



Transparency and the Public Trust

Report of the Collingwood Judicial Inquiry

Associate Chief Justice Frank N. Marrocco

COMMISSIONER

Complete Report

VOLUME I

Executive Summary and Recommendations

VOLUME II

Part One – Inside the Collus Share Sale

VOLUME III

**Part Two – The Arena and the Pool:
The Real Cost of Sole Sourcing**

VOLUME IV

Recommendations and Inquiry Process



November 2, 2020

His Worship Mayor Brian Saunderson and Members of Town Council
Collingwood City Hall
97 Hurontario Street
Collingwood, ON L9Y 3Z5

Dear Mr. Mayor and Councillors:

With this letter I deliver my report on the Town of Collingwood Judicial Inquiry.

Yours very truly,

A handwritten signature in blue ink, which appears to read "Frank Marrocco".

Associate Chief Justice Frank N. Marrocco,
Commissioner.

Encl.



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VOLUME I

This Report consists of four volumes:

- I *Executive Summary and Recommendations*
- II *Part One – Inside the Collus Share Sale*
- III *Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing*
- IV *Recommendations and Inquiry Process*

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Executive Summary

Executive Summary

The Collingwood Judicial Inquiry was asked to examine two major transactions that the Town of Collingwood engaged in under the leadership of its 2010–14 municipal Council.

Part One of the Inquiry examined the sale of a 50 percent interest in the Town's electric utility, Collus Power Corporation, one of the Town's largest assets. The successful bidder, PowerStream Incorporated, enjoyed several unfair advantages throughout the procurement process, many of which were facilitated by the mayor's brother, Paul Bonwick, whom the company hired as a consultant and paid \$323,997 (including HST) over a 17-month period.

Part Two of the Inquiry focused on the construction of arena and pool facilities, which the Town substantially paid for by using the proceeds of the Collus Power share sale. The Town selected an uncommon construction material for the buildings: fabric membrane stretched across aluminum arches. The company hired to supply and construct the buildings paid Mr. Bonwick's company an undisclosed success fee of \$756,740.42 (including HST) for his assistance with the transaction.

Several factors influenced both transactions.

Members of Council, including the mayor and the deputy mayor, had campaigned on reducing spending, lowering taxes, and decreasing the Town's debt. The focus on austerity served as the justification for both transactions and as an excuse for limiting the involvement of professional consultants in the Collus Power share sale.

Roles and responsibilities of Council members and staff were also misunderstood, leading to certain fundamental decisions being made away from the Council table or behind closed doors. Undisclosed conflicts of interest marred many of the decisions made in respect to these two transactions,

as did a series of unfair and precarious procurement practices. Combined, these factors left the transactions vulnerable to improper influence and cast doubt on both their legitimacy and the Town's reputation.

Several long-time residents and well-known public figures were at the centre of the events examined by the Inquiry, in particular Mayor Sandra Cooper, her brother Paul Bonwick, Mr. Bonwick's friend and former business associate Deputy Mayor Rick Lloyd, and Mr. Bonwick's friend Ed Houghton, who was concurrently the Town's executive director, engineering and public works, the president and CEO of Collus Power, the president and CEO of the Town's water utility, and, for a year beginning in April 2012, the Town's acting chief administrative officer (CAO). These four people knew each other well. Their family relationships were generational, and their personal relationships were complex and interrelated.

Ms. Cooper and Mr. Lloyd had served together during previous Council terms, where they worked closely with Mr. Houghton. As mayor, Ms. Cooper frequently sought and relied on Mr. Houghton's advice.

Mr. Bonwick, a former Town councillor and member of Parliament for Simcoe-Grey, worked as a consultant and lobbyist. His company, Compenso Communications Inc., assisted clients in their dealings with government, including the Town of Collingwood. Mr. Bonwick was also one of his sister's closest political advisors and served as a conduit to the mayor. He sometimes discussed Town business with the deputy mayor, his friend Mr. Lloyd, and Mr. Lloyd in turn provided Mr. Bonwick with confidential and non-public information relating to Council business that he thought might assist Mr. Bonwick's clients.

Mr. Houghton and Mr. Bonwick also collaborated on Mr. Bonwick's business ventures. In their testimony, however, both men maintained that Mr. Houghton was not compensated for assisting Mr. Bonwick in this way.

In contrast to this longtime network, at the beginning of the 2010 Council term, the CAO was new to Collingwood. Kim Wingrove, who joined the Town in September 2009, brought a wealth of experience from her work for the Ontario provincial government. She said, however, she was unable to penetrate the existing web of relationships in the Town. She testified she had a tense and strained relationship with Mayor Cooper, who preferred to consult with Mr. Houghton directly, although Ms. Wingrove was in fact his

superior. She also testified that Deputy Mayor Lloyd made her uncomfortable and only spoke to her when he felt it was necessary, usually when he wanted the Town to take a particular action. Ms. Wingrove's employment was terminated in April 2012, and Mr. Houghton replaced her as acting CAO.

Part One – Inside the Collus Share Sale

Mr. Houghton enjoyed unusual influence and freedom in his roles with the Town and the Collus corporations. He initiated the Collus Power share sale without Ms. Wingrove's knowledge. Although the CAO was eventually brought into the discussions, it was as a passenger while Mr. Houghton drove the process. With Mr. Houghton at the helm, Collus Power – the Town's asset – was in charge of selling itself, and the Town – the owner of the asset – had no effective control over the process. This unusual dynamic did not serve the Town's interest.

The origins of the Collus Power share sale can be traced to a series of unofficial conversations and private meetings. Before beginning the share-sale process, Mr. Houghton approached Brian Bentz, PowerStream's chief executive officer. He contacted Mr. Bentz because he believed it was time for Collus Power to merge with another utility that could provide more resources. PowerStream, the electricity provider for several municipalities, including Markham, Barrie, and Vaughan, was itself the product of utility consolidation and intent on completing more mergers and acquisitions.

Mr. Houghton arranged a breakfast meeting with Mr. Bentz in December 2010 to gauge his interest and plant the seed that a Collus request for proposal might be on the horizon. At this point neither Mayor Cooper nor Collingwood Council knew a sale was being considered. This early notice was the first of several unfair advantages Mr. Houghton provided to PowerStream. Mr. Bentz was concerned that the Town had apparently not been engaged in discussions about the sale. In the past, PowerStream had "wasted a lot of time" with potential transactions that never materialized because, although the utility was inclined to proceed with a deal, the municipal council was not. He shared his concern with Mr. Houghton at the meeting.

Shortly after Mr. Houghton's breakfast with Mr. Bentz, in January 2011,

Mr. Bonwick also contacted Mr. Bentz, offering his services as a consultant on the potential sale of Collus Power. Mr. Houghton had suggested to Mr. Bonwick that he reach out to Mr. Bentz to explore opportunities in the electricity industry. Although Mr. Houghton expressed some reservation about the mayor's brother consulting with a potential Collus buyer, he nevertheless gave a glowing reference about Mr. Bonwick to Mr. Bentz. Mr. Houghton, without authorization, provided Mr. Bonwick with confidential details about the potential sale, which Mr. Bonwick used to his advantage in his discussions with PowerStream.

Of particular note, at the end of January 2011, Mr. Houghton told Mr. Bonwick he had prepared a draft letter for Mayor Cooper to send both to him, as CEO of Collus Power, and to the chair of the Collus board of directors. The letter directed Collus Power to look for opportunities to reduce the Town's debt and find greater efficiencies. Significantly, it also purported to instruct Collus to obtain a valuation and review the benefits and drawbacks of selling the utility. Mr. Bonwick immediately shared the news of the valuation with PowerStream. Meanwhile, Council, except for the mayor, still had not been told a sale was under consideration.

Mr. Houghton retained KPMG in February 2011 to value Collus Power and analyze the Town's ownership options. Despite the mayor's letter, Mr. Houghton did not ask KPMG to advise how Collus Power could best assist the Town in its goals of reducing debt or finding efficiencies, nor did he arrange for them to speak with anyone from the Town other than himself (as I note above, he held three different roles: CEO of Collus Power, CEO of the Town's water utility, and the Town's executive director, engineering and public works). KPMG analyzed four ownership options: retain full ownership, sell a majority stake (more than 50 percent), sell a minority stake (less than 50 percent), and sell the whole utility. It provided no recommendations.

Council finally learned about the possibility of a sale of Collus Power at its June 27, 2011, Council meeting during a session that was closed to the public. In preparation for that meeting, Mr. Houghton took KPMG's analysis and altered it to present a new and "preferred" ownership option, which he described as a "strategic partnership." The strategic partnership would ultimately materialize in the form of a 50 percent share sale.

Mr. Houghton did not ask KPMG to consider a 50 percent share sale to a

strategic partner and the issues that might flow from equal co-ownership of a utility. Neither did KPMG recommend a strategic partnership.

The June 27 meeting became an inflection point. Council accepted Mr. Houghton's recommendation and struck a task team to pursue a strategic partner – the Strategic Partnership Task Team. Council's decision was grounded in Mr. Houghton's suggestion that a strategic partnership would best serve the Town's interest. The primary purpose of the strategic partnership, however, was to obtain more resources for the utility and to pursue opportunities for growth, not to achieve the Town's goals of debt reduction and greater efficiencies. As a result, with the exception of Mr. Houghton, the Task Team unwittingly moved forward with a plan that resulted in prioritizing Collus Power's interests over those of the Town: the pursuit of a strategic partner.

Meanwhile, Mr. Bonwick had been working to secure a retainer with PowerStream. Executives at PowerStream immediately recognized the apparent conflict of hiring the mayor's brother to assist in acquiring all or part of the Town's utility and requested disclosure as the appropriate remedy. They limited the disclosure, however, to requiring Mr. Bonwick to speak with the Town's mayor and the clerk. Mr. Bonwick, in turn, was less than forthcoming both in his disclosure to the mayor and the clerk and in the manner he reported on his disclosure to PowerStream. Other purported efforts at disclosure missed the mark. There was nothing more than a veneer of disclosure. This lack of disclosure left the town on a path to selling a 50 percent interest in Collus Power while the mayor and senior staff were unaware that the mayor's brother was working for a potential bidder on the Collus RFP. Mr. Bonwick did succeed in securing a retainer of \$10,000 a month from PowerStream without anyone at the Town, other than his friends Mr. Houghton and Deputy Mayor Lloyd, understanding that his work would involve consulting on a potential share sale of Collus Power.

Early in his retainer, Mr. Bonwick demonstrated to PowerStream the value of his relationships. In July 2011, he and Mr. Houghton arranged to have PowerStream partner with Collus Power in marketing a new green-energy product – a solar-powered roof vent. This advantage, bestowed on PowerStream but not on other potential bidders, allowed it to raise its profile within Collingwood. The partnership was a boon not only to PowerStream

but also to Mr. Bonwick, who had entered into a profit-sharing arrangement with the vent company. One of Mr. Houghton's friends had co-founded the roof-vent company, and Mr. Houghton introduced him to Mr. Bonwick. In exchange for Mr. Bonwick assisting with the sales of the vents to Collus Power and PowerStream, the roof-vent company shared 35 percent of its profits from those sales with Compenso. The principals of the company and Mr. Bonwick discussed sharing profits with Mr. Houghton, but during his testimony, Mr. Houghton denied receiving any such payment.

The Strategic Partnership Task Team held its first meeting in August 2011. It identified potential bidders and began preparing for a competitive request for proposal. While the team intended to operate a fair process, it was unaware that PowerStream, one of four bidders the team identified, had already capitalized on advantages that had not been offered to the other bidders. Except for Mr. Houghton and Mr. Lloyd, the team also did not know that PowerStream had engaged Mr. Bonwick to assist with its bid.

After substantial discussions on what Collus Power might want in a strategic partner, Mr. Houghton retained KPMG in September 2011 to attend confidential meetings between the Task Team and the four potential bidders as well as to assist the team in preparing an RFP. At this point, KPMG and the Task Team focused on finding a strategic partner, as Mr. Houghton had recommended on June 27. The Town's interest – reducing debt and finding efficiencies – was not the primary objective.

After meeting with the four bidders in September, the Town formally issued a request for proposal on October 4, 2011. Both before and during the RFP process, Mr. Houghton and Deputy Mayor Lloyd, who were members of the Task Team, shared confidential information with Mr. Bonwick, including sensitive information about the other bidders' presentations and the Task Team's deliberations. Mr. Bonwick passed the information onto PowerStream to assist with its bid. The PowerStream executives working with Mr. Bonwick did not stop him from providing inside information, nor did they ask him how he was getting it. Meanwhile, as the RFP was ongoing, Mr. Bonwick signed a new retainer with PowerStream that increased his monthly fee and the length of his contract. It provided for a further contract extension if PowerStream succeeded in the RFP.

The Strategic Partnership Task Team evaluated the bidders' responses to

the RFP in November 2011. At the same time, Collus Power and the Town announced publicly for the first time that they were pursuing a sale of up to 50 percent of the utility to a strategic partner. Mr. Houghton consulted with Mr. Bonwick regarding Collus Power's RFP communications strategy. The Collus press release announcing the RFP was actually written by staff at PowerStream. Mr. Houghton did not disclose to either the Town or the Strategic Partnership Task Team that PowerStream, one of the bidders, was advising and assisting in the RFP communication strategy.

The Task Team scored the bids in two parts. First, they evaluated the non-financial submissions that focused on the resources and synergies the bidder would bring to Collus Power. Second, they evaluated the financial offers each bidder made for 50 percent of the Collus shares. Because the goal was to find the best partner, and not necessarily the highest bid, the team structured the RFP to favour the non-financial criteria. PowerStream won this category handily and, as a result, won the whole RFP despite bidding \$3.85 million less than the highest financial bidder, Hydro One Incorporated. PowerStream's victory, however, was blighted by its unfair advantage.

After the Town selected PowerStream as its strategic partner for Collus Power, Mr. Bonwick continued to leverage his relationships with the mayor, deputy mayor, and Mr. Houghton to assist PowerStream in its goal of finalizing the transaction promptly.

At the same time, Mr. Houghton engaged a corporate lawyer to "paper" the transaction. Both the Town and Collus Power had previously been without legal advice, to the detriment of both entities. Once a lawyer was retained, the Town did not fully benefit from his assistance. Mr. Houghton assumed the authority to instruct the lawyer on behalf of both Collus Power and the Town, controlling and filtering the information the Town received. Mayor Cooper and Deputy Mayor Lloyd ignored warnings from the Town's municipal lawyer that the Town might need independent advice about the transaction.

Council voted to proceed with the sale of 50 percent of Collus Power to PowerStream at its January 23, 2012, meeting. Unbeknownst to Council, Mr. Houghton had invited PowerStream to assist in drafting the bylaw authorizing the share sale and, in that process, Mr. Houghton removed protections that would allow the Town solicitor and Council to review changes

to the sale terms before the final agreements were signed. The Town solicitor and the CAO wanted these protections. Their view did not win the day.

Three of the eight councillors who voted on January 23 had undisclosed conflicts of interest, which further undermined an already flawed process. Mayor Cooper did not disclose that her brother, Mr. Bonwick, worked for PowerStream, and that fact had never been disclosed to Council as a whole. Deputy Mayor Lloyd, who knew about Mr. Bonwick's role, did not disclose that he had asked Mr. Bonwick to have PowerStream do a favour for a friend during the RFP, which PowerStream obliged. Councillor Ian Chadwick did not disclose that he had worked for Mr. Bonwick preparing weekly news summaries for his clients – information he believed Mr. Bonwick shared with PowerStream.

Council abruptly terminated Ms. Wingrove's employment in April 2012 before the finalization of the share sale transaction. Throughout March and April 2012, Deputy Mayor Rick Lloyd had kept Mr. Bonwick informed of his criticisms of Ms. Wingrove's performance and the process leading to her termination. The day before Ms. Wingrove's dismissal, Mayor Cooper and Deputy Mayor Lloyd began lobbying Mr. Houghton to take on the role of CAO, despite his many other responsibilities. Mr. Bonwick also provided encouragement and offered advice to Ms. Cooper on some aspects of the process. By April 12, 2012, Ms. Wingrove was replaced by Mr. Houghton who was considered by Mr. Lloyd to be a friend and who had directed Mr. Bonwick towards two business relationships that proved to be lucrative: PowerStream and the solar vent initiative.

After he took over as acting CAO, Mr. Houghton not only oversaw the closing of the Collus Power share sale but also, along with Deputy Mayor Lloyd and their close friend and confidant Mr. Bonwick, engineered the purchase and construction of a new arena and a pool facility, which resulted in a success fee to Mr. Bonwick's company Green Leaf of \$756,740.42 including HST. The arena and pool transaction was the subject of Part Two of this Inquiry.

Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing

Approximately one year before Ms. Wingrove's tenure was terminated, Council struck a volunteer steering committee to investigate a partnership with the YMCA to build new recreational facilities in Central Park, a large park near downtown Collingwood that already housed the YMCA's pool and an outdoor rink (among other amenities). In March 2012, after consulting with the community and with professional advisors, the Steering Committee recommended a multi-use recreational facility, including arena and pool facilities, and suggested that Council explore funding options. Council initially approved the committee's report in principle. Around the time Mr. Houghton was appointed acting CAO, Council balked at the estimated \$35 million cost for the facility and went back to brainstorming how to meet the Town's growing recreational needs.

It was during this period, April to June 2012, that Mr. Houghton and Deputy Mayor Lloyd separately learned about Sprung Instant Structures Ltd. The company, based in Alberta, specialized in fabric buildings it advertised as an affordable alternative to conventional buildings and that could be built in less time. Historically, Sprung structures were primarily used for military purposes, but by 2012, the company was expanding its recreational facilities business. Although Sprung had secured contracts to build some arenas and at least one pool before the summer of 2012, it often found itself losing out to pre-engineered steel buildings (a popular and affordable building type) when it bid on new recreational facility projects. When it did sell buildings in Ontario, Sprung referred the construction work to BLT Construction Services Inc.

From the public's perspective, Council was still brainstorming options for new recreational facilities in late June 2012. Meanwhile, Deputy Mayor Lloyd had become enamoured of Sprung structures and directed Mr. Houghton to obtain estimates from Sprung for fabric structures to cover the Town's outdoor arena and 40-year-old, volunteer-built outdoor pool in Heritage Park.

On July 16, 2012, Council directed staff to prepare a report on the estimated cost and timelines of covering this outdoor pool with a fabric building and of building a single-pad arena in Central Park. Deputy Mayor Lloyd, intent on moving quickly, asked for the report to be delivered to Council on August 27. Mr. Houghton agreed to the short timeline, despite concerns raised by the head of the Town's Department of Parks, Recreation and Culture.

Shortly after the July 16 meeting, Mr. Bonwick met with BLT executives. He offered to promote Sprung structures to members of Council and other stakeholders in exchange for a percentage of the construction contract as a success fee. BLT agreed.

Mr. Bonwick did not advise BLT that his sister was the mayor, and he did not make any effort to disclose his new engagement to Mayor Cooper or anyone else at the Town except Mr. Houghton. Instead, Mr. Bonwick lobbied Town stakeholders on behalf of BLT without disclosing that one of his companies stood to earn a success fee, which was ultimately \$756,740.42 (including HST). Mr. Bonwick obscured his involvement by contracting with and receiving payment from BLT through Green Leaf Distribution Inc. Although Green Leaf was a company that Mr. Bonwick controlled, he was not publicly associated with it.

The decision to deliver a report by August 27 set the Town on a perilous course. Mr. Houghton took control of the staff report. Around the same time, Deputy Mayor Lloyd directed Mr. Houghton to be the sole contact point with Sprung, limiting the staff's ability to investigate. An architect hired by the Town faced similar constraints. Mr. Lloyd told Mr. Houghton that the report needed "the Ed Houghton positive spin" and said to "be careful not to give too much information."

Even though staff anticipated that there would be a competitive procurement for any new recreational facilities, Mr. Houghton coordinated with Mr. Bonwick and Green Leaf to obtain a detailed project budget from BLT for constructing an arena and covering the volunteer-built outdoor pool. He did not seek proposals from any other suppliers. Instead, as the Council deadline approached, Mr. Houghton oversaw a drastic reframing of the staff report on August 23–24. The report morphed from an informational document contemplating a competitive procurement process to a recommendation to sole source a design-build contract in excess of \$12 million for the purchase and

construction of two Sprung facilities. A series of alterations to cost estimates provided by the Town's consulting architect yielded an inaccurate cost comparison that inflated the cost of the other arena option presented to the Town.

Council voted to purchase and construct the Sprung structures at its August 27 meeting. Before the meeting, Mr. Bonwick discussed the potential for Council proceeding with a sole source with Mr. Houghton, who knew BLT had retained Mr. Bonwick. He also promoted Sprung to his sister, Mayor Cooper, but omitted to mention his financial interest in the matter. This non-disclosure was consistent with the siblings' agreement not to discuss Mr. Bonwick's business dealings with the Town, despite the apparent conflicts that might arise.

Neither Mr. Houghton nor Deputy Mayor Lloyd disclosed to Council that Mr. Bonwick had been working for BLT.

Two days after Council's vote, August 29, Mr. Bonwick advised Mr. Houghton about the amount of the success fee by email, writing "Gross is \$675,000.00 approx. ... maybe a bit more." Mr. Houghton forwarded the news to his wife but did not disclose the fee to anyone at the Town.

The next day, after no negotiation with BLT, Mr. Houghton arranged for the Town and BLT to execute the contract. The Town, in turn, paid BLT a 25 percent deposit in the amount \$3,099,725.24. On August 31, BLT wired Mr. Bonwick's company Green Leaf \$756,740.42 (including HST).

Council's decision stirred controversy. The public asked questions, including specific questions about Mr. Bonwick's involvement, which Mr. Houghton denied.

End of the Strategic Partnership

While the controversy regarding the recreational facilities was ongoing, Mr. Houghton stepped down as acting CAO in April 2013. He was replaced by John Brown, a career CAO. As Mr. Brown began to ask his own questions about the Collus Power share sale transaction, he found that the answers led only to more questions. Tensions grew between the Town and its electric utility, now called Collus PowerStream Incorporated.

The strategic partnership did not survive.

Conclusion

Undisclosed conflicts, unfair procurements, and lack of transparency stained both transactions, leading to fair and troubling concerns from the public. The evidence I heard and the conclusions I have drawn show that those concerns were well founded. When the answers to legitimate questions are dismissive, spun, or obfuscated, public trust further erodes.

When trust is lost, the relationship between the public and its municipal government may never be the same. The road back is arduous. Repairing the relationship requires self-reflection and a commitment to change. In the pages that follow, I set out a series of 306 recommendations for the Town of Collingwood which arise from the events I examined and have summarized above.

Recommendations

Recommendations

Introduction

Public inquiries investigate broad systemic and institutional issues and report to the public. Their reports include findings of fact and recommendations made in the public interest. Public inquiries are not trials. They are not intended to resolve disputes between parties or establish the guilt or innocence of accused persons in the criminal context.

The recommendations that follow respond to the matters I was directed to investigate by the Terms of Reference. These recommendations are directed to the Town of Collingwood, but the matters raised in the Terms of Reference are central to municipal governance. The concepts underlying these recommendations are, therefore, applicable to municipalities throughout the Province of Ontario.

Many of the matters addressed in my recommendations are referred to in legislation, have been commented on in previous inquiries and their recommendations, or have been discussed at length in academic and professional writing and are subject to ongoing efforts to improve municipal governance. Despite these efforts, the same issues arise. As a result, I repeat and reiterate earlier guidance throughout my recommendations.

In my recommendations I have also emphasized the need for leadership and education. The importance of maintaining and enhancing a culture of integrity for Council, staff, and those who wish to deal with municipalities is fundamental to good government at the local level.

Part Three of my Inquiry consisted of a series of panels discussing the issues of municipal governance. I was fortunate to receive the assistance in this endeavour of a group of knowledgeable and experienced people. I am indebted to the Honourable David Wake, Honourable Denise Bellamy, John

Fleming, Anna Kinastowski, Greg Levine, Valerie Jepson, Rick O'Connor, Mary Ellen Bench, Wendy Walberg, Marian MacDonald, Michael Pacholok, Suzanne Craig, Linda Gehrke, Robert Marleau, and Town of Collingwood chief administrative officer, Fareed Amin. Collectively, they advised on topics including roles and responsibilities in municipal government, conflicts of interest, municipally owned corporations, procurement, and lobbying. Their advice informed my recommendations and I thank them for volunteering their time and assistance.

I am aware that the Town of Collingwood has made significant changes in its practices, policies, and procedures since 2012 to address issues that I discuss in the Report and highlight in these recommendations. Some of those changes were rightly praised by the experts listed above who participated in the Part Three panels. My recommendations, however, are rooted in the Terms of Reference and respond to the policies, procedures, and decisions captured by my Terms of Reference. Nothing in this Report should be viewed as an express or implied criticism of the Town's efforts to improve its policies, practices, and procedures.

I have organized my recommendations by topic, addressing key municipal positions and specific municipal functions in turn. This structure permits a comprehensive discussion of the considerations that underlie the ethical exercise of each role and the resulting responsible municipal action.

Mayor

It became evident during the Part One and Part Two hearings that the mayor's roles and responsibilities were misunderstood.

That misunderstanding flowed, at least in part, from the description in the *Municipal Act, 2001*, of the head of Council (in the Town of Collingwood, the mayor) as the "chief executive officer of the municipality." The role and responsibilities of a head of Council differ from those of a corporate chief executive officer (CEO) in a meaningful way: the head of Council does not have the same powers as the CEO of a corporation. More specifically, unlike a corporate CEO, the head of Council does not have the power to commit the municipality to anything unilaterally. The head of Council becomes a

trustee in the public interest when she or he accepts the role, and that trust is in danger when imprecise analogies are drawn.

The erroneous belief that the mayor, by virtue of being described as the “chief executive officer of the municipality,” had the power to provide unilateral direction on behalf of Council, without Council’s agreement or approval, underpinned the lack of transparency around the origins of the Collus share sale, where directions from the mayor were treated as if they had the weight of directions issued by Council. That misunderstanding contributed in part to the blurring of the lines between Council and staff that pervaded the Collus share sale transaction and decisions about the new recreational facilities.

The recommendations below clarify the mayor’s leadership role in ensuring appropriate Council conduct and protecting the boundary between Council and staff, as well as eliminating any misunderstanding that the mayor may act on behalf of the municipality without Council’s agreement.

Amendments to the Ontario Municipal Act, 2001¹

- 1** The Province of Ontario should amend sections 225 and 226.1 of the *Municipal Act* to remove the inaccurate description of the head of Council as the chief executive officer of the municipality. The head of Council of a municipality is responsible to Council and does not have the authority to bind Council.

- 2** Describing the mayor as both the head of Council and chief executive officer blurs the fact that the mayor is the head of Council and the chief administrative officer (CAO) is the head of staff. There must be a clear division of roles and responsibilities between the mayor and the CAO, a separation of the political from the administrative.²

Town of Collingwood

- 3** The Town of Collingwood should set out in a bylaw its expectations concerning the mayor. Specifically, it should provide that the mayor demonstrate leadership to Council members regarding compliance with ethical policies and codes of conduct, as well as relevant bylaws and Town policies. It should also state that integrity and transparency in municipal government should be a priority for the mayor.³
- 4** The mayor should intervene where she or he becomes aware of uncivil conduct at Council meetings, at committee meetings, and in other work-related circumstances.⁴
- 5** The mayor should be involved in hiring the chief administrative officer.⁵
- 6** Although the relationship between the mayor and chief administrative officer (CAO) should be one of trust and collaboration, there may be instances where the division between the political role of the mayor and the public service role of the CAO is unclear. Accordingly, there should be a mechanism for resolving issues between the mayor and the CAO when the division between the political role of the mayor and the public service role of the CAO is unclear. The mechanism should be public and transparent.

Council Members

There was a lack of transparency regarding Council members' interests and actions in the events I examined in Parts One and Two of the Inquiry. Members of Council failed to identify and respond appropriately to conflicts of interest. The deputy mayor involved himself in staff's work without

Council's authorization and engaged with vendors seeking to deal with the Town outside of the Council process.

Factors leading to this lack of transparency included a failure to appreciate the importance of avoiding conflicts of interest and of disclosing real and apparent conflicts of interest to maintain public confidence. This result in part flowed from a failure to appreciate the role of Council members and of Council as a whole. That lack of transparency permitted political interests to infiltrate the staff's work, interfering with its efforts to provide objective information and advice to Council. It undermined public confidence in the municipality's actions and negatively affected the reputations of members of Council, staff, and others working to carry out the business of the Town. The legislation about conflicts of interest in effect at the time was confusing. I address this issue in my recommendations below.

It was apparent that all Council members were aware of the *Municipal Conflict of Interest Act*. It was also apparent that it is far too easy to misconstrue the *Municipal Conflict of Interest Act* as addressing all the kinds of conflict of interest that Council members must confront. Despite its name, the *Municipal Conflict of Interest Act* does not provide a complete conflict of interest code for municipal actors. It addresses the pecuniary interests of a narrowly defined group of family members related to a Council member which are by virtue of the *Act* deemed to be pecuniary interests of the Council member. Council members are obligated to avoid all forms of conflicts of interest or, where that is not possible, to appropriately disclose and otherwise address those conflicts.

Like the head of Council, members of Council are trustees of the public interest. Council members must ensure that this trust governs all their actions and decisions. Members of Council must also respect the need for a neutral and impartial public service, which gives its best advice based on the merits of the question before it. When this respect is lacking, staff's work risks becoming politicized and staff are in danger of failing to fulfill their obligations to the public, which in turn creates the risk of loss of public confidence.

The Council as a whole is the directing mind of the municipality, not individual members. It is responsible for setting policies and priorities, allocating resources, and providing direction to staff on the material,

operational, and financial business of the municipality. Council members must not seek to wield that power unilaterally or away from the Council chamber. Explicit Council authorization should be required where Council delegates its authority to a specific member of Council. Council's silence is not the same as Council's consent.

The recommendations below regarding Council members increase the transparency around political decision making and clarify the role of Council members in directing the business of the municipality. The concepts underlying these recommendations are not new. Other public inquiries have made recommendations similar to some of mine. I reiterate them here because the matters I examined in Parts One and Two of the Inquiry illustrated the need for increased commitment to these core principles.

Amendments to the Ontario Municipal Act, 2001

- 7** The Province of Ontario should amend the *Municipal Act* to define the roles and responsibilities of individual Council members.⁶ It should be made clear that only Council as a whole, not a single Council member, has the authority to direct staff to carry out a particular function, or act on any other matter, unless specifically authorized by Council.

- 8** The Province of Ontario should amend the *Municipal Act* to include a provision mandating the annual proactive financial disclosure of private interests of elected municipal officials. Proactive financial disclosure is critical to transparency. The requirement should state that Council members must provide financial disclosure within 90 days of assuming office. Types of financial interests that Council members should disclose include profession, employment, or businesses; debts, property holdings, and directorships; as well as a list of family members who have related financial interests in these matters. Disclosure of these financial interests should be consistent with the disclosure currently required of provincial and federal

elected officials in Canada. A record of these disclosures by Council members should be available to the public.⁷

Before enacting this provision in the *Municipal Act*, the Province should consult Council members in municipalities across Ontario.

- 9** Section 223.2(4) of the *Municipal Act* states the Minister of Municipal Affairs may make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct. Regulation 55/18 of the *Municipal Act*,⁸ which prescribes the subject matters that must be included in codes of conduct for Council members, should be amended to require that municipal codes of conduct for Council members include provisions on real, apparent, and potential conflicts of interest.
- 10** The Province of Ontario should amend the *Municipal Act* to require that the Staff / Council Relations Policy in each municipality contain specific provisions. For example, the Staff / Council Relations Policy should include the following:

 - a** Council members must respect the role of staff to provide advice based on objectivity and political neutrality and without undue influence from an individual Council member or group of Council members;
 - b** no member of Council shall use, or attempt to use, his or her power or authority to pressure, intimidate, threaten, coerce, or command a staff member in order to interfere with the staff member's duties;
 - c** no Council member shall maliciously or falsely injure the professional or the ethical reputation of staff and all Council members must treat staff with respect and courtesy;
 - d** only Council as a whole – and no single Council member – has the authority to direct staff to carry out a particular function unless specifically authorized by Council.⁹

- 11** The Province of Ontario should amend section 246 of the *Municipal Act* to state that, if a member abstains from voting because of a real, apparent, or potential conflict of interest, this should not be deemed a negative vote, but instead recorded as an abstention.

***Amendments to the Municipal Conflict of Interest Act*¹⁰**

- 12** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to broaden its scope beyond deemed pecuniary interest to encompass any real, apparent, and potential conflict of interest.

EXPANSION OF DEEMED PECUNIARY INTEREST

- 13** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to include an expanded group of family members. At a minimum, this should include:
 - a** spouse, common-law partner, or any person with whom the person is living with as a spouse outside marriage;
 - b** parent, including stepparent, and legal guardian;
 - c** child, including stepchild;
 - d** grandchild;
 - e** siblings;
 - f** aunt, uncle, nephew, niece, first cousins; and
 - g** in-laws, including mother- and father-in-law, sister- and brother-in-law, and daughter- and son-in-law.¹¹
- 14** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to state that the real and apparent conflicts of interest of the expanded group of family members are also deemed to be the conflicted interest of the Council member.

Disqualifying and Non-disqualifying Conflicts of Interest

- 15** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to define disqualifying and non-disqualifying interests. A disqualifying interest prevents Council members from participating in debate, voting on the issue, or attempting to influence other Council members or staff at the municipality. A non-disqualifying interest is one which, upon proactive disclosure by the Council member, permits the member to vote on the issue, engage in discussions with other members of Council, or participate in debate.¹²

- 16** The Province of Ontario should explicitly provide that Council members can rely on advice from the integrity commissioner as to whether a disqualifying or non-disqualifying interest exists in a particular matter.

The Collingwood Code of Conduct for Council Members

- 17** The Code of Conduct should state that Council members must perform their duties with integrity, objectivity, transparency, and accountability to promote public trust and confidence. The public is entitled to expect the highest standards of conduct from the individuals they elect to local government. This provision should be placed in the body of the Code of Conduct for Council members and not in the preamble to the Code.¹³

- 18** The Code of Conduct should state that Council members at the Town of Collingwood must comply with all applicable provincial and federal legislation, Town bylaws, and Town policies concerning “their position as an elected official.”¹⁴

- 19** The Code of Conduct should include a provision mandating the annual financial disclosure of private interests of all elected

municipal officials. The provision should state that Council members are required to provide financial disclosure within 90 days of assuming office. Types of financial interests that should be disclosed include profession, employment, or businesses; debts; property holdings; and directorships; as well as a list of immediate relatives who might have financial interests in these matters. (Recommendation 29 discusses which family relationships constitute “immediate relatives.”) A record of these disclosures by Council members should be available to the public.

- 20** The Code of Conduct should explicitly state that Council members at the Town of Collingwood must discharge their duties in a manner that not only promotes public confidence in the integrity of the individual Council member but also fosters respect for Council as a whole.¹⁵
- 21** The Code of Conduct should reflect the differences in the roles and responsibilities of Council members and staff. Council members should fully understand the roles of staff and never blur the distinction between their duties as elected officials and that of staff at the Town of Collingwood. For example, the Code of Conduct for Council members and the Code of Conduct for staff should state that it is the staff at the Town of Collingwood who are responsible for: a) undertaking research and providing objective, politically neutral advice to Council on policies and programs of the Town of Collingwood, b) implementing Council’s decisions and establishing “administrative practices and procedures to carry out Council’s decisions,” and c) carrying out other duties required under legislation including the *Municipal Act* and “other duties assigned by the municipality.”¹⁶
- 22** The Code of Conduct should provide that Council members must “encourage public respect for the” Town’s bylaws

and policies and should “convey information ... openly and accurately” on adopted policies, procedures, and decisions at the Town of Collingwood.¹⁷

- 23** The Code of Conduct should state that Council members at the Town of Collingwood shall not “use the influence of [their] office for any purpose other than for the exercise of [their] official duties.”¹⁸
- 24** The Code of Conduct should state that Council members at the Town of Collingwood must respect “the role of staff to provide advice based on political neutrality and objectivity and without the undue influence” of a Council member or group of Council members.¹⁹
- 25** The Code of Conduct should state that Council members at the Town of Collingwood should not falsely or maliciously “injure the professional or ethical reputation” of any staff member.²⁰
- 26** The Code of Conduct should state that Council members must be aware of and comply with the requirements of the Lobbyist Code of Conduct. (See the recommendations on lobbying.)
- 27** The Code of Conduct should contain specific provisions addressed to apparent and potential conflicts of interest as well as real conflicts of interest.²¹
- 28** The Code of Conduct should state that Council members must understand and adhere to their obligations concerning real, apparent, and potential conflicts of interest under the *Municipal Act*, the *Municipal Conflict of Interest Act*, the Code of Conduct for Council members in Collingwood, and other relevant Town policies and legislation.

- 29** The Code of Conduct should define “immediate relatives” to include a spouse, common law partner, or any person with whom the person is living as a spouse outside marriage; parent, including stepparent, and legal guardian; child, including stepchild; grandchild; sibling; aunt, uncle, nephew, niece, first cousin; and in-laws, including mother- and father-in-law, sister- and brother-in-law, and daughter- and son-in-law.²²
- 30** The Code of Conduct should state that the pecuniary interests of the expanded group of “immediate relatives” are also deemed to be the interest of the Council member.
- 31** The Code of Conduct for Council members in Collingwood should include provisions on disqualifying and non-disqualifying interests. The Code should prohibit Council members from participating in “decision-making processes” related to “their office when they have a disqualifying interest in the matter.”²³

A disqualifying interest is “an interest in a matter, that by virtue of the relationship between the Member of Council and other persons and bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could not participate impartially in the decision-making processes related to the matter.”²⁴

A non-disqualifying interest is “an interest in a matter that, by virtue of the relationship between the Member of Council and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could participate impartially in the decision-making processes related to the matter,”²⁵ if

- a** the Council member “fully discloses the interest” and provides “transparency” regarding the relationship;²⁶

- b** the Council member thoroughly explains “why the interest does not prevent” the Council member “from making an impartial decision on the matter;”²⁷
- c** the Council member promptly files a Transparency Disclosure Form established by the Town which is available to the public and posted on the Town of Collingwood website.²⁸

Whether a Council member is challenged or not, the assessment of whether a disqualifying or non-disqualifying interest exists should be subject to the advice of the integrity commissioner.

- 32** The Code should explicitly state that “only Council as a whole,” and no single Council member, “unless specifically authorized by Council,” “has the authority to direct” any staff “to carry out a particular function,” policy, or matter.²⁹
- 33** Notwithstanding that this type of conduct is unacceptable in any context, the Code should explicitly state that no Council member shall “use or attempt to use their authority or influence” to threaten, coerce, intimidate, command, or otherwise influence “any staff member with the intent of interfering with that person’s duties.”³⁰
- 34** The Code should state that Council members must “represent the public and the interests” of the Town of Collingwood with objectivity and impartiality and that “the acceptance of a gift, benefit, or hospitality can imply favoritism,” influence, or bias on the part of the Council member.³¹
- 35** The Code of Conduct should prohibit Council members from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from lobbyists.³²

- 36** The Code of Conduct should state that a Council member shall not receive gifts, favours, benefits, or hospitality which “a reasonable member of the public” would believe is “gratitude for influence, to induce influence,” or goes beyond the “appropriate public functions involved. For these purposes, a gift, benefit, or hospitality provided” to an “immediate relative” as defined in the recommendations, or to the Council “member’s staff, that is connected directly or indirectly to the performance of the” Council member’s duties is deemed to be a gift, benefit, or hospitality to that Council member.³³
- 37** The Code of Conduct should contain a provision prohibiting Council members from accepting gifts, favours, entertainment, trips, or benefits of any kind from any bidder or potential bidder in either the pre-procurement phase or during the procurement process.
- 38** “To enhance transparency and accountability” concerning gifts, favours, benefits, and hospitality, Council members should be required to file a disclosure statement each month relating to all such gifts, favours, benefits, hospitality, including any sponsored travel. The integrity commissioner should add the disclosure statement to the public gifts registry operated by the integrity commissioner. The disclosure statement should at a minimum indicate:
- a** the source of the gift, favour, benefit, hospitality;
 - b** a description of the gift, favour, benefit, or hospitality;
 - c** “its estimated value”;
 - d** the circumstances in which the Council member received it;
 - e** the date of the gift, favour, benefit, or hospitality;
 - f** the estimated value of the gifts, favours, benefits, hospitality received by the Council member from that person, organization, or group in the previous 12 months.³⁴

- 39** Council members should be encouraged to seek advice from the integrity commissioner regarding the propriety of accepting any gift, favour, benefit, or hospitality.³⁵
- 40** The gifts registry should be regularly updated and posted on the Town of Collingwood's website for public viewing.
- 41** The Code of Conduct should contain provisions on the appropriateness of a Council member attending charity events.³⁶
- 42** The Code of Conduct should state that Council members cannot use their position to “influence the decision of another person to the private advantage” of the Council member, his or her family and/or “immediate relatives” as defined in these recommendations, friends, business associates, or staff at the Town of Collingwood.³⁷
- 43** The Code of Conduct should contain comprehensive provisions concerning confidential information.³⁸
- 44** The Code of Conduct should prohibit Council members from using confidential information and non-public information received by virtue of their position, for personal or private gain, for the gain of family or “immediate relatives” (defined in Recommendation 29), or of any person or corporation. This information includes emails and correspondence from other Council members or third parties.³⁹
- 45** The Code of Conduct should state that Council members at the Town of Collingwood should not “disclose or release by any means” to any person, in oral or written form, “confidential information acquired by virtue of their office,” except when “required by law or when authorized explicitly by Council to do so.”⁴⁰

- 46** The Code of Conduct should state that Council members must not use confidential information to cause harm or detriment to Council or the Town of Collingwood.⁴¹
- 47** The Code of Conduct should state that Council members must keep information confidential both during and after their terms as Council members.⁴²
- 48** The Code of Conduct should state that no Council member shall “access or attempt to gain access to confidential information in the custody of the” Town of Collingwood “unless it is necessary for the performance of their duties and is not prohibited by Council policy.”⁴³
- 49** The Code of Conduct should state that no Council member shall “directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of ... property or assets” at the Town of Collingwood.⁴⁴
- 50** Council members who hold positions on municipal corporations at the Town of Collingwood may be in a conflict of interest position. Council members who believe they might have a potential, real, or apparent conflict of interest regarding their responsibilities and obligations to Council and their responsibilities and obligations to the municipal corporation should seek the advice and guidance of the integrity commissioner.
- 51** Former Council members should not accept employment for one year on specific matters on which they worked as an elected official at the Town of Collingwood.
- 52** The Code should state that Council members who have reasonable grounds to believe that a violation of the Code of Conduct has occurred should promptly report such behaviour

or activity in writing to the integrity commissioner or his or her delegate.

