its website, the MPS sets out its Mission Statement which provides, in part that the branch has a “public education function.” Further, in a January 2020 policy entitled Communication with the News Media, the following statements are made:

The Manitoba Prosecution Service (MPS) sees the benefit of providing information to the news media, subject to the direction provided in the Prosecution Guideline on Media Communication and the overriding duty to safeguard the fairness of the trial process. The communication of accurate, factual information to the news media can enhance public confidence in the justice system and promote greater understanding of it.

The public’s confidence in the justice system is determined in large part by the information that citizens receive from the news media. In this era of increasing media scrutiny of the criminal justice system, it is important that Crown Attorneys provide accurate and timely information to the public through the news media.

Given its own Mission Statement and policies, MPS has the tools it needs to provide the public with a better understanding of its decisions not to lay charges in matters with a high level of public interest. Simply reiterating its charging standard, as it did in the media release regarding the WPSHQ investigation, does nothing to advance the administration of justice.

While I appreciate the care that needs to be exercised, I recommend that MPS seek to be more open and forthcoming in its media releases with the goal of providing as much detail as it can regarding its decisions not to lay charges, always with the objective of advancing the administration of justice by informing the public to the greatest extent possible, while equally protecting the rights of private citizens. I recognize that this is not easy, but I challenge MPS to spend the time and effort to go as far as possible to make their media releases more informative.

Establishing Budgets for Public Inquiries

Recommendation #25

The Government of Manitoba should:

- 1. prior to finalizing a financial budget for a public inquiry, make all reasonable inquiries as to what external costs might likely be required and the extent of those costs, over and above the cost of retaining a commissioner and an inquiry team of sufficient size and expertise;**
- 2. be prepared, at the time the public inquiry is established, to acknowledge and publicly announce if necessary that the preliminary budget may need to be expanded as the investigative process unfolds, to ensure that the inquiry is ultimately able to perform its intended function and provide value to the taxpayers for the dollars expended.**

WCC first requested in 2017 that the Manitoba government convene a public inquiry into the Winnipeg police headquarters project. This request was repeated on several occasions and again after the Manitoba Prosecution Service announced in December 2019 that no criminal charges would be laid.

The current government had, prior to its election, promised to have such an inquiry undertaken and it kept that promise. I commend the government for that. I am hopeful that the facts that have been uncovered, as well as the recommendations that I have made, with the benefit of the evidence I heard, including the expert evidence, will truly make a difference and serve to prevent the unfortunate events surrounding the headquarters redevelopment, from ever happening again.

I believe it is useful to include some commentary in this report regarding the budget of \$2 million that was allocated for this inquiry. My comments are not to criticize but more to offer advice now that I have been through the process from start to finish.

At the outset, I accepted that \$2 million seemed like a lot of money and felt it would be sufficient. Having said that I have not had conduct of a public inquiry before this. I assume that is the case for most commissioners appointed to public inquiries.

Shortly after my appointment and having retained commission counsel, we met with external legal counsel for the city to gather information regarding the evidence that they had compiled for the civil litigation prior to it being settled. We learned that 1.75 million documents were being stored and accessed electronically through Deloitte, at a cost of approximately \$10,000 per month. We also learned that Deloitte, KPMG and Prairie Forensic had performed considerable expert work and would be available to continue that work for the benefit of the public inquiry.

My agreement with the government required me to by and large administer the \$2M budget myself, hiring inquiry team members as I saw fit and retaining external experts as needed. The agreement set out the hourly rates and maximum amounts for myself and team members I would hire, based on current rates set by the Manitoba government. It required me, prior to retaining external experts, to ensure that they be paid at fair and reasonable rates, consistent with industry standards, to be negotiated by me. Rates could not be greater than the rates charged by a particular expert for similar services in the last three years. As such in retaining external experts, I ensured that I sought and received sufficient information to satisfy me that the rates being proposed were in accordance with these requirements. To the extent possible I sought maximum amounts to be charged globally by each of the experts. However, this was not realistic for some of the experts given the nature of the work and opinions I was seeking.

Experts, particularly in specialized fields, do not come cheap. The hourly rates for experts I retained throughout this inquiry ranged from \$250 to \$600 per hour. Notwithstanding that most of the experts we retained had previously performed work at the city's cost, significant work was still required to finalize reports, prepare for, and testify at the inquiry. The total cost of experts including the court reporter used during the public hearings, amounted to approximately \$1M, or over half of my original budget. As a result in February 2026, I sought and was given an increase of \$300,000 to the inquiry budget. I am grateful that the government saw fit to grant my request.

As I have pointed out earlier in Part I of this report, a public inquiry is unlike a trial in criminal or civil court. It is not an event that takes place after a thorough investigation has been completed. It is, in many respects, an investigation in and of itself. It is like a search organized to try and find a person lost in the woods. Once it is determined that a search is necessary, it is conducted using all means available until either the person is found, or all reasonable steps have been taken to try to locate them.

