



TOWN OF COLLINGWOOD JUDICIAL INQUIRY

AMENDED RULES OF PROCEDURE

Purpose

1. The Town of Collingwood Judicial Inquiry is an independent Inquiry established pursuant to section 274(1) of the *Municipal Act 2001*, SO 2001, c 25, pursuant to a majority vote of the Council of the Town of Collingwood with specific terms of reference to inquire into the matters set out in Resolution 042-2018 adopted by the Council of the Town of Collingwood on February 26, 2018.

The Inquiry's mandate includes an investigation and inquiry into:

- i. the sequence of events leading to the Town of Collingwood concluding a Share Purchase Agreement for the sale of shares of Collingwood Utility Services Corporation to PowerStream Inc. on March 6, 2012 (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 Inc., Collus PowerStream and any other Collus company;
- iv. Any fee or benefit of any kind paid, or conferred, by or on behalf of PowerStream Inc. to any person in relation to the Transaction;
- v. the commercial relationship between PowerStream Inc., 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; and
- 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.

The Inquiry will examine the impact of the events described in the terms of reference on the ratepayers of the Town of Collingwood as they relate to the good governance of the municipality. When the hearings are complete, the Judge will make any recommendations he deems appropriate and that are in the public interest.

General

2. Throughout these Rules of Procedure, the word "Inquiry" refers to the Town of Collingwood Judicial Inquiry. The "Judge" refers to Associate Chief Justice Frank Marrocco who has been appointed to conduct the Inquiry. The "public record" will include:
 - (a) information about the administration of the Inquiry, including the Judge, Inquiry Counsel and Staff, the participants and the witnesses;
 - (b) all written rulings by the Judge;
 - (c) witness statements;
 - (d) the transcripts of all portions of the hearings;
 - (e) all documents marked as exhibits in the hearings or agreed to by the participants as forming part of the record of the Inquiry, and all documents put to witnesses during the hearing; and
 - (f) any interim report, and the final report, of the Inquiry.
3. Public hearings will be held at the Council Chambers, 97 Hurontario Street, 2nd Floor of the Town Hall in Collingwood.
4. The Judge will set the dates for the hearings. Those hearings will take place on Monday through Friday from 10:00 a.m. to 4:30 p.m. each week, except that on Mondays the hearings will begin at 1:00 p.m. and end at 6:00 p.m. and on Fridays the hearings will start at 10:00 a.m. and end at 1:00 p.m., unless otherwise directed by the Judge.
5. The Inquiry is committed to a process of fairness, including public hearings and public access to evidence and documents used at the hearings, subject to Rule 36.
6. The Inquiry encourages anyone who may have information that may be helpful to the Inquiry, including documents and the names of witnesses, to provide this information as soon as possible to Inquiry Counsel, Janet Leiper, at jleiper@collingwoodinquiry.ca or to Associate Inquiry Counsel, Kirsten Thoreson at kthoreson@collingwoodinquiry.ca.
7. People are advised that the law offers protection to witnesses to encourage them to come forward and give full and forthright evidence to an inquiry.

Applications to Participate (Standing)

8. Persons, groups of persons, organizations or corporations (“people”) who wish to participate may seek standing before the Inquiry.
9. The Judge may grant standing to people who satisfy him that they have a substantial and direct interest in the subject matter of the Inquiry or whose participation may be helpful to the Inquiry in fulfilling its mandate. The Judge will determine on what terms standing may be granted.
10. People who are granted standing are deemed to undertake to follow these Rules of Procedure.
11. People who apply for standing will first be required to provide written submissions explaining why they wish to have standing.
12. People who apply for standing will also be given an opportunity to appear in person before the Inquiry to explain their reasons for requesting standing. In-person applications for standing will be heard starting at 10:00 a.m. on August 14, 2018 at 97 Hurontario Street, 2nd Floor of the Town Hall in Collingwood.
13. The Judge has appointed Inquiry Counsel to represent his and the public’s interests. Inquiry Counsel will ensure that all matters that bear on the public interest are brought to the attention of the Judge. Inquiry Counsel will have standing throughout the Inquiry.