- 53** Integrity commissioners require sufficient resources to investigate promptly complaints of violations of the Code of Conduct for Council members and to take prompt action where a complaint is well founded.
- 54** Council members must fully co-operate during an investigation of alleged wrongdoing concerning any activity or behaviour contained in the Code of Conduct. Sanctions should exist for Council members who fail to co-operate with such investigations of the integrity commissioner.⁴⁵
- 55** Reprisal or retaliation by a Council member against a complainant, witness, or other person involved in an investigation should be prohibited, and such behaviour should result in the imposition of an appropriate penalty on the Council member.⁴⁶
- 56** Ethical misconduct by Council members is serious misconduct and the penalties should reflect this. An appropriate range of penalties for Council members must exist for violations of the Code of Conduct and other ethical policies and bylaws. This range includes a reprimand, suspension of remuneration paid to the Council member, a public oral or written apology by the Council member, the return of property or reimbursement of its value or monies spent, removal from membership of a committee, or removal as chair of a committee. The integrity commissioner should have the authority to recommend to Council any of these sanctions.⁴⁷
- 57** The integrity commissioner should have the necessary resources to provide ethical education and material for Council members. Council members must receive training

and education on the Code of Conduct, conflict of interest rules, and other pertinent legislation and policies. Conveying accurate and comprehensive information to Council members on managing conflicts must be a priority. The training should also make it clear that each time a Council member reviews a report, the Council member should consider whether the report affects his or her business interests or property, or whether it affects a family member, relative, or friend.⁴⁸

- 58** Training and education are critical to promoting and maintaining a strong ethical culture at the Town of Collingwood. Training should be mandatory and occur at regularly scheduled times. When new legal and other issues arise, Council members should receive timely additional training and education.⁴⁹
- 59** Training and education of newly elected Collingwood Council members by the integrity commissioner should be mandatory and occur promptly after the election.
- 60** An online provincial training program should also be created with the involvement of municipal integrity commissioners. All newly elected Council members should be required to take this training program.
- 61** A public record of the subjects of the training sessions provided to Council members as well as the attendance of Council members at the training sessions should be maintained.
- 62** The integrity commissioner should meet with each Council member on an annual basis.⁵⁰
- 63** Council members should be encouraged to seek guidance and advice on ethical issues including the Code of Conduct from the integrity commissioner or his or her designate.⁵¹

- 64** The integrity commissioner should regularly forward interpretation bulletins and educational material to all Council members on the Code of Conduct, conflict of interest rules, and other pertinent legislation and policies.⁵²
- 65** The website of the integrity commissioner should contain the Code of Conduct, FAQs, and other educational material on the ethical obligations of Council members.⁵³
- 66** The integrity commissioner should be responsible for holding meetings for prospective candidates seeking to become Council members in a municipal election at the Town of Collingwood. The integrity commissioner should educate potential candidates on conflicts of interest, the Code of Conduct for Council members, and all relevant policies and statutory provisions. This information will enable individuals to make informed choices about seeking election to the Collingwood Town Council.⁵⁴
- 67** The integrity commissioner should be responsible for submitting an annual report to Council on the number of Code of Conduct complaints received and processed, the nature of the allegations, the resolution of the complaints, and any recommendations made by the integrity commissioner. Council should disclose this annual report at an open Council meeting. The annual report should be available to the public and placed on the website of the integrity commissioner.⁵⁵
- 68** Council members at the Town of Collingwood should be required to sign annually an acknowledgement that they are aware of their obligations and will abide by the provisions in the Code of Conduct for Council members.⁵⁶
- 69** The Code of Conduct should regularly be reviewed when relevant legislation is amended, and at other times when

appropriate, to ensure that it remains current for Council members at the Town of Collingwood.⁵⁷

Chief Administrative Officer

It was apparent in the matters I examined in Parts One and Two of the Inquiry that the importance of the chief administrative officer (CAO) in the proper functioning of the Town was not appreciated. This lack of appreciation manifested itself in the manner that the role was treated publicly and in the approach to the role taken behind closed doors. This failure weakened a key pillar in the structure of the municipality, contributed to the blurring of the boundary between Council and staff, and made it easier to avoid proper procedure in the pursuit of Council's goals. It was also detrimental to the staff's confidence and morale and interfered with their efforts to provide objective information to Council.

The CAO is a full-time position that comes with significant responsibility. Someone with the education and experience required to maintain a culture of integrity and to provide the best information and advice to Council should always fill the CAO role. The CAO must operate independently, advising Council and carrying out Council's direction while remaining unaffected by political influence.

The recommendations that follow focus on providing a clear framework for the CAO role, including hiring, training, tenure, responsibilities, and a mechanism for addressing complaints about the CAO's conduct.

Amendments to the Ontario Municipal Act, 2001⁵⁸

- 70** The Province of Ontario should amend section 229 of the *Municipal Act* to mandate that municipalities the size of the Town of Collingwood appoint a chief administrative officer.⁵⁹

- 71** The Province of Ontario should amend the *Municipal Act* to describe fully the role and responsibilities of the chief administrative officer.⁶⁰

Town of Collingwood

- 72** The Town of Collingwood should establish in a bylaw the position of chief administrative officer (CAO) and must appoint a person to that position. This bylaw should define and describe the role and responsibilities of the CAO at the Town of Collingwood.⁶¹
- 73** As head of the public service, the chief administrative officer should have clear responsibilities and accountability for managing the administration of the Town, which must be described fully in the bylaw.⁶²
- 74** The bylaw should state that there must be a distinct separation between the administrative role of the chief administrative officer and the political role of the mayor and Council members.
- 75** The bylaw should state that the chief administrative officer (CAO) provides advice to Council, and receives instructions and policy directions from Council, and that the CAO must work with staff to ensure Council's directives are carried out.
- 76** The bylaw should state that the chief administrative officer (CAO) has a responsibility to provide impartial advice to Council. It should also state that the CAO has the ultimate responsibility for the accuracy of information presented to Council.
- 77** The chief administrative officer (CAO) should be the only member of staff who reports to Council. All other staff report

to the CAO. Where the CAO delegates his or her authority, such delegation should be explicit.⁶³

- 78** The bylaw should state that the chief administrative officer (CAO) must have the authority to direct staff at the Town of Collingwood and ensure that staff respect the separation between elected members on Council and staff. It is the role of the CAO, not the mayor or other members of Council, to direct staff.
- 79** The bylaw should state that the chief administrative officer is responsible for leading and fostering a “culture rooted in the highest ethical standards” for staff at the Town of Collingwood.⁶⁴
- 80** There should be training for new chief administrative officers at the Town of Collingwood on the role and responsibilities of the position, codes of conduct and policies on ethical obligations, Town bylaws, and relevant statutes such as the *Municipal Act* and *Municipal Conflict of Interest Act*.
- 81** There should be training for the mayor and Council members on the role and responsibilities of the chief administrative officer.
- 82** The chief administrative officer's term should be a six-year non-renewable term.
- 83** A process for complaints regarding the chief administrative officer should be established. Such complaints should be reported to the integrity commissioner.⁶⁵
- 84** Any reprisal or retaliation against a complainant, witness, or other persons for providing information to the integrity commissioner should be prohibited.⁶⁶ Similarly, it should also be prohibited for the chief administrative officer (CAO) to obstruct the integrity commissioner in her or his investigation.

Such behaviour on the part of the CAO should result in the imposition of an appropriate penalty.

- 85** Termination of the chief administrative officer before the end of his or her term of employment should require a two-thirds vote of members of Council.

Staff

Municipal staff are imperative to the functioning of the Town. It is staff's role to provide Council with objective information and recommendations, to inform Council's decision making, and to carry out Council's directions in a manner that maintains public confidence in the integrity of Council, staff, and the municipality. Staff are subject to a number of pressures and require clear guidelines, boundaries, and resources to respond appropriately. The consequences of failing to protect and support staff were apparent in the Part One and Two hearings. The evidence proved that political will trumped proper process, and public confidence was lost along the way.

The recommendations below are intended to clarify staff's role, reiterate staff's ethical obligations, and articulate mechanisms to address issues that arise in municipal public service.

Amendments to the Ontario Municipal Act, 2001

- 86** The Province of Ontario should amend the *Municipal Act* to mandate that each municipality establish a Code of Conduct for staff.⁶⁷
- 87** The Province of Ontario should amend the *Municipal Act* to declare that staff are expected to be neutral, objective, and impartial in all their work for the municipality.

Code of Conduct

- 88** The Town of Collingwood should pass a bylaw establishing a comprehensive Code of Conduct for staff. The Code of Conduct should set standards of ethical conduct designed to promote and protect the public interest and enhance public confidence and trust in the integrity, objectivity, impartiality, honesty, accountability, diligence, and transparency of all staff at the Town of Collingwood.⁶⁸
- 89** The Code of Conduct at the Town of Collingwood “should be written in plain language” and easily understandable by staff and members of the public.⁶⁹
- 90** Staff at the Town of Collingwood should be mandated to sign an annual acknowledgement that they are aware of their obligations under the Code of Conduct and will adhere to and uphold the provisions in the Code.⁷⁰
- 91** The Code of Conduct should state that staff at the Town of Collingwood must conduct themselves in an ethical manner with integrity, objectivity, impartiality, honesty, accountability, diligence, and transparency.⁷¹
- 92** The Code of Conduct should state that staff at all times should act, and be seen to act, in the public interest to maintain public confidence and trust in the Town of Collingwood.⁷²
- 93** The Code of Conduct should state that the role of staff is the implementation of Council’s decisions and the establishment of “administrative practices and procedures to carry out” the decisions of Council.⁷³
- 94** The Code should state that staff must undertake research and provide impartial and objective advice to Council concerning

the policies and programs of the Town of Collingwood and other duties assigned by the municipality, including those required under legislation such as the *Municipal Act*.⁷⁴

- 95** Staff should take measures to ensure that they are not influenced in their advice or recommendations to Council by an individual Council member or group of Council members. Staff are obligated at all times to provide information to Council that is politically neutral. There must be a clear separation between Council and staff when staff are formulating their advice and recommendations.⁷⁵
- 96** Staff have an obligation to speak the truth to their superiors and to Council.⁷⁶
- 97** Staff must not conceal or manipulate information. Staff must never intentionally misrepresent facts or information.⁷⁷
- 98** Staff must not use intimidation or fear in the workplace.⁷⁸ Staff must not inappropriately disclose or share confidential information.⁷⁹
- 99** Staff must be aware of and comply with the requirements of the Lobbyist Code of Conduct.⁸⁰

CONFLICTS OF INTEREST

- 100** The Code of Conduct for staff at the Town of Collingwood should provide detailed rules on conflicts of interest including real, apparent, and potential conflicts of interest.⁸¹
- 101** Staff should be prohibited from participating “in the analysis of information” or making any “decisions on an issue or matter in which” staff have “a real or apparent conflict of interest.”⁸²

- 102** The Code of Conduct should prohibit staff from using their positions at the Town of Collingwood “to further their private interests.”⁸³
- 103** The Code of Conduct should explicitly state that staff are prohibited from giving preferential treatment to family, relatives, or friends.⁸⁴
- 104** Staff “shall not use information for personal or private gain” or the gain of family, relatives, or friends.⁸⁵
- 105** Staff must take immediate action to prevent or resolve real, apparent, or potential conflicts of interest.⁸⁶
- 106** Staff must promptly inform the chief administrative officer in writing “that they are unable to act on a matter in which there is a real or apparent conflict of interest.”⁸⁷
- 107** Staff shall “decline employment, including self-employment,” with regard to matters that are incompatible or in conflict with the staff’s official responsibilities and duties at the Town of Collingwood.⁸⁸
- 108** Staff who hold positions on a municipal corporation at the Town of Collingwood may be in a conflict of interest position. Staff who believe they might have a potential, real, or apparent conflict of interest regarding their responsibilities and obligations to Council and their responsibilities and obligations to the municipal corporation should seek the advice and guidance of the chief administrative officer.

REPORTS

- 109** The Code of Conduct should state that staff reports must be objective and identify a full range of options for Council to consider. The risks associated with options must be clearly and fully presented. At no time should the fiscal impacts of any option be minimized by staff.⁸⁹
- 110** Staff at the Town of Collingwood should receive training on drafting clear, accurate, objective, and comprehensive reports.
- 111** Staff reports, including draft reports, should not be shared or disclosed to individual Council members or groups of Council members, except where explicitly authorized by Council.⁹⁰ If a Council member requests information from staff, the requested information should be provided to all Council members.⁹¹ The Code should provide that every effort should be made by staff to ensure that each member of Council has the same information.
- 112** The Code of Conduct should state that staff should not summarize or explain the findings of a consultant's report. A consultant should be available to speak to Council and respond to questions and issues that arise from the consultant's report. If the report is lengthy, the consultant should provide an executive summary of the report.⁹²

GIFTS

- 113** The Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting staff from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from lobbyists.⁹³

- 114** The Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting staff from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from any bidder or potential bidder in either the pre-procurement phase or during the procurement process.⁹⁴
- 115** Staff should be permitted in certain circumstances “to accept gifts, entertainment,” or “benefits of nominal value.”⁹⁵ Any gifts received should be reported on a Town of Collingwood gift registry to promote and ensure transparency.⁹⁶
- 116** Staff should be encouraged to consult and seek advice from the chief administrative officer or his or her designate regarding the propriety of accepting a gift.
- 117** The gift registry should contain at a minimum the following information:
- a** the name and position of the staff who received the gift;
 - b** the person, organization, or group who gave the gift;
 - c** “a description of the gift”;
 - d** the date on which it was received;
 - e** its estimated value; and
 - f** the estimated value of gifts received by the staff from that person, organization, or group in the previous 12 months.⁹⁷
- 118** The gift registry should be regularly updated and posted on the Town of Collingwood website for public viewing.

VIOLATIONS OF CODE OF CONDUCT, INVESTIGATIONS, AND SANCTIONS

- 119** Staff “who have reasonable grounds to believe a violation of the Code of Conduct has occurred” should promptly report in

writing such behaviour or activity to the chief administrative officer or his or her designate.⁹⁸

- 120** Complaints of alleged violations of the Code of Conduct should be investigated promptly and appropriate actions taken when there is a violation.⁹⁹
- 121** The Code of Conduct should contain reprisal protection for staff at the Town of Collingwood. The purpose of such protection provisions is to facilitate disclosure of wrongdoing, ensure that disclosures of wrongdoing are investigated, and protect from reprisal staff who report wrongdoing in good faith.¹⁰⁰
- 122** Reprisal or retaliation should be prohibited against a complainant, witness, or other persons involved in an investigation. Reprisal or retaliation should “result in appropriate disciplinary action.”¹⁰¹
- 123** All staff must fully co-operate “during an investigation of alleged wrongdoing” concerning any activity or behaviour contained in the Code of Conduct.¹⁰² Sanctions should exist for staff who fail to co-operate with such investigations by the chief administrative officer.
- 124** Any staff “found to have violated the Code of Conduct may be subject to disciplinary action,” “including discharge from employment.” A clear message must be sent that ethical misconduct by staff is serious misconduct and the penalties should reflect this principle.¹⁰³

TRAINING AND EDUCATION

- 125** Regular training and education are critical to promoting and maintaining a strong ethical culture at the Town of Collingwood.

The chief administrative officer should have the mandate and resources to provide ethical education programs and material for staff.

- 126** Training for staff on the Code of Conduct and their ethical obligations should be mandatory and occur at regularly scheduled times. In circumstances in which new legal and other related issues arise, there should be timely additional staff education and training.¹⁰⁴
- 127** Training on the Code of Conduct for staff should be practical and job-related to ensure that it is relevant to staff in different departments and various positions at the Town of Collingwood.
- 128** Information bulletins and other educational materials regarding the ethical obligations and Code of Conduct for staff should be sent regularly to staff at the Town of Collingwood.
- 129** Staff should be encouraged to seek guidance and advice on ethical issues from the chief administrative officer or his or her designate.¹⁰⁵
- 130** Hiring practices “should include appropriate questions designed to elicit perspective on the ethics” of a person applying for a position at the Town of Collingwood. Responses to ethical issues should be an essential consideration in the Town's hiring decisions.¹⁰⁶
- 131** Staff newly hired at the Town of Collingwood “should receive immediate training” on the Code of Conduct for staff.¹⁰⁷
- 132** The Code of Conduct for staff should be available to the public and posted on the Town of Collingwood website. Publication of the Code of Conduct may assist the public, including anyone considering work in the public service, in understanding the

responsibilities of public service holders and the manner in which they are expected to conduct themselves.

FORMER STAFF

- 133** Former Town of Collingwood staff should “not directly or indirectly use or disclose” any confidential information obtained during their employment at the Town of Collingwood.¹⁰⁸
- 134** Former Town of Collingwood staff should not accept employment for one year on specific matters on which they worked in their positions at the Town of Collingwood.

MANAGEMENT

- 135** The Code of Conduct for staff should contain specific provisions addressed to management at the Town of Collingwood.¹⁰⁹
- 136** The Code of Conduct should state that management at the Town of Collingwood should lead and promote a culture of the “highest ethical standards.”¹¹⁰
- 137** The Code of Conduct of staff should state that management at the Town of Collingwood should at all times behave in a way that is “consistent with the Code of Conduct.”¹¹¹
- 138** Management should “establish and maintain” “systems, procedures, and controls” to support compliance with the Code of Conduct for staff at the Town of Collingwood.¹¹²
- 139** Management should take appropriate steps both to prevent and to put an end to violations of the Code of Conduct that

come to their attention.¹¹³ They should deal expeditiously with any issues or allegations of violations of the Code of Conduct.¹¹⁴ Management with reasonable grounds to believe that a violation of the Code of Conduct has occurred should promptly report such behaviour or activity in writing to the integrity commissioner or his or her designate.

- 140** Information disclosed by management to a member of Council should be shared with all members of Council.¹¹⁵
- 141** Management should ensure that staff receive regular training and educational sessions on the Code of Conduct and other relevant ethical policies and guidelines.¹¹⁶
- 142** Management should “promote a safe and healthy workplace” that encourages all staff to report allegations of violations of the Code of Conduct without “fear of reprisal or retaliation.”¹¹⁷
- 143** To ensure that the Town receives the benefit of the relevant expertise of its staff, the Code of Conduct should state that every major initiative at the Town of Collingwood should be disclosed to and considered by the chief administrative officer and all members of management.

Procurement

Part One of the Inquiry, which examined how Council procured a strategic partner for its electric utility, and Part Two of the Inquiry, into how Council procured recreational facilities, revealed a failure to appreciate and follow proper procurement procedures. The two transactions I examined demonstrated a lack of transparency; a misconception of the roles of Council, staff, the Town solicitor, and suppliers; and a failure to appreciate the need for equitable treatment of proponents to secure the best information and prices the market has to offer.

The importance of transparency and fairness in public sector procurement is not a new concept. Prior municipal inquiries have made recommendations regarding procurement, and some of those recommendations are reflected here. I repeat and reiterate these recommendations because issues continue to arise despite the guidance previously issued. These core concepts remain as important as ever because, as former Ontario Superior Court Justice Denise Bellamy observed, “procurement is the biggest shopping with the people’s money that gets done in government.”¹¹⁸ If the integrity of procurements is maintained, so too is public confidence; if that confidence is lost, great efforts are required to restore it.

In the public sector, political actors are to remain at arm’s length from the procurement process. Council as a whole develops procurement policies and processes, identifies municipal needs and sets budgets, and makes final procurement decisions informed by staff’s non-partisan research and recommendations. There is no appropriate role for individual Council members in the execution of a procurement process. Council members must ensure that they guard against the risk of politicizing the procurement process. The chief administrative officer and senior staff must also do so.

Staff ensure successful public procurement through effective planning, maintaining clear and public policies, running transparent procurement processes, and executing and managing contracts with the successful proponents. The Town solicitor is a key member of the procurement team and must be involved from the inception of any major procurement.

Suppliers who wish to do business with the municipality must act ethically. Council members, staff, and suppliers must be aware of any potential conflicts of interest posed by a procurement and, as they are obliged to do, they must avoid those conflicts where possible, and address them appropriately where avoidance is not a viable option. These obligations continue throughout the procurement process.

The recommendations that follow articulate the goals and objectives that should guide municipal procurement and delineate the appropriate roles, responsibilities, and obligations of municipal and other actors in procurement.

Amendments to the Ontario Municipal Act, 2001¹¹⁹

144 The *Municipal Act* requires municipalities to adopt and maintain policies regarding the procurement of goods and services. The Province of Ontario should amend the *Municipal Act* to state that municipal procurement policies must be designed to promote the following objectives: openness, honesty, fairness, integrity, accountability, and transparency in the procurement process; competition in the procurement process; the best value for money for goods and services; equitable treatment of suppliers in the procurement process; and maintaining public confidence in the municipal procurement process.

Procurement at the Town of Collingwood

145 Procurement at the Town of Collingwood should be open, fair, ethical, and transparent.¹²⁰

146 The goals and objectives of the procurement bylaw and related policies and codes of conduct at the Town of Collingwood should:¹²¹

- a** promote openness, honesty, fairness, integrity, accountability, and transparency in the procurement process;
- b** encourage competition in the procurement process;
- c** prevent conflicts of interest – real, apparent, and potential – between suppliers and the Town’s elected officials and staff;
- d** ensure that goods and services are acquired at the best value for money;
- e** require that suppliers are treated equitably, consistently, and without discrimination throughout the entire procurement process;

- f** clearly identify the roles, responsibilities, and accountability of individuals involved in the procurement process, including the purchasing officer, the treasurer, procurement staff, department heads, consultants, senior staff, and the Town solicitor; and
- g** instill confidence in the public and in participants in the procurement process.

COMPETITIVE PROCUREMENT PROCESSES

- 147** There should be a strong presumption in favour of mandatory competitive tendering for all procurements at the Town of Collingwood. Criteria for exemption from competitive tendering should be strictly defined in the purchasing bylaw. A competitive procurement process should be used for procurements at the Town of Collingwood unless the conditions are met for a non-competitive procurement process.¹²²

NON-COMPETITIVE PROCUREMENT PROCESSES

- 148** The Town of Collingwood should be required, except for emergency situations, to issue an advance contract award notice when it plans to proceed with a non-competitive procurement process. Issuing an advanced contract award gives potential suppliers the opportunity to indicate whether they can meet the business needs of the Town and it provides the Town with information as to whether there is competition in the marketplace. The advance contract award informs members of the public that the Town intends to engage in a non-competitive procurement process and it promotes transparency and openness.¹²³

- 149** Exceptions to a competitive process, such as sole sourcing and single sourcing, should be delineated in the purchasing bylaw. Emergencies and monopolies are examples of situations in which a non-competitive procurement process may be appropriate. Other examples are lack of response to a competitive process, and a single supplier in the marketplace for the particular goods or services required by the Town.¹²⁴
- 150** Lack of planning or insufficient time to conduct a competitive procurement, except in an emergency situation, should not be an allowable exception.¹²⁵
- 151** A high level of scrutiny is necessary for non-competitive procurements.¹²⁶ The approval of the treasurer must be obtained to proceed with a non-competitive procurement.

UNSOLICITED PROPOSALS

- 152** The procurement bylaw should specify the conditions for unsolicited proposals.¹²⁷
- 153** The procurement bylaw should state that there must be one point of contact within Town staff for unsolicited proposals.¹²⁸
- 154** Before an unsolicited proposal is accepted, the Town should notify the marketplace that it plans to proceed with the unsolicited proposal. Notification should occur in a way that allows suppliers to compete and enable the Town to determine if another supplier has a superior proposal.¹²⁹
- 155** The treasurer should submit a report on the non-competitive and competitive procurement transactions annually to Council in an open session.¹³⁰ This promotes openness, integrity, accountability, and transparency in the procurement process.

TRAINING

- 156** Procurement staff at the Town of Collingwood should receive comprehensive and regular training on the procurement bylaw, procurement policies and practices, and relevant codes of conduct. Training should be mandatory and should include ethical issues that arise in the procurement process.¹³¹
- 157** Procurement staff at the Town of Collingwood should engage in discussions with procurement staff in other municipalities and in the province of Ontario to share best practices.¹³²
- 158** Senior staff and Council members should also be trained on the principles and objectives of the procurement bylaw, related policies, and codes of conduct. This training should include the ethical principles that arise in the procurement process and the presumption of competitive procurement at the Town.
- 159** The Town should make the training and educational material it provides to its procurement staff, senior staff, and Council members available to the public and post it on its website.¹³³

Council

- 160** Council is responsible for requiring and enforcing a fair, transparent, honest, and objective procurement process.¹³⁴
- 161** Council has a minimal role in procurements, and the separation between the role of Council and staff in procurements at the Town must be clear. Council's role is to set the budget and approve the overall procurement plan. In addition, Council must be satisfied that the procurement process is fair, honest, impartial, and equitable before it accepts staff's

recommendation of the supplier who is to be awarded the contract with the Town.¹³⁵

162 Council should be asked to approve the award of contracts where:

- a** the purchase is over budget or the “approved funding is insufficient for the award”,¹³⁶
- b** “the contract is not being awarded to the lowest bid that has met the specifications and terms and conditions of the quotation, tender, or proposal”,¹³⁷
- c** “the award is for a single source contract” or other contract in a non-competitive procurement process in which the total value “of the contract exceeds \$100,000”,¹³⁸
- d** the purchasing officer has recommended an award to a supplier whose response does not meet the specifications and qualification requirements set out in the solicitation or whose response may not represent the best value to the Town based on the evaluation criteria set out in the solicitation;
- e** “a major irregularity precludes the award of a tender to” a “supplier submitting the lowest responsive bid”,¹³⁹
- f** the chief administrative officer or treasurer recommends Council approval,¹⁴⁰
- g** the term of the contract exceeds five years; or¹⁴¹
- h** Council approval is mandated by statute.¹⁴²

163 Council members must remain at arm's length from staff and suppliers in the procurement process. Elected officials should be prohibited from involvement in the selection of the procurement process, evaluation of the bids, or selection of the successful supplier.¹⁴³

164 Council members should not receive or review any information or documents related to a particular procurement during the procurement process.¹⁴⁴

- 165** Council members must adhere to their obligations in the Code of Conduct for Council Members, the Lobbyist Code of Conduct, and other related policies and bylaws that address procurement at the Town.

Role of Staff

- 166** The procurement bylaw should clearly define the roles, responsibilities, and accountability of staff involved in the procurement process.¹⁴⁵
- 167** Procurement staff are responsible for recommending the most appropriate procurement method, overseeing all stages of the procurement process, and interacting with department staff to assess the business needs of the Town.¹⁴⁶
- 168** Procurement staff should identify additional resources, such as a fairness monitor, consultants, or professionals (for example, architects or engineers) to assist in the development or oversight of the procurement.¹⁴⁷
- 169** Staff must adhere to all their obligations in the Code of Conduct for staff and other related codes of conduct, bylaws, and policies related to lobbyists and procurement.

Fairness Monitor

- 170** The Town should retain a fairness monitor for procurements that are complex, high-risk, controversial, or of a substantial dollar value. The fairness monitor promotes the integrity of the procurement process and protects against bias or discriminatory practices.¹⁴⁸

- 171** A fairness monitor should be an independent third party who monitors the procurement process and provides feedback to Council on fairness issues. The fairness monitor should provide an objective, unbiased, and impartial opinion to Council as to whether the procurement process is conducted following the principles of openness, fairness, transparency, honesty, and consistency and in accordance with the procurement bylaw, codes of conduct, and other related policies at the Town. The fairness monitor can also provide guidance and advice on best practices in the procurement process to the Town.¹⁴⁹
- 172** The Town should be satisfied that the fairness monitor has the expertise and specialized knowledge necessary to provide an informed opinion on the particular procurement.
- 173** The decision to retain a fairness monitor is at the discretion of the chief administrative officer.

Consultants

- 174** Before issuing a significant, high-risk, complex, or substantial dollar value procurement, the Town should consider retaining consultants to provide expert advice and guidance.¹⁵⁰
- 175** The retainer agreement should identify the client. The retainer agreement should also provide clear and detailed instructions concerning the responsibilities of the consultant and the work the consultant is to perform.¹⁵¹
- 176** The Town should retain consultants at the beginning of a significant procurement process to provide expert advice, guidance, and assistance throughout the procurement process. Consultants can also offer advice on best practices from other municipalities and other jurisdictions.¹⁵²

- 177** Consultants retained by the Town to provide advice on the procurement process are precluded from submitting a bid or participating as a vendor or purchaser in the procurement process.¹⁵³
- 178** Consultants retained by the Town are prohibited from assisting or providing advice to “any potential bidder in a forthcoming tender.”¹⁵⁴
- 179** Consultants retained by the Town must declare any real, apparent, or potential conflicts of interest.
- 180** Consultant reports should be appended to staff reports. Town staff are precluded from modifying in any way the consultant’s report. If an executive summary of the consultant’s report is required, the consultant, not Town staff, should prepare it.¹⁵⁵

Timing for Submission of Bids

- 181** When dealing with a significant procurement, Town Council should obtain assurance from the chief administrative officer that staff have sufficient time to prepare the solicitation, as well as to evaluate the responses of prospective suppliers.
- 182** When setting deadlines for the submission of bids, the Town should provide sufficient time for suppliers to assess the requirements of the particular procurement and to prepare their bid. Adequate timing will help ensure that the Town receives the best value for the particular goods or services. There are costs associated with short timelines. Some suppliers may not respond to the solicitation, with the consequence that there may be adverse financial impacts to the Town.¹⁵⁶

Code of Conduct for Suppliers

- 183** The Town should establish a Code of Conduct for suppliers to promote a strong procurement process, as well as transparency, fairness, integrity, accountability, and honesty.¹⁵⁷
- 184** As part of the procurement process, the Town should include links and references to its relevant codes of conduct in tender documents, emphasizing that all bidders are under an obligation to be aware of and adhere to the provisions in the codes of conduct. This includes the Code of Conduct for suppliers, the Code of Conduct for lobbyists, the Code of Conduct for Council members, and the Code of Conduct for staff.
- 185** The Code of Conduct for suppliers should state that all suppliers must comply with the provisions in the Code of Conduct.¹⁵⁸ It should also require compliance with all applicable federal laws and provincial laws, including the *Municipal Act* and *Municipal Conflict of Interest Act*, relevant trade agreements, the Town of Collingwood procurement bylaws, and related policies.¹⁵⁹
- 186** The Town should include in all procurement documents a provision stating that sanctions may be imposed for violations of the Code of Conduct for suppliers and other relevant codes of conduct.
- 187** The supplier should provide the Town with a formal statement of compliance with the Code of Conduct for suppliers as a condition precedent to making a bid. The supplier should explicitly agree in the certification that material non-compliance with the Code of Conduct for suppliers, regardless of when it is discovered, is a basis for terminating the contract.¹⁶⁰

HONESTY

- 188** The Code of Conduct for suppliers should state that all suppliers must respond to the Town's "solicitations in an honest, fair, and comprehensive manner that accurately reflects" their ability "to satisfy the requirements ... in the solicitation."¹⁶¹
- 189** "Suppliers shall submit a bid only if they know they can satisfactorily perform all the obligations of the contract in good faith."¹⁶²
- 190** Suppliers must act with integrity and in accordance with their obligations pursuant to their contract with the Town.

CONFIDENTIALITY

- 191** Suppliers must maintain the confidentiality of all "information disclosed to the supplier as part of the" procurement process.¹⁶³
- 192** Any misuse by a bidder of confidential information belonging to the Town or another bidder should be grounds for disqualification of the bid.¹⁶⁴

CONFLICT OF INTEREST

- 193** Suppliers must ensure that all apparent, real, or potential conflicts of interest are appropriately addressed.¹⁶⁵
- 194** "Suppliers must declare and fully disclose any" apparent, real, or potential conflicts of interest or unfair advantage concerning "the preparation of their bid" or "in the performance of" their contract. Examples of such conflicts include:¹⁶⁶

- a** engaging family members, friends, or “business associates of any public office holder” at the Town “which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract”;¹⁶⁷
- b** “communicating with any person” to obtain “preferred treatment in the procurement process”;¹⁶⁸
- c** engaging current staff or public office holders at the Town to take part “in the preparation of the bid or the performance of the contract, if awarded”;¹⁶⁹
- d** engaging former Town staff or former “public office holders to take any part in the” development “of the bid or the performance of the contract, if awarded, any time within” one year of such person “having left the employ or public office” at the Town;¹⁷⁰
- e** “prior involvement by the supplier or affiliated persons in developing the” “specifications or other evaluative criteria for the solicitation”;¹⁷¹
- f** access to related confidential information “by the supplier, or affiliated persons” that is not readily available “to other prospective suppliers”;¹⁷²
- g** “conduct that compromises, or could be seen to compromise, the integrity of the procurement process.”¹⁷³

COLLUSION AND OTHER UNETHICAL PRACTICES

- 195** No supplier shall communicate, “directly or indirectly, with any other supplier” or their affiliates, regarding the supplier’s submission.¹⁷⁴
- 196** A supplier must “disclose any previous convictions” “for collusion, bid-rigging, price-fixing, bribery, fraud, or other similar” conduct “prohibited under the *Criminal Code*, *Competition Act*, or other applicable law, for which they have not received a pardon.”¹⁷⁵

INTIMIDATION

- 197** “No supplier may threaten, intimidate, harass, or otherwise interfere with any” Town staff or public office holders.¹⁷⁶
- 198** No supplier may “threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier to bid for a” “contract or to perform any contract awarded by the” Town.¹⁷⁷

GIFTS

- 199** No supplier or potential supplier “shall offer gifts, favours, inducements of any kind to” Town staff “or public office holders, or otherwise attempt to influence or interfere with their duties” and responsibilities concerning the procurement or management of the process.¹⁷⁸
- 200** Town staff are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers in either the pre-procurement phase or during the procurement process.¹⁷⁹
- 201** Council members are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers at any time during the pre-procurement phase or procurement phase of the process.

SANCTIONS

- 202** The Code of Conduct should explicitly state that any material violation of the Code, “including any failure to disclose potential conflicts of interest or unfair advantages, may be

grounds for” disqualifying the supplier or terminating the contract.¹⁸⁰

- 203** Suppliers who have violated the Code of Conduct may be prohibited from bidding on future contracts at the Town for a designated period.¹⁸¹

Planning

- 204** A procurement plan for the Town should be prepared annually and published.¹⁸² Procurement planning helps insulate the procurement process from political influence.
- 205** Before initiating any procurement process for goods or services, the purchasing department shall, (a) prepare detailed specifications and quantity requirements for the particular goods or services, and (b) certify that the goods or services are required for the Town of Collingwood.
- 206** “A standard checklist should be prepared” and published “indicating all the elements that should be in place before the” Town issues a tender.¹⁸³
- 207** Procurement staff and senior staff should take measures to ensure that lobbying in the Town does not have any impact on the design of the tender so as to unfairly favour a bidder.

Designated Contact Person

- 208** The tender document should specify the name and contact information of the person whom prospective bidders can contact with questions. The tender document should make it clear that for the duration of the procurement process, only this

Town staff member can be contacted by bidders regarding the tender.¹⁸⁴

209 If a bidder requests information, the designated contact person should notify the bidder that the information requested and conveyed may be disclosed to other bidders.

210 “To ensure that there is no appearance of advantage for bidders who” have communicated with the designated contact person, “that person should not participate” in the evaluation of the bids.¹⁸⁵

Blackout Period

211 Every tender document should define the “blackout period” when communication between bidders and the Town is prohibited.¹⁸⁶

212 During the blackout period, suppliers must refrain from contacting anyone but the designated person at the Town of Collingwood.

Legal Counsel

213 For each major procurement, the Town should retain a solicitor who should be involved from the inception of the procurement.¹⁸⁷ Major procurements include high-risk, complex, controversial procurements, as well as procurements that involve a substantial dollar value. The Town solicitor helps to ensure that the procurement process is open and transparent. The Town solicitor can identify risks in the procurement process, review procurement documents, and help to ensure compliance with the Town’s procurement bylaw and other relevant bylaws,

policies, and codes of conduct. The Town solicitor can also identify situations where legal counsel with particular expertise may be required for part or all of the transaction.¹⁸⁸

Evaluation of Bids

- 214** No person “involved in evaluating the bids” at the Town “should have a pre-existing relationship with any of the bidders or be influenced” “by anyone else’s pre-existing relationship with a bidder.”¹⁸⁹
- 215** No person “involved in the pre-procurement phase or the bidding process should be involved in evaluating the proposals.”¹⁹⁰
- 216** The Town “should have clear practices” for reading the bids.¹⁹¹
- 217** Each member of the evaluation team “should sign a conflict of interest declaration disclosing any entertainment, gifts,” meals, favours, or benefits of any kind “received from any of the proponents or their representatives.”¹⁹²
- 218** Each member of the evaluation team should sign a declaration “that they will conduct the evaluation” fairly and objectively, “free from any conflict of interest or undue influence.”¹⁹³
- 219** “The weight to be assigned to price in determining the winning bid should be carefully considered” and determined “in advance.”¹⁹⁴
- 220** The Town “should maintain a record of when” and who tells a bidder that they have been successful.¹⁹⁵

Debriefings

- 221** Following a “decision to award a contract, unsuccessful bidders are entitled to a debriefing” that explains “the evaluation process that led to the” Town’s “selection of the successful bidder.”¹⁹⁶

Supplier Complaint Process

- 222** The Town should establish a comprehensive complaints process for suppliers and potential suppliers.¹⁹⁷
- 223** A complaint process is essential to promote and maintain transparency and integrity in the procurement process and to ensure the objective and equitable treatment of all suppliers.¹⁹⁸
- 224** All supplier disputes or complaints, whether sent to Council members or staff, shall be referred to the treasurer.
- 225** In no circumstances, should Council members or staff act as advocates for aggrieved or successful suppliers.¹⁹⁹
- 226** Suppliers should try to resolve any pre-award disputes by communicating in writing directly to the treasurer as quickly as possible after the basis for the dispute becomes known to them. The treasurer should have the authority: (a) to dismiss the dispute; or (b) to accept the dispute and direct the Town’s purchasing officer to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, as well as cancelling the solicitation.²⁰⁰ The treasurer may decline to delay the award or any interim step of a procurement if the complaint appears to the treasurer to have no merit or if the supplier has failed to notify the treasurer

immediately after the disputed conduct came to the supplier's attention.

- 227** Any dispute of an award decision must be submitted in writing to the treasurer as soon as possible after the disputed conduct comes to the attention of the complainant.

Lobbying

Lobbying at the municipal level can be defined as “communication with a public office holder” by a person “who is paid or represents a business or financial interest”: the objective is to influence a legislative action, including the development, passage, “amendment, or repeal of a bylaw, motion, resolution, or outcome of a decision on any matter before Council, a Committee of Council,” Council member, or municipal staff.²⁰¹

Council and staff were subject to considerable lobbying during the two transactions examined in Parts One and Two of this Inquiry. The lobbying was not open or transparent. As I discuss in Parts One and Two of the Report, lobbying behind closed doors damages public confidence in Council members, municipal staff, and the business of the municipality. It can also have broad and long-term implications for the municipality, including discouraging businesses from doing business with the Town. Ethical and transparent lobbying activity, however, can assist staff and Council members in making informed decisions in the interest of the municipality.²⁰²

Lobbying must happen in the light of day. There is no room for secrecy and no place for claims that lobbyists, as private businesspeople, should not disclose details of the dealings they have or the compensation they receive for their work advocating Council members on behalf of specific interests. Ultimately, dealing with a municipality involves dealing with the public, and that requires openness, transparency, and honesty.

The recommendations that follow provide for an open, transparent, and ethical lobbying framework to govern lobbyists, businesses who wish to lobby the municipality, and municipal actors who may be subject to lobbying.

228 Members of the public and public office holders should be educated to understand that lobbying has a legitimate role in municipal government and can benefit elected officials and staff, provided it is properly conducted and controlled.²⁰³ Although a lobbyist is in the business of seeking to influence Council members and staff, this activity is not necessarily against the public interest. What is against the public interest is lobbying that occurs in secret and that is not transparent.²⁰⁴ The public has the right to know how decisions are made in the Town of Collingwood and what attempts are made to influence decision makers.

Lobbyist Registry

229 The Town of Collingwood should establish a Lobbyist Registry after consultation with businesses, staff, and Council members.²⁰⁵ The primary purpose of the registry is to foster transparency and integrity in government decision making. The Lobbyist Registry also assists in managing behaviour because the behaviour occurs in the open.²⁰⁶

230 The Lobbyist Registry should include all those who are paid or represent a business or financial interest whose objective is to influence elected officials or staff at the Town of Collingwood.²⁰⁷

231 Only persons registered in the Lobbyist Registry should be permitted to participate in any lobbying activity in the Town of Collingwood.²⁰⁸

232 The Lobbyist Registry should contain at a minimum the following information:²⁰⁹

- a** the name of the lobbyist, the name of the company or partnership represented, and “the names of all principals in the company or partnership”;²¹⁰
- b** the lobbyist’s contact information;
- c** “the subject matter of the lobbying activity;”²¹¹
- d** detailed disclosure of the lobbyist’s client, its business activities, or its organizational interests. This disclosure includes information on anyone who, to the knowledge of the lobbyist, controls or directs the client or otherwise has significant control of the client, the client’s business activities, or its organizational interests.
- e** identification by the lobbyist of who at the Town of Collingwood is the subject of the lobbying. This information should be detailed and include, for example, the name and title of the staff being lobbied, as well as the staff’s department;²¹²
- f** the “amount paid to the lobbyist for the lobbying activity;”²¹³
- g** the date, hour, and location where the lobbying took place, as well as details of the lobbying activity.

233 Council members and staff in the Town of Collingwood should be required to record “information on their meetings with lobbyists in the Lobbyist Registry.”²¹⁴

234 Sanctions should be imposed on lobbyists for failing to register.²¹⁵

Code of Conduct for Lobbyists

235 The Town of Collingwood should establish a Code of Conduct for lobbyists because it is important to the integrity of government decision making. A Code of Conduct for lobbyists indicates that compliance with the rules of proper conduct is more than

voluntary. Creating such a code of conduct also helps establish that lobbying is a legitimate activity.²¹⁶

- 236** A Code of Conduct is a required companion to a Lobbyist Registry.²¹⁷
- 237** The Code of Conduct should contain minimum standards with which lobbyists must comply. It should clearly delineate permissible and prohibited lobbying activities.²¹⁸
- 238** Every lobbyist must “agree to be bound” by the Code of Conduct before engaging in lobbying at the Town of Collingwood.²¹⁹
- 239** Lobbyists should “inform their client, employer or organization” of their obligations under the Town of Collingwood Code of Conduct for lobbyists and the Lobbyist Registry.²²⁰
- 240** The Code of Conduct for lobbyists should mandate that documents in relation to the activities of the lobbyist at the Town of Collingwood be retained and preserved by the lobbyist for a period of 10 years.
- 241** Lobbyists should be prohibited from giving gifts or providing entertainment, meals, trips, favours, or benefits of any kind to Council members or staff in the Town of Collingwood.²²¹
- 242** The Code of Conduct for lobbyists should contain a provision that states that lobbyists are prohibited from placing elected officials or staff in a real, apparent, or potential conflict of interest.²²²
- 243** Lobbyists must be transparent about who they are representing and the purpose of their lobbying activity. The Code of Conduct should prohibit lobbyists from misrepresenting for whom they act or the subject matter of their lobbying activity.²²³

- 244** Lobbyists who receive confidential information concerning Town business either intentionally or inadvertently from Council members or staff should immediately report this to the lobbyist registrar. In addition, the Code of Conduct should prohibit lobbyists from seeking confidential information or using any confidential information to the benefit of their client.
- 245** Lobbyists should be prohibited from receiving contingency fees or any type of payment, bonus, or commission connected or “tied to a successful outcome.”²²⁴ Although the lobbyist registrar should be able to rely upon the lobbyist’s representations regarding any fees received, the registrar should also have the power under the bylaw to verify information concerning any fees paid to the lobbyist.²²⁵
- 246** There should be a prohibition on lobbying during the procurement process about the subject matter of the procurement.²²⁶
- 247** Any communication by lobbyists in the pre-procurement phase should be registered on the Lobbyist Registry. “Lobbying aimed at influencing the procurement process before” it takes place, with the objective of favouring the lobbyist’s client in the procurement process, is inappropriate and should be prohibited.²²⁷
- 248** Each bidder should be required to provide a warranty to the Town of Collingwood that it will adhere to the relevant ethical standards in the Town’s bylaws and policies, and acknowledge that the Town reserves the right to annul any contract if there has been misuse of confidential information or any other material non-compliance with the Lobbying By-Law, the Procurement By-Law, or other relevant Town bylaws, policies, and codes of conduct.²²⁸

- 249** A lobbyist registrar should be appointed by the Town of Collingwood to oversee and ensure compliance with the Lobbyist Registry and the Code of Conduct for lobbyists. The lobbyist registrar, who could also be the integrity commissioner, should perform the function of providing advice, interpretation, monitoring, and enforcement of the Lobbyist Registry and the Code of Conduct.²²⁹
- 250** The lobbyist registrar should be independent of the Town of Collingwood Council and staff.²³⁰
- 251** The lobbyist registrar should be appointed for a non-renewable term.²³¹
- 252** “The lobbyist registrar should prepare an annual report.”²³² This report should include complaints, investigations, and sanctions imposed, as well as recommendations for improvement of lobbying activity in the Town of Collingwood.
- 253** The annual report, the Code of Conduct for lobbyists, the Lobbyist Registry, as well as interpretation bulletins and informational materials for lobbyists, Council members, and staff, should be placed on the Town of Collingwood website and should be easily accessible. This information should be updated on a regular basis.²³³
- 254** The lobbyist registrar should provide continuing education for lobbyists, their prospective clients and suppliers, Council members and staff, as well as the public, on the purpose of the Lobbying Registry and Codes of Conduct that address lobbying activity. This activity should include providing advice to people who want to know whether they are required to register. The responsibility of the lobbyist registrar should also include the obligation to provide a training tool for lobbyists, the chief administrative officer, and Town staff.²³⁴

- 255** One of the purposes of the educational component should be to ensure that staff in all departments within the Town of Collingwood, lobbyists, and their prospective clients, as well as prospective suppliers, understand why an accountability regime has been set up. Specifically, the educational component should ensure that the Town, lobbyists, and their prospective clients, as well as prospective suppliers, understand that a Lobbyist Registry mitigates the risk to the municipality that the public will believe or come to believe that the money it entrusts to elected officials has been used for the private gain of an individual or company.²³⁵
- 256** Council members and staff should be trained by the lobbyist registrar on the requirements for dealing with lobbyists and should be encouraged to seek advice and guidance from the lobbyist registrar on legitimate and prohibited activities of lobbyists.²³⁶
- 257** Lobbyists who fail to comply with the Lobbyist Registry or the Code of Conduct should be prohibited from any further lobbying activity with the Town of Collingwood.²³⁷ The Lobbyist Registrar should promptly communicate this information to public office holders to ensure that Council members and staff are aware of the non-compliance and the prohibition on the lobbyist from continuing to carry on any further lobbying activity with the Town.