In a public inquiry, well before public hearings begin, commission staff must carefully and thoroughly review documents to determine relevance. Potential witnesses must be

interviewed and sometimes re-interviewed, some of whom will then be determined to be unnecessary for the purposes of the Inquiry. The same holds true for documents reviewed. For those witnesses who will appear to testify, significant preparation is required before the hearing itself so that the evidence is properly presented. A plan for the scope and extent of public hearings must be made and revised as necessary as further evidence becomes available.

An initial budget set for a public inquiry, while it should be an educated guess, may need to be revisited as the matter proceeds.

By way of example, the Phoenix Sinclair Inquiry, which was concluded in 2013, was originally budgeted at \$4 million and ultimately cost over \$14 million. Commissioner Hughes, in his three-volume report, was able to make 62 separate recommendations to better protect Manitoba children.

Although I do not know how the \$2 million budget figure was arrived at prior to my appointment, I would think that some investigation, including communications with counsel that represented the city in the civil litigation, was necessary. This would have made it clear that a significant budget would be required to review a huge volume of documents, as well as retain experts to analyze and explain these documents. Then, on top of that, would be the costs of the commissioner and those of the inquiry team.

We were very fortunate in this case to have access to office space in the Woodsworth building at no cost, as well as use of the hearing room at the Public Utilities Board for 28 hearing days, also at no cost. Had we been obliged to pay for these, then the budget would have been entirely insufficient.

My advice to government in setting budgets for future inquiries is twofold. First, make all reasonable inquiries as to what external costs might likely be required and the extent of those costs, over and above the cost of retaining a commissioner and an inquiry team of sufficient size and expertise. Each inquiry will be different in that regard depending on its scope and the history of the matter. Second, be prepared at the outset to acknowledge, and publicly announce, that the preliminary budget may need to be expanded as the investigative process unfolds, to ensure that the inquiry is ultimately able to perform its intended function and provide value to the taxpayers for the dollars expended.

In this case, even after the budget was increased to \$2.3 million, I continued to monitor the budget and our expenditures closely. Managing the budget weighed very heavily on my mind virtually on a daily basis.

Once the public hearings commenced in February 2026, it became clear that cost-cutting measures would be necessary to stay within that revised budget. As a result, we made the following decisions to reduce costs:

- the initial 48 date hearing schedule was reduced to a total of 27.5 public hearing days. This saved cost both in terms of the inquiry team and the costs of court reporting services;
- there were 34 witnesses originally scheduled to testify. This was reduced to 30, plus one off-site meeting with representatives from the Manitoba construction industry;
- we reduced the number of months that counsel and inquiry staff could access the 1.7 million documents held on an external server, which was costing us approximately \$10,000. per month;
- one expert witness was cancelled entirely and a second was instructed to significantly reduce the scope of her work to reduce costs.

Ultimately, I am satisfied that even with these reductions we were able to thoroughly and effectively gain an understanding of the relevant evidence, enabling me to prepare this report and my recommendations. I sincerely thank the government for giving me the opportunity to conduct this inquiry.

APPENDICES

Appendix 1 – Order in Council No. 26-2025



MANITOBA

ORDER IN COUNCIL

DATE: **February 5, 2025**

ORDER IN COUNCIL No.: **26/2025**

RECOMMENDED BY: **Minister of Justice**
Minister of Municipal and Northern Relations

ORDER

Commissioner

1. Garth Smorang, K.C. is appointed as commissioner to inquire into the ability of the City of Winnipeg to implement large-scale publicly funded construction projects in a manner consistent with the public interest.

Terms of reference and completion date

2. In the context of the replacement of the Winnipeg Police Headquarters, the commissioner is to inquire into the affairs of the City of Winnipeg and determine any measures that are necessary to restore public confidence in the ability of the City to implement large-scale publicly funded construction projects in a cost-effective, timely, efficient and ethical manner.

The terms of reference for doing so are as follows:

- (a) The commissioner must inquire into the current and previous governance, decision-making, accountability and risk management structures of the City of Winnipeg for the implementation of large-scale publicly funded construction projects to determine whether they are in accordance with best practices to minimize construction cost increases and delays and to prevent dishonest practices or the acceptance of inducements.
- (b) In particular, the commissioner must inquire into the City of Winnipeg's current and previous policies, processes and procedures for
 - i. the planning, approval, procurement, contract management and project

management of large-scale publicly funded construction projects, and

- ii. the conflict of interest and disclosure obligations for the mayor and other elected officials and the chief administrative officer and other senior employees of the City of Winnipeg as they relate to the implementation of large-scale publicly funded construction projects.

(c) In doing so, the commissioner is to consider

- i. the dealings of previous elected officials, including the mayor, and senior employees of the City of Winnipeg, including the chief administrative officer, that occurred in respect of large-scale publicly funded construction projects, and
- ii. the current and previous legislative framework for oversight of municipal planning for large-scale publicly funded construction projects, including the role of the Municipal Board.