Preparation of Documentary Evidence

14. As soon as possible following the granting of standing, people with standing will produce to the Inquiry all documents in their possession, power or control that have any bearing on the subject matter of the Inquiry. People with standing must advise Inquiry Counsel of the names, addresses and telephone numbers of all witnesses they feel should be heard and, if possible, provide summaries of the information the witnesses may have.
15. Within 15 days after the granting of standing, people with standing will provide to the Inquiry a plan setting out how they will identify, locate and produce the documents that have any bearing on the subject matter of the Inquiry.
16. Where a person objects to the production of any document, or part thereof, on the grounds of privilege, including any documents the person has already provided to the Inquiry in redacted form, the following procedures will apply:
 - (a) the person shall deliver to Inquiry Counsel a list of the documents or parts thereof over which privilege is being asserted (the "Claimed Privilege List"). The Claimed Privilege List shall include the date, author, recipient, the nature of the privilege claimed and a brief description of the documents, and may have attached to it additional material, such as an affidavit, to support the claim for privilege;
 - (b) Inquiry Counsel shall review the Claimed Privilege List and decide whether to recommend to the Judge that he accept the claim for privilege;

- (c) if Inquiry Counsel is not prepared to recommend to the Judge that he accept the claim for privilege, the Claimed Privilege List and any further material filed shall be submitted forthwith, together with Inquiry Counsel's written submissions, to the Judge or, at the Judge's option, to another adjudicator designated by the Judge, for determination. If the Judge or designated adjudicator is unable to make a determination based on the record before them, they may request a copy of the disputed documents for inspection; and
- (d) if the claim for privilege is dismissed, the documents shall be produced to the Inquiry forthwith.

16A. Data and documents received by the Inquiry from participants with standing that the Inquiry concludes are irrelevant shall be tagged as such and segregated in a secure data archive separate and apart from the data to be used by the Inquiry. Irrelevant data and documents will not be available for review by any other participants. Upon issuance of the Inquiry's final report, all irrelevant documents provided to the Inquiry will be destroyed and a Certificate of Destruction issued.

16B. Documents which the Inquiry determines are privileged will be dealt with in a similar manner. There may be documents that are highly relevant and presumptively privileged over which participants may consider waiving privilege in the public interest or in responding to a suggestion of misconduct. Identifying such documents will ensure that relevant material is not overlooked.

16C. Upon issuance of the Inquiry's final report, all relevant data and documents that have not become part of the public record will be archived for a period of one year. At the end of this one-year period, all documents and data in this database will be destroyed and a Certificate of Destruction issued unless a court of competent jurisdiction orders otherwise.

Documents and data that have been made part of the public record of the Inquiry will become the property of the Town of Collingwood.

- 17. All documents received by the Inquiry will be treated as confidential, unless and until they are made part of the public record or the Inquiry otherwise directs. Inquiry Counsel are permitted to produce such documents to potential witnesses.
- 18. Inquiry Counsel will make best efforts to provide, both to witnesses and people with standing, those documents that will likely be referred to during a witness's testimony at least five days before the witness commences his or her testimony, unless the Judge directs otherwise. 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 Inquiry Counsel and the people with standing have been advised in advance and the document has been provided to Inquiry Counsel, the witness, and people with standing, unless the Judge directs otherwise.

Expert Witnesses

20. A copy of an expert witness's report shall, at least 14 days before the expert witness's appearance, be served on the people with standing.

Witness Interviews

21. Inquiry Counsel, or others designated by Inquiry Counsel for this purpose, will interview people who have information or documents that relate to the subject matter of the Inquiry and may be helpful in fulfilling the Inquiry's mandate. People who are interviewed are welcome, but not required, to have legal counsel present.
22. Following the interview, Inquiry Counsel or the person acting as Inquiry Counsel's agent for the purpose of the interview will prepare a summary of the witness's anticipated evidence. Before the witness testifies before the Inquiry, Inquiry Counsel will provide a copy of the summary to the witness for his or her review.
23. The witness summary, after being provided to the witness, will be shared with people with standing at least five days before the witness commences his or her testimony, unless the Judge directs otherwise. 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.
24. Inquiry Counsel and the witness may prepare a sworn affidavit of the witness's evidence. At the Judge's discretion, this sworn affidavit can be admitted into evidence in place of part or all of that individual's oral testimony.
25. Witnesses are advised that the *Public Inquiries Act, 2009*, SO 2009, c 33, provides that no adverse employment action shall be taken against any employee because that employee, acting in good faith, has given information to a person conducting an inquiry.