Council Members and Staff

- 258** Council members and staff at the Town of Collingwood should be mandated to report breaches of the Code of Conduct for lobbyists to the lobbyist registrar.²³⁸

- 259** Staff reports submitted to Council at the Town of Collingwood should list the lobbyists who have contacted them “on the subject matter of the report.”²³⁹
- 260** The Code of Conduct for Council members at the Town of Collingwood should contain provisions on prohibited lobbying activities with Council members, as well as a duty to report lobbyists who engage in prohibited activities to the registrar. For example, the Code of Conduct for Council members should contain a provision that precludes receiving a gift, benefit, entertainment, meal or hospitality from lobbyists or anyone doing business with the Town of Collingwood.²⁴⁰
- 261** The Code of Conduct for staff at the Town of Collingwood should contain provisions on prohibited staff activities with lobbyists. The Code of Conduct should prohibit accepting gifts, entertainment, meals, trips, favours, or benefits of any kind from persons who do business with the Town and a duty to inform lobbyists of this requirement. This code of conduct should also provide that staff have a duty to inform lobbyists that they cannot accept gifts, entertainment, meals, trips, favours, or benefits of any kind. In addition, the Code of Conduct for staff should provide that staff have a duty to inform lobbyists that there is a registration system.²⁴¹
- 262** The Code of Conduct for Council members and the Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting the disclosure of confidential information to others, including lobbyists.
- 263** Council members and staff have the duty to inform people who are lobbying them that they must register on the Town of Collingwood’s Lobbyist Registry.²⁴²

264 Former Council members and former staff at the Town of Collingwood should be prohibited from lobbying on matters on which they were involved during their tenure at the Town of Collingwood. With respect to other activities, former Council members at the Town of Collingwood should be prohibited from lobbying staff or elected public office holders at the Town of Collingwood for a minimum of one year after they leave office. Similarly, former staff at the Town of Collingwood should be prohibited from lobbying elected public office holders or staff at the Town of Collingwood for a minimum of one year after they leave their public service position.²⁴³

Municipally Owned Corporations

The governance of municipally owned corporations presents unique issues for Council, municipal staff, the corporation's board of directors, and its management. A clear understanding of the roles, responsibilities, and obligations of corporate management and the board of directors is required to ensure that decisions are made by the proper parties and that there is an appropriate and timely flow of information between the corporation and the municipality. As I discuss in Part One of my Report, the misplaced belief that corporate management was acting in the best interests of the municipality led to the subordination of the Town's interests to those of the corporation in the Collus share sale.

The recommendations that follow ensure that the roles of Council, municipal staff, the corporate board of directors, and corporate management are clearly defined and understood.

265 Municipally owned corporations at the Town of Collingwood must be accountable and transparent.²⁴⁴

Board of Directors – Selection Process

- 266** The selection process for board membership on a municipally owned corporation at the Town of Collingwood must be robust. It should involve a broad invitation for applications, a review of resumés, an interview process, recommendations by a nomination committee, followed by the appointment of a director by resolution of Council.²⁴⁵
- 267** The selection process must be applied consistently.²⁴⁶
- 268** The selection process should “be clear and understandable, and available to the public.”²⁴⁷
- 269** The selection of board members must be objective and based on the skills and qualifications of the applicants.²⁴⁸
- 270** The board should be composed of directors with a variety of experiences and backgrounds. Council may, for example, seek a member with a financial background, another with an auditing background, and other board members who have different skills to ensure that the board can serve the interests of the corporation.²⁴⁹
- 271** Appointees to the board should be committed to principles of integrity, ethical conduct, and the “values of public service.”²⁵⁰
- 272** The majority of board members on the municipally owned corporation should be independent of management. This independence will help ensure that the board functions in the best interests of the municipal corporation.²⁵¹
- 273** Appointments to the board should be staggered to ensure continuity.²⁵²

- 274** Appointments to the board should have “set term limits with options for renewal.”²⁵³
- 275** Vacancies on the board should be filled promptly.²⁵⁴

Clarity of Roles

- 276** A municipal bylaw should delineate the roles and responsibilities of board members representing the municipality.²⁵⁵
- 277** The role of the chair of the board and that of the chief executive officer (CEO) of the municipally owned corporation should be separate positions, and those positions should be held by different individuals to ensure “a check and balance” on each other’s authority. This separation ensures that the board can function independently from management. The CEO should “not be a voting member of the Board.” The chair is accountable to the shareholder or shareholders, and the CEO “is accountable to the Board.” “Combining the two positions creates” “conflicts of interest” and blurs accountability.²⁵⁶
- 278** The board’s role in a municipally owned corporation is to set the strategic direction of the corporation and to “monitor the performance and results achieved by management in implementing” that “direction.”²⁵⁷
- 279** “Monitoring the performance of the CEO” is also an important “responsibility of the Board.”²⁵⁸
- 280** Management is responsible for providing the board with “high quality information on a timely basis.” “Information and management proposals” must be submitted “to the Board in a manner that facilitates” board members’ “understanding of

the overall impact” of a decision. Information must be objective, useful, and relevant to the options under consideration and the decision that must be made. Board members should receive clear, accurate, reliable, and comprehensive information to fulfill their role as a board of a municipally owned corporation.²⁵⁹

- 281** The agenda of board meetings of municipally owned corporations should periodically include time reserved for *in camera* sessions. *In camera* meetings “without the presence of ... management” enables the board to discuss any “issues or concerns they may not wish to raise” in the presence of management. It also permits the board to discuss candidly the performance of senior management and its impact on the municipally owned corporation.²⁶⁰ The board should meet periodically *in camera* with the chief financial officer in the absence of the chief executive officer, and with the auditor in the absence of management so that the chief financial officer and the auditor have an unfettered opportunity to raise matters of concern.

Training

- 282** There should be comprehensive training for both current and newly appointed members of the board of directors of municipally owned corporations at the Town of Collingwood.²⁶¹
- 283** The training package for all members of the board should be comprehensive. It should include the mandate and purpose of the municipal corporation, the role and responsibilities of members of the board, conflict of interest and ethical principles, relevant legislation, such as the *Municipal Act* and the *Municipal Conflict of Interest Act*, and relevant Town bylaws and policies.²⁶²

- 284** Council members on the board of a municipally owned corporation at the Town of Collingwood must have extensive training on the Code of Conduct for Council members, other codes of conduct and ethical policies, and bylaws relevant to their position as board members of the municipally owned corporation. The training must include their duties and responsibilities to that municipally owned corporation and their duties and responsibilities as elected members to Council.²⁶³
- 285** Town staff on the board of a municipally owned corporation must have extensive training on the Code of Conduct for staff and other relevant codes of conduct, ethical policies, and bylaws relevant to their roles and responsibilities concerning the municipally owned corporation and their roles and responsibilities to Council.²⁶⁴

Conflicts of Interest

- 286** Council members and staff at the Town of Collingwood who hold positions on municipally owned corporations may be in a conflict of interest position. Council members and staff who believe they might have a potential, real, or apparent conflict of interest regarding their obligations to Council or their obligations to the municipally owned corporation should seek the advice and guidance of the integrity commissioner.

Board Meetings

- 287** It is the responsibility of the board, not management, to set the agenda for the board meeting. The lead responsibility for the agenda is generally the function of the chair. "A Board should not rely on management to set the agenda."²⁶⁵

288 Minutes of board meetings should be recorded and detailed.²⁶⁶

Role of Council

289 Council should be trained on the obligations that officers and directors of that corporation owe to the corporation.²⁶⁷

290 A municipally owned corporation is at arm's length from the municipality. When Council wishes to compel the corporation to act, Council should issue a shareholders resolution. Council speaks as one voice. At no time, does an individual Council member speak for Council at the Town except where explicitly authorized by Council.²⁶⁸

291 Board members who refuse to comply with a direction from Council can resign or be removed from their position by Council. The appointment bylaw for members of the board should state that they serve at the pleasure of Council and that they are subject to removal by Council.²⁶⁹

Reporting to Council

292 The chair of the board of the municipally owned corporation must submit an annual report to Council at the Town of Collingwood. Reporting to Council promotes accountability. The annual report should include the municipally owned corporation's business plans, strategies, financial statements, and information on its achievements and outcomes, as well as compliance with ethical policies and codes of conduct. The information should be transparent and understandable to members of the public. The annual report should be published on the Town of Collingwood website.²⁷⁰

Sale of the Corporate Asset

293 The board of directors of a municipally owned corporation should not have a direct role in the decision of the municipality to sell its asset. The role of the board is to be a resource to staff whose responsibility it is to provide information and advice to Council.²⁷¹

294 A solicitor retained by the Town of Collingwood should be involved from the inception to ensure that all rules, policies, and bylaws are strictly followed and to provide advice and guidance to Council.²⁷²

Integrity Commissioner

The absence of clear information and guidance about conflicts of interest, including identifying and addressing conflicts, was the subject of much evidence during Parts One and Two of the Inquiry and discussion in participants' closing submissions. The absence of a clear understanding of conflicts of interest was obvious and disturbing. The Town of Collingwood did not have an integrity commissioner during the events I examined. It is only fair to Council members, regardless of their occupation, to provide them with an adequate and complete understanding of real, apparent, and potential conflicts of interest.

According to the *Municipal Act, 2001*,²⁷³ the integrity commissioner reports to Council and is responsible for discharging in an independent manner the functions assigned by the municipality. These can include the application of the Code of Conduct for Council members, as well as the application of the *Municipal Conflict of Interest Act*.²⁷⁴ The integrity commissioner is a resource and educator for Council and an educator for staff and the public.

The recommendations that follow further clarify the role and importance of the integrity commissioner in municipal governance.

- 295** An integrity commissioner is a neutral, independent officer as defined in the *Municipal Act*. The integrity commissioner at the Town of Collingwood should be appointed by Council for a fixed non-renewable term of five years.²⁷⁵
- 296** The integrity commissioner should report directly to Council, not to the mayor, to ensure the independence of the integrity commissioner. (I recognize that section 223.3 of the *Municipal Act* contains a similar provision. I make this recommendation to emphasize that the integrity commissioner should report to Council not the head of Council.)
- 297** The removal from office of the integrity commissioner should require a two-thirds vote of all Council members.²⁷⁶
- 298** The integrity commissioner should have a dedicated website at the Town of Collingwood for education, training, and outreach purposes. It should contain material on the roles and responsibilities of the integrity commissioner; educational content for Council members, staff, and the public, such as interpretation bulletins, codes of conduct, updates on relevant statutory provisions, regulations, bylaws, and policies; and a section on frequently asked questions (FAQs), as well as the annual report of the integrity commissioner.
- 299** The integrity commissioner should be obliged to discharge the responsibilities described in my recommendations. (See my recommendations on Mayor/Council Members, CAO/Staff, Lobbying, and Municipally Owned Corporations.)
- 300** Integrity commissioners in municipalities in Ontario should share information and best practices. The sharing of information will enable integrity commissioners in smaller municipalities, such as the Town of Collingwood, to learn from each other and from integrity commissioners in larger

municipalities. While I am aware that an organization of integrity commissioners already exists, the purpose of this recommendation is to emphasize the importance of regular education and sharing of information and resources among integrity commissioners.

301 “An external auditor should periodically review the operations”
“of the integrity commissioner.”²⁷⁷

Municipal Solicitor

Council received filtered, incomplete, and at times misleading accounts of the advice provided by professional advisors. The filtering and incomplete nature of the advice sought and communicated to Council was particularly apparent when it came to the advice of the municipal solicitor in Part One, and the absence of legal advice regarding the procurement process and resulting contract in Part Two. Ineffective communication, as well as a lack of clear division of roles, responsibilities, and reporting structure, impeded Council’s interactions with the Town’s solicitor in Part One, the Collus share sale. The Town’s legal counsel were largely excluded from decisions concerning the recreational facilities in Part Two.

Council as a whole, the directing mind of the municipality, must receive legal advice directly from the lawyer retained to provide it. The need for direct communication becomes obvious where there is a clear understanding that Council as a whole is the municipal solicitor’s client. Staff may work with the solicitor to inform Council. Still, the solicitor’s duties are owed to Council, and Council must ensure that solicitors retained by the municipality report to it. Council must ensure that no one Council member or member of staff can leave a false impression that reporting to them is the same as reporting to Council.

The recommendations I set out in this section are foundational to establishing and maintaining the proper relationship between Council and the municipal solicitor.

Amendments to the Ontario Municipal Act, 2001²⁷⁸

- 302** The Province of Ontario should amend the *Municipal Act* to mandate that municipalities the size of the Town of Collingwood should have a solicitor on retainer to provide legal advice.

Town of Collingwood

- 303** A solicitor retained by the Town of Collingwood should have a direct reporting relationship to Council. Council is the client, not the mayor, deputy mayor, individual Council members, or Town staff.²⁷⁹
- 304** When the Town of Collingwood retains a solicitor, there must be a retainer letter.²⁸⁰

Professional Consultants

Professional consultants were involved in both of the transactions I examined in the Inquiry. In Part One, KPMG was involved in assessing options for Collus Power and in the request for proposal for a strategic partner for the electric utility; in Part Two, WGD Architects analyzed arena options. In both cases, these professional advisors issued reports, but those reports were not provided to Council.

The recommendation that follows ensures that the relationship between the Town and its professional advisors is clearly articulated and documented.

- 305** Every time a consultant is retained, there should be a retainer or engagement letter setting out, in part, that the Town is the client, the scope of the work, and the consultant's reporting obligations.

Follow-Up to Public by Town of Collingwood on Recommendations

- 306** The Town of Collingwood Council should issue a public report on the first anniversary of the release of this Report describing Council's response to these recommendations.

Notes

- 1 *Municipal Act, 2001*, SO 2001 c 25 [*Municipal Act*].
- 2 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 50.7–50.24; John Fleming, Good Governance Panel, November 27, 2019, 81.10–81.17, 83.1–84.7.
- 3 The Honourable Denise Bellamy, Introductory Remarks, November 27, 2019, 37.5–39.7, 47.23–48.2. See also *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 71 [*TCLI/TECI Report*].
- 4 See *TCLI/TECI Report* at Recommendation 16. See also City of Ottawa, by-law 2019-8, *Rules of Procedure* (January 30, 2019), s 12(2); City of Mississauga, by-law 139-13, *Council Procedure By-law* (June 19, 2013), ss 23, 25; County of Simcoe, by-law No 6703, *Procedure By-law* (November 28, 2017), s 8.3; City of Vaughan, by-law No 7-2011, *A By-Law to govern the proceedings of Council and Committees of Council* (Jan 25, 2011), s 3.1; Town of Caledon, by-law No BL-2015-108, *Town of Caledon Procedural By-law*, s 4.3.5; City of Toronto, by-law Chapter 27, *Council Procedures* (July 29, 2020), §§ 27-6.1, 27-6.5.
- 5 See *TCLI/TECI Report* at Recommendation 84.
- 6 See example: *Municipal Act*, CCSM c M225, ss 82, 83(1).
- 7 Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 67.10–68.16.
- 8 O Reg 55/18, *Codes of Conduct – Prescribed Subject Matters*.
- 9 See examples: City of Kingston, Council, *Council/Staff Relations*, Policy 74 (September 2019), s 3.1; City of Brampton, City Clerk’s Office, *Council Staff Relations Policy*, GOV-140 (March 1, 2019), ss 5, 6; City of Vaughan, City Manager, *Council-Staff Relations*, 13.C.04 (May 1, 2019), ss 1, 5; Corporation of the Town of Caledon, Town Council, *Council-Staff Relations Policy*, Staff Report 2020-0031 (February 18, 2020), s 5.
- 10 *Municipal Conflict of Interest Act*, RSO 1990, c M50 [*Municipal Conflict of Interest Act*].
- 11 City of Vaughan, Council, *Code of Ethical Conduct for Members of Council and Local Boards*, CL-011 (June 28, 2011), Definitions s 5 “Family Member” [Vaughan Council Code of Conduct]; Rick O’Connor, Conflict of Interest Panel, November 28, 2019, 44.7–44.10. Similar provisions exist in County of Simcoe, Warden, CAO, Clerk and Archives: Clerk’s Department, CLK 8.0.1 (October 9, 2018), s 4.5 [Simcoe Council Code of Conduct]; Town of Caledon, *Town of Caledon Code of Conduct for Members of Council and Designated Boards*, Definitions “Family” [Caledon Council Code of Conduct].
- 12 Simcoe Code of Conduct, s 6.8; Rick O’Connor, Conflict of Interest Panel, November 28, 2019, 85.2–86.6; Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 63.3–63.12, 86.9–86.12.

- 13 See City of Mississauga, *Council Code of Conduct* (December 11, 2013), r 1(b), (c) [Mississauga Council Code of Conduct]; Simcoe Council Code of Conduct, s 1; Vaughan Council Code of Conduct, r 1(b), (g); City of Ottawa, by-law 2018-400, *Code of Conduct for Members of Council* (December 12, 2018), s 4(1) [Ottawa Council Code of Conduct]. See also *TCLI/TECI Report* at Recommendation 2.
- 14 Ottawa Council Code of Conduct, s 4.2.
- 15 See Mississauga Council Code of Conduct, r 1(c); Simcoe Council Code of Conduct, s 1; Vaughan Council Code of Conduct, r 1(g).
- 16 Ottawa Council Code of Conduct, s 10; John Fleming, Good Governance Panel, November 27, 2019, 80.18–81.17. See also *TCLI/TECI Report* at Recommendation 15.
- 17 Simcoe Council Code of Conduct, ss 6.15.3, 6.16.4; Vaughan Council Code of Conduct, r 13.
- 18 Mississauga Council Code of Conduct, r 7(1); Simcoe Council Code of Conduct, s 6.10; Vaughan Council Code of Conduct, r 7; City of Toronto, Office of the Integrity Commissioner, *Toronto Council Code of Conduct* (July 7, 2010), Part VIII [Toronto Council Code of Conduct].
- 19 Mississauga Council Code of Conduct, r 13(3); Simcoe Council Code of Conduct, s 6.17.3; Vaughan Council Code of Conduct, r 16(3); Ottawa Council Code of Conduct, s 10(5); Toronto Council Code of Conduct, Part XII. See also *TCLI/TECI Report* at Recommendations 15, 18.
- 20 Mississauga Council Code of Conduct, r 13(4); Simcoe Council Code of Conduct, s 6.17.3; Vaughan Council Code of Conduct, r 16(4); Ottawa Council Code of Conduct, s 10(6); Toronto Council Code of Conduct, Part XII.
- 21 See *TCLI/TECI Report* at Recommendation 20. See Simcoe Council Code of Conduct, ss 4.11, 6.8. See also Mississauga Council Code of Conduct, Definition (f), r 1(b); Vaughan Council Code of Conduct, r 1(c); Ottawa Council Code of Conduct, s 4(5).
- 22 Vaughan Council Code of Conduct, Definitions s 5 “Family Member.”
- 23 Simcoe Council Code of Conduct, s 6.8.5.
- 24 Simcoe Council Code of Conduct, s 6.8.2.
- 25 Simcoe Council Code of Conduct, s 6.8.3.
- 26 Simcoe Council Code of Conduct, s 6.8.3.
- 27 Simcoe Council Code of Conduct, s 6.8.3.
- 28 Simcoe Council Code of Conduct, s 6.9.1.
- 29 Simcoe Council Code of Conduct, s 6.17.5.
- 30 Ottawa Council Code of Conduct, s 10(6); Simcoe Council Code of Conduct, s 6.17.6.
- 31 Ottawa Council Code of Conduct, s 13(1).
- 32 See *TCLI/TECI Report* at Recommendations 61, 62. Ottawa Council Code of Conduct, s 12(4).
- 33 Ottawa Council Code of Conduct, s 13(2).
- 34 See Ottawa Council Code of Conduct, ss 13(3), (4); *TCLI/TECI Report* at Recommendations 66, 67.

- 35 *TCLI/TECI Report* at Recommendation 68. See Mississauga Council Code of Conduct, r 2.
- 36 *TCLI/TECI Report* at Recommendation 69. See Mississauga Council Code of Conduct, r 2.
- 37 Mississauga Council Code of Conduct, r 7; Simcoe Council Code of Conduct, s 6.10; Vaughan Council Code of Conduct, r 7; Ottawa Council Code of Conduct, s 8; Toronto Council Code of Conduct, Part VIII.
- 38 See examples: *TCLI/TECI Report* at Recommendations 26, 27; Simcoe Council Code of Conduct, s 6.4; Mississauga Council Code of Conduct, r 4; Vaughan Council Code of Conduct, r 3; Caledon Council Code of Conduct, s 2; Toronto Council Code of Conduct, Part V.
- 39 See Simcoe Council Code of Conduct, s 6.4.3. See also Mississauga Council Code of Conduct, r 4(4)(c); Vaughan Council Code of Conduct, r 3(2); Ottawa Council Code of Conduct, s 5(1); Toronto Council Code of Conduct, Part V.
- 40 Mississauga Council Code of Conduct, r 4.4; Simcoe Council Code of Conduct, s 6.4.3(a); Vaughan Council Code of Conduct, r 3(1); Ottawa Council Code of Conduct, s 5.2; Caledon Council Code of Conduct, s 2; Toronto Council Code of Conduct, Part V.
- 41 See Simcoe Council Code of Conduct, s 6.4.3(b).
- 42 Simcoe Council Code of Conduct, s 6.4.2.
- 43 Mississauga Council Code of Conduct, r 4(4)(d). See also *TCLI/TECI Report* at Recommendation 27. See examples: Simcoe Council Code of Conduct, s 6.4.3(f); Vaughan Council Code of Conduct, r 3(6); Caledon Council Code of Conduct, s 2.4; Toronto Council Code of Conduct, Part V.
- 44 See Mississauga Council Code of Conduct, r 4(4)(c); Simcoe Council Code of Conduct, s 6.4.3; Vaughan Council Code of Conduct, r 3(3); Toronto Council Code of Conduct, Part V.
- 45 See Simcoe Council Code of Conduct, s 6.20.
- 46 See Mississauga Council Code of Conduct, r 16(2); Simcoe Council Code of Conduct, s 6.20.3; Vaughan Council Code of Conduct, r 19.2; Toronto Council Code of Conduct, Part XVI.
- 47 *TCLI/TECI Report* at Recommendation 47. See examples: Mississauga Council Code of Conduct, Complaint Protocol, s 9(4); Simcoe Council Code of Conduct, Complaint Protocol s 9(4); Vaughan Council Code of Conduct, r 20; Ottawa Council Code of Conduct, s 15; Caledon Council Code of Conduct, s 18; Toronto Council Code of Conduct, Part XVIII.
- 48 See *TCLI/TECI Report* at Recommendations 8, 49.
- 49 See *TCLI/TECI Report* at Recommendations 8, 49.
- 50 See the Honourable J. David Wake, *Ethical Government in Ontario*, November 28, 2019, 32.21–33.19.
- 51 See *TCLI/TECI Report* at Recommendations 12, 22.

- 52 Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 34.1–34.10; *TCLI/TECI Report* at Recommendation 49.
- 53 See *TCLI/TECI Report* at Recommendation 50.
- 54 Rick O'Connor, Conflict of Interest Panel, November 28, 2019, 104.8–105.9.
- 55 See Ottawa Council Code of Conduct, Appendix “A” s 6; Caledon Council Code of Conduct, s 15.1; Mississauga Council Code of Conduct, Complaint Protocol, s 3(1); Simcoe Council Code of Conduct, Complaint Protocol s 3(3).
- 56 *TCLI/TECI Report* at Recommendation 10.
- 57 See Simcoe Council Code of Conduct, s 3.2; Mississauga Council Code of Conduct, r 1(h).
- 58 *Municipal Act, 2001*, SO 2001, c 25 [*Municipal Act*].
- 59 John Fleming, Good Governance Panel, November 27, 2019, 119.7–119.15.
- 60 John Fleming, Good Governance Panel, November 27, 2019, 119.7–119.15.
- 61 See examples: City of Toronto, by-law Chapter 169, *Officials, City* (April 30, 2020), § 169-1 [Toronto Officials By-Law]; The Corporation of the Town of Caledon, Town Council, *Delegation of Powers and Duties to the CAO*, Staff Report 2020-0092 (April 28, 2020), s 2.1 [Caledon CAO By-Law].
- 62 See examples: Toronto Officials By-Law, § 169-1; Caledon CAO By-Law, s 2.1.
- 63 John Fleming, Good Governance Panel, November 27, 2019, 140.20–140.21.
- 64 City of Toronto, by-law Chapter 192, *Public Service* (October 3, 2019), § 192-33(1) [Toronto Public Service By-Law].
- 65 See John Fleming, Good Governance Panel, November 27, 2019, 132.12–132.21.
- 66 See Greg Levine, Good Governance Panel, November 27, 2019, 138.4–138.8; *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 43 [*TCLI/TECI Report*]; Toronto Public Service By-Law, §§ 192-47, 192-51.
- 67 See examples of Codes of Conduct: City of Vaughan, Human Resources, *Employee Code of Conduct*, 13.A.02 (November 20, 2018) [Vaughan Employee Code of Conduct]; City of Ottawa, City Manager: *Employee Code of Conduct* [Ottawa Employee Code of Conduct].
- 68 See examples: Vaughan Employee Code of Conduct; Ottawa Employee Code of Conduct.
- 69 *TCLI/TECI Report* at Recommendation 3.
- 70 *TCLI/TECI Report* at Recommendation 10; Vaughan Employee Code of Conduct, s 10.1.
- 71 Vaughan Employee Code of Conduct, Purpose, s 1.1.1.
- 72 Vaughan Employee Code of Conduct, Purpose. See also Ottawa Employee Code of Conduct, at 8.
- 73 This is stated in *Municipal Act*, s 227(a), but should be reiterated in the Code of Conduct for staff.
- 74 This is stated in *Municipal Act*, s 227(b), but should be repeated in the Code of Conduct

- for staff. John Fleming, Good Governance Panel, November 27, 2019, 81.10–81.17. See also *TCLI/TECI Report* at Recommendation 87.
- 75 See *TCLI/TECI Report* at Recommendation 82.
- 76 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 19.19–19.23, 22.9–22.19, 24.10–24.14; *TCLI/TECI Report* at Recommendation 87.
- 77 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 22.14–22.19; Vaughan Employee Code of Conduct, s 2.2.4.
- 78 Vaughan Employee Code of Conduct, s 1.1.4. See also Ottawa Employee Code of Conduct at 14.
- 79 *TCLI/TECI Report* at Recommendations 26; Toronto Public Service By-Law, § 192-16; Vaughan Employee Code of Conduct, s 2.2.
- 80 See Toronto Public Service By-Law, § 192-21; Vaughan Employee Code of Conduct, s 3.11.
- 81 *TCLI/TECI Report* at Recommendations 20, 21. See examples: Vaughan Employee Code of Conduct, s 1.2.3, 3; Toronto Public Service By-Law, § 192-11; Ottawa Employee Code of Conduct at 8.
- 82 Vaughan Employee Code of Conduct, s 3.8; *TCLI/TECI Report* at Recommendations 21, 22.
- 83 *TCLI/TECI Report* at Recommendation 23. See Toronto Public Service By-Law, § 192-12.
- 84 *TCLI/TECI Report* at Recommendation 30. See examples: Vaughan Employee Code of Conduct, s 3.3; Toronto Public Service By-Law, § 192-12.
- 85 Vaughan Employee Code of Conduct, s 2.2.5.
- 86 *TCLI/TECI Report* at Recommendation 22. Vaughan Employee Code of Conduct, s 1.2.3.
- 87 See Vaughan Employee Code of Conduct, s 3.6. (However, note that the Vaughan by-law instructs staff to inform their supervisor, not the CAO.)
- 88 Vaughan Employee Code of Conduct, s 3.9; *TCLI/TECI Report* at Recommendation 24.
- 89 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 23.18–24.12; Anna Kinastowski, Good Governance Panel, November 27, 2019, 98.9–99.4; Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 108.12–108.22; *TCLI/TECI Report* at Recommendation 87.
- 90 Anna Kinastowski, Good Governance Panel, November 27, 2019, 107.16–107.22; John Fleming, Good Governance Panel, November 27, 2019, 109.3–109.15.
- 91 Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 112.15–113.7.
- 92 John Fleming, Good Governance Panel, November 27, 2019, 146.8–146.13; Anna Kinastowski, Good Governance Panel, November 27, 2019, 146.14–146.19; Mike Pacholok, Procurement Panel, November 29, 2019, 119.15–119.25.
- 93 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.23–87.5. See also *TCLI/TECI Report* at Recommendations 61, 62.
- 94 See *TCLI/TECI Report* at Recommendation 204.
- 95 *TCLI/TECI Report* at Recommendation 61; Vaughan Employee Code of Conduct, s 8.1; Toronto Public Service By-Law, § 192-13(c).

- 96 See *TCLI/TECI Report* at Recommendation 66.
- 97 *TCLI/TECI Report* at Recommendation 67.
- 98 Vaughan Employee Code of Conduct, s 12.1. See also Toronto Public Service By-Law, § 192-35; Ottawa Employee Code of Conduct at 16.
- 99 See Vaughan Employee Code of Conduct, ss 12.2-12.4.
- 100 Greg Levine, Good Governance Panel, November 27, 2019, 138.4–138.15. See examples: Vaughan Employee Code of Conduct, s 13; Toronto Public Service By-Law, § 192-47.
- 101 Vaughan Employee Code of Conduct, ss 13.1, 13.3. See examples: Toronto Public Service By-Law, § 192-49; Ottawa Employee Code of Conduct at 16.
- 102 Vaughan Employee Code of Conduct, s 13.2. See also Toronto Public Service By-Law, § 192-41; Ottawa Employee Code of Conduct at 15.
- 103 Vaughan Employee Code of Conduct, s 14.1. See also Toronto Public Service By-Law, § 192-45.
- 104 Anna Kinastowski, Good Governance Panel, November 27, 2019, 147.7–147.15.
- 105 See Toronto Public Service By-Law, §§ 192-10, 192-11.
- 106 *TCLI/TECI Report* at Recommendation 6.
- 107 *TCLI/TECI Report* at Recommendation 7.
- 108 Toronto Public Service By-Law, §§ 192-11(C), 192-16; Vaughan Employee Code of Conduct, s 2.2.3.
- 109 See examples: Vaughan Employee Code of Conduct, s 9.1; Toronto Public Service By-Law, §§ 192-33, 192-34.
- 110 See Toronto Public Service By-Law, §§ 192-33, 192-34. See also Vaughan Employee Code of Conduct, s 9.1.1.
- 111 Vaughan Employee Code of Conduct, s 9.1.3.
- 112 Vaughan Employee Code of Conduct, s 9.1.6. See also Toronto Public Service By-Law, § 192-34(A).
- 113 Vaughan Employee Code of Conduct, s 12.2.
- 114 Vaughan Employee Code of Conduct, s 9.1.7.
- 115 Fareed Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 112.15–113.7.
- 116 See for example: Vaughan Employee Code of Conduct, s 11.2.
- 117 Vaughan Employee Code of Conduct, s 9.1.5.
- 118 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 33.9–33.10.
- 119 *Municipal Act, 2001*, SO 2001, c 25 [*Municipal Act*].
- 120 Mike Pacholok, Procurement Panel, November 29, 2019, 58.5–58.12. See also *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 129 [*TCLI/TECI Report*].
- 121 See City of Toronto, by-law Chapter 195, *Purchasing* (January 31, 2019), § 195-1.1 [Toronto *Purchasing By-Law*]; City of Vaughan, Procurement Services, *Corporate Procurement*

- Policy*, PS-003 (March 21, 2017), s 1.3 [Vaughan Procurement Policy]; City of Ottawa, by-law 2017-362, *Procurement By-law*, s 2 [Ottawa Procurement By-Law]; County of Simcoe, Corporate Performance: Procurement Fleet and Property, *Procurement Bylaw*, 2013-02 (July 1, 2018), s 4.1 [Simcoe Procurement Policy]; Corporation of the Town of Essex, by-law 1043, *A By-Law to Adopt a Policy for the Procurement and Disposal of Goods and Services* (September 20, 2010), s 2 [Essex Procurement Policy]; The Regional Municipality of Peel, by-law 30-2018, *A By-law to Govern the Procurement and Disposal of Goods and Services* (May 10, 2018), s 1 [Peel Procurement By-Law]; The Regional Municipality of Halton, by-law 83-19, *A By-Law to Amend By-Law No. 74-15, Being A By-Law to Define Procurement Policies and Procedures for the Regional Municipality of Halton* (November 20, 2019), s 1 [Halton Procurement By-Law].
- 122 See *TCLI/TECI Report* at Recommendation 146; Mike Pacholok, Procurement Panel, November 29, 2019, 58.13–58.22, 69.1–70.11; Marian MacDonald, Procurement Panel, November 29, 2019, 107.9–107.13. See examples: Toronto Purchasing By-Law, § 195-6.3; Ottawa Procurement By-Law, ss 2, 22; Simcoe Procurement By-Law, ss 2.1, 13; Essex Procurement Policy, ss 2.02, 3.01; Peel Procurement By-Law, s 3.1; Halton Procurement By-Law, ss 4.1, 7.1.
- 123 Mike Pacholok, Procurement Panel, November 29, 2019, 70.8–70.22; Marian MacDonald, Procurement Panel, November 29, 2019, 97.23–98.23. See example: Vaughan Procurement Policy, s 4.2.7.
- 124 Mike Pacholok, Procurement Panel, November 29, 2019, 69.1–70.2. See examples: Toronto Purchasing By-Law, § 195-7.1; Vaughan Procurement Policy, s 4.2.4; Ottawa Procurement By-Law, s 22; Simcoe Procurement By-Law, s 13; Essex Procurement Policy, s 9.08.
- 125 Marian MacDonald, Procurement Panel, November 29, 2019, 63.7–63.14; Mike Pacholok, Procurement Panel, November 29, 2019, 70.3–70.7.
- 126 Mike Pacholok, Procurement Panel, November 29, 2019, 69.15–69.18.
- 127 See examples: Vaughan Procurement Policy, s 10; Ottawa Procurement By-Law, s 25; Essex Procurement Policy, s 45.06; Peel Procurement By-Law, s 11.1; Halton Procurement By-Law, s 22.1.
- 128 See examples: Vaughan Procurement Policy, s 10; Ottawa Procurement By-Law, s 25; Peel Procurement By-Law, s 11.1.
- 129 See Mike Pacholok, Procurement Panel, November 29, 2019, 70.8–71.3.
- 130 See examples: Vaughan Procurement Policy, s 4.6.1; Peel Procurement By-Law, s 17.1.
- 131 *TCLI/TECI Report* at Recommendations 136, 137, 138. See example: Toronto Purchasing By-Law, §§ 195-3.1(J), 4.1(A).
- 132 *TCLI/TECI Report* at Recommendation 141.
- 133 See *TCLI/TECI Report* at Recommendation 147.
- 134 See *TCLI/TECI Report* at Recommendation 129.
- 135 Marian MacDonald, Procurement Panel, November 29, 2019, 61.16–62.5, 79.2–79.22;

- Mike Pacholok, Procurement Panel, November 29, 2019, 77.21–78.13; See *TCLI/TECI Report* at Recommendation 130.
- 136 Vaughan Procurement Policy, s 3.6. See also: Ottawa Procurement By-Law, s 9(c); Essex Procurement Policy, s 7.03(b).
- 137 Essex Procurement Policy, s 7.03(b); Halton Procurement By-Law, s 23.1(b).
- 138 Vaughan Procurement Policy, s 3.6; Halton Procurement By-Law, ss 23.1(a), (e).
- 139 Ottawa Procurement By-Law, s 9(1)(e); Peel Procurement By-Law, s 16.1.2.
- 140 Essex Procurement Policy, s 7.03(b); Vaughan Procurement Policy, s 3.6(e).
- 141 Toronto Purchasing By-Law, § 195-8.5(B).
- 142 Vaughan Procurement Policy, s 3.6(b).
- 143 Marian MacDonald, Procurement Panel, November 29, 2019, 61.16–62.5; Mike Pacholok, Procurement Panel, November 29, 2019, 81.3–81.22; *TCLI/TECI Report* at Recommendation 130.
- 144 *TCLI/TECI Report* at Recommendation 131.
- 145 Mike Pacholok, Procurement Panel, November 29, 2019, 58.19–58.22. See also *TCLI/TECI Report* at Recommendation 155. See examples: Toronto Purchasing By-Law, § 195-1.1(E); Vaughan Procurement Policy, s 3; Ottawa Procurement By-Law, s 5; Essex Procurement Policy, s 7; Peel Procurement By-Law, Part IV; Halton Procurement By-Law, s 5.
- 146 Marian MacDonald, Procurement Panel, November 29, 2019, 61.7–61.15.
- 147 Mike Pacholok, Procurement Panel, November 29, 2019, 75.12–75.17. See also *TCLI/TECI Report* at Recommendation 159.
- 148 Mike Pacholok, Procurement Panel, November 29, 2019, 117.5–118.3. See: *TCLI/TECI* at Recommendation 166. See example: Vaughan Procurement Policy, s 7.
- 149 Mike Pacholok, Procurement Panel, November 29, 2019, 117.5–118.3. See example: Vaughan Procurement Policy, s 7.
- 150 Marian MacDonald, Procurement Panel, November 29, 2019, 105.6–105.24. See *TCLI/TECI Report* at Recommendation 159.
- 151 See *TCLI/TECI Report* at Recommendation 161.
- 152 Marian MacDonald, Procurement Panel, November 29, 2019, 118.8–118.16.
- 153 See Marian MacDonald, Procurement Panel, November 29, 2019, 118.10–119.9.
- 154 *TCLI/TECI Report* at Recommendation 160.
- 155 Mike Pacholok, Procurement Panel, November 29, 2019, 119.10–120.6.
- 156 Marian MacDonald, Procurement Panel, November 29, 2019, 64.21–65.16, 87.20–88.18; Mike Pacholok, Procurement Panel, November 29, 2019, 88.25–89.17.
- 157 See Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See examples: Toronto Purchasing By-Law, § 195-13; The Regional Municipality of Halton, Supply Chain Management Division: *Vendor Code of Conduct* [Halton Vendor Code of Conduct].
- 158 Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See example: Toronto Purchasing By-Law, § 195-13.12.

- 159 Halton Vendor Code of Conduct at 6–7.
- 160 Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See example: Toronto Purchasing By-Law, § 195-13.12.
- 161 Toronto Purchasing By-Law, § 195-13.1(A).
- 162 Toronto Purchasing By-Law, § 195-13.1(B).
- 163 Toronto Purchasing By-Law, § 195-13.2(A). See also: Halton Vendor Code of Conduct at 8.
- 164 See examples: Toronto Purchasing By-Law, § 195-13.12; Halton Vendor Code of Conduct at 19.
- 165 See example: Halton Vendor Code of Conduct at 10.
- 166 Toronto Purchasing By-Law, § 195-13.3.
- 167 Toronto Purchasing By-Law, § 195-13.3(B).
- 168 Toronto Purchasing By-Law, § 195-2.1 Definitions: “Conflict of Interest or Unfair Advantage.”
- 169 Toronto Purchasing By-Law, § 195-13.3(A).
- 170 Toronto Purchasing By-Law, § 195-13.3(A) (Note: the Toronto Purchasing By-Law specifies two years).
- 171 Toronto Purchasing By-Law, § 195-13.3(B).
- 172 Toronto Purchasing By-Law, § 195-13.3(D).
- 173 Toronto Purchasing By-Law, § 195-2.1 Definitions: “Conflict of Interest or Unfair Advantage.”
- 174 Toronto Purchasing By-Law, § 195-13.4.
- 175 Toronto Purchasing By-Law, § 195-13.5(A).
- 176 Toronto Purchasing By-Law, § 195-13.6. See also: Mike Pacholok, Procurement Panel, November 29, 2019, 72.17–72.23.
- 177 Toronto Purchasing By-Law, § 195-13.6.
- 178 Toronto Purchasing By-Law, § 195-13.7. See also: Mike Pacholok, Procurement Panel, November 29, 2019, 72.17–72.23; Halton Vendor Code of Conduct at 11.
- 179 *TCLI/TECI Report* at Recommendation 204.
- 180 Toronto Purchasing By-Law, § 195-13.12(A).
- 181 Mike Pacholok, Procurement Panel, November 29, 2019, 120.13–121.2. See examples: Toronto Purchasing By-Law, § 195-13.13; Halton Vendor Code of Conduct at 19.
- 182 Marian MacDonald, Procurement Panel, November 29, 2019, 62.22–63.14.
- 183 *TCLI/TECI Report* at Recommendation 156.
- 184 Marian MacDonald, Procurement Panel, November 29, 2019, 65.25–66.5; Mike Pacholok, Procurement Panel, November 29, 2019, 94.15–94.24; *TCLI/TECI Report* at Recommendation 205. See also: Vaughan Procurement Policy, s 1.1.9; Essex Procurement Policy, s 5.01; Peel Procurement By-Law, s 12.1.
- 185 *TCLI/TECI Report* at Recommendation 207.
- 186 *TCLI/TECI Report* at Recommendation 208; Marian MacDonald, Procurement Panel, November 29, 2019, 92.21–93.4; Mike Pacholok, Procurement Panel, November 29, 2019, 93.16–94.8.