(d) The commissioner may also advise on whether the findings on any of the matters within the scope of the inquiry give rise to the need for further study, review or investigation and, if so, by whom.

- 3. The commissioner must complete the inquiry by January 1, 2027.
- 4. The commissioner may request the Lieutenant Governor in Council to expand the terms of reference to deal with any matter that the commissioner considers necessary because of information that arises during the inquiry.
- 5. The commissioner must conduct the inquiry and make the commissioner's findings and recommendations without expressing any conclusion or recommendation about the civil or criminal liability of any person or body.
- 6. The commissioner must avoid duplication of effort and therefore may rely on findings, recommendations and reports already made in relation to matters that fall within the scope of the inquiry.

Reports

- 7. The commissioner must deliver a final report containing the commissioner's findings and recommendations to the Minister of Justice and the Minister of Municipal and Northern Relations by January 1, 2027.
- 8. The commissioner must deliver to the Minister of Justice and the Minister of Municipal and Northern Relations one or more interim reports to indicate progress made in the inquiry. The commissioner may also deliver to them one or more interim reports to address urgent matters that fall within the scope of the inquiry.
- 9. Subject to *The Freedom of Information and Protection of Privacy Act* and other relevant laws, every report delivered by the commissioner must be in a form that is appropriate for public release.

Proceedings and assistance

10. The commissioner may hold proceedings in public or private as the commissioner considers advisable for the purpose of the inquiry.
11. If the commissioner is satisfied that an individual has a substantial and direct interest in matters that fall within the scope of the inquiry, the commissioner may provide the individual with an opportunity to give evidence and to examine or cross-examine witnesses personally or by counsel on evidence relevant to that individual's interest. The commissioner may approve funding at reasonable rates set by the Minister of Justice for the costs incurred by the individual for this purpose.
12. The commissioner may request the assistance of government departments, government agencies, the City of Winnipeg, other municipalities and any other body established under the authority of the Manitoba Legislature for the purpose of the inquiry. The department, agency, City of Winnipeg, municipality or body must promptly comply with the request to the fullest extent permitted by law.

Obligations re information

13. The commissioner must ensure that information is adequately protected if the disclosure of that information may reasonably be expected to cause undue financial harm to or significantly harm the competitive position of the City of Winnipeg or the parties with whom the City negotiates or contracts.
14. The commissioner must ensure that information reviewed by the commissioner that is subject to subsection 19(1) (Cabinet confidences) of *The Freedom of Information and Protection of Privacy Act* remains confidential and is not further disclosed to another person. This obligation does not apply to information that is summarized for context in a report.

Budget

15. The maximum budget for the conduct of the inquiry is \$2 million. The Minister of Justice may, in consultation with the commissioner, revise the budget to accommodate any change in circumstances that arises during the inquiry.
16. At the request of the Minister of Justice, the Minister of Finance may pay the following costs and expenses from the Consolidated Fund for the purpose of the inquiry:
 - (a) reimbursement of costs incurred by an individual referred to in paragraph 11;
 - (b) remuneration and expenses of technical advisors or other experts and assistants retained for the purpose of the inquiry;
 - (c) travel and other incidental expenses that the commissioner incurs in conducting the inquiry;
 - (d) any other operational expenses necessary to conduct the inquiry.

Effective date

17. This Order is effective immediately.

AUTHORITY

The Manitoba Evidence Act, C.C.S.M. c. E150, states:

Appointment of commission

83(1) Where the Lieutenant Governor in Council deems it expedient to cause inquiry to be made into and concerning any matter within the jurisdiction of the Legislature and connected with or affecting

...

(e) the affairs of any municipality, municipal district, or corporation, existing for any municipal purpose; or

...

he may, if the inquiry is not otherwise regulated, appoint one or more commissioners to make the inquiry and to report thereon.

...

Power to make rules

96 The Lieutenant Governor in Council may make provision, either generally in regard to all commissions issued and inquiries held under this Part, or specially in regard to any such commission and inquiry, for

(a) the remuneration of commissioners and persons employed or engaged to assist in the inquiry, including witnesses;

(b) the payment of incidental and necessary expenses; and

(c) all such acts, matters, and things, as are necessary to enable complete effect to be given to every provision of this Part.

BACKGROUND

In 2009, the City of Winnipeg purchased the former Canada Post building located at Smith Street and Graham Avenue in Winnipeg as a replacement for the Winnipeg Police Headquarters then located on Princess Street.

The Canada Post building required extensive renovations. The original estimate of the renovation project was \$135 million. The project's final cost was \$214 million.

Two external audits regarding the project were conducted at the request of the City of Winnipeg. Two civil proceedings were brought in relation to the project, one regarding construction deficiencies (2018) and the other related to civil fraud (2020).

The City of Winnipeg requested that the Province of Manitoba call a public inquiry.

