



Town of Collingwood Judicial Inquiry

July 26, 2019

REASONS AND DECISION CONCERNING APPLICATION FOR STANDING TO PARTICIPATE

MARROCCO A.C.J.S.C.

BACKGROUND

1. On February 26, 2018, the Council of the Town of Collingwood voted to request an independent judicial inquiry under s. 274 of the Municipal Act, 2001 to inquire into all aspects of the Town's sale of shares of Collingwood Utility Services Corporation to PowerStream Inc. (defined as the "Transaction" in the Terms of Reference) and into the allocation of the proceeds of that transaction to the construction of the recreational facility at Central Park and Heritage Park in Collingwood.
2. The Terms of Reference are found on the Inquiry's website located at: www.collingwoodinquiry.ca. The operative terms are as follows:

NOW THEREFORE, the Council of the Town of Collingwood does hereby resolve that:

the Terms of Reference of the Inquiry shall be to inquire into all aspects of the Transaction, including the history, the price at which the shares were sold and the impact on the Ratepayers of the Town of Collingwood, as it relates to the good government of the Municipality, or the conduct of its public business, and to make any recommendations that the Commissioner may deem appropriate and in the public interest as a result of the Inquiry.

AND IT IS FURTHER RESOLVED that pursuant to s. 274 of the Municipal Act, 2001, and s.33 of the Public Inquiries Act, the Commissioner, in conducting the Inquiry into the Transaction to which the Town of Collingwood is a party, is empowered to ask any question or cause an investigation into any matter which the Commissioner may consider necessary, incidental or ancillary to a complete understanding of the Transaction. In particular, the Commissioner may inquire into:

- i) Was there adequate Town Council oversight over the Transaction?
- ii) Was Town Council's delegation of authority in relation to the Transaction appropriate?

- iii) Did Town Council receive sufficient independent professional advice prior to delegating its authority to conduct the RFP negotiate or finalize the Transaction?
- iv) Were the criteria developed to assess the proposals received during the RFP process appropriate and did the criteria serve the interests of the Ratepayers of Collingwood?

And, for the purpose of providing fair notice to the Town of Collingwood and those individuals who may be required to attend and give evidence, and without infringing on the Commissioner's authority in conducting the Inquiry in accordance with the Resolution and the Commissioner's statutory authority, it is anticipated that the Inquiry may include:

1. An investigation and inquiry into all relevant circumstances pertaining to the Transaction referred to in the recitals to the Resolution, including the relevant facts pertaining to the Transaction, the basis of and reasons for making the recommendations for entering into the Transaction, and the basis of the decisions taken in respect of the Transaction;
2. An investigation and inquiry into the relationships, if any, between the existing and former elected and administrative representatives of the Town of Collingwood, Collingwood Utility Services Corporation and PowerStream Inc.; and,
3. A two-stage process consisting of a document review and public hearings as follows:

Document Review

- (a) To obtain, bearing in mind cost and the principles of proportionality, all documents necessary to understand the following:
 - i. the sequence of events leading to the Transaction, including the Request for Proposal process commissioned by the Town of Collingwood;
 - ii. the nature and extent of the delegation of authority by Council to those who negotiated on behalf of the Town of Collingwood in relation to the RFP process and Transaction;
 - iii. any subsequent contracts entered between or among the Town of Collingwood and PowerStream, Collus PowerStream and any other Collus company;
 - iv. Any fee or benefit of any kind paid, or conferred, by or on behalf of PowerStream to any person in relation to the Transaction;

- v. The commercial relationship between PowerStream, Collus PowerStream and any other Collus entity and the Town of Collingwood prior to 2017 and in particular, any agreement entered into between or among any of these parties;
- vi. The salaries, benefits and emoluments of any kind paid in relation to the Transaction to any employee of Collus PowerStream and any other Collus company;
- vii. The allocation of the proceeds of the transaction to the construction of the recreational facility at Central Park and Heritage Park;
- viii. The payment of any fee or benefit of any kind on behalf of any person of the entity involved in the creation or construction of the recreational facility at Central Park and Heritage Park;

Public Hearings

- (b) To conduct public hearings into the matters designated in accordance with the principles of fairness, thoroughness, efficiency and accessibility.
3. The public hearings have been divided into two parts. The Inquiry conducted the Part 1 hearings from April to June 2019. The Part 1 hearings addressed the issues described in paragraphs 1, 2 and 3(a)(i), (ii), (iii), (iv), (v) and (vi) of the Terms of Reference. The public evidentiary hearings for Part 2 will address the issues described in paragraphs 3(a)(vii) and (viii) of the Terms of Reference: the sequence of events leading to the allocation of the proceeds, the payment of fees or benefits and the impact of the recreational facility construction. The public hearings for Part 2 are scheduled to proceed in September and October 2019.

Process and Principles Applied to the Determination of Participation

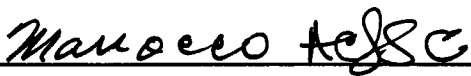
- 4. The Inquiry adopted an expedited process for those wishing to participate. That process and the principles applied to requests for standing to participate are described in detail in my Reasons and Decision Concerning Participation and Funding dated August 20, 2018.
- 5. Participation carries with it the obligation to assist the Inquiry in carrying out its mandate. Participants who are not discharging this obligation, or otherwise complying with the Inquiry's procedures, may very well find their participation curtailed.

BLT CONSTRUCTION'S APPLICATION FOR STANDING

6. BLT Construction ("BLT") is a construction company that built the recreational facilities that are the subject of Part 2 of the Inquiry.
7. BLT monitored Part 1 and concluded that its participation will advance the goals of the Inquiry and contribute to the openness, fairness and thoroughness of the Inquiry.
8. BLT has indicated that its interest is in the issues described in paragraphs 3(a)(vii) and (viii) of the Terms of Reference.
9. I grant BLT a limited right to participate in those portions of the Inquiry described in sections 3(a)(vii) and (viii) of the Terms of Reference, and which will be the subject of the Part 2 public hearings. BLT will have:
 - a. Consistent with Rules 17 and 18 of the Inquiry's Amended Rules of Procedure, access to documents collected by the Inquiry related to matters described in sections 3(a)(vii) and 3(a)(viii) of the Terms of Reference;
 - b. Consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence related to matters described in sections 3(a)(vii) and 3(a)(viii) of the Terms of Reference;
 - c. A seat at the counsel table for Part 2 of the public hearings;
 - d. The opportunity to suggest witnesses to be called by Inquiry counsel on matters described in sections 3(a)(vii) and 3(a)(viii) of the Terms of Reference;
 - e. The opportunity to cross-examine witnesses on matters described in sections 3(a)(vii) and (viii) of the Terms of Reference; and
 - f. The opportunity to make closing submissions in writing on matters described in sections 3(a)(ii) and (iii) of the Terms of Reference.

CONCLUSION

10. Persons who have been granted rights of participation are required to file a plan setting out how they will identify, locate and produce documents that have any bearing on the subject matter of the Inquiry. BLT must do so within 15 days of this decision.


Associate Chief Justice Frank N. Marrocco