- 187 See *TCLI/TECI Report* at Recommendation 164.
- 188 Marian MacDonald, Procurement Panel, November 29, 2019, 110.8–111.5; Mike Pacholok, Procurement Panel, November 29, 2019, 111.6–113.3
- 189 *TCLI/TECI Report* at Recommendation 213.
- 190 *TCLI/TECI Report* at Recommendation 214.
- 191 *TCLI/TECI Report* at Recommendation 212.
- 192 *TCLI/TECI Report* at Recommendation 215.
- 193 *TCLI/TECI Report* at Recommendation 215.
- 194 *TCLI/TECI Report* at Recommendation 218.
- 195 *TCLI/TECI Report* at Recommendation 228.
- 196 *TCLI/TECI Report* at Recommendation 229; Mike Pacholok, Procurement Panel, November 29, 2019, 122.8–122.12; Marian MacDonald, Procurement Panel, November 29, 2019, 122.13–123.4. See examples: Toronto Purchasing By-Law, §§ 195-2.1 Definitions: “Supplier Debriefing,” 195-10.2; Ottawa Procurement By-Law, s 46.3(a); Peel Procurement By-Law, s 15.1.
- 197 *TCLI/TECI Report* at Recommendation 230; Mike Pacholok, Procurement Panel, November 29, 2019, 121.12–122.12. See for example: Toronto Purchasing By-Law, § 195-10; Vaughan Procurement By-Law, s 9; Ottawa Procurement By-Law, s. 46; Simcoe Procurement Policy, ss 10.4, 10.5.
- 198 *TCLI/TECI Report* at Recommendation 230.
- 199 See *TCLI/TECI Report* at Recommendation 232.
- 200 See Toronto Purchasing By-Law, § 195-10.
- 201 City of Ottawa, by-law 2012-309, *Lobbyist Registry By-law*, Definitions: “lobby” [Ottawa Lobbyist Registry By-Law]. See City of Vaughan, by-law 165-2017, *Lobbyist Registry By-law* (December 11, 2017), s 1 Definitions: “lobby” [Vaughan Lobbyist Registry By-Law]; City of Toronto, by-law Chapter 140, *Lobbying* (December 13, 2018), § 140-1 Definitions: “lobby” [Toronto Lobbying By-Law].
- 202 See Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 16.6–16.10; *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at 79-80 [*TCLI/TECI Report*].
- 203 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 16.11–16.17, 51.25–52.22; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 50.16–50.23, 51.9–51.17. See *TCLI/TECI Report* at Recommendation 97.
- 204 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 17.25–18.4; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 59.11–59.20.
- 205 See examples: Ottawa Lobbyist Registry By-Law, s 2; Vaughan Lobbyist Registry By-Law, s 2; Toronto Lobbying By-Law, § 140-34.
- 206 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 17.18–18.4, 31.20–32.12, 53.4–54.2; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 63.11–63.23

- referencing *TCLI/TECI Report* at Recommendation 116; Fared Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 117.23–118.7.
- 207 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 31.20–33.25. See also *TCLI/TECI Report* at Recommendation 117.
- 208 *TCLI/TECI Report* at Recommendation 118. See also Toronto Lobbying By-Law, § 140-10.
- 209 *TCLI/TECI Report* at Recommendation 119; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 68.24–69.16; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 69.18–72.11; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 72.21–73.3.
- 210 *TCLI/TECI Report* at Recommendation 119.
- 211 *TCLI/TECI Report* at Recommendation 119.
- 212 *TCLI/TECI Report* at Recommendation 119.
- 213 *TCLI/TECI Report* at Recommendation 119.
- 214 See *TCLI/TECI Report* at Recommendation 121.
- 215 *TCLI/TECI Report* at Recommendation 123; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 13.16–13.21; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 100.5–100.15. See examples: Ottawa Lobbyist Registry By-Law, s 10; Vaughan Lobbyist Registry By-Law, s 9.
- 216 Fared Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 110.9–110.14. See *TCLI/TECI Report* at Recommendation 98; Vaughan Lobbyist Registry By-Law, Schedule "A" [Vaughan Lobbyist Code of Conduct]; Ottawa Lobbyist Registry By-Law, Appendix "A" [Ottawa Lobbyist Code of Conduct]; Toronto Lobbying By-Law, § 140, art VI.
- 217 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 64.5–65.20; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 66.23–67.10. See also *TCLI/TECI Report* at Recommendation 98.
- 218 *TCLI/TECI Report* at Recommendation 98.
- 219 *TCLI/TECI Report* at Recommendation 98; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 64.16–65.11, 72.3–72.11.
- 220 Ottawa Lobbyist Code of Conduct, s 4(1); Vaughan Lobbyist Code of Conduct, s 4; Toronto Lobbying By-Law, §140-43.
- 221 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–86.25; *TCLI/TECI Report* at Recommendation 109. See example: Toronto Lobbying By-Law, § 140-42.
- 222 *TCLI/TECI Report* at Recommendation 103. See example: Ottawa Lobbyist Code of Conduct, s 6(2).
- 223 Linda Gehrke, Lobbyist Registries Panel, Dec 2, 2019, 72.12–73.3; *TCLI/TECI Report* at Recommendation 101. See examples: Ottawa Lobbyist Code of Conduct, s 3(1); Vaughan Lobbyist Code of Conduct, s 3(a); Toronto Lobbying By-Law, § 140-40.
- 224 *TCLI/TECI Report* at Recommendation 112; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 8.11–8.24. See example: Toronto Lobbying By-Law, § 140-8.

- 225 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 98.12–98.22. See Toronto Lobbying By-Law, § 140-35.
- 226 *TCLI/TECI Report* at Recommendation 107. See Toronto Lobbying By-Law, § 140-41.
- 227 *TCLI/TECI Report* at Recommendation 108.
- 228 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 75.7–76.15; *TCLI/TECI Report* at Recommendations 54–56.
- 229 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 15.9–15.14; *TCLI/TECI Report* at Recommendation 122. See Ottawa Lobbyist Registry By-Law, s 9; Vaughan Lobbyist Registry By-Law, s 6; Toronto Lobbying By-Law, § 140-33.
- 230 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 19.11–19.23. See Ottawa Lobbyist Registry By-Law, s 8.
- 231 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 10.11–10.16, 21.23–22.4.
- 232 *TCLI/TECI Report* at Recommendation 124; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 10.11–10.16.
- 233 See *Vaughan Lobbyist Registry-By-Law*, s 2(b); *Toronto Lobbying By-Law*, § 140-34.
- 234 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 83.13–84.11; *TCLI/TECI Report* at Recommendation 125.
- 235 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 83.13–84.11.
- 236 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; See Suzanne Craig, Lobbyist Registries Panel, 84.7–84.11. See also *TCLI/TECI Report* at Recommendation 125.
- 237 See Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 100.5–100.15. See also *TCLI/TECI Report* at Recommendation 123.
- 238 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 87.1–87.12; Linda Gehrke, Lobbyist Registry Panel, December 2, 2019, 88.8–89.20.
- 239 See *TCLI/TECI Report* at Recommendation 106.
- 240 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18.
- 241 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18; *TCLI/TECI Report* at Recommendations 61–62, 100, 204.
- 242 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18.
- 243 *TCLI/TECI Report* at Recommendations 110, 111. See also Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 116.13–117.3.
- 244 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17.6–17.9, 45.11–45.18; Guy Holburn and Adam Fremeth, “Best Practice Principles of Corporate Governance for Crown Corporations” (March 2019) Ivey Energy Policy and Management Centre, at 5. Although this article deals with corporate governance for crown corporations, we have relied on it.

- 245 Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 15.12–15.20.
- 246 Holburn & Fremeth at 9; Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17:9–17:15.
- 247 Holburn & Fremeth at 9.
- 248 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 16.17–17.5; Holburn & Fremeth at 9.
- 249 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 32.22–33.11; Holburn & Fremeth at 10.
- 250 Holburn & Fremeth at 9.
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Transparency and the Public Trust

Report of the Collingwood Judicial Inquiry

VOLUME II

Associate Chief Justice Frank N. Marrocco

COMMISSIONER

VOLUME I

Executive Summary and Recommendations

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- IV *Recommendations and Inquiry Process*

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**Part Two – The Arena and the Pool:
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VOLUME IV

Recommendations and Inquiry Process

Acknowledgements

I owe an enormous debt of gratitude to many people who helped with the Inquiry's proceedings. When I began to compile the list of those people, I realized just how many had made significant contributions. Perhaps the best way to describe the contribution is to touch on a few key facts about the nature of the task:

- more than 440,000 documents collected;
- more than 18,000 pages of transcript created, reviewed, and analyzed;
- 61 days of evidence presented by 57 witnesses; and
- 306 resulting recommendations.

It is not easy to describe the time, energy, and effort required to turn all that information into a report that genuinely addresses the Inquiry's Terms of Reference. I want to formally recognize those most deeply involved in the hearings and the preparation of this Report. First, let me mention my counsel. Lead Counsel Kate McGrann was fundamental to leading the Inquiry team and assisting me in pulling all the information into a meaningful Report. Ms. McGrann had responsibility for the preparation of Inquiry witnesses and, in addition, led evidence before the Inquiry from approximately half the Inquiry's 57 witnesses. Ms. McGrann's competence, civility, and attention to detail set an example that was a credit to the Inquiry and a credit to herself. Without Ms. McGrann's leadership, the Inquiry would not have proceeded as smoothly as it did.

Ms. McGrann took over from Janet Leiper, who was lead counsel with the Inquiry from its inception until her appointment to the Superior Court of Justice on March 8, 2019. Justice Leiper's work in shaping and directing the initial investigation made a lasting contribution to this Inquiry.

Ms. McGrann could not have carried out our ambitious project without help. She had assistance from Associate Counsel John Mather, staff lawyer Max Libman, and Ronda Bessner, our senior legal analyst.

Mr. Mather took responsibility for approximately one-half of the witnesses heard in Part One and Part Two. This work involved not only the in-depth preparation of the witnesses but also a review of the extensive documentation that was important for those witnesses. In addition, Mr. Mather collaborated with Ms. McGrann concerning the many difficult administrative issues that arose during the course of the Inquiry.

Mr. Libman was essential to our ability to understand and to present coherently the evidence we heard. In addition, Mr. Libman also assumed significant responsibility not only for the preparation of the expert witnesses in Part Three but also for moderating Part Three expert panels.

Ms. Bessner, who has extensive experience with public inquiries, has worked on the Walkerton Inquiry, the Ipperwash Inquiry, and the Royal Commission on the Blood System in Canada, among others. In 2017, Ms. Bessner and her co-author Susan Lightstone wrote *Public Inquiries in Canada: Law and Practice* (Thomson Reuters Canada), an all-encompassing guide. Ms. Bessner, as she has for so many inquiries before mine, made a significant contribution to the policy work of the Inquiry. The individual and collective efforts of these team members were invaluable. All of them performed their duties with great skill, professionalism, and, importantly, the balance that is essential in a public inquiry. I wish to express my thanks to all of them.

I also want to acknowledge our Inquiry document management consultant, Kearren Bailey, who created the extensive document methodology used to manage more than 440,000 documents.

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Rogers broadcast and webcast the Inquiry's hearings at no cost, which enabled the public to view our proceedings in real time. I would like to acknowledge Paula Hodgson, who supervised the webcast and ensured that our hearings were streamed smoothly. Roger Robinson of CHS Productions managed the audio for the Inquiry's proceedings and ensured that they were clear and audible for those in the hearing room and those watching from home.

I could not have produced an Inquiry report in an appropriate form without the assistance of our professional and dedicated editors, Dan Liebman, Mary McDougall Maude, and Rosemary Shipton (Shipton, McDougall Maude Associates) and our talented designer, Linda Gustafson (Counterpunch Inc.).

Finally, the Report's value rests on its accuracy. For that, I would like to recognize our junior legal analysts, Amanda Byrd, Adam Voorberg, and Youssef Kodsy, for their diligence and attention to detail.

The Inquiry staff provided invaluable assistance. I wish to acknowledge our executive director Shelley Fuhre, who served with the Inquiry from its inception. Ms. Fuhre worked long hours under significant pressure and effortlessly provided all the administrative support necessary for the efficient functioning of the Inquiry.

I want to thank my registrar, Dawn Stewart (Atchison & Denman Court Reporting Services Ltd.), for the assistance she provided to me personally and to Inquiry witnesses. Ms. Stewart made sure the parties and witnesses felt as comfortable as possible throughout the hearings. I would also like to acknowledge our court reporter, Sue Kranz (Digi-Tran Inc.), for the timely daily delivery of transcripts.

I want to thank the municipal staff, information technology staff, and cleaning staff who the Town of Collingwood made available to us. I am

grateful to them for their professionalism, their unfailing politeness, and their timely response to our requests. I also wish to acknowledge and thank the Treasurer of the Town of Collingwood. Throughout the Inquiry, the treasurer lent us her office, which was next to the Council chamber. I can readily appreciate the inconvenience that caused her.

In planning the Inquiry, I spoke to former commissioners the Hon. Dennis O'Connor and the Hon. Denise Bellamy. Their advice greatly assisted me, and I thank them for it.

My recommendations were informed to a significant degree by the expert advice and commentary from the Hon. David Wake, the Hon. Denise Bellamy, John Fleming, Anna Kinastowski, Greg Levine, Valerie Jepson, Rick O'Connor, Mary Ellen Bench, Wendy Walberg, Marian MacDonald, Michael Pacholok, Suzanne Craig, Linda Gehrke, Robert Marleau, and former Town of Collingwood chief administrative officer Fareed Amin.

Last, but by no means least, on behalf of all the members of my team, I extend appreciation to the citizens of Collingwood and neighbouring Blue Mountain. Their friendly hospitality provided us with what came to feel like a home away from home.

Part One – Inside the Collus Share Sale

“I don’t know what is going on with COLLUS & PowerStream but it should not be something done behind closed doors. Selling off all or part of our utility is not [something] to be done lightly. It was never mentioned during the campaign and if not handled responsibly will be a very divisive local issue.”

– Email from former Mayor Ron Emo to Mayor Sandra Cooper, September 26, 2011

Collingwood in 2010: New Council and a New Chief Administrative Officer

Part One of the Inquiry examined the sale of 50 percent of the shares of Collingwood Utility Services Corporation – the holding company that wholly owned the Town of Collingwood’s electric utility, Collus Power Inc. Power-Stream Incorporated, a large utility that serviced nine municipalities, including Barrie, Markham, and Vaughan, purchased the shares. Collus Power was one of the Town’s largest assets.

The story of the share sale is complex. This chapter introduces the Town, its Council, key individuals and their relationships, and relevant laws, procedures, and practices that are discussed throughout the Report. Understanding the share sale begins with understanding these elements.

Snapshot of Collingwood

The Town of Collingwood was incorporated on January 1, 1858. Once an active shipping and grain storage hub, the local economy began to see a shift away from industry and toward tourism at the end of the 20th century. As Collingwood’s economy reoriented to recreational activities, the Town saw a 33.8 percent rise in population between 1991 and 2011 (to 19,241), close to the average increase in Ontario during the same period.

Roles and Responsibilities of Council and Staff

A nine-person elected Council governs Collingwood, with elections held every four years. The Council term with which this Inquiry is concerned spanned the period 2010–14. The roles and responsibilities of Collingwood’s

Council, councillors, and staff at this time were governed by a combination of provincial legislation, Town bylaws, and Town policies. In addition, the rulings and reports of two recent municipal judicial inquiries were available to assist them in understanding the appropriate roles of Council and staff.

PROVINCIAL LEGISLATION

The *Municipal Conflict of Interest Act* was a significant statute that applied to the Council. This *Act* required municipal councillors with “pecuniary” (financial) interests in a matter before Council to disclose their interest, recuse themselves from discussions or votes, and refrain from attempting to influence votes on the issue before, during, or after the meeting. If the Council was considering a matter in which any councillors had a financial interest during a meeting closed to the public, they were required to leave the room for that portion of the meeting. The *Act* deemed the financial interests of a councillor’s parent, spouse, or child – but not those of a sibling – to be the financial interests of the councillor.

Councillors could face both actual and apparent conflicts beyond the narrow definition of pecuniary interest provided for in the *Municipal Conflict of Interest Act*. I explore this issue later in the Report.

Collingwood Council was also subject to the Ontario *Municipal Act, 2001*, which provided municipalities with the ability to pass bylaws and to govern within their jurisdiction. This *Act* delineated roles and responsibilities for certain Council and staff positions and laid out transparency, accountability, and financial administration requirements for all Ontario municipalities. It also mandated that the Council as a whole was responsible for developing municipal policies and services and for maintaining the financial integrity of the municipality.

The “head of council” – the mayor – was the only member of the municipal Council with a legislatively prescribed role. The *Municipal Act, 2001*, required this person to act as the chief executive officer (CEO) of the municipality, preside over Council meetings, and provide leadership to Council. Despite these powers, the *Act* did not give the mayor the authority to act unilaterally on behalf of the municipality.

The wording in the *Municipal Act, 2001*, describing the mayor as the CEO of the municipality is unfortunate. The mayor does not have executive

powers akin to the CEO of a corporation. The problems presented by this imprecise language became obvious in the events before this Inquiry.

Under the *Municipal Act, 2001*, the chief administrative officer (CAO) was the senior administrator responsible for both municipal services and the staff. Although the *Act* referenced the CAO position and allowed municipalities to delegate powers to this person, it did not offer guidance on the roles and responsibilities that come with the job.

The clerk was the other municipal staff position explicitly addressed in the *Municipal Act, 2001*. Under this legislation, the clerk was responsible for recording the Council's decisions and resolutions, documenting the votes of individual councillors during recorded votes, and keeping copies of council bylaws and meeting minutes.

The 2010 version of the *Municipal Act, 2001*, permitted – but did not require – municipalities to establish a Code of Conduct for Council members and to appoint an integrity commissioner. The *Act* empowered integrity commissioners to reprimand or suspend the compensation of councillors who violated the Code of Conduct. This authority remains the same under the current version of the *Municipal Act*.

Between 2010 and April 2013, the Town of Collingwood did not have either a Code of Conduct for Council members or an integrity commissioner. It did, however, have a Code of Ethics, and in 2013 it converted its Code of Ethics into a Code of Conduct.

There are two crucial differences between these codes. First, councillors are automatically bound by the Code of Conduct, created as it was by a municipal bylaw, but they voluntarily chose to abide by the Code of Ethics when they signed the document. Second, a violation of the Collingwood Code of Ethics could not result in punitive action, whereas a breach of a Code of Conduct could result in a formal reprimand or suspension of a councillor's pay.

PREVIOUS MUNICIPAL PUBLIC INQUIRIES

Alongside provincial legislation, the rulings and reports of two recent public inquiries on municipal governance were also available to Collingwood's 2010–14 Council. These reports further elaborated on the appropriate roles and responsibilities of municipal councillors and staff.

The Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry

In 2005, the Honourable Denise Bellamy, then a member of the Ontario Superior Court of Justice, published her recommendations in *the Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report*. The report contained several helpful findings and recommendations, which were available to members of the Collingwood Council:

- Council's role is the setting of policy. Staff's purpose is to provide Council with neutral, professional advice on the objective merits of policy options and to implement resolutions made by Council. It is important that the differences between these roles are respected and that staff and Council refrain from infringing on each other's roles. Staff members should not act in a manner that unduly influences the policy choices Council has made. At the same time, councillors should not interfere with the staff's work in a manner that compromises or politicizes the impartial recommendations staff are meant to be providing to Council.
- The relationship between Council and staff is to be one of civility and trust. Councillors should be polite to staff and respectful of staff's work. In contrast, staff earn Council's trust by providing information that is fair, accurate, thorough, informative, timely, and understandable. The key to preserving this civility and trust is to ensure that councillors and staff are aware of their distinct roles and responsibilities. Staff members also have a responsibility to be civil among themselves and not berate, disparage, or ridicule each other.
- As the public face of the municipality, the mayor sets the ethical standard by which Council will operate. The mayor establishes this standard not only by governing ethically but also by hiring senior staff with reliable and ethical track records. The mayor must use her position to prevent individual councillors from disrupting proper municipal processes.
- The city manager or chief administrative officer is the leader of municipal staff, and Council should unequivocally provide the CAO with the responsibility of managing the administration of the municipality. A failure to do so undermines the CAO's effectiveness. The mayor is the political head of the municipality, and the CAO is the administrative head. Both individuals must respect each other's spheres of authority. A detailed

hierarchy of authority should be created that explicitly delineates the roles of the CAO, the mayor, and Council.

- Two forms of conflict of interest can emerge in the context of municipal governance: real conflicts of interest and apparent conflicts of interest. A real conflict of interest exists “when an individual’s independent judgment is swayed or might be swayed from making decisions in the organization’s best interests.” An apparent conflict of interest can arise when “an outside observer could reasonably conclude that an individual’s judgment is or might be swayed from making decisions in the organization’s best interests.”
- Councillors must take steps to avoid real and apparent conflicts of interest, although some real conflicts of interest will be unavoidable. When subject to a conflict of interest, the affected councillors must disclose their interest and abstain from voting or otherwise participating on matters related to the conflict.
- Public perception that a councillor or a staff member is subject to an apparent conflict of interest can erode confidence in a municipal government. Accordingly, councillors subject to an apparent conflict of interest must fully disclose their circumstances to the public, along with an explanation of how proper ethical guidelines were followed.
- Councillors and staff should avoid providing or appearing to provide preferential treatment to close friends and family. They should not conduct municipal business or encourage the municipality to contract with individuals with whom they have a close relationship.
- Councillors should not divulge confidential information to those not entitled to it or use confidential information to benefit a third party. Leaks of confidential information erode public trust in municipal governance and dissuade private businesses from working with municipalities.

(*Volume 2: Good Government*, pp 27–28, 38–43, 65–66, 70, 72, 75)

The Mississauga Judicial Inquiry

The Mississauga Inquiry also yielded helpful findings that were available to the 2010–14 Collingwood Council. During those hearings in June 2010, the Honourable Douglas Cunningham delivered a critical ruling concerning conflicts of interest. In his decision, he provided an overview of conflict of interest case law and stated:

[M]embers of a municipal council must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility. Suffice it to say that members of Council (and staff) are not to use their office to promote private interests, whether their own or those of relatives or friends. They must be unbiased in the exercise of their duties. That is not only the common law, but the common-sense standard by which the conduct of municipal representatives ought to be judged. (Mississauga Inquiry, *Updating the Ethical Infrastructure: Report*, Appendix J, p 9.)

The Honourable Mr. Cunningham published the final report of the Mississauga Inquiry on October 3, 2011. It too contained this decision on conflicts of interest (p. 380) and recommended, among other things, that municipal councillors refrain from meeting to discuss municipal business in informal settings.

INTERNAL COLLINGWOOD POLICY DOCUMENTS AND MEETING PROCEDURES

The Town of Collingwood introduced a Code of Ethics for councillors in 2006. It included provisions regarding the roles of councillors, confidential information, treatment of staff, gifts received by councillors, use of Town property, and transparency. The preamble stated that councillors were to carry out their duties in a “fair, impartial, transparent and professional manner.” Among other things, the code confirmed that all signatory councillors understood that “conflicts between the private interests of elected representatives and their public responsibilities represent an ethical challenge to maintaining an open, accountable and transparent process.”

The Collingwood Code of Ethics required councillors to adhere to “both the letter and spirit” of the *Municipal Conflict of Interest Act*. Leo Longo, a solicitor with whom the Town of Collingwood consulted during the relevant time, testified that he interpreted this provision to mean that councillors should not read the *Act*’s wording so narrowly that they exempted themselves from obligations under it when the spirit or desired outcomes of the *Act* required otherwise.

With regard to relationships between Council and staff, the code required councillors to acknowledge that only Council as a whole had the capacity to direct staff. It stated that councillors must refrain from using their position to improperly influence the work of staff members to gain an advantage for themselves or others and must not criticize staff members publicly. The code also noted that councillors might be privy to confidential information while carrying out their duties, and it prohibited them from using that information for their personal advantage or to the detriment of others.

All members of the 2010–14 Collingwood Council signed the Code of Ethics on December 6, 2010. In addition, they signed a Declaration of Office promising to truly, faithfully, and impartially exercise their office, not to receive payment related to the exercise of their office, and to disclose pecuniary interests in accordance with the *Municipal Conflict of Interest Act*.

COUNCIL MEETINGS

During the 2010–14 term, Council met on Mondays. The meetings were generally held in public, except for the discussion of certain private, or *in camera*, matters that were closed to the public and the press.

The clerk's office prepared and circulated an agenda, which was usually delivered on the Thursday evening before the meeting. The Town's CAO and the department heads reviewed the agenda before it was distributed to ensure it included items requiring Council's review and direction at that particular meeting. The agendas were also posted online and were available at Town Hall for the public to see.

As a general matter, each item on the agenda was accompanied by a staff report prepared by staff within the relevant department or departments. Staff reports contained background information, analysis, and recommended resolutions to assist Council in its deliberations and decision making. Council members could also discuss and vote on matters that were not the subject of a staff report by providing advance notice that a particular matter would be considered or decided.

Generally, a Collingwood Council vote passed with 50 percent Council support. Some matters, such as the rescinding or reconsideration of a previous Council resolution, required support from two-thirds of Council. Voting typically proceeded by show of hands, with the clerk recording only the

overall result of the vote, not individual votes by each councillor. However, any councillor could request a recorded vote, where each member's vote was recorded in the minutes.

The *Municipal Act, 2001*, contained a list of confidential or sensitive matters that Council could discuss *in camera*, including matters involving municipal property, personnel, and legal advice. It required all other issues to be discussed publicly. The *Act* permitted Council to vote *in camera* only on procedural matters or on the provision of directions to staff. All other Council votes had to be made in public.

When asked during the hearings of this Inquiry to provide examples of the limited matters that could be voted on by Council during *in camera* sessions, Sara Almas, clerk for the Town of Collingwood, testified that permitted procedural matters might include votes to receive the minutes of previous meetings or votes on a point of privilege, while the provision of directions to staff might include votes to direct staff to investigate a sensitive or confidential matter and report back to Council. Ms. Almas's general understanding of the difference between public votes and *in camera* votes was that no direction or decision to materially advance the business of the Town could be made *in camera*.

As clerk, Ms. Almas was responsible for taking minutes at all Council meetings, including during *in camera* sessions.

The Collingwood Council, 2010

On October 25, 2010, the Town of Collingwood elected a Council led by Mayor Sandra Cooper and Deputy Mayor Rick Lloyd. The other seven Council members were Town residents from a variety of backgrounds: Ian Chadwick, a journalist and former small business owner; Sandy Cunningham, a former fire chief; Dale West, a local radio host and president of a minor league hockey association; Mike Edwards, a retired industrial quality assurance manager; Kevin Lloyd, a small business owner with experience in the advertising and marketing industry; and Keith Hull and Joe Gardhouse, both real estate agents.

THE NEW MAYOR, SANDRA COOPER

Mayor Cooper led the 2010–14 Council. Her roots in the Town of Collingwood ran deep. Her father, Jack Bonwick, was a prominent member of the Collingwood business community as well as a former councillor. Her brother, Paul Bonwick, had served as a councillor and, from 1997 to 2004, as the elected Liberal member of Parliament for the riding of Simcoe-Grey, which included Collingwood.

Ms. Cooper had first been elected to Council in 1997. She became deputy mayor in 2003 and held that position until her election as mayor in 2010. Before municipal politics, she worked part time in retail and volunteered in the community.

THE DEPUTY MAYOR, RICK LLOYD

Mr. Lloyd was the most experienced member of the 2010–14 Collingwood Council. Before becoming deputy mayor in 2010, he had served as a councillor for a total of 20 years over several Council terms in the 1990s and 2000s.

During the 2010–14 term, Mr. Lloyd was also chair of the Town's Finance and Public Works committees. He testified that as the chair of the Public Works Committee, he served as a conduit between Council and the executive director of public works and engineering and also assisted the department with its budget and operations. As chair of the Finance Committee, he led committee discussions with regard to budgets, reviewed the budgets of all Town departments with Collingwood's treasurer, and attended meetings with the Town auditor.

At this time, Mr. Lloyd was the only member of the Public Works Committee. In contrast, all eight of the other members of Council sat on the Finance Committee. None of these roles gave Mr. Lloyd any additional formal powers concerning policy making or directing staff.

During his time as deputy mayor, Mr. Lloyd employed a specific governance style that he referred to in his testimony as "micromanaging." Mr. Lloyd's micromanaging commonly manifested in three ways. First, after Council directed staff on a given matter, he often followed up with the staff members responsible to make sure the Council's direction was progressing satisfactorily. Second, when Town residents alerted him to issues such as potholes or Town snowploughs blocking personal driveways, he

either rectified the issue himself or called appropriate Town staff members to ensure that remedying the problem became a priority. He said he did not feel that providing direct assistance to residents circumvented good municipal practice. Third, he sent internal Council communications to local businesses whose interests were affected by the contents. In disclosing these communications, Mr. Lloyd thought he was fulfilling one of his roles as councillor – to help local businesses succeed. He testified that he provided such assistance to individual residents who requested it and to those he felt required it.

Mr. Lloyd took a similarly “hands-on” approach to his role as chair of the Public Works Committee and the Finance Committee. He testified that staff from the Public Works and the Finance departments often asked him about a variety of topics, and he provided them with “opinions” on how to resolve these matters. He felt it was appropriate to give this advice without bringing the matters back to Council for consideration. Mr. Lloyd told the Inquiry he never received any complaints from the Town clerk, the mayor, or Human Resources about his conduct.

Collingwood Staff

THE CHIEF ADMINISTRATIVE OFFICER, KIM WINGROVE

In September 2009, Collingwood hired a new CAO, Kim Wingrove, to replace Gord Norris, who had served as a Collingwood public servant for 30 years, the last four as CAO. Ms. Wingrove was an experienced public servant with the Ontario provincial government. Immediately before arriving in Collingwood, she had served as the director of regional economic development with the Ministry of Municipal Affairs and Housing.

Before Collingwood, Ms. Wingrove had never worked for a municipality. When she was hired, Ms. Wingrove was told that the Town was seeking somebody with a broad skill set who could help advance local economic development. She welcomed the challenge. She was also excited to have a position that allowed her to live in one location with her family, unlike her work with the provincial government which required a lot of travel. Unfortunately, Ms. Wingrove’s integration into the fabric of the Town of Collingwood was more difficult than anticipated, as I discuss later in the Report.

She had particular difficulty with the 2010–14 Council, which was elected a year after she became CAO.

MS. WINGROVE'S RELATIONSHIP WITH COUNCIL

Ms. Wingrove found her time working as Collingwood's CAO to be challenging. She testified that Council and some of the staff did not respect her office; moreover, most of the councillors sought assistance from long-time senior staff members for initiatives and functions that were more appropriately dealt with by the CAO. She also stated that Council had little regard for due process and was not interested in discussing and deliberating important Town matters with her. Instead, they viewed her as somebody who was "there to do Council's bidding."

In her testimony, Ms. Wingrove said that Council's reaction to her professional advice was unpredictable: sometimes it was well received, and at other times it was unwelcome. She could never predict which response she would get. She further testified that some councillors regularly criticized her, making it difficult for her to function effectively as CAO.

MS. WINGROVE'S RELATIONSHIP WITH MAYOR COOPER

Ms. Wingrove testified that her relationship with Ms. Cooper was awkward, without the spirit of trust and collaboration that marks a functional mayor-CAO rapport. Instead of speaking with her about initiatives related to the Town, Ms. Cooper often consulted Ed Houghton, the executive director of public works and engineering. Ms. Wingrove stated that Ms. Cooper would only bring these initiatives to her when it came time to follow up on them or implement them. Ms. Wingrove noted that there was nothing inherently inappropriate about this approach except for instances in which she questioned the underlying rationale behind a decision. Ms. Wingrove explained that the information Ms. Cooper provided in response was "often very thin."

In her testimony, Ms. Cooper took the position that she had an open and informal relationship with Ms. Wingrove. She did not recall Ms. Wingrove ever raising concerns that she was being bypassed or disrespected by Council. She did, however, acknowledge that she felt more comfortable reaching out to Mr. Houghton rather than Ms. Wingrove on certain matters.

Mr. Houghton had worked for the Town for many years, she said, and the issues she discussed with him were under his purview. In addition to his director role with the Town, he was also the president and CEO of both the Town's water utility and its electric utility, Collus Power.

Ms. Cooper also noted that Ms. Wingrove, throughout her tenure as CAO, had difficulties communicating openly with Council and delegating work in a manner that would allow initiatives such as budget planning to proceed quickly. Ms. Cooper testified she told Ms. Wingrove in both informal conversations and at an April 1, 2011, formal performance review meeting that she needed to improve her working relationship with Council. However, there is no evidence that Ms. Cooper provided any practical advice or assistance to Ms. Wingrove on how to address these communication issues. Ms. Cooper admitted she didn't know what Ms. Wingrove could have done to change the fact that members of Council felt more comfortable consulting with longer-serving Town department heads with whom they were more familiar.

Although Ms. Cooper prepared a written evaluation following the April 1 performance review meeting, Ms. Wingrove never received it. Ms. Cooper testified she sent the document to one of the human resource staff members, but she did not know whether Ms. Wingrove ever saw it. She acknowledged that Ms. Wingrove could not have benefited from a performance review document without having reviewed it.

When asked at the Inquiry whether she experienced "emotional challenges" or "awkward moments" in her dealings with Ms. Wingrove, Ms. Cooper responded in the affirmative. Although pressed to elaborate on her reactions, she did not provide any specific detail other than to say that Ms. Wingrove displayed emotional frailty.

MS. WINGROVE'S RELATIONSHIP WITH DEPUTY MAYOR LLOYD

Ms. Wingrove testified she also encountered professional difficulties with Mr. Lloyd. She said he spoke to her only when he felt it was necessary, and their conversations were usually restricted to his telling her what action the Town should take on a given matter. Ms. Wingrove also stated she was chastised several times by both Mr. Lloyd and Ms. Cooper for speaking with members of the public who had an interest in issues that might come before

Council. As a public servant, she felt it was her duty to engage with stakeholders as one way to ensure that the staff reports put before Council contained sufficient detail. She testified that, during these reprimands, Mr. Lloyd and Ms. Cooper indicated that engaging with the public in this way undermined Council's authority. Ms. Wingrove said she found this criticism confusing because it often followed discussions she had with residents on matters that had not yet come before Council.

In her testimony, Ms. Wingrove also noted she was uncomfortable in Mr. Lloyd's presence because she had seen him act unkindly toward others. This sentiment was echoed by Ms. Almas, who stated that Mr. Lloyd intimidated and bullied Ms. Wingrove in instances where she disagreed with Council's approach to a matter or failed to give priority to an issue that interested Council.

For his part, Mr. Lloyd testified he had concerns about Ms. Wingrove's ability to fulfill the role of CAO successfully. He indicated that Ms. Wingrove did not have any municipal governance experience and did not fully understand Collingwood's municipal procedures. He also noted she was very "emotional." When asked to be specific about her improper conduct, Mr. Lloyd testified that Ms. Wingrove usurped Ms. Cooper's role as Council's public spokesperson and occasionally infringed on Ms. Almas's responsibility by providing direction on the wording of municipal bylaws.

With regard to his conduct toward Ms. Wingrove, Mr. Lloyd stated he treated all Town staff members in the same manner because he was extremely busy; he was "direct" with staff so he could fulfill his responsibilities. He acknowledged having a discussion with Ms. Wingrove in which he told her it was inappropriate for her to speak to members of the public about matters before Council. In his view, these discussions did not constitute a reprimand. He denied bullying Ms. Wingrove, stating that, although he could be demanding of staff, his encounters with them were always respectful.

Ms. Wingrove testified she also had difficulty in creating a functional professional relationship with Mr. Houghton in all his multiple roles in the Town of Collingwood. I address this issue later in the chapter.

THE TOWN CLERK, SARA ALMAS

Ms. Almas was appointed as clerk for the Town of Collingwood in 2007 and remained in that position throughout this Inquiry. In 2010–12, she carried out the responsibilities of a clerk as legislatively required by the *Municipal Act, 2001*, and also had a number of other duties, including managing business and lottery licensing; maintaining vital statistics; ensuring bylaw enforcement; managing parking control, crossing guards, and records; executing Town communications; and overseeing freedom of information and protection of privacy legislation.

THE MAN WITH MYRIAD ROLES, ED HOUGHTON

Mr. Houghton is a third-generation resident of Collingwood. At the time of the 2010 election, he was already well known as the long-standing leader of the Town's electric and water utilities as well as the Town's executive director of public works and engineering. He joined Collingwood's combined water, wastewater, and electricity public utility service board in 1978 and slowly rose through the ranks. In 2000, Collingwood's electric utility was separated from its water utility and became an Ontario business corporation, Collus Power Corporation (see Part One, Chapter 2).

When Collingwood's electric utility was incorporated, Mr. Houghton assumed the position of president and CEO of both Collus Power and its holding company, Collingwood Utility Services Corporation. Around this time, he also became president and CEO of the Collingwood Public Utilities Service Board (CPUSB), which provided water and wastewater services to the Town. In addition to overseeing the Town's utilities, Mr. Houghton served as the Town's executive director of public works and engineering from 2000 until 2013. In this position, he was responsible for the Town's roads, wastewater, and engineering portfolios.

Mr. Houghton was the only department head with an "executive director" title. Others were typically called "director." On his résumé, he listed his role with the Town as "Executive Director of the Town of Collingwood." This position was not identified on the Town's organizational chart. Eventually, he was appointed acting CAO of Collingwood, following the sudden termination of Ms. Wingrove's tenure in April 2012 (see Part One, Chapter 9). Mr. Houghton was generally well regarded by his colleagues and employees,

as well as within the broader Ontario electricity industry. Ms. Cooper testified he was the most influential of the Town's department heads – one of the facts that placed him at the centre of the events that constitute the focus of this Inquiry.

Mr. Houghton's multiple roles with the Town and the Town's electric and water utilities involved a complicated compensation structure (see Part One, Chapter 2). In short, because he fulfilled the role of president and CEO for both entities, Mr. Houghton's salary was paid for in part by Collus Power and in part by the CPUSB. He was not formally paid any wages by the Town for his work as Collingwood's executive director of public works and engineering. Rather, compensation for this work was included within the amount he received from his position with the water utility. Paying Mr. Houghton in this way was described by Tim Fryer, the chief financial officer of the Town's electric and water utilities, as an "in-kind service" or benefit provided by the water utility to the Town. The Inquiry received conflicting evidence as to whether Mr. Houghton's work for the Town was provided free of charge or whether the compensation he received from the water utility was an amount that reflected the value of Mr. Houghton's services to both the water utility and the Town.

As the president and CEO of the electric and water utilities, Mr. Houghton reported to the boards of directors of those corporations. As executive director of public works and engineering for the Town, he was also accountable to the head of municipal staff, the CAO. Mr. Houghton, however, did not see himself as an employee of the Town, despite his position there. In his testimony he stated: "I was never an employee of the Town of Collingwood. I was virtually a volunteer that was seconded."

MR. HOUGHTON'S RELATIONSHIP WITH MS. WINGROVE

Ms. Wingrove testified that, during her time as CAO of Collingwood, all the Town's staff departments reported to her except for Mr. Houghton – due to "unique circumstances." When asked to explain, she referenced a complicated "matrix sort of relationship" between Mr. Houghton's role as the Town's executive director of public works and engineering and his role as president and CEO of the Town's electric and water utilities. She said that the mayor previous to Ms. Cooper told her when she was first hired as CAO

that Mr. Houghton's work as executive director of public works and engineering was beyond the purview of the Town's CAO. Ms. Wingrove testified that Ms. Cooper repeated that instruction after the 2010 election.

In further testimony, Ms. Wingrove said that, under the leadership of Mr. Houghton, the Town's Department of Public Works and Engineering was subject to a "vener" of accountability because, similar to other Town departments, it too submitted staff reports to Council whenever it was seeking approval for public works initiatives and, in addition, one of its representatives attended department head meetings with the CAO. However, Ms. Wingrove also stated that Mr. Houghton was the only one of the Town's department heads who would not provide her with detailed briefings about his department's activities. She testified that she attempted to set meetings with him to clarify his reporting relationship with her, but he often aborted or rescheduled these appointments. Ms. Wingrove further noted that when she was able to meet with or speak to Mr. Houghton, he was not responsive to her desire for clarity in their working relationship.

Ms. Wingrove said that Mr. Houghton's independence from the CAO meant she was disconnected from initiatives undertaken by the Department of Public Works and Engineering – a core Town department. She also testified that this separation resulted in problems that could have been prevented if there had been a proper reporting relationship. Ms. Wingrove believed that, once these problems did arise, they were interpreted as reflecting negatively on her performance as CAO.

In his testimony, Mr. Houghton refuted the notion that he did not make himself available to meet with Ms. Wingrove. He did not address any of her statements about the Town's reporting structure as it applied to him other than to say that the balance of Ms. Wingrove's evidence on this point was "totally incorrect."

Mr. Houghton's executive assistant, Pam Hogg, who was responsible for setting Mr. Houghton's schedule between 2010 and 2012, testified that Mr. Houghton did not cancel any meetings with Ms. Wingrove. She said Ms. Wingrove and Mr. Houghton met between six and 10 times per year, and Ms. Wingrove never had any difficulty in arranging meetings with Mr. Houghton.

Brian MacDonald, who served as Collingwood's manager of engineering

services in 2011 and 2012, also testified on these points. He confirmed he attended six to 10 meetings where Mr. Houghton and Ms. Wingrove were also present. In his opinion, the interactions he witnessed between them were “businesslike,” and he was not aware of any tensions. He could not recall any instances in which Mr. Houghton cancelled a meeting with Ms. Wingrove, but he agreed that cancellations may have occurred. With regard to their reporting relationship, Mr. MacDonald said he understood that Mr. Houghton reported to Ms. Wingrove, but he did not have any knowledge of how this reporting took place. Mr. MacDonald did not refer to any instances where Ms. Wingrove was noticeably emotional.

Mr. Houghton’s closing submissions contested Ms. Wingrove’s evidence on his availability for meetings. Otherwise, they did not address whether Mr. Houghton appropriately respected the authority of Ms. Wingrove’s position. Mr. Houghton asserted that Ms. Wingrove’s evidence was not persuasive because she was emotionally unstable during her time as CAO and embittered by the Town’s eventual termination of her employment.

Given the senior positions held by both Ms. Wingrove and Mr. Houghton, I am satisfied they met at specific points to discuss their working relationship. I also accept that Ms. Wingrove would have preferred to have had more meetings with Mr. Houghton. She cared about the Town residents she served and legitimately wanted to make Collingwood a better place in which to live and do business. The only negative feeling Ms. Wingrove had about her termination was regret that she let down the residents of Collingwood and her staff. She was troubled by her inability to clarify her working relationship with Mr. Houghton. This distress was driven by a sense that the tensions in her relationship with Mr. Houghton had made it difficult for her to do her job and serve the people of Collingwood.

I accept Mr. MacDonald’s and Ms. Hogg’s evidence that they understood Mr. Houghton reported to Ms. Wingrove and that they did not personally observe any tensions between the two. However, Mr. MacDonald acknowledged he had no direct knowledge of the way Mr. Houghton reported to Ms. Wingrove. I am also satisfied there were interactions between Ms. Wingrove and Mr. Houghton which Mr. MacDonald and Ms. Hogg did not witness.

Mr. Houghton’s evidence disputing the notion that he did not respect Ms. Wingrove’s authority was limited: during his testimony, he made a

blanket statement that Ms. Wingrove's evidence was incorrect; and, in his closing submissions, he argued that Ms. Wingrove was upset about her termination and also emotionally unstable.

I do not accept Mr. Houghton's evidence that Ms. Wingrove was unfit to serve as CAO and that her evidence was not credible because she was too emotional. Ms. Wingrove presented herself in a thoughtful professional manner. The only emotion she showed was a genuine sense of regret and frustration that she was unable to find a way to work with Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton.

THE TOWN SOLICITOR, LEO LONGO

The Town of Collingwood did not have a lawyer on staff. Instead, after 1998, it relied on the Toronto-based law firm Aird & Berlis to provide legal advice and services to the municipality. Two Aird & Berlis partners, Leo Longo and John Mascarin, were available to assist the Town on an as-needed basis. They charged an hourly rate for their services. Mr. Mascarin provided general municipal law advice to the Town and drafted agreements and bylaws, while Mr. Longo dealt with land-use issues and assisted with smaller day-to-day legal matters. Mr. Longo testified that he usually took instructions from the Town's CAO, clerk, or director of planning. He occasionally received instructions from the Town's councillors, but he would inform the CAO or the clerk when that occurred.