Appendix 2 – Biographies of Inquiry Staff

Biographies of Inquiry Staff

Garth Smorang, K.C., Commissioner

Commissioner Smorang was a lawyer in private practice for 40 years until retiring in 2023. He has extensive experience in labour and employment law and has appeared as lead counsel before arbitration boards and at all levels of Manitoba Courts. He also has previously been a member of the Judicial Inquiry Board that considers whether charges are warranted concerning complaints made against Judges of the Provincial Court of Manitoba and was a member of the Federal Advisory Committee on Supreme Court of Canada appointments.

Since 2023, Commissioner Smorang has served as a labour arbitrator/mediator. Highlights of the Commissioner's biographical information include:

- called to the Bar in 1983
- was a practicing lawyer from 1983-2001; became Partner in 1990 at Deeley Fabbri Sellen; primary areas of practice included civil litigation (personal injury, medical malpractice, commercial litigation) and labour and employment law
- partner at Myers LLP from 2001-2023 including being the firm's Managing Partner from 2020-2023; primary areas of practice included labour and employment, administrative law, human rights
- elected Benchler of the Law Society of Manitoba from 1998-2006 including serving as president in 2005-2006; served on numerous committees including regularly being appointed to sit on discipline panels involving citations against Law Society member lawyers, 2006-present
- elected member of the Manitoba Bar Association (MBA) Council from 1988-1996 including membership on the MBA Executive Committee from 1993-1998 and serving as MBA president from 1996-1997
- served on the Canadian Bar Association (CBA) National Executive Committee from 1997-1998 and on numerous CBA committees from 1992-1998, including meeting and establishing ties between the CBA and the Polish Bar Association in November 1995
- chaired the Manitoba Law Foundation Board of Directors from 2011-2021
- served as a member of the Winnipeg Airports Authority board of directors from 2006-2014, which he also chaired from 2012-2014
- served on the board of the Winnipeg Jazz Orchestra from 2019-2021
- performed as a volunteer actor in various Manitoba Theatre Centre/Manitoba Bar Association fundraising plays 1996-2017
- was an instructor on Solicitors Transactions (1986-1988) and Sessional Lecturer on Advocacy and Pre-trial Process (1989- 1997) at the University of Manitoba, Faculty of Law
- was a lecturer on Practice Management, Civil Procedure and Stress Management

- 1991-2001 at Bar Admission Courses at the Law Society of Manitoba
- prepared various presentations and papers on legal issues from 1995-2023
- inducted as Fellow of the American College of Labor and Employment Lawyers in 2013 and American College of Trial Lawyers in 2020
- recognized with awards for contributions to the community and the legal profession, including recipient of the Richard J. Scott Award from the Law Society of Manitoba (2023), the Distinguished Service Award from the Manitoba Bar Association (2024), the Douglas Miller Award from the Canadian Bar Association (2000)

Heather Leonoff, K.C., Commission Counsel

Heather Leonoff, K.C. received her Bachelor of Laws in 1977, and her Master of Laws in 1980, from Osgoode Hall Law School at York University.

Ms. Leonoff, K.C. worked in private practice in Winnipeg from 1981-1998 until she joined the Constitutional Law Branch with Manitoba Justice. She worked as Crown Counsel and later served as the Director of the Constitutional Law Branch for 20 years. She has appeared at all levels of court in Manitoba, as well as 16 times before the Supreme Court of Canada. She has also been a lecturer at the Faculty of Law at the University of Manitoba, teaching evidence, criminal procedure, criminal law, advocacy and constitutional issues in criminal law. Ms. Leonoff, K.C. served as Manitoba's lead counsel on the National Inquiry into Missing and Murdered Indigenous Women and Girls, 2016-2019.

Ms. Leonoff, K.C. retired from the Constitutional Law Branch in 2023, but continues to help Manitoba Counsel prepare for Supreme Court of Canada hearings through the Supreme Court Advocacy Institute. She also currently serves as an independent chair of the Law Society of Manitoba's Discipline Committee, as well as a member of the Manitoba Mental Health Review Board.

Ms. Leonoff, K.C. has received numerous recognitions and awards throughout her career including the Richard J. Scott Award from the Law Society of Manitoba (2021), the International Association of Prosecutors Special Achievement Award (2002), Manitoba Department of Justice - Certificate of Excellence Award (2002), Department of Justice Canada - Federal Prosecution Service Award (2001) and the Criminal Intelligence Service Canada - Mark of Excellence Award (2001). She has also written many articles and papers and co-authored a book, *Identification Evidence* (Carswell:1991) with D. Deutscher.

Stacy Nagle, Inquiry Coordinator

In 2021, Stacy Nagle retired from being the Executive Director at the Manitoba Bar Association after nearly 20 years. In that role, she was responsible for overseeing a non-profit professional association representing approximately 1,600 legal professionals in Manitoba. Her position encompassed comprehensive management and administration, including staff supervision, overseeing financial operations and budgets, strategic planning, development of policies, technology implementation, moving and setting up new offices, website maintenance and responding to media inquiries. Through her leadership, she contributed significantly to the growth, development and influence of Manitoba's legal community.