Evidence

26. The Judge may receive any evidence that he considers to be helpful in fulfilling the mandate of the Inquiry. The Judge is entitled to receive evidence that might not be admissible in a court of law.
27. Subject to the Judge's discretion, the Judge may, as much as practicable and appropriate for a fair hearing, refer to and rely upon:
 - (a) any existing records or reports that have any bearing on the subject matter of the Inquiry;
 - (b) any agreed statement of facts prepared by Inquiry Counsel;
 - (c) the testimony of a representative witness of a participant in a public inquiry; and
 - (d) any summary of background facts prepared by Inquiry Counsel.

28. Inquiry Counsel may prepare and rely on summaries of background facts and documents that have any bearing on the subject matter of the Inquiry. Inquiry Counsel shall provide each person with standing an opportunity to review a summary before it is introduced as evidence. A person with standing may submit written comments and propose witnesses to Inquiry Counsel for the purpose of supporting, challenging, commenting upon or supplementing a summary.
29. Witnesses who testify will give their evidence under oath or upon affirmation. Witnesses may be called upon to testify in panels.
30. The Judge may set time allocations for the conduct of examinations and cross-examinations. It will be the practice of Inquiry Counsel to issue and serve a summons to witness upon every witness before he or she testifies.
31. Witnesses are entitled to have their own counsel present while they testify. Counsel for a witness will have standing for that witness's testimony.
32. Witnesses may be called more than once.
33. In the ordinary course, Inquiry Counsel will call and question witnesses who testify at the Inquiry. Counsel for a witness may apply to the Judge to lead a particular witness's evidence-in-chief. If counsel is granted the right to do so, counsel shall be confined to the normal rules governing the examination of one's own witness in court proceedings, so that counsel can only lead the witness on non-essential matters, unless otherwise directed by the Judge.
34. The order of examination will be as follows:
 - (a) Inquiry Counsel will lead evidence from each witness. Except as otherwise directed by the Judge, Inquiry Counsel is entitled to ask both leading and non-leading questions and to challenge the witness's evidence;
 - (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 agreement of the people with standing or, if they are unable to reach agreement, by the Judge;
 - (c) Counsel for the witness will examine next, unless he or she has questioned the witness-in-chief, in which case there will be a right to re-examine the witness; and
 - (d) Inquiry Counsel will have the right to conclude the examination of the witness.
35. If Inquiry Counsel elects not to call a witness or file a document, anyone with standing may apply to the Judge to do so or for an Order directing Inquiry Counsel to do so.
36. All hearings are open to the public. However, where the Judge is of the opinion that:
 - (a) matters involving public security may be disclosed at the hearing; or

- (b) intimate financial or personal matters, or any other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, 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 hearing be open to the public,

the Judge may hold the portion of the hearings concerning any such matters or receive documents in the absence of the public on such terms as he may direct.

37. Applications from witnesses or people with standing to hold any part of the hearing in the absence of the public should be made in writing to the Judge at the earliest possible opportunity.
38. Subject to Rule 36, the transcripts and evidence from the hearing will be made available as soon as possible for public viewing. If any part of the hearing is held in the absence of the public, the transcripts and exhibits from that part of the hearing will only be made available for public viewing on such terms as the Judge may direct.
39. Permission is required to use recording or photographic equipment in the hearing room. The use of such equipment shall be subject to the directions of the Judge and must not disrupt or detract from the hearing.

Right to Counsel

40. Witnesses and people with standing are entitled, but not required, to have counsel present while Inquiry Counsel interview them and also while they testify.
41. Counsel will be retained at the expense of the witness and people with standing. The terms of reference do not grant the Judge jurisdiction to order the Town of Collingwood to provide funding for legal counsel. However, requests for funding may be made to the Judge at the hearing on standing and the Judge may make recommendations to the Town of Collingwood.

Notices Regarding Misconduct

42. The Judge 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 the opportunity during the Inquiry to be heard in person or by counsel.
43. All notices of alleged misconduct will be delivered on a confidential basis to the person to whom the allegations of misconduct refer.
44. If a notice of alleged misconduct is delivered, the recipient may apply to the Judge for leave to call evidence that the recipient believes may be helpful to respond to the alleged misconduct.

Amendment to the Rules

45. These Rules of Procedure may be amended, and new Rules may be added if the Judge finds it is helpful to do so.