Ron Clark, another lawyer at Aird & Berlis, was retained in 2011 to prepare the transaction documents for the share sale that is the subject of Part One of this Inquiry. The nature of this work, and how it related to the services Mr. Longo provided, are explored in Part One, Chapters 8 and 10, of this Report.

Paul Bonwick: Personal and Professional Relationships with Town Council and Staff

Paul Bonwick is a central figure in the events before this Inquiry. Like his sister, Mayor Sandra Cooper, Mr. Bonwick's roots in the community ran deep. In the 1990s, he owned a furniture business in Collingwood and, in 1992, served as a board member of the Collingwood Downtown Business Improvement

Association. In 1995, he was elected as a member of the Town Council. Two years later, he was elected as the Liberal member of Parliament for the riding of Simcoe-Grey. Mr. Bonwick lost his seat in the 2004 federal election and returned to Collingwood. Among other ventures, he founded Compenso Communications Inc., a communications and government relations firm. He also registered as a provincial lobbyist. Mr. Bonwick believed his relationships and experience in the Collingwood political arena and in provincial and federal politics helped him provide high-value services to his clients.

In the years 2010–14, Mr. Bonwick was an active member of Collingwood’s political and business community.

RELATIONSHIP WITH MAYOR COOPER

Mr. Bonwick described himself in his testimony as one of Ms. Cooper’s trusted political advisors. He wrote her inaugural address and provided guidance on various issues facing Council. Both Mr. Houghton and Mr. Lloyd knew he was counselling his sister. They testified that, in certain instances where they wanted Ms. Cooper to take a specific direction, they asked Mr. Bonwick to recommend that course to her.

During her testimony, Ms. Cooper sought to minimize her brother’s role as an advisor. She testified that Mr. Bonwick provided her with suggestions and advice, but stated in her closing submissions that she never took direction from him in relation to her role as mayor.

I am satisfied that Mr. Bonwick served as an advisor to Ms. Cooper. Given his experience both as an elected official and as a political consultant, I find that he understood the importance of fairness and transparency when serving in public office. He therefore would have been alive to the optics and implications flowing from his interactions with the Town of Collingwood Council, including his sister and staff representatives.

RELATIONSHIP WITH DEPUTY MAYOR LLOYD

Mr. Bonwick also had a professional and personal relationship with Rick Lloyd. As close family friends, they socialized together. Mr. Bonwick’s parents were godparents to Mr. Lloyd’s wife, and her parents were godparents to Mr. Bonwick. Mr. Lloyd’s father and Mr. Bonwick’s father also worked in management positions at the Collingwood shipyard.

In addition, Mr. Bonwick and Mr. Lloyd were former business associates. In 2008–9, Mr. Lloyd, who was not on Council at the time, agreed to manage a gravel pit controlled by Mr. Bonwick. In return, Mr. Bonwick agreed to use Mr. Lloyd’s construction company exclusively to haul gravel from the pit. The arrangement was informal. Mr. Lloyd received payment for hauling gravel, but he did not draw a salary for his management services.

After Mr. Lloyd was elected as deputy mayor, he continued to assist Mr. Bonwick with his business ventures. He generally kept him apprised when Council was dealing with matters related to Mr. Bonwick’s consulting clients, and, on request, provided him with Town information related to his clients. Together, on occasion, they sent letters to public entities in support of Mr. Bonwick’s clients: Mr. Bonwick drafted the letters, Mr. Lloyd reviewed them and signed them in his capacity as deputy mayor, then sent them to the relevant public offices.

Mr. Lloyd also provided Mr. Bonwick with internal Council correspondence. He generally sent Mr. Bonwick any internal Council information he felt was relevant to the interests of Mr. Bonwick’s clients. In one instance, he forwarded Mr. Bonwick an email involving Mr. Lloyd, Ms. Cooper, and Mr. Longo which related to an Ontario Municipal Board matter in which one of Mr. Bonwick’s clients was participating. In another, when a client was interested in purchasing a parcel of land, he sent Mr. Bonwick Council correspondence regarding an offer that the Town was making to purchase the adjoining piece of property. Mr. Lloyd felt that sharing this information with Mr. Bonwick was appropriate because it helped local businesses such as Mr. Bonwick’s consulting firm succeed and, at the same time, efficiently resolved matters before Council. He did not consult with Council before forwarding this correspondence to Mr. Bonwick.

Mr. Lloyd did not appear to be concerned that Mr. Bonwick’s relationship with Ms. Cooper rendered his interactions with Mr. Bonwick problematic. When asked at the Inquiry whether, in providing commercial assistance to Mr. Bonwick, he was conferring a benefit on the mayor’s brother, he responded that the *Municipal Conflict of Interest Act* does not include the interest of a sibling as a conflict of interest. He insisted he treated Mr. Bonwick in the same way he treated other Town residents or businesses that asked for his assistance. He testified that although he didn’t see anything

wrong with this behaviour at the time, he now understands it might have been cause for concern if the public had discovered he was sending Council information to third parties.

The Collingwood Code of Ethics required councillors to convey information concerning Council's adopted policies, procedures, and decisions openly and accurately. The code also explicitly required councillors to respect the status of confidential information and not use it to benefit others.

RELATIONSHIP WITH MR. HOUGHTON

Paul Bonwick also had a personal and professional relationship with Ed Houghton. Both Mr. Houghton and Mr. Bonwick testified that they were friends. Mr. Houghton and Mr. Bonwick also had interwoven family histories: Mr. Bonwick's father had employed many members of the Houghton family at one point or another.

Mr. Houghton and Mr. Bonwick worked together both formally and informally on several active and prospective business ventures. Mr. Bonwick acted as a consultant for Collingwood's ethanol plant, Amaizeingly Green Products (AGP), which was experiencing financial difficulties. He helped the company secure government funding and negotiated with the company's creditors. Meanwhile, as president and CEO of the Town's electrical utility, Mr. Houghton had an interest in ensuring that one of the utility's larger consumers did not go out of business. Mr. Bonwick helped Mr. Houghton organize meetings between Town representatives and government officials who might be able to provide AGP with grant funding. He also drafted briefing notes that Mr. Houghton used to seek public funding for AGP. Finally, Mr. Houghton consulted with Mr. Bonwick for advice on matters concerning the Town's relationship with AGP, including tax collection and responding to resident complaints about layoffs at the company.

Mr. Bonwick also owned a company called Gemba Environmental Services Ltd. In June 2011, he sent Mr. Houghton a draft proposal to have Gemba inspect the Town's fuel tanks. The proposal was addressed to Mr. Houghton in his position as executive director of public works and engineering for the Town, and before he returned it, Mr. Houghton made some minor edits. Mr. Bonwick also passed information about Gemba to Marcus Firman,

the manager of water and wastewater services at the Town's water utility, indicating that the company could be of assistance with the utility's water tanks. Mr. Firman went on to hire Gemba to inspect the tanks and also forwarded this information to some of the Town's staff members, who also hired Gemba.

Mr. Lloyd, too, was involved in promoting Gemba. Although he may not have played a role in Gemba securing a contract from the Town itself, he sent an email to the Town's procurement manager and Mr. Houghton in January 2012 indicating that both Collus Power and the water utility had already hired Gemba and it would make sense to have the Town hire Gemba as well. Mr. Lloyd confirmed in his testimony that he discussed Gemba with Mr. Houghton and suggested the Town hire Gemba for consistency reasons. He insisted he did not know that Mr. Bonwick owned Gemba.

Mr. Bonwick and Mr. Houghton also consulted each other on potential future business opportunities. In 2010, they began discussing opportunities in the electricity industry, which I explore in Part One, Chapter 3 of the Report.

Commencement of the 2010–14 Council Term

COUNCIL'S AUSTERITY PLATFORM

Mayor Cooper and Deputy Mayor Lloyd campaigned on platforms of cutting expenditures and reducing Town debt, although, before they took office, neither raised the sale of all or part of Collus Power as a way to achieve this goal. In any event, after the election of the 2010–14 Council, it soon became apparent that the new Council felt it had a mandate to reduce spending, decrease debt, and lower taxes. In her inaugural speech, drafted mainly by Mr. Bonwick, Ms. Cooper stated she would initiate a review of Town spending. Mr. Bonwick actively advised and encouraged Ms. Cooper's efforts to reduce spending.

Shortly after her inauguration in December 2010, Ms. Cooper met with department heads and challenged them to find methods of reducing costs. On Mr. Bonwick's advice, she repeated the challenge at budget meetings in January 2011. Mr. Bonwick then provided her with policy suggestions in advance of Council's budget meeting in March 2011, as well as draft remarks that, she testified, she "more or less" used at the meeting.

One of Council's primary targets for cost reduction was fees paid to lawyers and other outside consultants. In her inaugural address, Ms. Cooper specifically identified legal fees as an expense to be reduced.

COUNCIL ORIENTATION AND TRAINING

The 2010–14 Council received two orientation sessions at the beginning of its term. Both of these sessions prepared the mayor, deputy mayor, and councillors for their respective responsibilities at the Town of Collingwood. The first, on November 25 and 26, 2010, was a general orientation session led by CAO Kim Wingrove. The second, on January 6 and 7, 2011, was held at Collingwood Town Hall. During this session, Ms. Wingrove made a presentation on the municipality's corporate structure, strategic plan, and Code of Ethics and explained the role of the CAO.

The January orientation also featured a presentation from Clerk Sara Almas on the services provided by the Town clerk. The Ministry of Municipal Affairs and Housing also gave one on the appropriate roles of Council and staff and the relationships between them. Finally, John Mascarin and Leo Longo of Aird & Berlis made slide presentations on the basics of municipal law, defamation, and the *Municipal Conflict of Interest Act*.

The presentation by Mr. Longo on the *Municipal Conflict of Interest Act* provided councillors with an overview of the legislation. He noted that the financial interests of a councillor's sibling, unlike those of a parent, spouse, or child, were not deemed by the legislation to belong to a councillor. He also defined conflicts of interest in general terms: "A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional." Mr. Longo indicated that a conflict of interest under the *Municipal Conflict of Interest Act* was "not nearly as broad as the general public likely thinks it is." If councillors were unsure whether they were subject to a conflict of interest, he cautioned they should seek independent legal advice from their own lawyer. Aird & Berlis could not provide such advice to individual councillors because the firm had been retained to represent Council as a whole. If it advised both Council and an individual councillor on the same matter, the firm would be put into a conflict of interest.

Mr. Longo testified he was not aware that councillors received any

additional conflict of interest training beyond the *Municipal Conflict of Interest Act*. He noted, however, that they had sworn their Declaration of Office only one month before the January 2011 orientation sessions. Their duty to faithfully and impartially exercise their office, disclose pecuniary interests in accordance with the *Act*, and not receive payment related to their office would have been fresh in their minds regardless of whether conflict of interest was directly addressed at the orientation.

Although Mr. Longo did not recall discussing the treatment of confidential information with Council during the orientation, he believed it would have been addressed at some point because it was a standard feature of most Council orientation sessions in which he had participated during his career. Moreover, on the first day of the January session, Ms. Wingrove made a presentation on the Code of Ethics, and the code included a provision prohibiting councillors from using confidential information for their personal advantage or to the detriment of others.

I find that the orientation sessions for the 2010–14 Council conveyed to councillors not only that they needed to abide by the requirements of the *Municipal Conflict of Interest Act* but also that they must be sensitive to any situation in which their private interests or the private interests of close friends and relatives might compromise their ability to execute their office impartially. The orientation sessions were also sufficient to convey to councillors that they should seek legal advice if they thought they might be subject to a conflict of interest.

During his presentation, for example, Mr. Longo provided an in-depth overview of the *Municipal Conflict of Interest Act* as well as a broad, general definition of what constitutes a conflict of interest. The day before Mr. Longo's presentation, Ms. Wingrove presented the Code of Ethics to Council. The code required councillors to carry out their duties in a "fair, impartial and transparent" manner and noted that "conflicts between the private interests of elected representatives and their public responsibilities represent an ethical challenge to maintaining an open, accountable and transparent process." As stated above, the code also required councillors to abide by the "letter and spirit" of the *Municipal Conflict of Interest Act*.

I am satisfied that Ms. Wingrove's and Mr. Longo's presentations, as well as the wording of the Code of Ethics, conveyed to the 2010–14 Collingwood

Council the need to avoid or disclose conflict of interest situations beyond the circumstances contemplated by the *Municipal Conflict of Interest Act*.

In their closing submissions, both Mr. Houghton and Ms. Cooper took the position that Mr. Longo's training to Council on conflicts of interest was inadequate. In support of this argument, they cited Mr. Longo's failure to refer to the Honourable Mr. Cunningham's ruling on conflict of interest from the Mississauga Judicial Inquiry during his presentation on the *Municipal Conflict of Interest Act*. Mr. Houghton argued that Mr. Longo's failure to educate Council on the Cunningham decision contributed to the creation of this Inquiry. Ms. Cooper admitted in her closing submissions that, during the 2010–14 term, she had a “one-dimensional view” of conflicts of interest that was limited to the wording of the *Municipal Conflict of Interest Act* – one she attributed to Mr. Longo's failure to convey the Cunningham decision to Council and the fact that the Collingwood Code of Ethics restricted councillors' conflict of interest considerations to the provisions of the *Municipal Conflict of Interest Act*. Ms. Cooper appeared to contend that, had she known about the Cunningham decision, she would have approached the events under review by this Inquiry differently.

I do not accept Mr. Houghton's or Ms. Cooper's submissions in this regard. The spirit and principles of the Cunningham decision were adequately communicated to Council during their orientation session through Mr. Longo's presentation on the *Municipal Conflict of Interest Act* and Ms. Wingrove's presentation on the Council Code of Ethics. The 2010–14 Council should have understood the underlying principles of the Cunningham decision even if they did not have the decision itself.

I also cannot accept Ms. Cooper's argument that the Collingwood Code of Ethics restricted councillors' conflict of interest consideration to the provisions of the *Municipal Conflict of Interest Act*. The code's emphasis on the need for councillors to govern impartially and on the dangers of conflicts between the private interests of elected representatives and their public responsibilities, as well as its reference to the “spirit” of the *Municipal Conflict of Interest Act*, all indicated to the 2010–14 Council members that they were subject to conflict of interest obligations that extended beyond the specific wording of the *Act*.

I acknowledge Ms. Cooper's argument that the inability of individual

councillors to confer with Mr. Longo or other Aird & Berlis counsel on conflict of interest concerns placed those confronted by a conflict with a difficult choice between paying for their own expensive legal advice or dealing with the conflict on their own. This obstacle has since been remedied: in December 2013 the Town hired an integrity commissioner who can advise councillors on conflict issues.

Although the 2010–14 Council may not have had all the resources that today's Council has to identify and address conflict of interest concerns, I find that Ms. Cooper and Mr. Lloyd received sufficient information throughout their orientation to understand they might be subject to a conflict of interest in any situation in which their private interests or the private interests of individuals with whom they were close appeared to influence their ability to carry out their responsibilities as elected officials.

Ms. Cooper and Mr. Lloyd also received sufficient information during their orientation to know that, when unsure whether they were subject to a potential conflict, they should seek legal advice. I'm further satisfied they had enough information to appreciate that disclosure was an effective way of dealing with real and apparent conflicts.

Conclusion

By the beginning of 2011, Collingwood's Council and staff consisted of several people who had generational, interwoven relationships with each other and diverse leadership styles. Ms. Cooper led Council while consulting with her brother, Paul Bonwick, on policy matters. Mr. Lloyd and Mr. Houghton also had long-standing personal and business relationships with Mr. Bonwick. Meanwhile, Ms. Wingrove was a recent arrival to the Town who struggled to understand these complex relationships and gain the respect of senior Town politicians and public servants.

After receiving training and orientation in late 2010 / early 2011, Council and staff began searching for ways to respond to Ms. Cooper's call to reduce debt. This challenge also extended to Collus Power, one of the Town's most valuable assets.

Collus Power: A Valuable Town Asset

The Collus share sale was complex in large part because the distribution of electricity in Ontario is a highly regulated industry. Collus Power Corporation itself was also involved in complex, interwoven, and varying relationships with affiliated companies, the Town's water utility, as well as the Town itself. This chapter provides background on the structure of the Collus group of companies, key executives and officers, the relationship with the Town, and the role of the Ontario Energy Board (OEB) as a regulator. The chapter also looks at the environment for municipal electricity distributors in 2010. Although complicated, Collus Power's place within the Town and the electricity industry is central to the story of the share sale.

Ontario's electricity sector underwent a significant regulatory overhaul in the first decade of the 21st century. New legislation in 1998 changed power generation and distribution, which compelled the Town of Collingwood's electric utility to change its corporate structure. A further set of legislated requirements followed in 2009 and 2010. Struggles to meet these requirements and the impending loss of staff members and significant revenue sources created a sense among the electric utility's leadership that Collus Power Corporation would need to pursue new strategic directions to remain viable.

Collingwood, like most Ontario municipalities, owned its electric utility. If the Town wished to reduce debt and increase its fiscal efficiency, it would inevitably need to consider one of its most significant and valuable assets: its electric utility, Collus Power.

Electricity Distribution in Ontario

The Basics

Electricity is typically delivered to Ontario's households and businesses in three stages. First, electricity is generated using nuclear, hydro, wind, or solar power, or fossil fuels. Second, electricity is transmitted from generation sites to geographic areas where customers are located. Third, electricity is transferred from the transmission system to local networks of electricity lines that distribute electricity to individual customers at a suitable voltage. The poles and wires that distribute electricity to local customers are installed and maintained by electric utility companies, also known as local distribution companies (LDCs). This Inquiry is primarily concerned with this third distribution stage.

History of Electricity Distribution

For most of the 20th century, electricity in Ontario was generated and transmitted to local communities by a single company known as Hydro-Electric Power Corporation and then Ontario Hydro. Distribution to local customers was the responsibility of municipal electrical utilities, which were departments within municipal governments, with Ontario Hydro regulating the rates and terms of service. In the mid-1990s, there were 307 municipal electricity utilities in Ontario.

In 1998, the Ontario Government passed the *Energy Competition Act* and the *Electricity Act*. The *Energy Competition Act* created new entities to separate the generating and transmitting of electricity in Ontario: Ontario Power Generation became responsible for power generation, and Hydro One its transmission. The *Energy Competition Act* also required all municipal electrical utilities to become business corporations under the *Ontario Business Corporations Act (OBCA)*. These new corporations are referred to as local distribution companies.

At this time, many of the province's municipal utilities chose to merge or amalgamate with larger utilities rather than transform themselves into OBCA corporations. The *Energy Competition Act* temporarily lifted a 33 percent

transfer tax that applied to the sale of municipal utilities, which encouraged some municipalities to sell their utilities. Hydro One also absorbed 88 smaller utilities.

Other utilities merged when the municipalities controlling them merged into larger cities. Utilities created as a result of these municipal mergers included Toronto Hydro, Hamilton Hydro, and Hydro Ottawa. By 2010, there were fewer than 100 LDCs in Ontario. Most were either wholly owned by a single municipality or jointly owned by several municipalities. The diffused state of Ontario's electricity sector was unique in Canada; provinces such as Quebec, Manitoba, and British Columbia generally had a single, vertically integrated utility handling the vast majority of generation, transmission, and distribution in their respective provinces.

Regulation of Electricity in Ontario

The Ontario Energy Board (OEB) has regulated the province's electricity industry since 1998 in accordance with the *Electricity Act* and the *Ontario Energy Board Act*. The Ontario Energy Board has three categories of core functions: licensing distribution, setting electricity rates, and overseeing distribution. The licensing function is straightforward; the other two are more complicated. All LDCs must obtain a licence from the OEB before beginning operation. These licences specify the territory in which they have the exclusive right to distribute electricity.

Setting Electricity Rates

LDCs can only charge rates approved by the Ontario Energy Board. An LDC proposes the rates it wishes to charge, and the OEB determines whether these rates are appropriate. In determining whether a rate is appropriate for a given LDC, the Energy Board assesses whether the rate is fair and reasonable for both the consumer and the LDC, and whether the rate will allow the LDC to maintain effective customer service and operations while remaining financially viable.

When assessing LDC rates, the OEB uses a measurement known as the

“debt-to-equity ratio.” An LDC’s debt-to-equity ratio is calculated by dividing the LDC’s total liabilities by the shareholders’ equity in the utility. The ratio essentially indicates the proportions of equity and debt the company is using to finance its assets. Maintaining higher equity levels as compared to debt leaves an LDC with the capacity to acquire additional cash in the future by assuming more debt. Maintaining higher debt levels allows an LDC to have more cash on hand, but also increases risk, because of the increased financial obligations related to its loans.

As of 2010, the Ontario Energy Board determined appropriate rates for electric utilities on the assumption that all LDCs in Ontario maintained a capital structure of 60 percent debt and 40 percent equity. Using the same deemed ratio for every LDC helped ensure electricity rates were relatively consistent throughout Ontario.

Even though the Ontario Energy Board’s calculation of appropriate rates was based on the assumption that all electric utilities maintained 60/40 debt equity ratios, LDCs were permitted to maintain different capital structures unless the board determined that the structure entailed too much financial risk.

Oversight of Distributors, Affiliated Entities, and Mergers and Acquisitions

The Ontario Energy Board’s third primary function is to oversee electric utilities’ conduct and performance. Generally, the Energy Board accomplishes this by enforcing codes of conduct and publishing performance scorecards on its website so that consumers can compare the performance of their local LDC with others in the province.

One of the Ontario Energy Board’s main focuses is overseeing the relationships between LDCs and affiliated entities. These affiliated entities could include the municipality that owns the LDC, holding companies established by municipalities that in turn own the LDC, or external corporations that provide the LDC with services, such as billing. The *Affiliate Relationships Code for Electricity Distributors and Transmitters* (Affiliate Relationships Code) governs these relationships and one of its primary objectives is to prevent inappropriate cross-subsidization between an LDC and any entity

affiliated with it. The Code includes rules prohibiting LDCs from selling services to affiliated companies for below market value or purchasing services from such a company for above market value. All services that flow between LDCs and affiliated entities must be set out in Ontario Energy Board-approved service agreements. The Ontario Energy Board generally reviews service agreements once every four or five years at the time of the LDC's rate application. Although the agreements are generally considered from the perspective of how they may affect rates, the Energy Board can investigate compliance with the Affiliated Relationships Code if evidence suggests a violation.

The Affiliate Relationships Code also contains rules to ensure that LDCs do not force their ratepayers to use the services of an affiliate when there are other competitors on the marketplace offering the same service. The Code also prohibits LDCs from providing affiliates with customer information not publicly available.

As specified in the Code, one-third of the directors on an LDC board must be "independent" in that they are not also board members of any affiliated companies. The purpose of this policy is to avoid conflicts of interest and to ensure that a minimum number of directors of each electric utility are obligated exclusively to the best interests of the LDC.

Part of the Ontario Energy Board's oversight function also includes regulating instances in which there is a change in control of an LDC. LDCs must obtain approval before they sell or divest assets or amalgamate with another entity by filing an application to merge, acquire, amalgamate, or divest (MAADs application) with the Energy Board. Any company seeking to purchase more than 10 percent of the voting securities in an LDC must file a MAADs application

Generally, the Energy Board will approve a MAADs application where the parties can show that the transaction will not harm the new LDC's underlying cost structures, reliability, or quality of service, and not harm the cost effectiveness, economic efficiency, and financial viability of the electricity distribution sector. When evaluating a MAADs application, the Energy Board generally does not consider the purchase price of the transaction, the process by which the seller decided to sell its utility, or whether an alternative transaction would be more beneficial. The Energy Board examines these factors

only where there is concern that one might harm the LDC or its ratepayers. Most MAADs applications received by the Energy Board are approved.

Electricity Distribution in Collingwood

In the late 1990s, the Town of Collingwood's electric utility underwent structural changes similar to those experienced by other Ontario electricity providers. Before 2000, electricity and water services were provided to Collingwood residents by a single utilities commission, the Collingwood Public Utilities Commission. When the *Energy Competition Act* and *Electricity Act* were passed, the Town's electric utility was required by law to become an *OBCA* corporation.

In 1999, partners John Herhalt and Jonathan Erling from the consulting and accounting firm KPMG and Peter Budd of the law firm Power Budd made a presentation to the Collingwood Public Utilities Commission about converting the electric utility to an *OBCA* corporation. On March 27, 2000, the Town of Collingwood Council passed a bylaw approving the incorporation of several *OBCA* corporations to meet the requirements of the *Electricity Act*. Approximately three weeks later, four new affiliated corporations were created: Collingwood Utility Services Corporation, Collus Power Corporation, Collus Solutions Corporation, and Collus Energy Corporation, each controlled by its own board.* The boards' members included industry leaders, electric utility employees, and current and former Town councillors.

The New Family of Collus Corporations

Collingwood Utility Services Corporation

Many municipalities in Ontario established holding companies at this time to own and control their electric utility as well as any affiliated businesses. The Town of Collingwood took this approach and established Collingwood

* The Collingwood Public Utilities Commission continued to provide water services to the residents of Collingwood.

Utility Services Corporation as a holding company with the Town as the sole shareholder. Collingwood Utility Services then was the sole shareholder of three other companies: Collus Power Corporation, Collus Solutions Corporation, and Collus Energy Corporation. The holding company did not own any other assets.

Collingwood Utility Services was subject to a shareholder direction from the Town mandating that the board of the corporation consist of seven directors, two being members of Council and one of these two directors being the mayor or the mayor's delegate. Dean Muncaster, a person of extensive business experience, chaired the Collingwood Utility Services board. He spent the majority of his career at Canadian Tire Corporation, where he held the position of president and CEO from 1966 until his retirement in 1985. Mr. Muncaster had also held director positions at other large corporations, including Ontario Hydro and Bell Canada.

Joan Pajunen served as vice chair of the Collingwood Utility Services board as well as chair of the company's human resources committee. Mayor Cooper and Collingwood councillor Mike Edwards served as directors and Council representatives on the Collingwood Utility Services board. Doug Garbutt, a former Collingwood mayor and town councillor, was also a board member.

Collus Power Corporation

As of April 2000, Collus Power Corporation (Collus Power) was the licensed LDC that distributed electricity to residents and businesses within the Town of Collingwood. The shareholder direction required that a board of three directors, chosen from the seven directors of the holding company, manage each of the Collingwood Utility Services subsidiaries. The only exception to this rule was Collus Power. The Ontario Energy Board's Affiliate Relationships Code required that one-third of every LDC's directors be independent of any company affiliated with the LDC. One of the three Collus Power board members was thus required to be independent of Collingwood Utility Services or any affiliated entity.

Mr. Muncaster also served as the chair of the Collus Power board, while David McFadden was the board's independent director. Mr. McFadden was a leader in Ontario's energy sector, serving as the chair of the National

Energy and Infrastructure Industry Group for the law firm Gowling WLG. Mayor Sandra Cooper was the third director on the Collus Power board.

Collus Solutions Corporation

The other active company owned by Collingwood Utility Services was Collus Solutions Corporation. Before the passage of the *Energy Competition Act* and the *Electricity Act*, when Collingwood Public Utilities Commission provided the Town's electric and water services, some staff members performed work for both utilities. After Collus Power was created, all staff who provided services to both the Town's electric and water utilities were placed in a new corporation called Collus Solutions Corporation (Collus Solutions) and were paid by Collus Solutions. Collus Solutions did not operate to earn a profit. Its sole purpose was to pay employees who performed work for the Town's power and water utilities. It held only enough cash assets to pay these individuals' salaries, and otherwise operated on a "break even" basis. The money Collus Solutions used to pay the salaries was provided by both Collus Power and the Town's water utility under shared services agreements detailed below. Joan Pajunen was the chair of the Collus Solutions Board, with Doug Garbutt and Mike Edwards also serving as directors.

Collus Energy Corporation

The final corporation in the group was Collus Energy Corporation (Collus Energy), which was originally intended to be a marketing company but was inactive during the events examined by the Inquiry. Doug Garbutt chaired its board, with Mike Edwards and Dean Muncaster serving as directors.

Collus Corporations Staff

As mentioned in Part One, Chapter 1, Ed Houghton was president and chief executive officer (CEO) of Collus Power during the time examined by the Inquiry. He was also the president and CEO of Collingwood Utility Services, Collus Solutions, and Collus Energy. The chief financial officer (CFO) of the company, Tim Fryer, reported directly to Mr. Houghton. The rest of

the Town's electric utility employees reported to him through the director of operations and information technology services, Larry Irwin.

When Collingwood's electric utility incorporated in 2000, Mr. Fryer became the CFO of all the Collus corporations. He had worked for the Town's electric and water utilities since 1979 and was the utilities' primary financial professional. Mr. Fryer and Mr. Houghton joined Collingwood's utilities within a year of each other and worked together for 33 years. They had a good working relationship but no personal relationship.

Mr. Fryer retired from these positions on September 30, 2012, roughly two months after the completion of the Collus share sale. He was replaced as CFO by Cindy Shuttleworth. During 2011 and 2012, Pam Hogg worked as executive assistant to Mr. Houghton while also serving as the manager of human resources and board secretary for all of the Collus companies.

Collingwood Public Utilities Service Board

As discussed, before 2000 Collingwood's residents received both electric and water services from the Collingwood Public Utilities Commission. After the Town's electric utility was incorporated pursuant to the *Electricity Act*, the Town needed to decide how to structure its water utility services. According to the *Energy Competition Act*, OBCA corporations such as Collus Power could not assume water utility assets. This prohibition left the Town with a choice: keep the assets of its water utility within a utilities commission or transfer the assets directly to the Town.

After the incorporation of Collingwood's electric utility, the Town's water operations continued for four years as the Collingwood Public Utilities Commission. In 2004, changes to the *Municipal Act, 2001*, required the Town to convert its water utility commission to a municipal services board. The Town completed this conversion in February 2004 and changed the name of its water utility from the Collingwood Public Utilities Commission to the Collingwood Public Utilities Service Board (CPUSB). As a municipal services board, the CPUSB was a separate entity from the Town but remained a body corporate and agent of the municipality. Assets held by the CPUSB were legally held in trust for the Town.

Dean Muncaster was the chair of the CPUSB board, with Mayor Cooper and Doug Garbutt serving as directors. As with the Collus companies, Ed Houghton served as the president and CEO of CPUSB in 2010. Tim Fryer served as CFO. When Mr. Fryer resigned as CFO of the Collus corporations in September 2012, he also left his position with CPUSB. At that point, Cindy Shuttleworth also took over from Mr. Fryer as CFO of the CPUSB. The reporting structure within CPUSB was also the same as that within the Collus corporations. All staff of the Town's water utility staff, except the CFO, reported to Mr. Houghton through the director of operations and IT services, Mr. Irwin. The CFO reported directly to Mr. Houghton.

Every single executive and director of CPUSB also served as a board member or executive for either Collus Power or Collingwood Utility Services, both *OBCA* corporations that were legally distinct from the Town. This intermingling of leadership roles between the Town and its electric utility would be the subject of criticism by the Town's professional advisors in the years following the share sale transaction, as I discuss in Part One, Chapter 10. Although the CPUSB was legally an agent of the Town, there was a disparity in the evidence at the Inquiry as to the extent to which the Town controlled the actions of the water utility. Tim Fryer and Cindy Shuttleworth believed that the Town controlled the water utility. However, Clerk Sara Almas testified that the Collus companies in practice controlled the water utility. Similarly, Kim Wingrove testified that when the Town of Collingwood hired her as the chief administrative officer (CAO), Mayor Cooper and others at the Town told her that, even though the CAO was the head of the Town's administration and CPUSB was a body corporate of the Town, she was not to concern herself with the water utility.

Relationship Between the Town and the Collus Corporations

A shareholder direction, issued October 25, 2000, governed the relationship between the Town as shareholder and the Collus corporations as Town assets and set requirements for the internal governance of the corporations,

including membership on the board of directors. The direction identified the Town's objectives for its relationship with Collingwood Utility Services and Collus Power. The primary objective was that the Collingwood Utility Services Corporation's board of directors manage the corporation's affairs in a manner that:

- a) ensured the value of the corporation and its subsidiaries was maintained or increased;
- b) protected the Town's investment by developing a planning process and risk management strategies for Collus Power;
- c) provided the Town with its desired rate of return subject to Ontario Energy Board regulations;
- d) provided adequate reporting to the Town;
- e) established and maintained appropriate financial and capital structures for Collingwood Utility Services and all subsidiaries subject to Ontario Energy Board regulations; and
- f) provided energy services in an environmentally friendly manner.

The shareholder direction also required the directors and officers of all Collus corporations to ensure that no confidential information regarding the Town or any of the Collus companies was disclosed except when disclosure was required by law, was necessary for the performance of an obligation held by the Town or one of the Collus corporations, or was part of the public domain. The shareholder direction specified actions the Collus companies could not take without approval from the Town of Collingwood Council, including amalgamating, merging, consolidating, reorganizing, or selling any asset that was material to the operation of Collus Power. Council was to approve these actions by a resolution passed at a Council meeting after providing notice to Collingwood Utility Services, which in turn was required to supply Council with any information necessary to allow it to make an informed decision on the matter.

The direction also required Collingwood Utility Services to provide the Town with a three-year consolidated business plan before the final 60 days of each fiscal year. The business plan was to detail the corporation's strategic direction, any new business initiatives planned, and any material variances

from the current business plan that had already been taken. The direction required the Collus companies to conduct their business following the plan. The direction also obligated Collingwood Utility Services to report major business developments to Town Council as the board considered appropriate.

The Collus Companies and the Collingwood Public Utilities Service Board

The relationship between the Collus companies and the CPUSB was governed by a complex network of arrangements and contracts. Some agreements obligated the Collus companies to pay CPUSB for certain services, while others involved Collus Solutions providing services to both the Town's water and power utilities. The execution of some of these agreements also involved what certain Inquiry witnesses referred to as "in-kind" services. These in-kind services did not consist of two entities providing corresponding services to one another but were instead services provided to the Town that were paid for by one of the Collus companies or by the CPUSB. Some of these agreements were financially beneficial to the Town.

Collus Power Shared Services Agreements

Collus Power was a party to two agreements under which it paid the CPUSB for the provision of services. In particular, Collus Power rented office space from the CPUSB under a shared facilities agreement. As the CPUSB was a service board and agent of the Town, and service boards were not legally allowed to own assets, Collus Power paid the rent for its office space to the Town. The shared facilities agreement was created in November 2000, and the most recent amendment to the agreement before the share sale was on January 31, 2011. Under the amended agreement, Collus Power leased its office space for \$216,000 per year.

Collus Power also paid the Town via CPUSB for the use of its computers and IT systems. Collus Power initially rented computer hardware and

software from the CPUSB under the shared facilities agreement referenced above, but a separate computer rental agreement was created in 2003. The most recent version of this agreement signed before the share sale was on January 31, 2011, under which Collus Power paid CPUSB \$80,000 per year.

Collus Solutions Shared Services Agreements

Collus Power and Collus Solutions were parties to a contract whereby Collus Solutions provided Collus Power with several services, including billing, collections, accounting, management, customer service, and inventory maintenance. This agreement was created on December 12, 2002, and amended on December 17, 2003. The amended agreement came into effect on January 1, 2004, and remained in force until the Collus share sale.

Collus Solutions was party to a similar contract with the CPUSB. The agreement, signed on January 1, 2003, was amended on November 4, 2004, to reflect the conversion of the water utility to a municipal services board. A central service provided under both these contracts was the labour of Collus Solutions employees who worked for both the Town's electric and water utilities.

As stated above, Collus Solutions was created to employ staff who carried out work for both Collus Power and the CPUSB. Collus Solutions' employees generally performed services for some combination of the Collus companies and the CPUSB. Ed Houghton and Tim Fryer were among those remunerated by Collus Solutions, as they served as CEO and CFO, respectively, for all the Collus companies and CPUSB. Although Collus Solutions paid these individuals, the company itself did not provide any services or produce revenue. Thus, under shared services agreements, Collus Solutions billed Collus Power and the CPUSB for the work Collus Solutions employees carried out for each company. Collus Power and CPUSB then compensated Collus Solutions, and it used this income to pay its employees' salaries.

The shared services agreements initially contemplated that Collus Power and the CPUSB would pay specific amounts to Collus Solutions for services provided. Starting around 2010, the process by which Collus Solutions' costs were allocated came to differ from the cost allocation process contemplated in the agreements. The cost of the services provided by a Collus Solutions

employee or department to Collus Power or the CPUSB would be allocated based on an estimate of the time the employee or department spent providing the service. Collus Solutions then charged each company for the proportionate amount of the employee's salary plus a small markup to ensure that Collus Solutions could break even and provide its employees with benefits. Before the Collus share sale, Tim Fryer oversaw this allocation. Mr. Fryer testified that in 2011 he began to update the agreements to outline more precisely how costs were being allocated.

Mr. Fryer testified about this cost allocation. He said that, in 2012, 55 percent of the costs related to the labour of Collus Solutions employees who worked in the finance departments of the Town's electric and water utilities were deemed to be related to Collus Power, while 40 percent was allocated to the CPUSB. Collus Solutions thus billed Collus Power for 55 percent of the employees' salaries and billed the CPUSB for the other 40 percent. Collus Solutions paid the remaining 5 percent to account for administrative matters such as benefit pay. At the end of each year, the total costs charged by Collus Solutions to Collus Power and the CPUSB were examined to ensure the costs did not exceed the amount contemplated in the shared services agreements. The cost allocations and other transactions made under these agreements were audited and documented in the Collus Power and Collus Solutions financial statements. They were also recorded in the Collingwood Utility Services Annual Report and Business Plan, presented to Council.

The Ontario Energy Board also reviewed the shared services. Thus, every fourth or fifth time Collus Power applied to the board to set its rates, the Energy Board reviewed the shared services agreements to determine how they would impact rates. If, during this review, the Energy Board uncovered anything to indicate that the agreements did not abide by the Affiliate Relationships Code (ARC), the Energy Board could take action. The Ontario Energy Board has never launched an ARC-related compliance action against Collingwood's electric utility. In 2013, a study commissioned by Collus Solutions found that the process used to allocate costs to Collus Power, CPUSB, and the Town adhered to the Affiliate Relationships Code.*

* This study is discussed further in Part One, Chapter 10.

Collus Solutions also had a shared services agreement with the Town of Collingwood whereby Collus Solutions employees provided IT services to the Town and billed it for these services.

In-kind Services

In some instances the Town received services from Collus Solutions employees that were paid for by either CPUSB or Collus Power. These services were referred to by certain Inquiry witnesses as “in-kind” services. Describing these services as in-kind was somewhat misleading, as the term normally describes a money-less transaction in which one party pays another for a service by providing a service of roughly equivalent value. Rather, the “in-kind” services detailed before the Inquiry involved Collus Solutions employees providing services to the Town with the costs of these services being allocated to and paid for by the CPUSB or Collus Power. The Town did not reimburse the CPUSB or Collus Power for these services in any way.

One of the most prominent in-kind services provided to the Town was Mr. Houghton’s work as executive director of public works and engineering for the Town of Collingwood. Collus Solutions paid Mr. Houghton’s compensation for his combined work as the Town’s executive director of public works and engineering, president and CEO of the Collus corporations and president and CEO of CPUSB. Collus Solutions then allocated 55 percent of the costs related to Mr. Houghton’s compensation to Collus Power for his work for the electric utility. Forty percent of his compensation was allocated to the CPUSB, and 5 percent of the costs were paid for directly by Collus Solutions to cover employee benefits.

The CPUSB, however, was not a legally distinct entity from the Town but rather was an agent of the Town. Thus, the 40 percent of Mr. Houghton’s labour costs paid by the CPUSB to Collus Solutions was considered to cover both Mr. Houghton’s work as president and CEO of CPUSB and his work as executive director of public works and engineering for the Town. As a result of this arrangement, the Town never directly paid for Mr. Houghton’s work as executive director but rather classified his work as a cost related to the water utility. Both Mr. Fryer and Mr. Houghton considered this arrangement to constitute an in-kind service under which Collus Solutions allocated costs

to the CPUSB that covered not only Mr. Houghton's duties for the water utility, but also as executive director of public works and engineering.

The extent to which the Town saved any money or received any "free" services as a result of this in-kind service is unclear. Mr. Fryer, who oversaw the allocation process, believed that, when Collus Solutions allocated costs to the CPUSB to cover a portion of Mr. Houghton's salary, these costs were to cover the full value of Mr. Houghton's work for both the CPUSB and the Town, as the CPUSB was an arm of the Town. Mr. Houghton, however, testified that the Town was never billed for his wages. Mr. Houghton took the position that the Town did not employ him despite his role as executive director of public works and engineering. He said in his testimony at the Inquiry: "I was never an employee of the Town of Collingwood. I was virtually a volunteer that was seconded."

The cost allocation system used by the Town, the Collus companies, and CPUSB was extremely complex. Although I am satisfied Mr. Fryer understood the allocations, the fact that Mr. Houghton and Mr. Fryer could not even agree on whether Mr. Houghton was being paid for his work at the Town indicates to me that this system was difficult to grasp.

Another example of these in-kind services can be seen in the case of Collus Solutions employee Brian MacDonald. During 2011 and 2012, Mr. MacDonald served as the Town of Collingwood's manager of engineering services and worked exclusively for the Town. He was employed, however, by Collus Solutions and his entire salary was allocated to and paid for by the CPUSB even though he provided no services to the water utility. The water utility was thus deemed to have paid for the entirety of Mr. MacDonald's work as an in-kind service to the Town.

In-kind services between the Collus companies and the Town also included administrative services. For example, the Town of Collingwood occasionally asked for pamphlets related to municipal affairs to be printed and included in the same envelopes as the electricity bills sent to Collus Power ratepayers. As an in-kind service, Collus Power covered the costs of the pamphlets and sought no compensation from the Town. Cindy Shuttleworth ended the practice of in-kind services when she became CFO of the Collus entities and the CPUSB in September 2012, testifying that the Town should have been billed for the services it received.

Collus Power and Other Local LDCs

During the years leading up to the share sale, Collus Power was a member of the Cornerstone Hydro Electric Concepts Association, referred to as the CHEC group. The CHEC group, formed in 2000 with the help of Ed Houghton, consisted of 12 small and mid-sized electric utilities that operated as a co-operative to help each other respond to regulatory changes in the Ontario electricity industry. The local distribution companies within the CHEC group sought to reduce their costs by working together to develop conservation and demand management initiatives, share regulatory costs and office support resources, and jointly purchase new technologies and consulting services.

Members of the group included Centre Wellington Hydro, Innisfil Hydro, Lakefront Utilities, Lakeland Power Distribution, Midland Power, Orangeville Hydro, Parry Sound Power, Rideau St. Lawrence Distribution, Wasaga Distribution, Wellington North Power and West Coast Huron Energy. As of 2011, Collus Power had the highest number of ratepayers and third highest value of all the CHEC LDCs. CHEC continues to operate with a membership of 19 small and medium-sized Ontario LDCs.

Collus Power's Financial Practices

During its first decade as an *OBCA* corporation, Collus Power implemented certain practices with regards to debt, capital structure, and dividends.

Promissory Note to the Town

On June 10, 2002, Collus Power issued a promissory note to the Town. The note essentially constituted a loan of \$1,710,169 from the Town to Collus Power. According to the promissory note, the Town could demand repayment of the full note at any time. As long as the note remained unpaid, Collus Power made annual interest payments of 7.25 percent to the Town (approximately \$124,000). The possibility of the Town's LDC issuing debt to

the municipality had been raised by KPMG when it was advising the Town on electric utility restructuring options in 1999.

The interest rate on this promissory note was the maximum allowed by the Ontario Energy Board (OEB) for debts of that nature. Witnesses testified that the Town annually reviewed the note to determine whether to recall the debt or sign a waiver indicating that it would not recall the debt over the coming year. The promissory note remained in place at the time of the 2010 Town of Collingwood Council election.