Prior to this, Ms. Nagle held leadership roles at the Court Challenges Program of Canada and the Community Legal Education Association where she managed administrative operations and developed programs.

Debra McEvoy, Administrative Assistant

Debra McEvoy, a paralegal who had recently retired from the Legal Services Branch of the Department of Justice after 31 years of service. Ms. McEvoy came highly recommended and provided administrative support to the entire Inquiry team.

Assisting Inquiry Staff:

Nicholas Warsza, Crown Counsel – Legal Services Branch, Manitoba Justice

Nicholas Warsza received his Juris Doctor from the University of Manitoba in 2023 and his Bachelor of Arts from the University of Winnipeg majoring in Conflict Resolution Studies in 2019.

Mr. Warsza was called to the Bar in 2024 and currently works at Legal Services Branch, Manitoba Justice as Crown Counsel. Mr. Warsza works on the Crown Law team where he provides advice on a range of matters including privacy, environmental licensing and regulation, and legal issues specific to the operation of government.

Prior to this, Mr. Warsza worked at a not-for-profit as a mediator facilitating victim-offender, peace bond, family, and community mediations.

Appendix 3 – List of Counsel for Parties with Standing

List of Counsel for Parties with Standing

City of Winnipeg represented by Michael Finlayson and Gabrielle Lisi from the firm Marr Finlayson – granted standing for all phases of the inquiry.

City of Winnipeg Police Service – represented by City of Winnipeg Police Service Legal Counsel, Kimberly Carswell, Shannon Hanlin and Allie Derwin – granted standing for phases 1, 2 & 3.

Caspian Projects Inc., (“CPI”) Caspian Construction Inc., Armik Babakhanians, Shaun Andre Babakhanians, Triple D Consulting Services Inc., Pamela Anderson, 4816774 Manitoba Ltd. operating as Mountain Construction, JAGS Development Ltd. (the “Caspian Group”) all represented by Mr. George Orle, K.C. from the firm GJO Law Corporation – granted standing for all phases of the inquiry.

Phil Sheegl represented by Richard Wolson K.C. and Evan Roitenberg, K.C. from the firm Wolson, Roitenberg, Robinson, Wolson – granted standing for phase 1.

Sam Katz represented by Danny Gunn from the firm Campbell Gunn Seib Jones – granted standing for phase 1.

John Garcea, Mabel Garcea, S & J Construction Ltd., Colour Design Decorating Inc., Granite Concrete Services Inc., Tuscany Construction Ltd. and Strada Construction Ltd. (collectively, the “Garcea Group”) represented by Timothy Fry, Kosta Vartsakis and Jordan Kreml from the firm Merit Law Corporation – granted standing for phase 2.

Greg Fiorentino and FABCA Construction Ltd. represented by Kevin Williams K.C., Matthew Nordlund and Austin Sutherland from the firm Taylor McCaffrey – granted standing for phase 2.

G&G Interiors Ltd. represented by Richard Beamish from the firm Tapper Cuddy – granted standing for phase 2.

Adjeleian Allen Rubeli Limited (AAR) represented by David Sherriff-Scott, Scott Pollock and Bethany Keeshan from the firm Borden Ladner Gervais in Ottawa ON – granted standing for phases 1 and 2.

Appendix 4 – Decision on Funding - AAR

Decision on a Funding Application from Adjeleian Allen Rubeli Limited (AAR) - September 10, 2025

Within its written submission applying for Standing AAR also sought funding from the inquiry to cover its legal costs associated with its participation. The lawyers representing AAR are located in Ottawa, Ontario and funding is also sought for the costs associated with travelling to Winnipeg to attend the hearings.

AAR is a for-profit structural engineering firm located in Ottawa, Ontario. It has been in business since 1955 and has been involved in many major and complex construction projects in Canada over the years. In its brief AAR purports to have an excellent reputation within the construction industry and it has been the recipient of several industry awards both in Ontario and nationally.

As is set out in its Brief, the substantial and direct connection AAR has to this inquiry involves its then principal Mr. Peter Chang who represented AAR when it was retained by the City of Winnipeg prior to and during the redevelopment phase of the police headquarters building. Mr. Chang is no longer with AAR. He resides outside of Manitoba and as such cannot be compelled to testify at the inquiry by way of subpoena.

Notices of Misconduct were served confidentially on a number of individuals. Such a Notice was not served on AAR, nor is it anticipated that any evidence of impropriety directed at AAR, outside of the evidence concerning Mr. Chang, will be tendered. AAR has indicated that it is prepared to participate in the inquiry and that it is uniquely situated to offer information to the Inquiry that will assist in its mandate. This information was accepted and standing in phases 1 and 2 was granted to AAR.

AAR provided financial information including draft financial statements for recent years and specific information concerning, among other things, current profit and retained earnings within the company. This information was all reviewed.

In accordance with the Rules of Procedure, the Commissioner has discretion to determine on what terms Standing may be granted including whether or not funding will be granted to any particular applicant.