Collus's Capital Structure

As mentioned, the Ontario Energy Board set rates for electric utilities based on the assumption that all electric utilities in Ontario maintained a capital structure of 60 percent debt and 40 percent equity. Notwithstanding this assumption, LDCs could maintain a debt-to-equity ratio of their choosing subject to Energy Board approval.

When Collus Power was incorporated in 2000, it maintained a debt-to-equity ratio of approximately 50-50, typical of other LDCs created around that time. Collus Power's debt consisted of the \$1.7 million promissory note issued to the Town and a \$3.3 million loan Collus Power took to purchase the electric utilities of nearby municipalities Thornbury, Creemore, and Stayner.

In the years that followed, Collus Power generally paid down its debt without taking on new debt. This practice caused the LDC's equity levels to increase while its debt decreased. In the year leading up to the share sale, Collus Power maintained a capital structure of 30 percent debt and 70 percent equity. Seven of the 12 electric utilities within the CHEC group maintained relative debt levels between 28 percent and 44 percent. Both Mr. Houghton and Mr. Fryer – as CEO and CFO of Collus Power, respectively – testified that the utility kept a 30/70 debt-to-equity ratio to maintain its ability to borrow additional funds to pay for future projects.

Mr. Houghton testified that he did not generally consult Council with regards to Collus Power's capital structure. He noted, though, that he would take direction from Council on the matter if direction was provided. When asked whether he agreed that decisions regarding the capital structure of the utility were Council's to make, Mr. Houghton replied:

My – my job is to look after the corporation, which I did, and – and if – if Council came back to us and said specifically we want you to bring us cash out of the company, we would have done that. My job, my fiduciary responsibility is to Collus and that's what we did.

No Declared Dividends

Collus Power also followed the practice of not declaring dividends. From the time it was incorporated until the share sale in 2012, the company issued no dividends to its owner. Although the company did not issue any dividends to the Town before the share sale, Mr. Houghton and Mr. Fryer maintained that Collus Power provided a number of other benefits to the Town that should be considered as dividends. Mr. Houghton took the position that the shared services agreements under which Collus rented its facilities and computer system from the CPUSB constituted a dividend to the Town, as the CPUSB was an agent of the Town. Mr. Fryer expressed a similar view regarding the Collus Power–CPUSB rental agreements. Mr. Fryer also indicated that Collus Power considered the interest payments it made to the Town on the promissory note to be a form of dividend.

January–September 2010: Concerns over Collus's Strategic Direction

In 2010, several developments within Collus Power and in the LDC sector caused the utility's leadership to doubt whether Collus Power could continue operations as it had over the past decade.

New Regulations

As I discussed above, from 2000 to 2010, mergers and acquisitions in the LDC sector in Ontario reduced the number of municipally owned electric utilities from 307 to fewer than 100. In 2010 and 2011, many in the electricity industry thought that decreasing the number of Ontario's LDCs while

increasing the size of the remaining utilities could improve efficiency in the province's electricity sector. This perceived improved efficiency contributed to a sense within the industry that LDC consolidations would continue, whether voluntarily or by legislative compulsion.

Although no legislation mandated consolidation, new regulatory requirements placed smaller LDCs such as Collus Power in a position of having to provide modern, environmentally oriented electricity services to its ratepayers. In 2009, the Ontario government passed the *Green Energy Act*, which required all LDCs to help consumers reduce their electricity consumption. Among the initiatives required by the *Act* was the installation of smart meters on all consumers' homes to provide real-time information on energy usage.

The environmental initiatives required by the *Act* were difficult for small LDCs such as Collus Power. They were costly to implement and, once successfully put in place, they reduced energy usage, which in turn reduced the electric utility's billings.

Internal Pressures: Loss of Staff and Revenue

In addition to experiencing difficulties common to most small Ontario LDCs, Collus Power's internal issues lent further credence to the notion that maintaining the status quo was not an option. Several of the Town's large industrial electricity consumers were also reducing their demand because of environmental initiatives or financial difficulties. Some large consumers were in such dire financial straits that they were unable to pay their electricity bills.

Collus Power was also experiencing staffing issues. A number of senior management employees had either retired or were slated to retire over the next several years. The LDC was also having trouble employing sufficient technical workers such as linemen, because it could not offer a salary competitive with those offered by larger electric utilities.

Concerns over the viability of the utility's business model were discussed by the utility's directors and management during a Collus strategic retreat in January 2010 and at a gathering of small and mid-sized Ontario LDCs the following September.

Collus Retreat, January 2010

On January 14, 2010, the boards and senior management of the Collus corporations assembled for a strategic retreat, at which Collus Power board member David McFadden gave a presentation. Mr. McFadden discussed recent changes in the Ontario LDC industry and the challenges faced by LDCs in light of new legislatively mandated environmental initiatives. He noted that Collus Power needed to consider whether the utility as constituted was in a position to meet these challenges.

Witnesses had differing recollections as to the specific options put forward in the presentation. Mr. Houghton remembered coming away from the presentation with the belief that Collus Power could not continue with the status quo and would need to change if it wanted to continue providing high quality services to ratepayers. He recalled specific discussion of Collus Power proceeding under a “multi-utility” model that would tie Collus Power in with the CPUSB to achieve further synergies. He stated in his testimony and his closing arguments that the presentation yielded detailed discussions of potential changes that Collus Power might make in its scope and scale, but he did not specify what was discussed other than the multi-utility model mentioned above.

For his part, Mr. McFadden recalled comprehensive consideration of ownership options both before and after his presentation. He testified that he had discussions with Mr. Houghton and Mr. Muncaster before the retreat, during which both spoke of the changes taking place in the industry and indicated that Collus Power would need to “look maybe at doing something different.” It was in the context of these discussions that Mr. McFadden recalled their request that he present at the January 2010 retreat.

Mr. McFadden recalled that, after his presentation, three options for Collus Power were discussed: maintaining the status quo, selling the utility, or pursuing a strategic partnership in which an investor would purchase part of the company but also provide the utility with expertise and resources. Mr. McFadden was careful to note that he did not recommend any one option, but rather described the state of the industry and left the choice up to the Town as Collus Power’s owner.

Mr. McFadden stated that discussions of the various options followed his presentation, but that no decisions or resolutions were made at this point.

He also recalled having the impression that maintaining the status quo and selling the entire utility were undesirable and that the preferred scenario was one in which the Town retained at least 50 percent of its utility and brought in a partner to provide additional expertise and resources. He also recalled the words “50/50” or “strategic partnership” written on the blackboard in the room where he presented.

There is some confusion in the evidence about the discussion of ownership options. In a September 2011 email to a former mayor of Collingwood, Mayor Sandra Cooper noted that the sale of all or part of the utility was not discussed before the Town’s October 2010 election. Mayor Cooper similarly testified that discussions of a potential strategic partnership began only in June 2011. Mr. Houghton also gave detailed evidence at the Inquiry that the notion of a strategic partnership was not conceived until a June 4, 2011, meeting among himself, Mr. Muncaster, and Mr. McFadden. He further testified that Collus Power merging with a larger electric utility was not on his mind in the fall of 2010.

Regardless of this confusion, I do accept that Mr. McFadden’s January 2010 presentation left the Collus Power directors and management with thoughts that a shift in strategic direction might be required if the LDC was to adapt to the changing electricity industry. These changes would again be discussed in the fall of 2010.

Georgian Bay LDCs and the Future of the Industry, September 2010

The future of Collus was raised a second time in 2010 at a conference for LDCs in the Georgian Bay region. Ed Houghton, Dean Muncaster, David McFadden, Joan Pajunen, and Doug Garbutt attended from the Collus companies. One of the presentations at the conference focused on what the provincial government might do with LDCs in the future, including the possibility of forced consolidation. There was also discussion of the challenges facing small to medium-sized LDCs.

Mr. Houghton testified that, at this meeting, he spoke with a representative of Barrie Hydro, which had recently merged with PowerStream, a large LDC that provided electricity services to nine municipalities, including Barrie, Markham, and Vaughan. He recalled having an enjoyable conversation

with Barrie Hydro staff about their integration into PowerStream's corporate structure. Mr. Houghton also testified that, at some point during the conference, Doug Garbutt told him that Collus needed to "fish or cut bait," meaning that it should consider its options before being forced to consolidate. In an affidavit, Mr. Garbutt confirmed that he had a discussion with Mr. Houghton along those lines, although he did not recall using those exact words.

I accept that this meeting further contributed to a sense among Collus Power's directors and management that a change in strategic direction would be needed.

Conclusion

From 2000 on, Collingwood's power utility underwent a substantial overhaul and took on the status of an *OBCA* corporation as a result of legislated changes to Ontario's electricity industry. This change in status required the utility to reorient its relationships with the Town of Collingwood – its owner and sole shareholder – as well as with the Town's water utility. Collus Power also created a new relationship with newly formed Collus Solutions through shared services agreements.

After adapting to this new reality at the beginning of the 2000s, at the end of the decade, Collus Power began to confront additional regulatory burdens and issues with revenue and staffing. By winter 2010, Collus Power president and CEO Ed Houghton had become convinced that the utility could not continue as it had, and he began exploring potential new directions.

The Origins of the Collus Power Sale

The origins of the share sale for Collus Power Corporation can be traced to a series of unofficial conversations and meetings. Throughout 2010, Collus Power president and chief executive officer (CEO) Ed Houghton and Paul Bonwick discussed the electricity industry and the potential for business opportunities in that sector. Mr. Houghton suggested that Mr. Bonwick contact Brian Bentz, the president and CEO of PowerStream Incorporated – a local distribution company (LDC) for nine municipalities, including Barrie, Markham, and Vaughan.

In November 2010, Mr. Houghton reached out to Mr. Bentz directly and advised him that Collus Power was considering a sale. The two men subsequently met for breakfast, and Mr. Houghton informed Mr. Bentz that a request for proposal (RFP) might be forthcoming. In January 2011, Mr. Bonwick contacted Mr. Bentz and, supported by a recommendation from Mr. Houghton, offered to help PowerStream acquire Collus Power. Mr. Houghton and Mr. Bonwick then collaborated on preparing a letter for Mayor Sandra Cooper, Mr. Bonwick's sister, to send to Collus Power directing the utility to undertake a valuation and an analysis of potential ownership options, including a sale. With that letter in hand, Mr. Houghton retained KPMG to complete a valuation and options analysis, the first formal step in the sale process.

Even though the Town of Collingwood owned Collus Power, these developments transpired without Council's knowledge. While Mayor Cooper knew about her letter, Council effectively had no input into the decision to explore a potential sale of one of its most valuable assets.

Initial Sale Discussions

Mr. Houghton and Mr. Bonwick testified they had two or three conversations in mid-2010 about the electricity industry and whether there were any business opportunities in that sector for Mr. Bonwick. During these conversations, Mr. Bonwick asked Mr. Houghton to recommend a “mover and shaker in the industry” for him to contact. Mr. Houghton suggested Brian Bentz at PowerStream, who had recently completed a merger with Barrie Hydro and was known to be interested in acquiring other LDCs in the industry. Mr. Bentz testified that at this time, PowerStream had been looking at four or five different mergers before the Collus Power opportunity arose. Mr. Houghton provided Mr. Bonwick with Mr. Bentz’s email address.

As part of these conversations, Mr. Houghton mentioned a possible sale of Collus Power. In his testimony at this Inquiry, Mr. Houghton said he told Mr. Bonwick he preferred that he (Mr. Bonwick) not become involved in any potential deal with Collingwood. Mr. Houghton explained he was concerned about the optics of Mr. Bonwick, the mayor’s brother, working for PowerStream, a prospective purchaser. In response, Mr. Bonwick said he understood the concern – a reply Mr. Houghton interpreted as a promise not to raise the potential sale of the Collingwood utility if Mr. Bonwick spoke with Mr. Bentz.

Following these conversations, both Mr. Houghton and Mr. Bonwick separately contacted Mr. Bentz to discuss the prospect of a Collus Power share sale. Mr. Bonwick’s and Mr. Houghton’s conversations about opportunities in the LDC industry marked the beginning of the Collus Power share sale.

Early Communications with PowerStream

Ed Houghton and Brian Bentz

Mr. Houghton emailed Mr. Bentz on November 23, 2010, to ask if he was available for a “confidential discussion.” The two men spoke on the phone the next day. Mr. Bentz testified that this initial call was brief, but when

Mr. Houghton raised a potential sale of Collus Power, the topic immediately grabbed his attention.

In his testimony, Mr. Houghton said he approached Mr. Bentz in confidence after speaking with Dean Muncaster, chair of the Collus Power board of directors, about the possibility of consolidation in the industry.* Mr. Houghton stated both he and Mr. Muncaster considered that the status quo was no longer an option: Collus Power needed the perspective of a large utility with regard to possible further consolidation among LDCs. He did not recall specifically why he told Mr. Bentz the discussion was confidential, but thought it was to prevent Collus Power employees from learning that a sale was under consideration. Mr. Houghton testified that, when he reported to Mr. Muncaster after his initial call with Mr. Bentz, the board chair directed him to speak with Mr. Bentz again to obtain additional information about his views on consolidation in the industry.

I do not accept that Mr. Houghton informally discussed the likelihood of consolidation with Mr. Muncaster before contacting Mr. Bentz. I am satisfied that, by this time, Mr. Houghton believed there would be a consolidation of LDCs. He was active in the electricity industry and was no doubt aware of the reduction in number that had already occurred among these companies. I also do not accept that Mr. Houghton met with Mr. Bentz in late 2010 to get the perspective of a large utility about likely further consolidation. Rather, I am satisfied that, by this time, Mr. Houghton had decided that Collus Power should merge, in some form, with another utility. He reached out to Mr. Bentz in late 2010 because he knew PowerStream might be interested.

One of the reasons I do not accept that Mr. Houghton spoke with Mr. Muncaster is that the initial contact with PowerStream was improper. The Town owned Collus Power. Whether to explore potential sale options was an issue for Council to address as part of its strategic planning, not one to be determined by the CEO or the chair of the asset. David McFadden, a member of the Collus Power board of directors, understood this distinction, noting in his testimony that, as a director, he had no power to tell the shareholder whether it should buy or sell its asset. It was up to the Town of Collingwood to decide. Mr. Muncaster, an experienced business executive, would have understood this issue as well.

* Mr. Muncaster passed away in early 2012.

A week after the initial phone call with Mr. Bentz, Mr. Houghton emailed him again and asked to meet in person. The two men had breakfast at the Sunset Grill in Vaughan on December 3, 2010. Their recollections of the conversation that day are different.

Mr. Bentz's memory was informed by notes he made in the spring of 2011 for a presentation he made to PowerStream's Audit and Finance Committee about a potential Collus Power sale. The following passage from the notes offers a window into the breakfast discussion.*

Talked about situation with Collus: more demands from industry, harder to keep up. Staff turning over CFO leaving for example has _____

Also in his role as Executive Director of the Town of Collingwood basically runs Municipal Deputy [*sic*] there has a lot of clout.

Talked about fiscal situation in Collingwood, \$20M in debt, last Council spent a lot and got thrown out.

Talked about how he observed what we did in Barrie.

...

Exploring path of what to do in LDC – preliminary discussion @ Collus Board at Town to look at options

> RFP with multiple bidders

> had breakfast with him shortly thereafter

Talked about process and value range

Said back of envelope \$15–\$20M on EV [Enterprise Value] less debt.

Mr. Bentz testified that, during the breakfast meeting, Mr. Houghton informed him that the Collus Power board was considering options, including a sale, because of the Town's fiscal challenges and the increasing regulatory burden small utilities faced. He indicated that the sale would proceed by way of RFP and asked if PowerStream would be interested if an RFP moved forward.

In reply, Mr. Bentz said he asked Mr. Houghton about the size and rate base of Collus Power in order to obtain a general sense of its value.

* Mr. Bentz's original notes were written by hand. He transcribed the notes for the Inquiry and confirmed in his testimony that the transcription was accurate. The quote that follows is taken from Mr. Bentz's transcription.

Mr. Houghton responded that the Collus Power enterprise value was \$15 million to \$20 million.

Mr. Bentz was concerned that the Town had apparently not been engaged in discussions about the sale. In the past, PowerStream had invested time in potential transactions that never materialized because, while the utility was inclined to proceed with a deal, the municipal council was not. As an example, Mr. Bentz pointed to his experience with the Town of Orangeville in 2007, explaining, “I wasted a lot of time on that transaction.” Mr. Bentz said he shared this concern with Mr. Houghton at the breakfast meeting.

I pause here to note that Mr. Bentz’s apprehension highlights the point that the interests of a municipality and the corporations it owns may not always align. For that reason, it is important that the municipality, as owner, have control over decisions regarding ownership.

Mr. Bentz testified that, over breakfast, he advised Mr. Houghton that PowerStream would be interested in participating in an RFP, if one were announced. He told Mr. Houghton that Collus Power could serve as a stepping stone to broader consolidation in the region. He asked Mr. Houghton to keep him informed, saying that PowerStream might be interested. He also told Mr. Houghton that, if the sale proceeded, he “would have to go through the proper channels” to obtain approval for PowerStream’s participation in the RFP process.

Mr. Houghton, in his testimony, downplayed the importance of the conversation at the December 2010 breakfast. He framed it as a general discussion about the LDC industry and Mr. Bentz’s views on whether the government would require LDCs to amalgamate. Mr. Houghton said he may have told Mr. Bentz that Collus Power was taking a serious look at options as a result of the mayor’s direction. He also acknowledged that he referenced an RFP in his discussions with Mr. Bentz. Mr. Houghton did not remember speaking with Mr. Bentz about the potential value of Collus Power and denied providing Mr. Bentz with any form of valuation. In his words, he would not have had “the foggiest notion.”

I accept Mr. Bentz’s evidence. It was corroborated by the notes he made later, when the events were fresh in his mind. Moreover, I also do not accept that Mr. Houghton, an experienced executive, would not have any sense of

the value of his company, especially at a time when, as he testified, he had a potential sale in mind.

At the Inquiry hearings, Mr. Houghton said he spoke with Mr. Muncaster after the breakfast meeting. Among other things, he recalled they discussed how obtaining a valuation would be the first step if Collus Power was considering a sale. They decided, he said, to let the conversation “simmer and brew in our brains.” Mr. Houghton added that not much happened until they received a letter from the mayor directing them to undertake a valuation (see below).

Mr. Houghton’s discussions with Mr. Bentz about the potential sale of Collus Power undermined the Town’s ability to oversee the share sale transaction: before Council became aware that a sale of the Town’s asset was being contemplated, Mr. Houghton provided PowerStream with a competitive advantage over any other interested party. The fairness of the process was compromised before the sale got underway. This initial contact also gave PowerStream an advantage in any potential procurement, simply because it had the opportunity to take early steps to prepare for the RFP, including hiring Mr. Bonwick as its consultant. This advantage would be the first of many for PowerStream.

No Council Involvement

On January 6, 2011, Mr. Houghton spoke during the orientation session for the new Town councillors, who had been elected in the fall of 2010 (see Part One, Chapter 1). His slide presentation did not mention any potential ownership changes for the Town’s electrical utility, nor did he say he had met with Mr. Bentz of PowerStream. Sandra Cooper, who was mayor of Collingwood at the time, testified she had no idea then that a Collus Power sale was on the horizon.

If Mr. Muncaster and Mr. Houghton had been focused on change, as Mr. Houghton argued in his submissions, there was no reason not to raise this issue with Council during the January orientation session. Instead, Council did not learn about the sale prospect until six months later. Mr. Houghton said in his evidence that he did not want to present Council with a “half-baked” project. It was Council, however, that had the exclusive authority to determine whether even to begin the sale process. Because Council was left

out, the Town's interests and goals were not prioritized in the decision of what, if anything, to do with Collus Power.

Paul Bonwick and PowerStream

On January 10, four days after Mr. Houghton spoke to the new Council, Mr. Bonwick sent Mr. Bentz an introductory email, writing:

I am not sure if we have met during our travels so I will take a brief minute to introduce myself. I will hopefully have an opportunity in the near future to expand on that introduction.

I live in the Town of Collingwood operating a Government Relations & Communications firm servicing Clients in Canada and the USA.

I formerly served as a Member of Parliament for several years and prior to that served as a Municipal Councillor for Collingwood.

Throughout this period of time I have had to [sic] pleasure of building a [sic] extensive network of individuals / friends / colleagues throughout the Municipal, County, Provincial and Federal Governments. This network has proved invaluable in representing Clients and their needs.

Over the course of the last few years and more specifically the last few weeks I have followed with interest the situation presently being experienced by Collingwood Council. More specifically their financial situation and the need for a significant capital injection. As I reviewed options that might help Council address this need[,] I remembered that during the time I spent in elected office[,] the potential sale of Collingwood's Utility Services had been raised with mix [sic] emotion. It is [as] a result of that possibility I would like to meet and discuss PowerStream's [sic] level of interest in pursuing such an option. Municipal Council is in the process of beginning their budget considerations and[,] as a result[,] timing is potentially a critical factor. As a result[,] I am requesting an opportunity to meet and discuss the situation should PowerStream have a potential interest.

I can be reached via e-mail or feel free to call ...

Before he received this email, Mr. Bentz had never heard of Mr. Bonwick. The fact that Mr. Bonwick contacted Mr. Bentz within a month of Mr. Houghton's meeting with Mr. Bentz is, however, no coincidence. The timing flowed from the conversation during the December breakfast meeting that Mr. Bentz and Mr. Houghton had together. At that meeting, Mr. Bentz raised his concern about whether the Town had the political will to proceed with a sale. I am satisfied that, in response, Mr. Houghton spoke with his friend Mr. Bonwick, who then offered to assist Mr. Bentz with the very concern he had raised with Mr. Houghton.

When he received the email, Mr. Bentz immediately saw an opportunity to avoid another wasted effort in his plan to consolidate more local distribution companies within PowerStream. He believed Mr. Bonwick might well know whether the Town of Collingwood was amenable to a transaction, though, at this point, he was not aware that Mr. Bonwick was the mayor's brother. He arranged to meet Mr. Bonwick two days later, on January 12.

Mr. Houghton's Emotional Allergy

After Mr. Bonwick sent Mr. Bentz his introductory email, he forwarded it to Mr. Houghton with the comment "FYI." Later that day, Mr. Houghton emailed Mr. Bonwick and asked to speak to him about Mr. Bentz. In his testimony, Mr. Houghton said he made this request because, in the email Mr. Bonwick sent to Mr. Bentz, he specifically referenced the potential sale of Collus Power, despite having promised – at least in Mr. Houghton's mind – to avoid Collingwood in his discussions with Mr. Bentz.

At the Inquiry, Mr. Houghton described his concern about Mr. Bonwick working with PowerStream on a Collus Power sale as an "emotional allergy," though he had difficulty explaining the nature of this allergy. At one point, he testified that "Collingwood's a very small community. Mr. Bonwick is a very high profile person. And as a result of that, sometimes he attracted attention." Later, he explained that he "wanted to make sure that what we did was above reproach" and that there might have been a sensitivity from an "optics perspective" to Mr. Bonwick advising PowerStream. He suggested that "other people" might have "draw[n] conclusions," even if incorrect.

As questions continued at the hearings, Mr. Houghton resisted the suggestion that his concerns arose from Mr. Bonwick's sibling relationship with Ms. Cooper. He asserted that public perception issues with Mr. Bonwick were more about "jealousy" than his sister's role as mayor. However, he did agree that, in hindsight, there was a potential conflict issue. Although Mr. Houghton stopped short of saying so directly, it is apparent he recognized that, if the mayor's brother worked on a potential purchase of Collus Power, this involvement could create the perception of a conflict of interest. He was correct.

Mr. Houghton also correctly recognized that the perception of conflict could impede a potential sale. He testified that it was not for him to judge whether an actual conflict of interest would arise if Mr. Bonwick consulted on matters involving Collingwood while his sister was the mayor. Rather, he said, he was concerned about the prospect that others might perceive a conflict, and, in his words, he wished to explore a sale without "any kind of white noise around me." This explanation demonstrates that Mr. Houghton understood the effect of both real and apparent conflicts of interest.

According to Mr. Houghton, he raised his concerns with Mr. Bonwick during their phone conversation. Mr. Bonwick, in turn, offered not to include Collingwood as part of any proposal he made to PowerStream. He said that Mr. Bonwick, to provide reassurance and comfort, also offered to share his proposal with Mr. Houghton. Mr. Houghton stated he was confident Mr. Bonwick understood he did not want him working on any matters involving the Town of Collingwood. However, he did not ask Mr. Bonwick to make a commitment to refrain from working on such initiatives.

Mr. Bonwick, for his part, did not recall offering to let Mr. Houghton review his proposal as part of this conversation. He testified that Mr. Houghton was "okay" with his eventually working for PowerStream on a Collus Power transaction, but not at this early stage when the utility had not yet decided how to proceed. Despite Mr. Houghton's concerns, Mr. Bonwick mentioned a potential Collus Power sale in his initial email to Mr. Bentz because he saw the possible sale of Collus Power as a good opportunity for PowerStream.

Mr. Houghton's Recommendation

Before meeting with Mr. Bonwick on January 12, 2011 Mr. Bentz phoned Mr. Houghton to ask if he knew Mr. Bonwick. Mr. Bentz testified he told Mr. Houghton that PowerStream was interested in learning more about the deliberations of Council and wondered if Mr. Bonwick could assist. According to Mr. Bentz, Mr. Houghton responded that he and Mr. Bonwick were friends and that Mr. Bonwick was a “good guy” with solid standing in the community. Mr. Houghton also said that Mr. Bonwick could be useful to PowerStream, particularly in responding to an RFP for Collus Power.

In his testimony, Mr. Houghton denied he told Mr. Bentz that Mr. Bonwick could assist with an RFP. He explained that, at this point, he did not yet know what Collus Power was going to do. He maintained that the conversation was about Mr. Bonwick generally, not a potential RFP for Collus, and added: “[H]e didn’t say Collingwood and I didn’t say Collingwood.” Mr. Houghton also questioned Mr. Bentz’s ability to remember a conversation that was eight or nine years old. Mr. Houghton testified he told Mr. Bentz that Mr. Bonwick was a former member of both Parliament and Collingwood Council and also that his sister was the mayor and his father a local business icon. He described Mr. Bonwick as a strategic thinker who had been involved in many developments in Collingwood and regularly helped the community in various ways.

I accept Mr. Bentz’s evidence and find that Mr. Houghton did advise Mr. Bentz that Mr. Bonwick could assist with a potential RFP for Collus Power. By Mr. Houghton’s own admission, he highlighted Mr. Bonwick’s connections to Collingwood during the call with Mr. Bentz. There would be no other reason to focus on Mr. Bonwick’s family and his work in the Town unless he was recommending that PowerStream retain Mr. Bonwick to assist with matters in Collingwood.

Mr. Houghton was aware that Mr. Bentz wanted a better understanding of whether Council had the political will to proceed with a sale. He put Mr. Bonwick in contact with Mr. Bentz to assist PowerStream with that specific concern.

The Meeting Between Mr. Bonwick and Mr. Bentz

When Mr. Bonwick and Mr. Bentz met in person on January 12, Mr. Bonwick explained more about his company, Compenso Communications Inc. Mr. Bentz expressed his uncertainty as to whether Council supported a sale and mentioned that, perhaps, Mr. Bonwick could assist with this issue. Mr. Bonwick disclosed that his sister was the mayor, but he assured Mr. Bentz that this relationship did not create a conflict under the *Municipal Conflict of Interest Act*.

Mr. Bentz testified that the sibling relationship immediately caused him concern, although he did not believe it would be a “showstopper.” He told Mr. Bonwick that, if PowerStream was to engage Mr. Bonwick, he would need approval from the company’s Audit and Finance Committee and full disclosure would be required. Disclosure, he said, would be foundational to any engagement going forward.

As the discussion progressed, Mr. Bentz asked Mr. Bonwick to provide a draft proposal. He also asked him to advise Mr. Houghton that PowerStream was considering engaging Compenso. Finally, he asked if Mr. Bonwick could provide support for his assertion that a sibling relationship did not constitute a conflict of interest under the *Municipal Conflict of Interest Act* (see Part One, Chapter 4).

As I note above, because Mr. Houghton gave PowerStream an early indication that Collus Power was considering a sale, Mr. Bentz was able to begin to make arrangements for a potential RFP, including exploring a retainer with a local lobbyist who was also the mayor’s brother. The other bidders in the eventual RFP would not learn of the potential sale until July 2011, six months later. John Glicksman, the chief financial officer (CFO) of PowerStream, confirmed in his evidence that this tipoff was an advantage. He testified that one of the main reasons he believed PowerStream should retain Mr. Bonwick was to prevent him from consulting with a competitor about Collingwood:

He came to us first. Well, if we would say no and not hire him, he might have gone to somebody else, like Horizon, or Veridian,* who have hired

* Horizon and Veridian were two of the bidders in the Collus Power share sale RFP.

consultants in the past, and they would have then hired him. And then not only wouldn't – we had [sic] his knowledge, but one (1) of our potential competitors would have had his knowledge.

Valuator Recommendations Requested

On January 14, two days after Mr. Bonwick met with Mr. Bentz, Mr. Houghton phoned Mr. Bentz and asked if PowerStream had any recommendations for a valuator for Collus Power. In his testimony, Mr. Houghton maintained he called Mr. Bentz because both he and Mr. Muncaster were “not sure” who could perform the valuation of a utility.

I do not accept this evidence. To the extent that Mr. Houghton did not have this knowledge, despite his extensive experience in the industry, he could have asked Collus Power director David McFadden, an expert in the electricity industry and in mergers and acquisitions. Mr. Muncaster would also have understood that recommendations, if truly needed, could be obtained from Mr. McFadden.

The only reasonable conclusion is that Mr. Houghton called Mr. Bentz to signal that the prospect of a sale was moving forward. Mr. Houghton disclosed his interest in finding a valuator to PowerStream before anyone brought the idea of a sale to Collingwood Town Council.

Mr. Bonwick's Draft Proposal

On January 19, Mr. Bonwick sent Mr. Houghton a copy of his proposal to PowerStream, writing: “Have a look. Tried to clean up the billings section.” The next day, Mr. Houghton replied, “I reviewed and made a few minor changes.” At the Inquiry, Mr. Houghton testified that his review was limited to fixing typos and confirming that the proposal did not mention Collingwood, as he had requested in his earlier discussion with Mr. Bonwick.

Mr. Bonwick's proposal did not mention Collingwood or Collus Power explicitly but stated more generally that Mr. Bonwick would assist PowerStream to identify and pursue opportunities to “bid on Utility Corporations” in Ontario. It highlighted Mr. Bonwick's experience on “Municipal Council,” without expressly identifying Collingwood Council. The proposal also

stated that Mr. Bonwick's office was "in constant contact with the Municipal government" – again, without expressly stating it was Collingwood.

Mr. Houghton testified he was not bothered by the fact that the proposal discussed acquisitions of LDCs in Ontario. He said he assumed the proposal pertained only to LDCs other than Collus Power. When he was asked whether, in relation to the proposal, Mr. Bonwick had specifically promised not to assist PowerStream with any potential Collus Power sale, Mr. Houghton replied that Mr. Bonwick did not "owe" him a commitment, despite the fact that Mr. Houghton earlier testified that, in 2010, Mr. Bonwick did promise, at least in Mr. Houghton's mind, not to assist PowerStream with anything involving Collingwood. Mr. Houghton maintained he was satisfied that Mr. Bonwick had said he understood his [Mr. Houghton's] concerns.

Mr. Houghton's evidence that he was concerned about the optics of Mr. Bonwick assisting PowerStream on a Collus Power RFP is inconsistent with his actions at the time. At most, Mr. Houghton's efforts to keep Mr. Bonwick away from a potential Collus Power sale amounted to ensuring that the word "Collingwood" did not appear in Mr. Bonwick's proposal. Mr. Houghton advised both Mr. Bonwick and Mr. Bentz about the potential sale of the utility, and then he introduced Mr. Bonwick to Mr. Bentz.

On January 20, Mr. Bonwick sent Mr. Bentz a copy of his proposal (see Part One, Chapter 4). In the covering email, he wrote that Mr. Houghton and he had "detailed discussions relating to the overall proposal that I have prepared in the context of involvement and timing."

A Valuation of Collus Power

The Collus Power board of directors met on January 31. On the evening of January 30, Mr. Houghton sent Mr. Bonwick a draft letter to be sent by Mayor Cooper. The letter requested Collus Power to undertake a valuation and consider a sale of the utility. It read in part:

As you know, my Council was elected to get our spending and our municipal debt in control. I have asked our CAO [chief administrative

officer] and our Department Heads to look for opportunities within their areas of responsibility to reduce costs and still offer similar levels of service.

I would like to ask that Collus looks [sic] for similar opportunities to help reduce our debt ...

My specific request would be for Mr. Houghton and Mr. Muncaster to undertake an [sic] valuation of Collus and to look at the positives and negatives of selling the assets of Collus. I'm asking you to do this now where you can still be in control and take the lead because I firmly believe that during our budget deliberations this year or next that the suggestion will be made to sell Collus. When that occurs someone else will be in control.

...

This request and your review must be kept in strictest confidence. I must also say that this is not a "done deal" that Collus will be sold. If after the review we are asked about selling Collus[,] we can provide the details that suggest the contrary if that is the right thing.

Mr. Houghton testified that he drafted this letter following a conversation with Ms. Cooper about how Collus Power could meet the mayor's challenge to find efficiencies. As part of these conversations, Mr. Houghton said he told Ms. Cooper that he and Mr. Muncaster had been discussing Collus Power's future, including a potential sale. He also testified that he advised Ms. Cooper about his meeting with Mr. Bentz. In her own testimony before the Inquiry, however, Ms. Cooper denied knowing about this meeting and agreed with counsel for the Town that Council should have been informed before Mr. Houghton discussed a potential sale with Mr. Bentz.

In further testimony, Mr. Houghton said he explained to Ms. Cooper that the next step in considering a sale was to obtain a valuation of the utility. He suggested that the mayor, as "CEO" of the Town of Collingwood, send a letter directing Collus Power to obtain a valuation and assess options. He offered to draft the letter. Ms. Cooper agreed, he said, and directed him to share a draft of the letter with Mr. Bonwick because she wanted it to be consistent with her election platform.

At this point, Mr. Houghton did not inform Ms. Cooper that Mr. Bonwick

had already been in contact with PowerStream about a potential retainer – in his words, he “didn’t think about it actually.” Mr. Houghton testified that it was “not really for me to talk to the Mayor and tell her what her brother is doing.”

Despite saying in the letter that the matter was confidential, Mr. Houghton also testified that he was not concerned about sending the letter to Mr. Bonwick, a third party, because the confidentiality language was designed to prevent Collus Power staff from learning about the review. Mr. Houghton explained he did not consider that Mr. Bonwick might discuss the direction with PowerStream because his recent proposal to Mr. Bentz had not mentioned Collingwood. He said he did not have “that sort of conspiratorial thinking process.”

Ms. Cooper believed she asked Mr. Houghton to draft a letter directing Collus Power to look at opportunities for efficiencies. It was unclear from her testimony whether she specifically requested that the letter call for a valuation or whether it was a more general request for Collus Power to find cost-saving opportunities, a request she had made of other departments at the Town. In any event, Ms. Cooper testified she did not know that Mr. Houghton had sent a copy of the draft letter to Mr. Bonwick, and I accept her evidence in that regard.

I find in the case of Mr. Houghton that he prepared the letter because he wanted to continue exploring options for a potential sale. He consulted with Mr. Bonwick on the letter because he knew Mr. Bonwick was one of the mayor’s advisors.

In the case of Mr. Bonwick, I am satisfied he was content to discuss the letter and the next steps in the sale process with Mr. Houghton so he could use the information to assist in his efforts to secure a retainer with PowerStream.

In this regard, Ms. Cooper testified that, at the Council orientation session in the beginning of January 2011, she had no idea that a Collus Power sale could be on the horizon. The draft letter suggests that, by the end of the month, she was prepared to instruct Collus Power formally to explore a sale. I do not accept that Ms. Cooper came to this conclusion on her own in so short a time.*

* In an email Ms. Cooper sent in September 2011 to former Collingwood mayor Ron

Four contemporaneous emails bear out the conclusion that Ms. Cooper's direction for a valuation originated with Mr. Houghton and Mr. Bonwick. First, on February 1, Mr. Bonwick wrote Mr. Bentz:

In the interest of time, I had to initiate the beginning of the process we discussed. Unfortunately the next committee meeting was not scheduled for another two months[,] which would have caused some timing challenges if process [*sic*] was not initiated this week.

As a result, the Chairperson and Executive Director have now received direction to commence a valuation of the Utility ...

The plain reading of this email is that Mr. Bonwick informed Mr. Bentz that he had initiated the request for a valuation (see Part One, Chapter 4).

Second, Mr. Houghton emailed Mr. Bonwick the draft letter for the mayor on the evening of January 30. He sent the letter as part of an email chain that began with Mr. Houghton writing to Mr. Bonwick: "We have a Board Meeting tomorrow morning and I was wondering if we should chat?" Mr. Bonwick responded: "Good idea[.] I will call you in few minutes if that works." Mr. Houghton then sent Mr. Bonwick the draft letter. Although Mr. Bonwick testified he did not recall receiving the draft letter or discussing it with Mr. Houghton, this email suggests otherwise. It indicates that Mr. Houghton and Mr. Bonwick discussed the next steps in a potential Collus Power sale – a topic they had talked about before – and Mr. Houghton then sent Mr. Bonwick a draft letter for Ms. Cooper to send to Collus.

Third, on January 30, as part of the same email chain, Mr. Houghton told Mr. Bonwick that "it is so important that Rick does not know what I am doing." Mr. Bonwick responded, "No kidding ... that applies to absolutely everyone."

Mr. Houghton and Rick Lloyd, who was deputy mayor at the time, testified that these comments related to an ongoing controversy regarding the picture of former mayor Chris Carrier which had been hung in Town Hall. The picture was in colour. All the other former mayors' pictures were black and white, a difference that, they said, had upset some Council members.

Emo, she suggested that the idea of a sale was brought forward during budget deliberations, which took place in March after the letter was sent.

There was talk of removing the colour picture. Mr. Houghton testified that he thought he could mediate and wanted to find out whether Mr. Bonwick had discussed the issue with Ms. Cooper before he himself raised it with her at the board meeting the next day.

I do not accept this evidence. Mr. Houghton did not need to wait until a Collus Power board meeting to speak with Ms. Cooper about the portrait. According to his own evidence, he was in regular contact with the mayor. It is clear from the evidence that the comment about Mr. Lloyd related to Mr. Houghton's and Mr. Bonwick's discussions about the draft letter sent to the mayor. It is not surprising that Mr. Houghton would want to keep the matter secret from Mr. Lloyd because, as deputy mayor, he had the capacity to derail the process at this early stage if he did not agree with the idea of a sale of Collus Power.*

Fourth, Mr. Bonwick emailed Ms. Cooper directly on January 31 and wrote:

I got your message re budget. You will need to be very clear with Department Heads on your expectations [*sic*]

Same goes for COLLUS. It also sends a message through early in your term that your Council will provide direction.

When I spoke to you a few weeks ago about this type of direction[,] Ed thought his Board would be supportive of the request.

Mr. Bonwick and Mr. Houghton testified that this email reflected the fact they had spoken with each other about Ms. Cooper's challenge to department heads to find efficiencies, and that the challenge extended to Collus Power. The natural extension of that conversation would be the direction to have Collus Power undertake a valuation and consider a sale, as that is how Mr. Houghton believed Collus Power should respond. The day after Mr. Houghton sent the draft letter to Mr. Bonwick, Ms. Cooper sent a revised draft to her executive assistant for review and formatting. The revised January 31 draft read:

* I discuss Mr. Lloyd's approach to governance in Part One, Chapter 1, and throughout Part Two.

As you may know, our new council was partly elected to get our spending and our municipal debt under control.

As a result, I have asked our CAO, Ms. Wingrove and our department heads to look for opportunities within their areas of responsibility to explore cost reduction [sic] opportunities and still offer similar levels of service.

I would [sic] like to ask that Collus look for similar opportunities in part to help reduce our debt and create greater efficiencies for Collingwood residents. I recognize the input during budget presentation [sic].

My specific request is that chair Muncaster direct Mr. Houghton to undertake a valuation of Collus examining all potential opportunities that might benefit Collingwood residents and that a report containing recommendation [sic] be presented to Council by May 30, 2011.

I would appreciate this review being treated with confidence until myself and council have an opportunity to be presented with a report.

The revised draft contained two important changes from the initial draft Mr. Houghton sent Mr. Bonwick. First, it directed Collus Power not only to look for opportunities to reduce debt but also to “create greater efficiencies.” Second, it no longer directed Collus to “look at the positives and negatives” of selling Collus, but, rather, to examine “all potential opportunities that might benefit Collingwood residents.” The effect of these changes was to broaden the mandate to focus not only on a sale but on any and all opportunities that could benefit the Town.

The Inquiry was not provided with a final version of Ms. Cooper’s letter. Mr. Houghton testified that it was delivered to Mr. Muncaster in hard copy.

The minutes of the January 31 Collus Power board meeting do not reflect that the mayor’s letter was discussed at all. When asked to explain the reason, Mr. Houghton suggested that Ms. Cooper’s fiduciary duty to the company as a director would have somehow impeded that discussion. He said the direction needed to come from Ms. Cooper in her capacity as mayor and that a letter was the best way to deliver it.

I do not accept this explanation as a valid excuse for not discussing the mayor’s direction at the Collus Power board meeting. The Collus Power board had three directors: Dean Muncaster (the chair), Mayor Cooper, and

David McFadden. At this point, only Mr. McFadden was unaware of the mayor's letter. Throughout the Inquiry, Mr. Houghton testified he relied on the insight and experience of Mr. McFadden, and, at this point, there was no reason not to inform him so he could provide any views he might have had on the process. Instead, Mr. Houghton continued to control who was aware of the possible sale, keeping Council out of the loop.

Authority to Initiate a Valuation

Mr. Houghton testified he considered Mayor Cooper's letter to be his "marching orders" from the Town to obtain a valuation and to explore sale options. He said he told Ms. Cooper it was appropriate for her to send the letter as the "CEO of the Community." Mr. Houghton testified that it was also appropriate for the mayor to make such a request because it was merely a direction to look at options, not a direction to sell the utility. I do not accept this purported distinction. The mayor had no independent authority to direct Collus Power to undertake a valuation.

Council as a whole is responsible for developing municipal policies and services and for maintaining the financial integrity of the municipality (see Part One, Chapter 1). Although section 226.1 of the *Municipal Act, 2001* describes the head of Council, or the mayor, as the "chief executive officer" of a municipality, the mayor cannot act unilaterally on behalf of the municipality and does not have power akin to that of the CEO of a corporation.

Further in his testimony, Mr. Houghton stated that, if it was not appropriate for Ms. Cooper to send the letter without Council's approval, Council would have said so at the June 27, 2011, meeting. At that meeting, Mr. Houghton first notified members of Council that Collus Power had been exploring a potential sale. This argument misses the point. Waiting for an objection was not an appropriate approach. Mr. Houghton should have sought the Town's instructions before taking the first steps toward the potential sale or transaction involving Collus Power.

KPMG's Valuation and Options Analysis

On February 6, 2011, Mr. Houghton telephoned John Herhalt, a partner at KPMG. Mr. Herhalt had advised the Town in the early 2000s when the *Electricity Act* required all electricity distributors to become corporations under the *Ontario Business Corporation Act*. He worked with Mr. Houghton on that project and had crossed paths with him at various industry events. During the call, Mr. Houghton advised Mr. Herhalt that Collus Power wanted to analyze its options in light of potential consolidation and, in conjunction with that, prepare a valuation. Mr. Houghton testified that he described Ms. Cooper's letter on the call but never provided Mr. Herhalt or KPMG with a copy of the letter.