On the Inquiry website, the Application for Standing page requires applicants who seek funding to demonstrate that they do not have sufficient financial resources to participate in the inquiry without financial assistance.

In its brief, AAR acknowledges that it has substantial retained earnings which could be used to fund legal and travel costs but indicates that those earnings “must be used first and foremost for business purposes rather than legal representation”.

However, it also argues, in its brief, that AAR's name is unfortunately closely linked with Mr. Chang and that there is a high likelihood of confusion or misattribution on the part of the public and in the broader marketplace depending on the findings of the Inquiry. It argues that AAR has suffered, and will likely continue suffer, significant damage to its reputation as a result of its association with Mr. Chang.

It seems to me that expending corporate retained earnings to defend its good reputation is a legitimate and important business purpose. Further, given its national reputation AAR expending further corporate or shareholder funds to defend that reputation appears to be appropriate and sensible, just as other corporations and individuals involved in this entire unfortunate matter, many of whom have sought and been granted standing today, will also be obliged to do.

Accordingly, I am not prepared to grant AAR any funds from the Inquiry budget in order to participate in the hearing. I am hopeful that it continues to do so because I do agree that it will have information to provide to the inquiry that will be useful.

Garth Smorang, K.C.
Commissioner, Winnipeg Police Headquarter Inquiry

Appendix 5 – Statement of Revenue and Expenses

Winnipeg Police Service Headquarters Inquiry –

Statement of Revenue and Expenses (to September 21, 2026) ¹

Revenue

Province of Manitoba	\$ 2,300,000.00
Total Revenue	\$ 2,300,000.00

Expenses

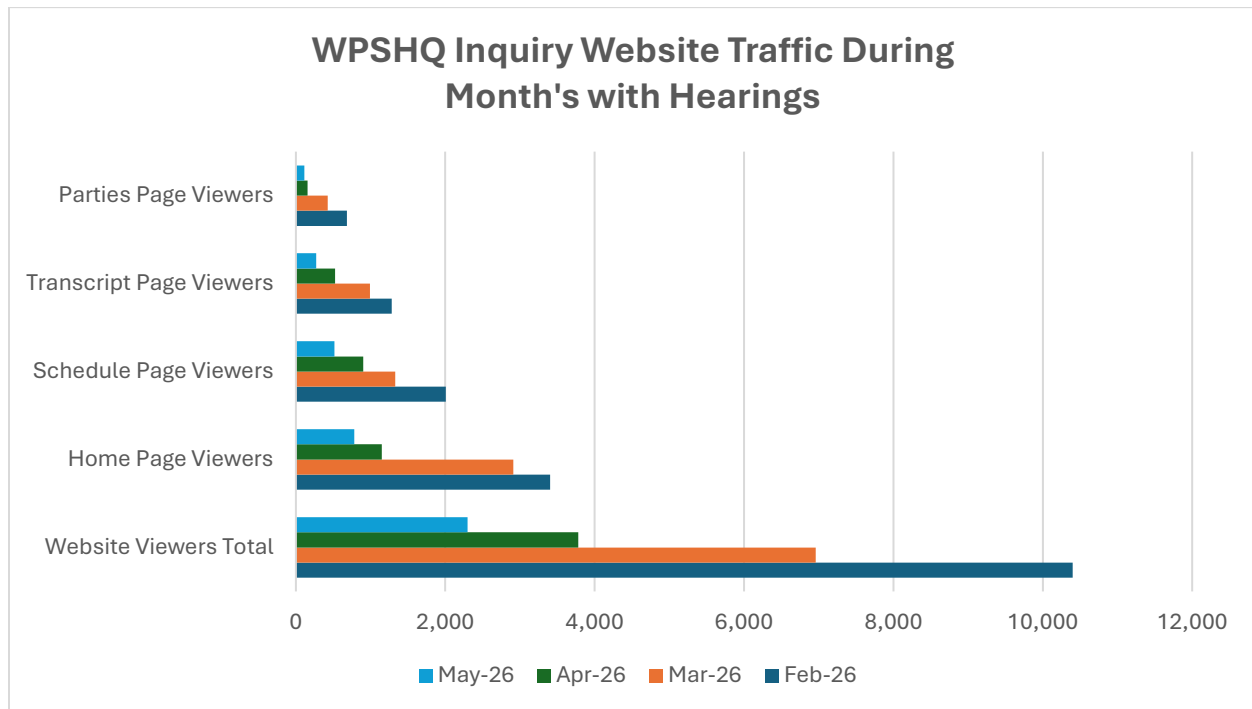
Equipment - Computer Software, etc.	\$ 2,771.14
Office Supplies	\$ 940.23
Printing – External	\$ 6,477.76
Commissioner and Staff, including out-of-pocket expenses	\$ 1,086,566.74
Transcription	\$ 53,095.98
Expert Witnesses	\$ 953,231.94
Total Expenses	\$ 2,103,083.79

¹ This statement does not contain additional expenses that will be incurred after September 21, 2026. It is anticipated that those expenses will not be substantial.

Appendix 6 – Website Traffic Data

Website Traffic Data

<https://www.wpshqinquiry.ca/>



	February 2026	March 2026	April 2026	May 2026	Total ²
Website Viewers Total	10,402	6,961	3,781	2,299	23,443
Home Page Viewers ³	3,402	2,910	1,152	782	8,246
Schedule Page Viewers	2,007	1,331	901	514	4,753
Transcript Page Viewers	1,284	990	525	273	3,072
Parties Page Viewers	683	426	158	114	1,381

Most of the viewers were from Canada, but there were viewers from the United States, Singapore, Mexico, China, the United Kingdom and Portugal.

Most of the viewers in Canada were from Winnipeg, but there were viewers from Toronto, Vancouver, Calgary, Saskatoon and Regina.

² Graph and chart only contain information on pages that had over 1,000 viewers in total during February – May 2026.

³ Access to the live stream video of the hearings was on the Home Page.

Appendix 7 – Rules of Procedure

Rules of Procedure

General

1. The Winnipeg Police Service Headquarters Inquiry is an independent commission established by an Order in Council [#26/2025](#) to inquire into the ability of the City of Winnipeg to implement large-scale construction projects in a manner consistent with the public interest.
2. In doing so, the commission will inquire into current and previous structures for the implementation of large-scale construction projects regarding governance, decision-making, accountability, and risk management and will determine whether these structures are in accordance with best practices to minimize cost increases and delays, and to prevent dishonest practices or acceptance of inducements.
3. The specific focus will be on the extensive renovation process to the former Canada Post building located at Smith St. and Graham Ave. in Winnipeg, purchased by the City of Winnipeg as a replacement for the Winnipeg Police Headquarters, then located on Princess St.
4. Following the conclusion of hearings, the Commissioner will deliver a final report to the Minister of Justice and the Minister of Municipal and Northern Relations by Jan. 1, 2027, containing the Commissioner's findings and any recommendations he deems appropriate in the public interest.
5. Throughout these rules, the words "Commission" and "Inquiry" are used interchangeably, and both refer to the Winnipeg Police Service Headquarters Inquiry.
6. Public hearings will be held, and the Commissioner will set the dates and location for the hearings. This information will be posted on the Inquiry website.
7. The Commission is committed to a fair process, including public hearings and public access to evidence and documents used at the hearings.
8. The Commissioner encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information to the Commission as soon as possible.

Standing

9. Persons, groups of persons, organizations or corporations ("people") who wish to participate may seek standing before the Inquiry.

10. If the Commissioner is satisfied that people have a substantial and direct interest in matters that fall within the scope of the Inquiry, the Commissioner may provide them with an opportunity to give evidence and to examine or cross-examine witnesses personally or by counsel on evidence relevant to their interest. The Commissioner may approve funding at reasonable rates set by the Manitoba government for the costs incurred by the individual for this purpose. The Commissioner will have complete discretion to determine on what terms of standing may be granted.
11. People who are granted standing must follow the Rules of Procedure.
12. People who apply for standing will first be required to provide written submissions explaining why they are requesting standing. A deadline for written submissions will be posted on the Inquiry website.
13. People who apply for standing may also be given an opportunity to appear in person before the Commissioner to explain their reasons for requesting standing.
14. The Commissioner has appointed Commission counsel to represent him and the public interest. Commission counsel will ensure that all matters related to the public interest are brought to the attention of the Commissioner. Commission counsel will have standing throughout the Inquiry.

Preparation of Documentary Evidence

15. As soon as possible following the granting of standing, people with standing will produce all documents having any bearing on the subject matter of the Inquiry to the Commission, including identifying all witnesses they believe should be heard and, if possible, providing summaries of the information the witnesses may have.
16. All documents received by the Commission will be treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioner otherwise directs. Commission counsel will be permitted to produce such documents to proposed witnesses.
17. The Commissioner will ensure that information is adequately protected if the disclosure of that information may reasonably be expected to cause undue financial harm to, or significantly harm, the competitive position of the City of Winnipeg or the parties with whom the City negotiates or contracts.
18. Commission counsel will try to provide, both to witnesses and people with

standing, those documents that will likely be referenced during a witness's testimony. Before being provided with such documents, witnesses and people with standing will be required to sign an undertaking that they will use the documents only for the purposes of the Inquiry.

19. No document will be used in cross-examination or otherwise unless Commission counsel has been advised in advance and the document has been provided to Commission counsel, the witness, and people with standing unless the Commissioner decides otherwise.

Witness Interviews

20. Commission counsel will interview people who have information or documents which have any bearing upon the subject matter of the Inquiry and may be helpful in fulfilling the Commission's mandate. People who are interviewed are entitled, but not required, to have legal counsel present.
21. Following the interview, Commission counsel will prepare a summary of the witness's anticipated evidence and, before that person testifies before the Commission, will provide a copy of the summary to the witness for their review.
22. The witness summary, after being provided to the witness, will be shared with people with standing. Before being given a copy of the witness summary, people with standing will be required to sign an undertaking that they will use the witness summary only for the purposes of the Inquiry.