The following week, on February 14, Jonathan Erling, a managing director at KPMG, sent Mr. Houghton a draft engagement letter. The fee estimate in the letter was \$30,000. Mr. Houghton forwarded the proposal to Mr. Muncaster. In his reply, Mr. Muncaster noted that the estimate was higher than Mr. Houghton's authorization limit, raising "the tactical question about the involvement of the other COLLUS Power directors." He continued:

Because Mayor Cooper has been involved in the previous consideration of having this valuation done[,], that should not be a difficulty and I would suspect that we will be relying on her judgement about the involvement of the shareholder.

The point at which David McFadden is introduced to the issue is an interesting one, but I would think that sooner is better than later if that does not cause you or the Mayor undue difficulty from a political point of view, because he has the obligations and responsibilities of a director.

Other than these tactical issues, I believe that the project is well launched.

Later that day, Mr. Houghton emailed Mr. Herhalt and asked if anything could be done to bring the proposal within his \$20,000 spending limit. Mr. Herhalt replied that the valuation would cost \$30,000–\$50,000 "out of the gate." Mr. Herhalt explained that a more comprehensive valuation with greater certainty would have cost more money.

Collus Power eventually agreed to the \$30,000 fee estimate. Mr. Houghton

testified he did not speak with Ms. Cooper directly regarding the fee; rather, he stated, Mr. Muncaster spoke to her, and she in turn approved the fee.

The amount to spend on professional advice about the value of Collus Power and on future options for the utility was a question for the shareholder, the Town, not for the asset, Collus Power.

Mr. Houghton never advised Council about KPMG's retainer. Although Mr. Muncaster's email suggested that Collus Power would rely on Ms. Cooper's judgment "about the involvement of the shareholder," Ms. Cooper testified she relied on Mr. Muncaster's and Mr. McFadden's experience and knowledge as to when it was appropriate to notify the Town. Mr. McFadden, for his part, testified he was not consulted on either the retainer of KPMG or the appropriate time to inform the Town Council.

Mr. Houghton testified that Mr. McFadden was not involved because the board needed only a majority vote to approve KPMG's retainer. He added that, at the time Mr. McFadden was informed of the retainer after the fact, he did not have any concerns. However, Mr. McFadden testified he thought Council had requested that a consultant be retained. Tim Fryer, Collus Power's CFO, who became involved in KPMG's work, also believed that Council had provided the direction.

Because Council did not know about KPMG's work, it was unable to convey its priorities and goals to KPMG in regard to options for Collus Power.

No Communication Between KPMG and the Town

On February 24, 2011, KPMG sent Mr. Houghton a retainer agreement, which he signed on March 11. The retainer letter stated that KPMG was "pleased to submit this proposal to Collus Power ('Collus' or 'Client') to help you and your shareholder, the Town of Collingwood." Mr. Herhalt and Mr. Erling testified they understood that Collus Power was the client, though the work was being done for both Collus Power and the Town of Collingwood. In completing the assignment, no one at KPMG ever spoke with anyone at the Town other than Mr. Houghton.

The retainer provided that KPMG would undertake two primary tasks. First, it would complete an analysis of the potential sale value of Collus Power. Second, it would prepare a summary of the advantages and disadvantages

of various ownership options “from the perspective of the Town, of utility ratepayers, and local ratepayers.” The retainer further provided that KPMG would summarize its findings in a PowerPoint report it would present to the “relevant stakeholders.”

Mr. Herhalt testified that KPMG had prepared an options analysis for municipalities and their utilities on many occasions. He explained it was not uncommon for KPMG to be retained by either the distributor or the Town, and sometimes both. In either case, Mr. Herhalt recognized it was the owner, the shareholder municipality, that would ultimately decide how to proceed. KPMG’s work for Collingwood was no different.

In further testimony, Mr. Herhalt said that KPMG did not approach the work from the perspective of the Town’s objectives. It conducted a review of the options generally available to any LDC. Similarly, he said that the pros and cons analysis was undertaken from the perspective of a municipality generally, and not necessarily Collingwood. For this reason, he said KPMG was not concerned it had no meetings with Town officials. He also stated that KPMG was not asked its opinion about the best strategic option or to rank the options or provide any advice on which option to select.

As I discuss below, Mr. Houghton narrowed the scope of KPMG’s work. The Town, as a result, was effectively deprived of the benefit of receiving KPMG’s advice on all potential options for Collus Power. Council was not presented with the option to recapitalize Collus Power, for example, following the mayor’s direction to find ways to reduce debt. At the time, Collus Power maintained a debt-to-equity ratio of 30 percent debt and 70 percent equity (see Part One, Chapter 2). Most LDCs, however, maintained a ratio of 60 percent debt to 40 percent equity. As I discuss in further detail in Part One, Chapter 8, as part of the share sale to PowerStream, Collus Power did increase its debt to 60 percent, which resulted in a dividend to the Town of approximately \$4.5 million. The Town, however, could have received this dividend without proceeding with a share sale. Mr. Houghton testified he decided that Collus Power should not increase its debt to ensure that the company would have funds available for large projects. This decision was not Mr. Houghton’s to make. Rather, it was a matter for Council to determine after it had been informed of the pros and cons by staff – who, in turn, could consult with an expert advisor such as KPMG.

If KPMG had been retained by the Town to advise on how best to achieve its goals, Council may well have decided to remain with the status quo. Mr. Herhalt testified that, in his experience, many municipalities, and the smaller ones in particular, elected to maintain the status quo when presented with KPMG's options analysis. One factor, he noted, was that municipalities generally wished to retain 100 percent ownership of the utility's income stream. While individuals within Collus Power, such as Mr. Houghton, may have believed that the status quo was no longer viable, Council was never given an opportunity, with the assistance of professional advisors, to assess independently whether this attitude was true for the Town. As noted above, according to Mr. Bentz, the municipality of Orangeville opted to hold onto its utility, despite the utility's own view that a change was needed.

The Narrow Scope of KPMG's Review

In 2011, Mr. Herhalt was KPMG's global leader of its government and infrastructure group, a role that required him to be overseas about 80 percent of his time. As a result, he delegated the substance of KPMG's retainer to John Rockx, a certified business valuator with KPMG, and Jonathan Erling, a managing director at KPMG with expertise in the Ontario electricity industry. Mr. Rockx was responsible for the valuation, and Mr. Erling for the options analysis.

After the engagement was finalized, Mr. Houghton and Mr. Erling arranged a phone call for March 11. Mr. Erling remembered only two details from that call: first, that Collus Power considered it was time to conduct a review of the Town's ownership position in the utility; and, second, that the valuation should be done as part of that exercise.

From the outset, Mr. Erling wanted to know details of the shared services arrangements among Collus Power, the water utility (Collingwood Public Utilities Service Board, or CPUSB), and the Town. In his testimony, he stated that any potential sale could affect the shared services arrangements, specifically the services that the various Collus corporations provided to the Town (see Part One, Chapter 2). He had therefore sought to obtain a better understanding of the cost consequences if a purchaser was not interested in continuing to provide services to the Town and the CPUSB.

In order to comprehend how the shared services were structured, Mr. Erling had asked Mr. Fryer, the utility's CFO, several questions about them. He found it difficult, however, to obtain answers, noting at one point in an email that he did not think Mr. Fryer was "on board" with KPMG's assignment. In a telephone conversation during the project, Mr. Houghton told Mr. Erling that Mr. Fryer was opposed to a potential sale and was "scrambling." Mr. Erling did not recall the specific date of that conversation.

Mr. Fryer testified he was busy during this period but tried to answer Mr. Erling's questions as best he could with the resources he had available. He was not aware that KPMG had concerns about the nature of his responses and did not believe there was any issue in the assistance he was providing.

Before this matter could be resolved, Mr. Houghton intervened to prevent Mr. Erling from seeking further information about the shared services from Mr. Fryer. On May 9, after leaving Mr. Herhalt a voicemail, Mr. Houghton emailed him: "This is becoming very time sensitive and we need to get to a conclusion very soon." Mr. Herhalt testified that when he received this message, he was not aware of any particular deadline that needed to be met. Rather, he thought that Mr. Houghton merely wanted to see the matter moving faster.

Mr. Herhalt responded to Mr. Houghton's email, writing:

I don't think things have gone off the rails. Some of Jonathan's queries are related to the part of the assignment that was to explore other potential options and the quantitative and qualitative pros and cons.

My suggestion is that we first focus on getting the valuation done and clear up any information on that. For the other options and pros and cons piece[,] let's talk about the high level approach to that and some of the parameters so we don't go into too much detail.

Mr. Erling and Mr. Rockx met with Mr. Houghton and Mr. Muncaster on May 12. This meeting was the only in-person contact between KPMG and any individual from Collus Power. Before the meeting, Mr. Herhalt told Mr. Erling that the purpose was to explore the depth that Mr. Houghton was looking for in the options analysis, noting: "[M]y sense is he wants that piece at a pretty high level."

Mr. Erling did not have a strong recollection of the discussions that took place at this meeting. He recalled, however, that by the end, it had been agreed that KPMG would not incorporate an assessment of the shared services agreements into its valuation.

Mr. Rockx took notes at the meeting. Among other things, these notes stated, “New Council ... Mandate – reduce level of debt.” During his examination-in-chief, Mr. Rockx testified he did not recall discussing Council’s mandate to reduce debt levels beyond the fact that it was included in his notes. When he was cross-examined by Mr. Houghton’s counsel, Mr. Rockx testified that one of either Mr. Houghton or Mr. Muncaster told him at the meeting that a new Council had been elected and that one of its mandates was to reduce debt.

To the extent that Council’s mandate to reduce debt was discussed with Mr. Rockx, I am satisfied that these discussions were not substantial and did not have a meaningful impact on KPMG’s analysis.

As noted above, Mr. Herhalt testified that KPMG did not approach its work on the review of options through the lens of the Town’s specific objectives but, rather, from the perspective of a municipality generally. This approach was evident in the eventual options analysis report produced by KPMG, which did not mention the Town’s need to reduce debt.

Mr. Erling testified that, on May 13, the day after the meeting, he advised Mr. Herhalt that KPMG and the Town had agreed to “stay away from the detailed operational impacts of losing synergies between the water and electricity operations.” Mr. Erling explained they decided KPMG would not try to “disentangle” the shared services and put a dollar impact on the potential loss of synergies if they did not continue. The potential impact, he said, would need to be addressed later in the process because, at this point, they did not know whether a potential purchaser would be willing to continue the shared services arrangement.

Mr. Erling further stated that it would be unusual for a purchaser to continue to provide services to the Town, though it was “not out of the question.” He also confirmed that KPMG had analyzed shared services between a utility and affiliated entities with other clients, but he described the analysis as more involved.

Mr. Houghton testified he decided to direct KPMG not to analyze the

shared services agreements because both the Town and Collus Power wanted to continue with them. He said he knew Ms. Cooper liked these arrangements. However, Mr. Houghton did not consult with the mayor or the Town Council about whether KPMG should consider the shared services agreements as part of its review.

In further testimony, Mr. Houghton explained there was a rush to complete KPMG's work because Ms. Cooper's letter had requested a report by May 30, 2011. He was unable, however, to explain why she gave that deadline, and he said he had never discussed it with her. He also did not ask her at any time whether KPMG should be given more time to complete its analysis.

As a result of Mr. Houghton's direction, KPMG did not analyze the potential impact of the sale on the shared services. These services were a significant issue to the Town. In one email, Mr. Rockx estimated that the Town could be receiving \$250,000 in free services annually from the Collus group. This amount was not confirmed because of Mr. Houghton's later instructions to KPMG.

At the Inquiry, Mr. Erling indicated that quantifying shared services would not fundamentally change the approximate value of the utility. At the same time, he said that undertaking the analysis was not difficult, remarking: "It just ... takes a bit of effort." He testified that, once the value of the shared services was quantified, their impact on the Town after a sale would depend on who purchased the company and the terms of sale. Although that may well be accurate, whether to take the first step of quantifying the value of the shared services agreement to the Town at this stage was clearly a question for Council.

KPMG Analysis Not Shared with Town

KPMG delivered a draft valuation document and options analysis to Collus Power on May 24, 2011. It valued the company at between \$14.1 million and \$16.3 million. Mr. Houghton never asked KPMG to finalize the draft.

The options analysis came in the form of a slide presentation, as contemplated by the retainer agreement. The PowerPoint report considered the pros and cons of three different ownership options: full ownership (the status quo) and both the full sale or a partial sale of a majority or a minority

interest. KPMG did not discuss and was never asked to consider a 50 percent share sale, the option the Town ultimately pursued.

The analysis included one slide about shared services. The slide stated that any transaction could affect the Town and the water utility, and it noted that any such impact would “ultimately need to be examined as part of the financial analysis, from the Town’s perspective, of any proposed transaction.” As I discuss later in this Report, this analysis was not completed prior to the closing of the share sale transaction. After the sale, the issue of the shared services contributed to tensions between the Town of Collingwood and PowerStream.

Despite being expressly contemplated in the retainer, Mr. Houghton did not ask KPMG to present its valuation or options analysis to anyone at Collus Power or the Town. Instead, he took KPMG’s work, made significant changes to it, and presented the analysis himself to Town Council on June 27, 2011 (see Part One, Chapter 4).

The Strategic Partnership and the Role of Paul Bonwick

At the start of January 2011, PowerStream Incorporated's president and chief executive officer (CEO), Brian Bentz, had never heard of Paul Bonwick. By June 2011, PowerStream had retained Mr. Bonwick's company to assist in a potential request for proposal (RFP) for Collus Power Corporation.

During these six months, Mr. Bonwick previewed the value he could bring to PowerStream by sharing the confidential information he had obtained about the early stages of the Collus sale process. PowerStream, in turn, wanted to engage Mr. Bonwick but recognized the actual and apparent conflict of interest issues raised by hiring the mayor's brother to assist in purchasing the local utility. PowerStream's stated solution was to insist Mr. Bonwick make full disclosure to his sister and the Town's clerk about his role as a consultant. Mr. Bonwick, however, did not make the required disclosure. Mr. Bentz and PowerStream chief financial officer John Glicksman, who Mr. Bonwick was negotiating his retainer with, did not confirm that the required disclosure had been made. What resulted was only a veneer of disclosure.

Meanwhile, Collus Power's CEO, Ed Houghton, continued to push the company in the direction of a sale at a heightened pace. After KPMG completed its analysis of Collus Power's strategic options at the end of May 2011, Mr. Houghton arranged a meeting with two of Collus Power's three directors to discuss what option the company would recommend to the Town. The third director, Mayor Sandra Cooper, was not invited. Mr. Houghton testified that the three men discussed the idea of a "strategic partnership," through which another utility would both purchase an interest in Collus Power and provide the company with resources. As I will discuss, the strategic partnership ultimately materialized in a 50 percent share sale. After the meeting, Mr. Houghton prepared a presentation for Council recommending

that it establish a task team to explore the strategic partnership further. Mr. Houghton created the presentation by taking KPMG's report, removing the firm's name, and adding a strategic partnership as the "recommended option." KPMG never reviewed the presentation or the new analysis. It also did not participate in the presentation. Rather, Mr. Houghton delivered the presentation to Council *in camera* on June 27, 2011, following which Council decided to strike a task team, as suggested.

Two days later, on June 29, PowerStream met with the mayor, the deputy mayor, and the Town's chief administrative officer (CAO) to introduce PowerStream and discuss Mr. Bonwick's role with the company. Again, Mr. Bonwick's work on a potential RFP was not raised. This lack of disclosure left the Town on a path to selling a 50 percent interest in Collus Power while the mayor and senior staff were unaware that the mayor's brother was working for a potential bidder.

Negotiation of Paul Bonwick's Retainer

As I explain in Part One, Chapter 3, Mr. Houghton had had discussions with Mr. Bonwick in late 2010 about potential opportunities for him in the local distribution company (LDC) industry. Mr. Houghton suggested that Mr. Bonwick get in touch with Mr. Bentz, and the two arranged a meeting for January 12, 2011. At that meeting, Paul Bonwick and Brian Bentz discussed the apparent conflict presented by Mr. Bonwick's relationship to the mayor. Mr. Bonwick advised Mr. Bentz that a sibling relationship was not a conflict under the *Municipal Conflict of Interest Act*. Mr. Bentz asked Mr. Bonwick to provide support for his assertion that there was no conflict. He requested that Mr. Bonwick advise Mr. Houghton that PowerStream was considering retaining Compenso Communications Inc., Mr. Bonwick's company. He also asked Mr. Bonwick to provide a draft work proposal.

It is unclear to me why Mr. Bentz would insist that Mr. Bonwick confirm that retaining Mr. Bonwick to assist PowerStream in its pursuit of an interest in Collus Power would not place his sister, Mayor Sandra Cooper, in a conflict of interest. PowerStream had the sophistication and resources to answer the conflict question on its own, and it did so.

After he met with Mr. Bonwick, Mr. Bentz consulted with the mayors of Vaughan, Barrie, and Markham, who sat on PowerStream's Audit and Finance Committee, about hiring the mayor's brother to consult on the acquisition of a Town's utility and the potential conflict posed by such a retainer. Mr. Bentz testified that the mayors did not see a conflict so long as PowerStream was "very transparent about disclosure" to Mayor Cooper. The rationale, Mr. Bentz explained, was that Mayor Cooper could then consider the potential conflict for herself and determine whether it required disclosure and recusal from Council discussions and decisions regarding Collus Power. According to Mr. Bentz, the mayors did not discuss disclosure to anyone other than Mayor Cooper or the details of what information should be disclosed.

Mr. Bentz was not an expert in conflicts of interest. It followed that he would seek advice from the three mayors on the Audit and Finance Committee, who would be familiar with the obligations of a mayor when it came to a potential conflict of interest.

Mr. Bentz also sought advice from PowerStream's internal legal counsel on this issue, who in turn discussed the matter with PowerStream's external legal counsel. PowerStream declined to disclose the legal advice it received to the Inquiry.

I accept Mr. Bentz's evidence that the mayors agreed the decision to disclose information and recuse herself was Mayor Cooper's decision to make, assuming she was made aware of the full scope of Mr. Bonwick's engagement.

I do not accept Mr. Bentz's evidence that there was no consideration of the content of the required disclosure or disclosure to a broader audience.

I am satisfied that the mayors determined that, if PowerStream hired Mr. Bonwick to work on an acquisition involving Collus, this needed to be publicly disclosed to enable Mayor Cooper to consider the apparent conflict and whether to recuse herself. It would also arm the Town's councillors and staff with the information they required to determine how they should interact with Mr. Bonwick.

Mr. Bentz's decision to consult with the mayors and legal counsel was a vigilant start to a transparent potential engagement with Mr. Bonwick. Unfortunately, Mr. Bentz's vigilance did not continue.

Deputy Mayor Seeks Information on Conflicts of Interest

Mr. Bonwick took steps to confirm that a sibling relationship did not give rise to a conflict of interest under the *Municipal Conflict of Interest Act*, as Mr. Bentz had requested. Ironically, Mr. Bonwick's approach to this question was anything but transparent. Rather than seeking out a professional opinion on the conflict issue, he sought the assistance of his friend, Deputy Mayor Rick Lloyd.

On January 17, 2011, Deputy Mayor Lloyd emailed Sara Almas, the Town clerk, stating that his brother was considering bidding on some work for the Town. Deputy Mayor Lloyd asked Ms. Almas to confirm his understanding that this relationship would not put him in a conflict of interest under the "Conflict of Interest Act," saying that he knew the clerk could not give advice on the matter.* Ms. Almas replied, confirming her understanding that the *Municipal Conflict of Interest Act* did not deem a councillor to be in a conflict if the financial interest in question was that of a sibling.

Three days later, on January 20, Mr. Bonwick emailed Mr. Bentz, noting that the "Town's solicitor provided a legal opinion to the Deputy Mayor clarifying that there is no breach [sic] of conflict of interest guidelines in this situation." As I note later in this chapter, Mr. Lloyd testified that he never told Mr. Bonwick that he had obtained a legal opinion from the Town's solicitor.

Regarding concerns about a conflict of interest, Mr. Bonwick proposed in the same email that

PowerStream consider engaging my company ... on a much broader level eliminating the potential accusation that our business relationship is somehow predicated on family contacts ... This approach would in no way detract from [the] LDC [local electricity distribution company] opportunity presently being discussed.

Mr. Bonwick's January 20 email to Mr. Bentz was a red flag that Mr. Bentz failed to identify or address. Mr. Bonwick proposed blurring the nature of Compenso's true engagement with PowerStream; namely, to work with

* The deputy mayor's reference to the "Conflict of Interest Act" in his email was an error. There is no act called the "Conflict of Interest Act." In her response, the clerk identified the relevant legislation: the *Municipal Conflict of Interest Act*.

PowerStream in responding to any opportunities to acquire an interest in Collus Power. This proposal was antithetical to the advice of the three mayors that disclosure was required so Mayor Cooper could address the potential conflict of interest issues posed by PowerStream's retainer of her brother. As Mr. Bentz would learn shortly, there was also no legal opinion from the Town solicitor.

Mr. Bentz kept notes documenting his early interactions with Mr. Bonwick. These notes recorded that Mr. Bonwick's initial representation that his retainer by PowerStream would not put the mayor in a conflict of interest began to erode under scrutiny. Mr. Bentz's notes indicated that he asked Mr. Bonwick about the source of the opinion that the mayor would not be in a conflict of interest. They stated that Mr. Bonwick "[s]aid it came from City Clerk on advice of Council that if the interest is of a sibling then the elected official does not have a conflict. Said the request came from Deputy Mayor not Mayor."

Mr. Bonwick and Mr. Bentz spoke by telephone on January 25, 2011. Mr. Bentz's notes from his early discussions with Mr. Bonwick recorded that, during this call, Mr. Bentz asked Mr. Bonwick to provide documentation to support that a sibling relationship did not create a conflict of interest.

On January 27, Deputy Mayor Lloyd forwarded his January 17 email exchange with Clerk Almas to Mr. Bonwick. Mr. Bonwick, in turn, forwarded an altered version of that email chain to Mr. Bentz on January 29. In the covering message, Mr. Bonwick wrote that the deputy mayor had "informed [me] that it was a legal opinion. That said, the Clerk is the person responsible for the interpretation of the Municipal Act [*sic*] for Council."

The alteration that Mr. Bonwick made to the deputy mayor's email correspondence with the clerk is telling. Mr. Bonwick removed the deputy mayor's email to Clerk Almas, providing Mr. Bentz only with the clerk's response. In omitting the deputy mayor's email, Mr. Bonwick removed the context of the clerk's response. He also removed the deputy mayor's acknowledgement that Clerk Almas could not provide advice on the issue of conflicts.

In his evidence, Mr. Bentz described the effect of this omission. He understood Clerk Almas's email responded to the question of whether Mr. Bonwick's work for PowerStream on Collus Power would put Mayor Cooper in a conflict of interest. Mr. Bentz testified that PowerStream wanted

Mr. Bonwick to disclose the specific situation to the clerk. Mr. Bentz acknowledged that he “might have” had questions about why Mr. Bonwick chose to remove Deputy Mayor Lloyd’s email from the email chain containing the clerk’s response, had he known about it.

Mr. Bonwick enlisted the deputy mayor to obtain confirmation from the clerk about the status of siblings under the *Municipal Conflict of Interest Act*. By working through Deputy Mayor Lloyd, Mr. Bonwick avoided dealing directly with Clerk Almas. He therefore avoided any questions about his work for PowerStream that may have flowed from that conversation.

Mr. Bonwick and Deputy Mayor Lloyd each provided different explanations for this email correspondence. Mr. Bonwick testified that he was unaware of the deputy mayor’s January 17 email correspondence with Clerk Almas when he emailed Mr. Bentz on January 20. Mr. Bonwick said he emailed Mr. Bentz following a conversation with Deputy Mayor Lloyd about Mr. Lloyd’s experience in dealing with potential conflicts relating to his brother. The latter operated a construction company that bid on Town projects from time to time.

More specifically, Mr. Bonwick testified that he told the deputy mayor that he was “pursuing work” with a “company outside the community” that may be engaging with the municipality. In that context, Mr. Bonwick asked about the deputy mayor’s experience in dealing with the clerk about whether sibling relationships gave rise to a conflict of interest. Mr. Bonwick testified that the deputy mayor responded the issue had arisen on several occasions, and he had always been provided an opinion that a sibling relationship did not create a conflict. Mr. Bonwick testified that he misunderstood his conversation with the deputy mayor and was left with the impression that the deputy mayor had obtained a legal opinion from the Town’s solicitor.

Mr. Lloyd’s recollection was different. He testified that he sent his January 17 email to the clerk shortly after arguing at a bar with his brother and Mr. Bonwick and “a bunch of other guys.” According to the deputy mayor, the group was needling him about his brother bidding on Town projects and insisting that it gave rise to a conflict of interest. Mr. Lloyd testified he was “pretty cheesed off” by the conversation. He emailed the clerk within days of the argument to confirm a sibling relationship did not amount to a conflict. Then, he said, he forwarded the clerk’s response to Mr. Bonwick

on January 27 “so he could show these other characters that I didn’t have a conflict.”

Mr. Lloyd denied speaking with Mr. Bonwick about his communications with the clerk before he forwarded the email exchange with her on January 27. He did not mention a conversation in which Mr. Bonwick advised him about a potential new retainer.

I do not accept Mr. Lloyd’s version of events.

Deputy Mayor Lloyd did not forward Clerk Almas’s email to Mr. Bonwick until January 27, at least two weeks after the alleged offending conversation with Mr. Bonwick and their mutual friends. If Deputy Mayor Lloyd was so upset by the conversation that he asked the Town clerk for her view of his brother’s situation, he would have forwarded her responding email immediately on receiving it and not 10 days later.

Finally, Deputy Mayor Lloyd’s email forwarding Ms. Almas’s response made no mention of the “other characters,” and he did not ask Mr. Bonwick to show the email to anyone.

I am satisfied that Mr. Lloyd forwarded Ms. Almas’s email to Mr. Bonwick to assist him, as he had on many other occasions.

I am also satisfied that Mr. Bonwick removed the deputy mayor’s email from that email chain to create the false impression that the Town clerk had confirmed Mr. Bonwick’s retainer by PowerStream would not put the mayor in a conflict of interest.

The Houghtons’ Review of the Draft Proposal

While PowerStream was considering the implications of retaining Paul Bonwick to assist in its intended investment in Collus Power, Mr. Bonwick worked to convince PowerStream to hire him, leveraging his relationship with Mr. Houghton in the process.

Mr. Bonwick prepared a document setting out the mergers and acquisitions–related services he proposed to offer to PowerStream through his company, Compenso. The proposed services included identifying key decision makers, maintaining political and bureaucratic relationships related to the transaction, and acting as an “early-warning system” that gathered intelligence to enable PowerStream to respond to any potential critical challenges that arose.

On January 19, 2011, Mr. Bonwick sent copies of his draft PowerStream proposal to Ed Houghton and his wife, Shirley Houghton, by separate emails.

Mr. Bonwick asked Ms. Houghton to provide comments on the draft proposal. Ms. Houghton was surprised by Mr. Bonwick's request and did not know why Mr. Bonwick asked for her assistance. She had not done any work for Mr. Bonwick before. She called Mr. Bonwick and advised that he had sent her the document in error. According to Ms. Houghton, Mr. Bonwick replied: "Sorry about that, but while I've got you on the line, would you mind taking a look at it for me?" Ms. Houghton reviewed the draft proposal for typographical errors. She could not recall how she communicated her comments on the draft to Mr. Bonwick.

Ms. Houghton recalled advising Mr. Houghton that Mr. Bonwick had emailed her the proposal for her review. She forwarded the email to Mr. Houghton at his request. Mr. Houghton couldn't recall if he was aware of Mr. Bonwick's communications with Ms. Houghton.

The next day, Mr. Bonwick offered Ms. Houghton a paid position with Compenso, editing documents and assisting with "matters related to the Lobbyist Registrar at both the Federal and Provincial level" at a rate of 20 dollars an hour. Ms. Houghton was not working full time and agreed to work part time, providing administrative support for Compenso. Over the following 20 months, Ms. Houghton received \$27,390 from Compenso. One payment Compenso made to her, totalling \$19,350, is discussed in Part One, Chapter 5.

I am satisfied Mr. Houghton knew that Mr. Bonwick asked Ms. Houghton to work for him and review his proposal.

As I discuss in Part One, Chapter 3, Mr. Bonwick also sent his draft proposal to Mr. Houghton. Mr. Houghton responded and said he had "reviewed and made a few minor changes".

On January 20, 2011, Paul Bonwick sent Brian Bentz the proposal. In his covering email, Mr. Bonwick told Mr. Bentz that he had engaged in "detailed discussions" with Mr. Houghton about the proposal, stating: "As a result of my assessment of the situation I constructed the proposal in a manner that address [*sic*] any potential concerns." In other words, Mr. Bonwick advised Mr. Bentz that he had the ear and the assistance of the target utility's CEO.

Ultimately, on January 25, Mr. Bonwick and Mr. Bentz discussed Mr. Bonwick's proposal. During that conversation, Mr. Bentz advised Mr. Bonwick that PowerStream's Audit and Finance Committee would have to review the proposal.

Confidential Information Provided During Retainer Discussions

Paul Bonwick supplied PowerStream with confidential information about Collus Power while he was negotiating his retainer with PowerStream. On February 1, Mr. Bonwick emailed Mr. Bentz, writing:

In the interests of time, I had to initiate the beginning of the process we discussed. Unfortunately the next committee meeting was not scheduled for another two months which would have caused some timing challenges if process was not initiated this week[.]

As a result, the Chairperson and Executive Director have now received direction to commence a valuation of the Utility ...

The plain reading of this email is that Mr. Bonwick informed Mr. Bentz that he had initiated a process which resulted in Collus Power undergoing a valuation by KPMG. The implication of this message would be apparent to Mr. Bentz: Mr. Bonwick wielded significant influence within the municipality, and that influence would be an asset to PowerStream.

Mr. Bentz testified that he interpreted Mr. Bonwick's email differently. He understood the "process" Mr. Bonwick mentioned in the email was PowerStream's hiring process.

The email cannot reasonably bear that meaning.

Mr. Bonwick, for his part, testified that he was unable to recall what he was intending to communicate with this email.

Meanwhile, the day before Mr. Bonwick sent this email to Mr. Bentz, he sent an email to Mayor Cooper advising her to promote austerity measures among the Town's department heads.

On February 13, 2011, Mr. Bonwick sent Mr. Bentz three reference letters, including a letter from Mr. Houghton dated 2005. In the covering email, Mr. Bonwick specifically explained that he had "... contacted Ed to secure

his approval of providing this letter to you. It was my opinion that requesting a more current letter from Ed could put him in a conflict situation.”

Mr. Bonwick testified that his comment about conflict of interest related to his earlier discussions with Mr. Houghton about Mr. Bonwick potentially assisting PowerStream with a transaction involving Collus. He believed that having Mr. Houghton provide a current letter of reference would heighten Mr. Houghton’s concerns.

I am satisfied that Mr. Bonwick told Mr. Bentz about his conversation with Mr. Houghton with Mr. Houghton’s consent. The purpose of the communication and the reference letter was to impress on Mr. Bentz and PowerStream that the CEO of the company they wanted to buy was in favour of PowerStream retaining Mr. Bonwick.

Presentation to PowerStream’s Audit and Finance Committee

PowerStream’s Audit and Finance Committee considered retaining Mr. Bonwick in early March 2011 after a presentation about Collus Power as a potential merger or acquisition target. Members of that committee were Markham Mayor Frank Scarpitti; Vaughan Mayor Maurizio Bevilacqua; Barrie Mayor Jeff Lehman; Dan Horchik, a lawyer and the independent board member from Markham; and Gino Rosati, a regional councillor from Vaughan. The political experience of this committee is evident.

The slideshow presented to the Audit and Finance Committee in early March stated that, “[t]hrough informal discussions with Senior Employees of Collus Power, it was suggested that PowerStream explore the potential of hiring Paul Bonwick as a consultant.” Mr. Bentz, who confirmed the reference was to Mr. Houghton, said that this suggestion was likely explained to the Audit and Finance Committee during the presentation. The slideshow also indicated that Mr. Bonwick was the brother of Collingwood’s mayor.

The presentation further indicated that “Mr. Bonwick would assist PowerStream in figuring out how best to work with the Town of Collingwood’s Council, if an acquisition opportunity were to arise.” PowerStream’s Audit and Finance Committee concluded that retaining Mr. Bonwick was possible if there was no conflict and if “we were very transparent about disclosure.”

Concerns at PowerStream

PowerStream executives shared the concerns of its Audit and Finance Committee regarding the potential retainer of Mr. Bonwick. In particular, Dennis Nolan, the company's general counsel and corporate secretary, told the Inquiry that he was skeptical about retaining Mr. Bonwick from the beginning and remained concerned about the potential conflict of interest. Mr. Nolan testified that he questioned the value flowing from the retainer throughout Compenso's relationship with PowerStream. Mr. Nolan saw the importance of being transparent about the retainer.

PowerStream's management and the Audit and Finance Committee knew it was dealing with an apparent conflict of interest. It knew it would look suspicious if PowerStream was the successful bidder and it was subsequently discovered that the mayor's brother had assisted PowerStream. Management and the Audit and Finance Committee understood what it would be like to see this coincidence revealed for the first time and explored in the media.

The Need for Disclosure of Mr. Bonwick's Involvement to the Town

PowerStream arranged a meeting on April 13, 2011, with Mr. Bonwick, Mr. Bentz, and the three mayor members on PowerStream's Audit and Finance Committee. At the meeting, the mayors communicated the necessity for transparency and disclosure concerning PowerStream's intention to hire Mr. Bonwick to assist on a Collus Power RFP as a prerequisite to any such retainer. In his testimony, Mr. Bentz could not recall any discussion about Mr. Bonwick disclosing his fees or the kinds of services he would provide. Still, he believed the three mayors told Mr. Bonwick that he needed to disclose that PowerStream had retained him concerning a potential Collus RFP.

Mr. Bonwick told the Inquiry that, at the April 13 meeting, he emphasized the need for disclosure should PowerStream retain him. Mr. Bonwick testified that, to him, full disclosure meant full disclosure to the mayor so she understood the potential services Compenso would provide to PowerStream. It also involved a disclosure meeting with senior staff members at Collus Power and the municipality to ensure they had a thorough understanding of the services Compenso would provide to PowerStream.

Following his April 13 meeting with the three mayors, Mr. Bonwick sent Mr. Bentz a memo headed with the following warning: “CONFIDENTIAL: THIS BRIEFING CONTAINS COMMERCIALY SENSITIVE INFORMATION AND MUST BE TREATED ACCORDINGLY.” Mr. Bonwick’s memo referenced the Audit and Finance Committee’s position on the “optics concerning Collus and the Town of Collingwood” and proposed a meeting with Ed Houghton, Collus board chair Dean Muncaster, Chief Administrative Officer Kim Wingrove, Mayor Cooper, Deputy Mayor Lloyd, and Clerk Almas “[i]f the RFP scenario unfolds.”

I do not accept Mr. Bonwick’s evidence that he advocated for the need to disclose Compensor’s relationship with PowerStream to the Town during the April 13 meeting with the PowerStream mayors.

The evidence of Mr. Bonwick’s conduct during early 2011 establishes a pattern: Mr. Bonwick made the bare minimum disclosure at every stage. In his initial discussions with Mr. Bentz, outlined above, Mr. Bonwick misrepresented the nature of the information he had about the potential conflict of interest. First, he indicated that the Town solicitor had advised the deputy mayor that there was no conflict. Then, when pressed to produce that opinion in writing, Mr. Bonwick forwarded some, but not all, of the deputy mayor’s correspondence with Ms. Almas, removing the crucial initial email from the deputy mayor setting out the context for the inquiry and his acknowledgement that the clerk could not provide legal advice. Mr. Bonwick’s approach to disclosure did not change as events unfolded.

POWERSTREAM’S DISCLOSURE REQUIREMENT

PowerStream and Mr. Bonwick signed a retainer agreement on June 7, 2011. The agreement stated that Mr. Bonwick would

- identify “potential opportunities for the purchase, merger or other business combinations with LDCs”;
- prepare “detailed briefings identifying key decision makers related to a particular opportunity”;
- “[a]ssist in the preparation of any Proposals that PowerStream intends to submit”; and

- “[a]ssist with any other duties required as it relates to PowerStream’s M&A [mergers and acquisition] activity.”

The agreement stated that Compenso was “in constant contact with the Municipal Government Leaders” and that it would “provide PowerStream with ... [a] detailed verbal brief of tactics and recommended approaches for proceeding.”

The retainer agreement provided that PowerStream would pay Compenso monthly fees of \$10,000 and expenses of \$1,000. There was no provision for any success fee.* Mr. Bonwick had initially sought a monthly \$9,500 fee plus expenses and a 2.5 percent success fee.

The retainer agreement included a section entitled “Disclosure,” which provided that,

Bonwick agrees to make all necessary and prudent disclosure of his/CCI’s engagement with PowerStream. Any such disclosures shall be discussed and authorized by PowerStream in advance. Specifically, with respect to any authorized activity on PowerStream’s behalf, relating to COLLUS Power, Bonwick represents and warrants that he has disclosed the scope of his services and his retainer by PowerStream to the Mayor and Clerk of the Town of Collingwood, and shall provide written evidence of such disclosure to PowerStream. Further, with respect to COLLUS Power, CCI shall, after consulting with PowerStream, make any additional disclosure(s) that may be prudent or required by applicable law, during the course of this engagement, or any extension thereof ...

LETTER DRAFTED IN THE MAYOR’S NAME

On May 18, 2011, Mr. Bonwick sent Mr. Bentz a copy of a letter that he had drafted in the name of the mayor. The letter, addressed to Mr. Bentz, stated that Mr. Bonwick had disclosed to his sister the work he would do for PowerStream, though it made no reference to Mr. Bonwick assisting PowerStream in its pursuit of an interest in Collus Power. In fact, Mr. Bonwick had not made this disclosure to the mayor.

* For this Report, a “success fee” is a payment made when a defined result is achieved.

In his covering email, Mr. Bonwick explained that he drafted the letter “with the thought of public disclosure if ever required.” The letter included a vague description of the services Mr. Bonwick would provide to PowerStream, including “strategic advice in matters related to Public Relations, Strategic Planning, Acquisitions and Media Relations ... these responsibilities could potentially incorporate advice related to the Town of Collingwood subject to certain conditions unfolding in the coming months.”

This letter, which the mayor did sign and send on June 2, made no mention of Mr. Bonwick’s intended involvement in PowerStream’s response to the Collus RFP or his involvement in any Collus Power sale.

DISCLOSURE OF KPMG’S VALUATION OF COLLUS

Mr. Bentz and John Glicksman, PowerStream’s chief financial officer, met with Mr. Bonwick on May 24. After this meeting, Mr. Bonwick forwarded to Mr. Glicksman his January proposal along with two letters of reference. Despite his correspondence with Mr. Bentz in February, Mr. Bonwick did not provide Mr. Glicksman with Mr. Houghton’s 2005 letter of reference.

In the covering email, Mr. Bonwick advised Mr. Bentz that KPMG had completed its valuation of Collus, a fact that had not been disclosed to Collingwood Town Council. Council did not even know that a change in ownership was contemplated. This information was presented to the PowerStream board of directors before Council learned that a change in the ownership of its electric utility was contemplated or that a valuation analysis of the company had been undertaken. Mr. Bonwick learned that the valuation analysis was complete from Mr. Houghton, who knew Mr. Bentz was concerned with Council’s level of commitment to a potential sale. The disclosure also demonstrated to PowerStream the value that Mr. Bonwick could bring as a consultant.

The information advantaged PowerStream because it provided this company alone with notice that the sale was likely to proceed. No other potential bidder had such information at this time.

MISREPRESENTATION OF HIS DISCLOSURE

On May 31, Mr. Glicksman sent Paul Bonwick a draft consulting agreement. Among other things, the agreement required Mr. Bonwick to provide

written evidence that he had disclosed to the mayor and the clerk the scope of his services under the retainer. This requirement presented a problem for Mr. Bonwick. As a result of Mr. Bonwick's communications to date, particularly his treatment of the January 17 email exchange between Deputy Mayor Lloyd and Clerk Almas, PowerStream believed this disclosure had already occurred. Mr. Bonwick knew it had not.

Mr. Bonwick responded to Mr. Glicksman's email saying he needed to make "one small correction," which was that he had "not formally engaged with the Clerk or any other municipal staff on this matter at this time." His response caught PowerStream by surprise. Mr. Glicksman responded:

There still seems to be some apparent "misunderstanding" of the disclosures Brian thought you had made to-date to him with respect to both the Mayor and the City Clerk. He was under the impression that you had made disclosure to and received clearance from, the City Clerk, that under the Municipal Act [*sic*] there was no conflict for you to do work for us leading to or on a potential RFP of Collus and that you had received written confirmation of same from the City Clerk.

Mr. Bonwick now undertook to make the disclosure, with written confirmation, that PowerStream thought he had made previously. As before, he did so in a manner that was less than straightforward and with the bare minimum of disclosure the circumstances would allow.

Mayor Cooper and Mr. Bonwick met to discuss the disclosure letter that Mr. Bonwick had drafted for her to send to Mr. Bentz. Mr. Bonwick testified that he could not recall if he specifically discussed a potential Collus Power RFP with his sister. Ms. Cooper told the Inquiry that Mr. Bonwick did not discuss all the services described in the disclosure letter. She did not understand that PowerStream would be retaining Mr. Bonwick to work on a potential Collus RFP. In particular Ms. Cooper did not understand what "acquisitions" meant, and she did not ask. She testified that she did not ask Mr. Bonwick to provide her with a copy of his retainer agreement with PowerStream because she felt it was none of her business.

I accept Ms. Cooper's evidence in this regard. Her testimony is consistent with Mr. Bonwick's insincere attitude toward full disclosure.

On June 2, Mr. Bonwick sent Mayor Cooper an email, with a copy to Mr. Bentz, providing her with Mr. Bentz's email address. In doing so, Mr. Bonwick showed Mr. Bentz that he could put him in direct contact with the mayor of the Town of Collingwood. Later that day, Mayor Cooper's office sent Mr. Bentz a signed copy of the disclosure letter that Mr. Bonwick had drafted.

Mr. Bonwick's communications with Mayor Cooper fell well short of the transparent disclosure insisted on by PowerStream's Audit and Finance Committee.

Mr. Bentz candidly acknowledged in his evidence that Mr. Bonwick's letter could have been more explicit and that PowerStream did not follow up with the Town to confirm that Mr. Bonwick had made the appropriate disclosure. If Mr. Bentz knew PowerStream wanted to ensure that the mayor was aware of the scope of Mr. Bonwick's retainer, he should have informed her of it in writing. Mr. Bentz is more than sophisticated enough to understand the importance of such communication. Mr. Bentz decided not to inform the mayor himself.

Ms. Cooper's unquestioning acceptance of Mr. Bonwick's draft letter was not satisfactory. As mayor of the Town of Collingwood, she should have better informed herself before making representations to third parties using the authority of the mayor's letterhead.

After meeting with his sister, Mr. Bonwick met with the Town's clerk, Sara Almas, on June 2 to discuss his potential work for PowerStream. Ms. Almas testified that, at the meeting, Mr. Bonwick disclosed that he had made a proposal to a company called PowerStream to provide public relations and community outreach services in relation to the CHEC group of local distribution companies (LDCs). Ms. Almas's contemporaneous notes from the meeting are consistent with her recollection of what Mr. Bonwick told her. Mr. Bonwick then advised the clerk that PowerStream's CEO had a concern about a potential conflict of interest, given that Mr. Bonwick was the mayor's brother. Mr. Bonwick asked Ms. Almas to email Mr. Bentz confirming that a sibling relationship did not create a conflict under the *Municipal Conflict of Interest Act*. Ms. Almas declined and advised that she could not give legal advice. Mr. Bonwick then proposed he would send an email to Mr. Bentz with a copy to Ms. Almas about their conversation. Ms. Almas said that would be fine, so long as Mr. Bonwick confirmed in the email that she was not providing legal advice.