Evidence

23. The Commissioner may receive any evidence that he considers to be helpful in fulfilling the mandate of the Inquiry. The strict rules of evidence used in a court of law to determine admissibility of evidence will not apply. A witness's evidence can be received orally at a hearing, by affidavit, or by written statement, or by audio or video conference.
24. The Commissioner will avoid duplication of effort and therefore may rely on findings, recommendations and reports already made in relation to matters that fall within the scope of the Inquiry.
25. The Commissioner has the power to summon witnesses by subpoena or summons. It will be the practice of the Commission to issue and serve a subpoena upon every witness before they testify.
26. Witnesses who testify will give their evidence under oath or upon affirmation. Their evidence shall be committed to writing with the assistance of a court reporter.

27. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for the purposes of that witness's testimony.
28. Witnesses may be called more than once.
29. In the ordinary course, Commission counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Commissioner to lead a particular witness's evidence in chief. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.
30. The order of examination will be as follows:
 - a. Commission counsel will lead the evidence from each witness. Except as otherwise directed by the Commissioner, Commission counsel is entitled to ask both leading and non-leading questions.
 - b. People with standing will then have an opportunity to cross-examine the witness to the extent of their interest. The order of cross-examination of each witness will be determined by the people with standing and, if they are unable to reach an agreement, by the Commissioner.
 - c. Counsel for a witness will examine last, unless they have questioned the witness in chief, in which case there will be a right to re-examine the witness.
 - d. Commission counsel will have the right to re-examine last.
31. If Commission counsel elects not to call a witness or to file a document, anyone with standing may apply to the Commissioner to do so or to direct Commission counsel to do so.
32. All hearings are open to the public. The Commissioner may close the hearing to the public if the Commissioner concludes that,
 - a. matters involving public security may be disclosed at the hearing; or
 - b. intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, that the desirability of avoiding disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
33. Applications from witnesses or people with standing to hold any part of the hearing in the absence of the public should be made orally or in writing to the Commission at the earliest possible opportunity.

34. The transcripts and evidence from the hearings will be made available on the Inquiry website as soon as possible for public viewing. If any part of the hearings is held in the absence of the public, the transcripts and evidence from that part of the hearing will only be made available for public viewing on such terms as the Commissioner may direct.
35. The proceedings are open to the public. The use of television cameras or other electronic or photographic equipment in the hearing room will be governed by the direction of the Commissioner.

Right to Counsel

36. Witnesses and people with standing are entitled, but not required, to have counsel present while Commission counsel interviews them and when they testify. Unless otherwise approved by the Commissioner in advance, counsel will be retained at the expense of the witness and people with standing.

Final Submissions

37. Commission counsel, and each participant authorized to do so, may make written submissions to the Commissioner on any issue within the Commission of Inquiry's Terms of Reference.

Alleged Misconduct

38. The Commission may include an inquiry into, and concerning, the conduct, character, and motives of any person whose actions are relevant to the scope of the Inquiry.
39. On the basis of oral and documentary evidence tendered during the evidentiary hearings, the Commissioner will make findings of fact and may make a finding of misconduct against a person or make a report that alleges misconduct by a person. The Commissioner's findings of fact or findings of misconduct cannot be taken as findings of criminal or civil liability.
40. The Commissioner will not make a finding of misconduct on the part of any person unless that person has had reasonable notice of the substance of the alleged misconduct and was allowed full opportunity during the Inquiry to be heard in person or by counsel. Any notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.
41. In his report, the Commissioner may also advise on whether the findings on any of the matters within the scope of the Inquiry indicate the need for further study, review or investigation and, if so, by whom.

Amendment to the Rules

42. These Rules may be amended, and new Rules may be added if the Commissioner finds it helpful to do so to fulfil the Commission's mandate and to ensure that the process is thorough and fair.

Appendix 8 – Expert Reports

Expert Reports

The following is a list of the Expert Reports that are posted under the [EXPERT REPORTS](#) on the Inquiry website:

- City of Winnipeg Police Headquarters Inquiry Final Report by Ross Homeniuk, KPMG LLP Feb. 2026
 - Memorandum - Addendum to WPSHQ Report by Ross Homeniuk, KPMG LLP May 20, 2026
 - KPMG Presentation May 20, 2026
- Dunford CAO City of Winnipeg Presentation Final May 22, 2026
- Municipal Board Presentation Final May 13, 2026
- Neufeld Report by Victor G. Neufeld, Prairie Forensic & Investigative Accounting Dec. 23, 2025
- Procurement Processes and Related Agreements by Eleanor Andres Feb. 6, 2026
- Project Management Practices by David Kimber, Deloitte LLP Feb. 17, 2026
- Triple D by Gina Campbell, Deloitte LLP Feb. 2, 2026
- Winnipeg Construction Association Report June 17, 2026