Following their meeting, Mr. Bonwick emailed Mr. Bentz, copying Ms. Almas, and wrote:

I had the opportunity to meet with the Clerk of the Town of Collingwood, Ms. Sara Almas this morning. During the meeting I described the services my company would be providing to PowerStream [*sic*] throughout the Region as well as specific to Collingwood. Ms. Almas was kind enough to offer an interpretation (opinion) of the “Provincial Conflict of Interest Act” as it relates to my sister being a member of Municipal Council. Ms. Almas was quite clear that there is no conflict of interest based on my company’s relationship with PowerStream [*sic*].

Ms. Almas testified that she was frustrated with Mr. Bonwick’s email because he had included the word “opinion,” but otherwise thought the email was generally accurate based on her understanding that Mr. Bonwick was providing public relations and community outreach services to PowerStream. She discussed responding to his email to correct the opinion statement with the CAO. Together, they decided she should not.

Mr. Bonwick sent a second email to Mr. Glicksman and Brian Bentz on June 3, in which he advised that he had “thoroughly briefed” the clerk.

This statement was not accurate.

This email is illustrative of Mr. Bonwick’s approach to disclosing his relationship with PowerStream. He was more than prepared to understate or obfuscate the facts PowerStream required him to disclose, while overstating the disclosure he had made when reporting to PowerStream.

Ms. Almas testified that Mr. Bonwick did not disclose at the meeting that he would be providing services beyond public relations and community outreach. She had no idea Mr. Bonwick’s work might involve consulting on acquisitions, including a potential transaction involving Collus. Mr. Bonwick testified that they must have discussed Collus, although he did not have a specific recollection of what he said.

I accept Ms. Almas’s evidence about this meeting and subsequent email exchange.

I am satisfied that Ms. Almas believed Mr. Bonwick was asking about a potential conflict arising from his providing to PowerStream public relations

and community outreach services in relation to the CHEC group, not as a consultant on an acquisition of Collus Power. Nothing in Mr. Bonwick's vague confirmatory email suggested that his services would extend beyond what Ms. Almas said he had described at the meeting.

On the other end, Mr. Bentz and Mr. Glicksman did not know that Mr. Bonwick had failed to disclose the full scope of his services, although they also failed to ask Mr. Bonwick for specifics. The approach Mr. Bentz and Mr. Glicksman took to disclosing Mr. Bonwick's retainer to the Town clerk did not reflect the importance that PowerStream's Audit and Finance Committee placed on transparent disclosure.

The best way to ensure the disclosure recommended by PowerStream's Audit and Finance Committee took place was for Mr. Bentz to make written disclosure to the clerk. Failing that, Mr. Bentz should have clarified the disclosure made to the clerk through direct communication with her.

He did neither.

MEETING WITH CAO WINGROVE

On June 7, PowerStream signed the retainer letter and a non-disclosure agreement with Paul Bonwick's company, Compenso Communications Inc. (Compenso). Shortly after signing the retainer agreement, Mr. Bonwick emailed the Town's chief administrative officer, Kim Wingrove, to "discuss a company that I have recently started to provide services. The purpose of the meeting is to provide disclosure as well as [propose] an additional meeting." Mr. Bonwick forwarded this email to Deputy Mayor Lloyd with the message, "Hey Bubba, let me know if you have time to discuss this."

Mr. Bonwick met with Ms. Wingrove on June 14 for approximately 10 minutes. Ms. Wingrove's evidence was that after the meeting she had a vague understanding Mr. Bonwick would be providing communications advice to a neighbouring utility. She was concerned Mr. Bonwick had arranged the meeting so he could later claim he had spoken with her about his work for PowerStream. During her evidence, Ms. Wingrove candidly acknowledged that, with the benefit of hindsight, it "would have been prudent" for her to ask Mr. Bonwick more questions about the work he would be doing.

Ms. Wingrove also testified that the meeting "made your antenna go up." When asked how she addressed this concern, she explained:

It was my experience that I didn't have solid outlets – solid places to be able to communicate those kinds of concerns. Who was I going to tell? ... where I had a specific situation and – and sufficient detail to have a meaningful conversation, I would reach out to our legal representatives and have a conversation with them but things like this that were ill defined, subjective based on ... just my own gut instinct, I didn't really have a place to take those or an ability to do very much with them. It was more that I had to wait and see if something more came of it ... in a more substantive [way so] that I would then have a reason ... to bring in legal counsel or – or, you know, speak to specifics.

After the meeting with Mr. Bonwick, CAO Wingrove did not know that Mr. Bonwick would be assisting PowerStream to respond to a Collus RFP. The CAO, like Mayor Cooper, understood Mr. Bonwick would be providing communications advice to PowerStream.

Mr. Bonwick told the Inquiry that his June 14 meeting with Ms. Wingrove was his second attempt to meet with the CAO. Mr. Bonwick testified that a previously scheduled meeting did not take place, as the CAO had left the office before the appointed time, apparently “very upset” and “emotional.” He said this was why he reached out to Deputy Mayor Lloyd via email regarding his meeting with CAO Wingrove. Deputy Mayor Lloyd did not recall receiving the email to which Mr. Bonwick referred.

Mr. Bonwick painted Ms. Wingrove as unprofessional, telling the Inquiry that “[t]his seemed a bit bizarre in terms of any normal interaction in a business environment.” He also said that his June 14 meeting with Ms. Wingrove ended because she took a call during the meeting and grew so upset that she left the room. Mr. Bonwick elicited evidence supporting his version of these events from Deputy Mayor Rick Lloyd. Ms. Wingrove had no memory of the purported aborted first meeting or of her brief meeting with Mr. Bonwick ending as he described.

I do not accept that Ms. Wingrove was an unstable, ineffective, or unprofessional public servant.

Ms. Wingrove's efforts to maintain appropriate boundaries between Council and staff, and to operate the Town following accepted governance practices, were unsuccessful. A pre-existing web of relationships contributed

to her challenges. Part One, Chapter 9, addresses in greater detail Ms. Wingrove's abrupt termination of employment in April 2012.

The Strategic Partnership Option

Ed Houghton scheduled a June 4, 2011, meeting with two of the three Collus Power directors, David McFadden and Dean Muncaster. The third director, Mayor Cooper, was not invited to the meeting. Mr. Houghton explained that the purpose of the meeting was for him and Mr. Muncaster to discuss the KPMG valuation and options analysis with Mr. McFadden. Neither Mr. McFadden nor Mr. Houghton knew why the mayor was not told of the meeting. (The KPMG valuation and options analysis is discussed in the previous chapter.)

The meeting focused on the sale of all or part of Collus Power. Between May 31 and June 2, Mr. Houghton exchanged emails with Mr. McFadden requesting a meeting but did not attempt to include Mayor Cooper.

Mr. Houghton told the Inquiry that, at the June 4 meeting, the three men decided to recommend a strategic partnership. He explained that he, Mr. Muncaster, and Mr. McFadden owed a duty to Collus Power to strengthen the company. Mr. Houghton said Mayor Cooper had indicated that the Town was not interested in a full sale. The three men agreed that continuing with the status quo was not an option and that, while an investor would give "cash to the Town," it would do nothing for the company. A "strategic partner" would provide resources to strengthen the company while also providing "some cash" to the Town, "which helps check that box of what [the mayor] was really getting at." They also discussed putting together a group of people to pursue a strategic partner, with representation from Collus Power and the Town. After the June 27 Council meeting, a group was formed called the Strategic Partnership Task Team.

Mr. McFadden testified that he did not recall the contents of the discussion at the meeting.

Mr. Houghton said they decided to bring the mayor into the conversation at the conclusion of the meeting, "as the other Board member and ... as our representative of the shareholder."

The Collus Power board of directors met on June 10. The meeting's minutes do not reflect any discussion of the KPMG report or potential ownership options for Collus Power, nor do they reflect that any *in camera* discussions occurred during that meeting.

Mr. Houghton told the Inquiry that he, Mr. McFadden, and Mr. Muncaster met with Mayor Cooper after the Collus Power board meeting on June 10. At that meeting, Mr. Houghton provided Mayor Cooper with a copy of the KPMG presentation and the men advised her about their June 4 discussions. They also considered who should sit on the Strategic Partnership Task Team.

Mr. McFadden also did not recall the June 10 meeting with the mayor, and Mayor Cooper did not have a clear or detailed recollection of how the strategic partnership option became the recommended one. Following this meeting with the mayor, Mr. Houghton appropriated KPMG's slide presentation, making key and misleading alterations that presented the strategic partnership as the "preferred" ownership option for the Town. I discuss Mr. Houghton's alterations to the KPMG slide deck in greater detail below.

Mr. Houghton did not consult KPMG about the strategic partnership option or his alterations to KPMG's slides. He told the Inquiry that no discussions took place between him and the Collus Power board of directors about consulting KPMG about the strategic partnership concept.

KPMG's John Herhalt testified that a 50 percent share sale, which is ultimately how the Town structured the strategic partnership, raised governance concerns not presented by the sale of a minority interest.

Mr. Houghton testified that the Collus board of directors discussed governance issues regarding a strategic partnership and felt that the strategic partnership reduced governance risks.

No information about governance issues posed by the strategic partnership was included in the slides Mr. Houghton presented to Council. Mr. Houghton testified that the governance concerns related to a partial sale that KPMG had identified were left out of the strategic partnership slides in error.

Mr. McFadden told the Inquiry that he did not know what legal advice the Town had received about governance concerns, and that Collus Power

did not need legal advice because it would be acting on instructions from its shareholder, the Town of Collingwood.

On June 14, 2011, Mr. Houghton sent Mr. McFadden an email with the subject “Confidential Council Presentation,” asking Mr. McFadden to “review the attached and see if I have captured what we discussed and been sensitive in the areas of ‘sale?’” The Inquiry was not provided with a copy of the attachment Mr. Houghton sent to Mr. McFadden.

Mr. McFadden responded to Mr. Houghton, providing comments and advising, “I am concerned about the timing of the RFP. It might be prudent to do it after the Provincial Election since we will want to have some idea about the future direction of govt. policy. Concern about this could deter potential investors / partners ...” Mr. Houghton agreed to incorporate Mr. McFadden’s points into the presentation. However, the slide deck presented to the Town contained no such warning; instead, it cautioned that “[t]iming is critical considering the upcoming election, possible provincial policy changes, upcoming town budget deliberations and current value.” Mr. Houghton’s presentation did not include Mr. McFadden’s caution about not issuing the RFP until after the provincial election.

KPMG’s Work Edited

Mr. Houghton made a number of changes to KPMG’s Review of Options slide deck. He did not provide his revisions to KPMG for their review or comment.

Mr. Houghton inserted the strategic partnership as the preferred restructuring option, without identifying that he had not consulted KPMG about that option. Mr. Houghton recast three of the five disadvantages that KPMG had identified for the partial sale option as advantages of the strategic partnership option. Mr. Houghton ignored the potential for loss of local employment in the strategic partnership scenario, illustrated in Table 4.1.

Table 4.1: Strategic Partnership Scenario

<i>Partial sale disadvantage</i>	<i>Strategic partnership advantage</i>
Loss of control. The Town loses partial control of the utility and its decisions with respect to levels of customer service, promotion of economic development, and rate setting (although these remain constrained by OEB oversight).	Control. The Town retains joint-control of the utility and its decisions with respect to levels of customer service, promotion of economic development, rates, subject to OEB oversight.
Operating synergies with the Town. The Town may lose the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.	Operating synergies with the Town. The Town retains the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.
Loss of local employment. The Town may lose some local employment if a buyer reduces costs by centralizing some functions at its head office.	[not addressed]
Loss of partial income stream. The Town will receive a smaller future dividend stream based on the equity ownership in the new owner's LDC.	Retains an income stream. The Town may earn a future dividend stream based on equity ownership in the new partner's LDC.

Sources: KPMG's Collingwood Utility Services Review of Options, May 24, 2011; Collus Confidential Review of Options, June 27, 2011.

The only disadvantage the slides listed for the strategic partnership option was the payment of a transfer tax, which turned out to be inapplicable.

Exclusion of the CAO from Discussions

From January to June 2011, Ms. Wingrove was not involved in the discussions about obtaining a valuation and examining the Town's ownership options. Her absence was consistent with her evidence about the interactions she generally had with Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton. Ms. Wingrove appeared as a witness at the Inquiry. She straightforwardly presented her evidence and identified where her memory failed her. She provided an apology to the Inquiry and the Town for the errors she felt she had made during the material time.

Ms. Wingrove was a credible witness.

CAO Wingrove's relationship with Mayor Cooper was stilted and awkward. Ms. Wingrove testified that the mayor preferred to consult about Town business with Ed Houghton, a lifelong Town employee and a close friend of her brother, Paul Bonwick.

Ms. Wingrove found it difficult to work with the 2010–14 Council. She testified that Council did not consistently communicate its directions to staff through the CAO. Instead, individual councillors went directly to staff members at the Town, seeking information and providing direction. CAO Wingrove resorted to consulting department heads to understand what staff was doing to comply with the various demands emanating from Council and the individual councillors. Ms. Wingrove commented in her evidence on the lack of trust and respect she experienced in her dealings with Mayor Cooper. As well, her observations of the deputy mayor being unkind to people caused her concern, and she felt he spoke with her only when it was necessary. The mayor and deputy mayor reprimanded her “on a number of occasions” for speaking with members of the public interested in Town matters. Ms. Wingrove also stated that Councillor Ian Chadwick was a significant critic of hers who “spent a lot of time just sending me emails and asking for clarification and critiquing my work.”

Both Sandra Cooper and Rick Lloyd gave evidence about working with Kim Wingrove. Although it was clear they had issues with Ms. Wingrove's work as the Town CAO, it was less clear what those issues were. Ms. Cooper gave evidence that Ms. Wingrove was “emotionally frail.” She felt Ms. Wingrove needed to have “better communication with [Mayor Cooper] and Council” and that Ms. Wingrove did not deal with certain issues as promptly as Council would have liked. The deputy mayor told the Inquiry that Ms. Wingrove did not understand the municipal process and she was “very emotional.”

Mayor Cooper conducted a performance review meeting with CAO Wingrove in April 2011. After the meeting, the mayor filled out an “Overall Evaluation” template. Although that document reflects Ms. Cooper's evaluation of Ms. Wingrove, neither Mayor Cooper nor anyone else showed it to Ms. Wingrove.

The “background and current Town process of evaluating the CAO's performance” was discussed at the December 5 Council meeting, where “[i]t

was suggested that such reviews be conducted annually and early in each calendar year.” At that meeting, Council carried a motion introduced by Councillor Chadwick to ask the Town’s manager of human resources to “bring back a report to Council suggesting a process to undertake the annual performance reviews of the Town’s CAO.”

Council abruptly terminated CAO Wingrove’s employment in April 2012.

Ms. Wingrove had tried to improve the working environment. She reached out to colleagues from the province, other CAOs, and the Ontario Municipal Administrators’ Association to try to understand better how to do the job. Her efforts were unsuccessful, and the situation continued to worsen. Ms. Wingrove indicated that she could not predict whether Council would accept her input and professional expertise, or whether she had “stepped on a landmine.” Overall, her impression was that her advice was not welcome.

Ms. Wingrove testified that she found it next to impossible to work with Mr. Houghton, who was head of the Public Works Department, held the title of “executive director, engineering and public works,” and was president and CEO of Collus Power.

Ms. Wingrove told the Inquiry that it was made clear to her that Mr. Houghton would not be reporting to Council through her. She said that when she raised the matter with Mayor Cooper, she learned the situation was not going to change.

Ms. Wingrove said she attempted to discuss improving her working relationship with Mr. Houghton in the fall of 2011, but he was having none of it. Mr. Houghton provided her with only the information he felt she needed to know.

No one told Ms. Wingrove about the exploration of alternative Collus Power ownership options until June 2011. Mr. Houghton came to her office at that time and advised her that work was underway. The CAO was surprised to learn the process was as advanced as it was without her knowing about it. Quite justifiably, as it turned out, she was very concerned Mr. Houghton “would be seeking an arrangement with another utility company and essentially going out and having conversations about this in the absence of any sort of formal process.” Ms. Wingrove told Mr. Houghton that the Town needed external assistance to ensure it was proceeding appropriately. She

explained that, given the regulatory environment and the intricate arrangements between Collus Power and Collingwood, the Town had to ensure that it properly managed any sale and the resulting financial implications. The CAO also emphasized the necessity to protect the public perception of the process. Mr. Houghton indicated he would consider the CAO's comments.

No one provided any further information to Ms. Wingrove until the June 27 Council meeting, when Mr. Houghton presented the strategic partnership as the preferred option to Council.

In Camera Report and the Formation of the Strategic Partnership Task Team

At the June 27 Council meeting, Mr. Houghton made an *in camera* presentation recommending that the Town of Collingwood pursue a strategic partner for Collus Power. The slides that Mr. Houghton presented warned Council that "confidentiality is critical." Ms. Cooper told the Inquiry that confidentiality was critical to ensure the Town obtained the best price for the utility.

Mr. Houghton advised Town Council that Collus had reviewed potential alternative ownership options for the Town "as Collus' ongoing approach to ensure that the Municipality is receiving the most value for its dollar."

This statement was inaccurate and misleading.

As I discuss in Part One, Chapter 3, KPMG was retained to provide "an objective assessment of the ownership options open to the Town and their likely financial and business implications." KPMG was not asked and never stated how the Town could maximize its returns from Collus.

Mr. Houghton told the Inquiry that he, Mr. Muncaster, and Mr. McFadden's focus was on strengthening the company.

Mr. Houghton testified that he did not provide Council with KPMG's slide presentation and that Council was not provided with the option of receiving a report from KPMG. He did not tell Council that he told KPMG to ignore the shared services among Collus Power, the Collingwood Public Utilities Service Board, and the Town. No contemporaneous evidence indicates that the Town was advised that KPMG had been retained to do any work on the ownership options analysis.

Although KPMG's retainer stated that the firm would provide a presentation of its report to relevant stakeholders, KPMG was not asked to and did not present its work to the Town. No one provided Town Council with a copy of KPMG's report.

Mr. Houghton's evidence was that he, Mr. Muncaster, and Mr. McFadden determined it was appropriate for Mr. Houghton to make and provide his presentation. Mr. Houghton could not recall if Mayor Cooper was involved in that decision. In his closing submissions, Mr. Houghton argued that the mayor's January 2011 letter "authorized Muncaster and Houghton, and in essence, the Collus Power Board, to proceed and report back to Town Council."

I do not accept Mr. Houghton's evidence that he, Mr. Muncaster, and Mr. McFadden decided together to withhold KPMG's report and advice from the Town. There is no good reason for this decision. The Town paid for half of KPMG's fee. The fee included the presentation. Mr. McFadden indicated, and I accept his evidence, that he thought the request for the valuation and options analysis came from the Town and that KPMG was working for the Town. He would hardly agree under those circumstances that Mr. Houghton withhold KPMG's report from the Town.

I also reject Mr. Houghton's argument that the mayor's January 30 letter (see previous chapter) prevented KPMG from presenting to Council. That letter, which Mr. Houghton drafted, cannot bear the responsibility for withholding professional information and advice from Council.

Because Mr. Houghton rather than KPMG presented the ownership options to the Town, Council did not have the opportunity to consider the best objective advice and information about how Collus Power could be used to aid the Town in reducing its debt.

In fact, the sale to PowerStream did not reduce Collingwood's debt by one cent.

Before the strategic partnership, Collus Power generally retained its earnings and maintained a debt-to-equity ratio lower than the Ontario Energy Board's recommended levels of 60/40. After the sale, the strategic partnership resulted in changes to the utility's debt policy, forcing Collus Power to take on debt and pay dividends to its shareholder. However, Town debt did not decrease. None of the proceeds of the share sale went to reducing debt. Further, if Collus PowerStream Inc., the entity created by the

Collus Power share sale, had pursued the regional growth strategy promoted by Mr. Houghton and Mr. Bentz, the Town would have had to continue to invest money in Collus PowerStream to maintain its 50 percent stake in Collus PowerStream.

In short, the justification for the share sale was a debt reduction fantasy.

The Inquiry did not receive any evidence indicating that Mr. Houghton disclosed to Council that KPMG had prepared a valuation of Collus Power. In his closing submissions, Mr. Houghton argued that it would have been imprudent to advise Council about the indicative valuation.*

This argument is difficult to understand. It would have been prudent to provide the utility's owner with complete information about the value of the asset so that the owner could properly consider a sale of all or part of that asset. A municipal council must deal with confidential, commercially sensitive information in the course of running the business of the municipality. It is, and must be, part of its job.

The Town Council had a fundamental decision to make. Collingwood was the utility's sole owner. KPMG's indicative valuation was important information for Council to gauge the potential value of proceeding with an RFP or maintaining sole ownership of Collus Power, using the 60/40 debt-to-equity ratio permitted by the Ontario Energy Board and applying the resulting funds to pay down the Town's debt.†

KPMG was not asked to express an opinion on this fundamental decision. Mr. Houghton did not place this option before Town Council. Council did not have the opportunity to receive KPMG's advice on this option, even though it was considering a sale of half the utility.

The slideshow that Mr. Houghton presented to the Town identified the following five next steps:

1. It would be the intention to identify and investigate potential parties interested in the opportunities surrounding the Strategic Partnership

* John Herhalt explained that an indicative valuation was a calculation of value as opposed to a more formal comprehensive valuation, which would have required more work and cost more.

† The debt-to-equity ratio is discussed in detail in Part One, Chapter 2.

- Option. President & CEO, Ed Houghton should speak with potential Strategic Partners to determine / stimulate levels of interest.
2. (Possible Step) Prepare an Expression of Interest.
 3. Establish a Team comprised of the Collus Power Board (Dean Muncaster, Mayor Sandra Cooper & Independent Director David McFadden), Ed Houghton, Tim Fryer, CAO Kim Wingrove and a Council Representative to meet with all interested Strategic Partners to outline needs, wants and desires.
 4. Prepare a Request for Proposal by the end of August.
 5. Call the RFP for the end of October, 2011.

Paul Bonwick and Ed Houghton discussed the membership of the Strategic Partnership Task Team before the Council meeting took place. On June 27, Mr. Houghton emailed Mr. Bonwick, writing: "Sounds like mike is trying to hijack the process. Wants to speak to Council without COLLUS." Mr. Bonwick replied: "Can't ... has a responsibility to Collus!!! You should let Sandra know that clearly and now!!!!!!!" "Mike" is Councillor Mike Edwards, who at this time was also a director of Collingwood Utility Services Corporation, the parent company of Collus Power. According to Mr. Houghton and Mr. Bonwick, Mr. Edwards wanted the last position on the Strategic Partnership Task Team.

Mr. Houghton's June 27 email raises a critical question: Why was Mr. Houghton discussing the membership of the Strategic Partnership Task Team with Mr. Bonwick, a paid representative of PowerStream?

Mr. Houghton claimed he sent the email to Mr. Bonwick out of frustration.

Mr. Bonwick did not recall this email correspondence and advised the Inquiry that he did not learn about the Strategic Partnership Task Team until later. However, Mr. Houghton's evidence about his email correspondence about Councillor Edwards undermines that evidence, and I do not accept Mr. Bonwick's evidence in that regard.

Deputy Mayor Rick Lloyd filled the final spot on the Strategic Partnership Task Team.

The minutes from the *in camera* portion of the Council meeting recorded the following:

Mr. Ed Houghton, President and CEO of COLLUS provided an update for Council's information on a study that Collus Power is undertaking to investigate their strategic opportunities. Mr. Houghton and Mr. Fryer, CFO addressed questions from Council, including concerns with valuations, partnerships, assets, staffing, shared resourced [sic], and high use customers.

Mr. Houghton confirmed that following the completion of the study, a detailed report would be provided to Council.

At neither the *in camera* nor the public portion of the Council meeting did Council vote to form the Strategic Partnership Task Team or to pursue a strategic partner. The minutes do not indicate that Council was asked to make any decisions regarding Collus Power's pursuit of a strategic partnership. Mr. Houghton testified that Council's direction to proceed was implied.

Mr. Bonwick learned after the June 27 Council meeting that the Town would be issuing an RFP. He could not recall from whom he learned this information. Mr. Bonwick promptly advised John Glicksman, PowerStream's CFO, about the RFP. Once again, Mr. Bonwick provided PowerStream with non-public information about Collus Power and the Town's plans for its ownership of the utility.

PowerStream's Introduction to Town and Collus Representatives

Two days after Mr. Houghton presented the strategic partnership option to Collingwood Town Council, PowerStream met with representatives of the Town and Collus Power. Even though the apparent purpose of the meeting was to disclose that PowerStream had retained Mr. Bonwick to assist in its efforts to acquire shares in Collus Power, that fact was not disclosed at the meeting. PowerStream did take the opportunity to profile its company to the attendees, three of whom were on the Strategic Partnership Task Team. After the meeting, PowerStream's CEO and one of the members of its Audit and Finance Committee golfed with Mr. Houghton and Mr. Bonwick.

Meeting with Town Representatives and the Collus Board Chair

Mr. Bonwick, through Mayor Cooper, scheduled a June 29 meeting between PowerStream and representatives of Collus Power and the Town. The mayor, deputy mayor, Mr. Muncaster, CAO Wingrove, Mayor Lehman, and Mr. Bentz attended the meeting. Mr. Bonwick did not attend.

Sandra Cooper testified that the meeting was Mr. Bonwick's idea and the purpose was to introduce Brian Bentz and to discuss PowerStream's plans for the future. Mr. Bentz told the Inquiry that the meeting's purpose was to ensure disclosure of Mr. Bonwick's retainer.

The representatives from the Town were not in a good position to address the conflict presented by Mr. Bonwick's relationship with PowerStream: CAO Wingrove was not influential, Mayor Cooper was Mr. Bonwick's sister, and Deputy Mayor Lloyd was Mr. Bonwick's friend.

Ms. Wingrove recalled that an introductory discussion about PowerStream took place. Other than her understanding that Mr. Bonwick would advise PowerStream on communications, she did not have a clear recollection of the meeting.

Mr. Houghton did not attend the meeting. He testified that Mayor Cooper had explained to him in advance that PowerStream would be disclosing that it was engaging Mr. Bonwick in "some way, shape or form." Mr. Houghton stated that he told Mr. Muncaster on the morning of June 29 that he was not comfortable attending the meeting because of his ongoing "emotional allergy" to the Bonwick / PowerStream situation (see Part One, Chapter 3). I note that Mr. Houghton's emotional allergy had not prevented him from assisting Mr. Bonwick in pursuing the PowerStream retainer. Mr. Houghton also testified that he did not want to influence the other attendees; he felt his attendance would be inappropriate because he had referred Mr. Bonwick to Mr. Bentz.

Mr. Houghton testified that Mr. Muncaster told Mr. Houghton that he need not attend the meeting and that Mr. Muncaster would subsequently report to him on the meeting's contents.

Mr. Bentz told the Inquiry that Mayor Cooper opened the meeting. The mayor referenced the letter she had sent indicating she was aware that PowerStream was engaging her brother and she mentioned that such a retainer would not contravene the *Municipal Conflict of Interest Act*. The

mayor also stated that the decision to hire Mr. Bonwick was PowerStream's.

From PowerStream's perspective, part of the purpose of the meeting was to increase the company's profile in the community and to communicate its interest in a potential RFP. Mr. Bentz disclosed some basic facts about PowerStream, and Barrie's mayor, Mr. Lehman, spoke about the merger of his city's electricity utility with PowerStream. PowerStream used the meeting to promote itself to the key decision makers on Council, on Town staff, and at Collus Power. More than half of the Strategic Partnership Task Team attended this meeting. No other utility was provided with this opportunity. This meeting was excluded from all subsequent reports to the Town about the search for a strategic partner.

Mr. Bentz testified that he and Mayor Lehman formally disclosed that PowerStream had engaged Mr. Bonwick and that, if there were an RFP, he would assist them in that regard.

It is worth reviewing the evidence that Inquiry witnesses provided about the disclosure made at the June 29 meeting.

Mr. Bentz was quite precise in his evidence. In response to a question from Commission Counsel Kate McGrann concerning what he specifically remembered Mayor Lehman saying about Mr. Bonwick's retainer, Mr. Bentz replied, "just that if the RFP was going to proceed that he ... would maybe [be] of assistance to us in that regard." Mr. Bentz was more specific when talking about a later discussion about the meeting with Mayor Lehman, stating: "I think we thought it was a good meeting. It accomplished our objectives, and, you know, we had disclosed the relationship."

Mr. Bentz also explained:

I remember where the meeting was held, and I do remember ... Deputy Mayor Lloyd saying you can't prevent a man from earning an income. And I do remember – as I said, it was either Mr. Lloyd or Mr. Muncaster saying if anything, it would improve the quality of his response. And we're talking about the response to the RFP. I remember those two things distinctly.

And I know that Jeff Lehman was there because he was talking about – as he had before with the Mayor around his experience with the Barrie Hydro merger. So those things I – I do remember.

I am satisfied that Mayor Lehman and Mr. Bentz disclosed Mr. Bonwick's retainer in generalities at the June 29 meeting.

I am also satisfied that Mayor Lehman and Mr. Bentz were under the impression Mr. Bonwick had already made the required disclosure outlined in the retainer agreement and that this impression coloured the approach they took to discussions about Mr. Bonwick's work in the June 29 meeting. I am also satisfied that this colours Mr. Bentz's present-day memory of discussions at the meeting about Mr. Bonwick's retainer.

Ms. Cooper told the Inquiry that the June 29 meeting was Mr. Bonwick's idea. She described it as an introductory meeting. She could not recall if there was discussion about Mr. Bonwick's retainer. Significantly, Mayor Cooper did not understand that her brother would be working on the Collus Power RFP.

Mr. Lloyd provided inconsistent accounts of this meeting and his understanding of Mr. Bonwick's work for PowerStream. He told the Inquiry that, at the meeting, Mr. Bentz briefly mentioned Mr. Bonwick's work for PowerStream, but that Mr. Bonwick's work on the Collus Power RFP was not specifically mentioned.

In his closing submissions, Mr. Lloyd wrote that, in October 2011, he was "unaware of the details of [Mr. Bonwick's] work for [PowerStream] or whether he was involved with the bid process." However, he also told the Inquiry that the attendees of the June 29 meeting were advised that Mr. Bonwick's work for PowerStream would include speaking to individual councillors, the Strategic Partnership Task Team, and Collus about the RFP, and that he understood Mr. Bonwick would help PowerStream with the RFP bids.

I find Mr. Lloyd's various inconsistent versions of the disclosure unreliable.

Mr. Glicksman indicated that the disclosure he thought Mr. Bonwick had made to the mayor and the clerk would be duplicated, but to a broader audience. However, Mr. Glicksman did not attend the meeting.

Mr. Lloyd said that Mr. Muncaster commented at the end of the June 29 meeting that "if Bonwick can help with the sale ... of Collus to the benefit of Collingwood, God bless him." Mr. Houghton gave evidence that Mr. Muncaster said something similar to him when Mr. Muncaster subsequently described the meeting to him.

I do not accept the evidence of Mr. Houghton or Mr. Lloyd concerning this comment attributed to Mr. Muncaster.

On June 29, there was no reason to believe there would be any difficulty selling Collus Power or a portion of it. Deputy Mayor Lloyd did not believe there would be any difficulty selling the utility. Mr. Houghton said he already believed PowerStream was interested. Mr. Bentz's only concern was that Collingwood Town Council would ultimately refuse to sell. There was every reason to believe other potential purchasers would be interested.

I am satisfied that, at the June 29 meeting, the clear disclosure required by PowerStream's Audit and Finance committee was not achieved.

Golf Game with Messrs. Houghton, Bonwick, Bentz, and Lehman

Following the June 29 meeting, Mr. Bonwick arranged for Mr. Bentz and Mr. Lehman to play golf with him and Mr. Houghton. Mr. Bentz told the Inquiry that the men discussed the disclosure at the meeting, but the golf game was "mostly social."

Mr. Houghton recalled there was discussion that the meeting had gone well and that everyone was content with the outcome. They also discussed the "multi-utility model," in which the water and electric functionalities are in a single utility. Mr. Bentz wanted to know more about the concept. Mr. Houghton explained that, although the water utility would not form part of the RFP, Collus Power was effectively operating under a multi-utility model owing to the service agreements. This topic was raised again in a meeting Mr. Houghton had with Mr. Bentz and other PowerStream representatives in August 2011.

Conflicts, Confidential Information, and Unfair Advantages

After the June 27, 2011 Council meeting, Ed Houghton, chief executive officer (CEO) of Collus Power Corporation, and Dean Muncaster, chair of its board of directors, arranged meetings with five potential bidders for the strategic partnership opportunity. The stated purpose of the meetings was to give each bidder the same message – that Collus Power might proceed with a request for proposals (RFP). In fact, the messages were far from consistent. One bidder, PowerStream Incorporated, was offered the opportunity to publicly partner with Collus Power in the Solar Strategic Alliance, a pilot project for a new green-energy product – the solar-powered attic roof vent – which was intended to reduce home energy costs. This partnership opportunity was not offered to the other potential bidders.

The partnership was a boon not only to PowerStream but also to businessman Paul Bonwick, Mayor Sandra Cooper's brother, who had entered into a profit-sharing arrangement with the vent company. Mr. Houghton, moreover, was repeatedly invited to share in the vent sale profits.

Meanwhile, the Strategic Partnership Task Team held its first two meetings and conducted confidential meetings with the bidders. Mr. Bonwick obtained confidential information about the bidder meetings and shared it with his client, PowerStream (see Part One, Chapter 4). Mr. Houghton knew about this leak, but he did nothing meaningful to stop Mr. Bonwick from passing on the information.

At the end of September 2011, Collus Power retained the consulting and accounting firm KPMG to assist with the RFP. Although KPMG sought to prepare an RFP that would allow for a fair process, PowerStream had already received unfair advantages.

The Solar Strategic Alliance

Between May 2011 and January 2012, in light of the upcoming RFP, Mr. Houghton and Mr. Bonwick sought to create an opportunity for Collus Power and PowerStream to partner in a promotion of the solar vents – a partnership they dubbed the “Solar Strategic Alliance.” Mr. Bonwick also benefited financially from the solar attic vent sales.

Mr. Houghton and the Solar Attic Vent Project

In the spring of 2011, Mr. Houghton was contacted by Peter Budd, a former colleague, for advice on a solar-powered attic roof vent his company was developing. This new product was designed to be installed on residential roofs. Using a solar-powered fan, the vent was intended to emit hot air from the home’s attic or upper floor. In this way, it purportedly reduced the load on the home’s air conditioner and, in turn, decreased the owner’s electricity bill. Mr. Budd’s business partner, Tom Bushey, had invented the product.

A former energy regulatory lawyer, Mr. Budd had been speaking with some of the local distribution companies (LDCs) about the vents, and he asked Mr. Houghton whether Collus Power would be interested in the product. Mr. Houghton thought the concept was “brilliant.” He immediately introduced the product to Mr. Bonwick, who saw it as a business opportunity. By May 24, Mr. Bonwick had proposed to Mr. Budd that he and Mr. Houghton become shareholders in the vent initiative. Mr. Houghton, meanwhile, planned to sell the vents to Collus Power.

On June 9, Mr. Bonwick suggested he and Mr. Budd use Mr. Houghton’s personal Gmail address, and Mr. Houghton agreed. Both Mr. Bonwick and Mr. Houghton denied that their purpose was to hide Mr. Houghton’s involvement in the vent company from his employer, Collus Power – which soon became a purchaser of the vents.

In his testimony, Mr. Houghton said the reason he had not produced any email correspondence from his Gmail account was because it contained no relevant correspondence. He testified he had forwarded all vent-related correspondence from his Gmail account to his Collus Power account, and then

had probably deleted the emails from his Gmail account. Neither Mr. Budd nor Mr. Bonwick produced any email correspondence related to the vent initiative.

Mr. Budd's original business plan for the vents had been to sell them to a number of LDCs. He needed to generate profits and data about the efficacy of the vents for sales and marketing purposes. Mr. Houghton, however, wanted to pilot the program in Collingwood through Collus Power, and then to extend the opportunity to participate to the potential bidders for Collus Power. Mr. Budd deferred to Mr. Houghton and agreed to his plan.

Mr. Houghton advanced the solar attic vent business by creating and administering a pilot program partially funded and staffed by Collus Power. He presented a prototype of the vent at the June 10 Collus Power board meeting and proposed that Collus Power "become a pilot community and run a beta test, and then approach the other LDCs." At that point, Mayor Sandra Cooper, who was also a director of the utility, left the meeting (no reason was recorded for her departure), and the board went on to approve the initiative.

Glenn McAllister, a finance and conservation analyst at Collus Power, researched available programs and subsidies for Mr. Houghton and ran the pilot program. When he presented the proposed vent program at the July 8 Collus Power board meeting, he said the net cost to the utility would be approximately \$90,000. Deputy Mayor Rick Lloyd attended this meeting as a guest. The Collus Power board of directors, including Ms. Cooper, voted unanimously to proceed with the pilot project.

Four days later, Mr. Budd and Mr. Bushey incorporated a company called International Solar Solutions Inc. Discussions about Mr. Houghton's and Mr. Bonwick's financial interest in the solar attic vents continued through January 2012. Collus Power invested \$113,650 in purchasing vents.

PowerStream and the Solar Attic Vent Project

In July 2011, Mr. Houghton and Mr. Muncaster had introductory meetings with five utilities they thought they might invite to bid on a Collus Power RFP: PowerStream, Hydro One Incorporated, Veridian Corporation, Horizon Utilities Corporation, and St. Thomas Energy Services Inc. The meetings

took place before the first meeting of the Strategic Partnership Task Team. The team was later told that the purpose of these meetings was to identify and investigate parties who might be interested in a strategic partnership and that a consistent introduction had been used at each meeting. The meetings were not, in fact, consistent.

At the PowerStream meeting on July 7, Mr. Houghton and Mr. Muncaster invited PowerStream to become Collus Power's partner in advancing the solar attic vent pilot project through the Solar Strategic Alliance. This alliance was described in a memorandum subsequently prepared by Mr. Bonwick which explained that Collus Power and PowerStream would jointly launch the vent program in late July or early August. Each utility would spend \$77,500 on purchasing 500 attic vents, and a further \$7,500 on advertising and promotion.

Brian Bentz, PowerStream's president and CEO, recalled having a telephone discussion with Mr. Bonwick in July 2011 about the opportunities presented by the Solar Strategic Alliance. During this call, Mr. Bonwick recommended that PowerStream participate in the solar attic vent project to boost its own profile in the Collingwood community. This move would, in turn, help PowerStream in its response to a Collus Power RFP. A contemporaneous email suggests that this conversation happened shortly before the introductory meeting. Mr. Bentz testified that this initiative was the only one Mr. Bonwick recommended to enhance PowerStream's profile. Notably, Mr. Bonwick did not disclose he was also negotiating a personal interest in the vent business.

PowerStream agreed to join the Solar Strategic Alliance and take the opportunity to raise its profile in the Town. Among other things, the marketing campaign featured PowerStream's logo. Mr. Bentz attended the August launch event in Collingwood, which resulted in local media coverage discussing the fruitful cooperation between Collus Power and PowerStream.

The other bidders were not invited to join the alliance at their introductory meetings with Mr. Houghton and Mr. Muncaster. Veridian and Horizon were offered a limited opportunity to purchase the vents at a higher cost than PowerStream paid and without the marketing and profile-building opportunities. Hydro One was not invited to participate at all.

Mr. Houghton testified that the solar attic vent project was a “litmus test” he devised with Mr. Muncaster to see how well a prospective strategic partner would pick up on a project advanced by Collus Power, the smaller-sized partner.

I do not accept this evidence. As a starting point, Mr. Houghton told the Inquiry he understood that the litmus test would work only if the prospective strategic partner did not know the importance of participating in the initiative. However, PowerStream knew the importance of participation. Besides, a litmus test would be informative only if all the potential bidders were offered the same opportunity. They were not. Finally, although three other LDCs also participated in the vent launch – Orangeville Hydro, St. Thomas Energy Services Inc., and Wasaga Distribution Inc. – they were not invited to bid on the Collus Power RFP, despite having agreed to work with Collus Power on the project.

Mr. Houghton told the Inquiry he chose not to invite Hydro One to participate because he did not know which person should receive the invitation. This explanation is not credible for at least two reasons. First, Mr. Budd testified he had contacts within Hydro One. Second, Mr. Houghton and Mr. Muncaster met with Hydro One representatives on July 20, as part of the initial meetings they conducted with all the potential bidders. The offer to participate in the pilot project could easily have been extended at that time.

I find, based on the evidence, that Mr. Houghton did not extend the same invitation to Veridian, Horizon, and Hydro One as was offered to PowerStream. As a result, PowerStream gained an unfair advantage. The company knew it was being evaluated when it agreed to join the alliance. This advantage further undermined the fairness of the Collus Power RFP.

In addition to increasing PowerStream’s local profile, the Solar Strategic Alliance created the opportunity for an ongoing conversation between Collus Power and PowerStream through the summer of 2011, including meetings between Mr. Houghton and PowerStream staff. The other potential bidders did not have these opportunities. For example, Mr. Houghton hosted Mr. Bentz in his home around the time of the solar attic vent launch. In his August 16 thank you email to Mr. Houghton, Mr. Bentz wrote that the launch event was “a great initiative for each of

our organizations ... I look forward to many more.” He had “really come to appreciate our friendship even more over the past while as we have had time to connect on a personal and professional level on initiatives like the one we had last week.”

Another Meeting with Mr. Bentz

Mr. Houghton met with Mr. Bentz again on August 24, along with Mr. Bonwick and PowerStream executive Mark Henderson. Mr. Bentz told the Inquiry they discussed the solar attic vent initiative and essential considerations for Collus Power in the RFP process, particularly that the company wanted to retain its autonomy and independence. They also discussed the water utility and the possibility of accommodating a multi-utility model that included electric distribution along with other utilities. Mr. Houghton did not offer a similar meeting to any of the other potential bidders.

This August 24 meeting of Mr. Houghton, Mr. Bentz, and Mr. Henderson was problematic for three reasons. First, because PowerStream was the only RFP proponent offered a meeting with the Collus Power CEO at this time, it contributed to the uneven playing field that persisted throughout the RFP process. Mr. Houghton’s decision to attend the meeting with PowerStream further undermined the fairness of the RFP before it had even been issued. The preferential treatment accorded to PowerStream undermined the fairness of the Collus Power bidding process.

Second, in his invitation to the solar attic vent launch event, which was sent to the Collus Power board and all members of Collingwood Town Council, Mr. Houghton described the initiative as “a testament to the collaborative efforts and vision for each of our Alliance Partners.” The press release for the launch event featured a quotation from Mr. Bentz: “We are grateful to Mr. Houghton and the Town of Collingwood for bringing this opportunity to us ... We expect this partnership to be of benefit to all our utilities.” In its response to the Collus Power RFP, PowerStream highlighted its involvement with the solar attic vents as an example of collaboration between Collus Power and PowerStream.

Further, Mr. Houghton and PowerStream coordinated a joint marketing

campaign that included the launch event and a billboard campaign. Collus Power and PowerStream also shared the costs of a billboard campaign for the vents. The billboards, which were on display through the fall of 2011, prominently featured the logos of Collus Power and PowerStream. Eric Fagen, PowerStream's director of communications, explained the benefit of these billboards in a contemporaneous email to Dennis Nolan, the company's general counsel and corporate secretary: "Although this primarily promotes the solar power attic vent program for Collus Power, the fact that the billboard is co-branded with the PowerStream logo, will help to build our brand awareness in the area."

Neil Freeman, Horizon's vice-president business development and corporate relations at the relevant time and currently a consultant to utility energy companies, said in his evidence at the Inquiry that the billboards struck him as "a transparent sort of promotion – of Collus and PowerStream in the middle of an RFP." The cynicism concerning the solar attic vent initiative and the fairness of the Collus Power RFP is captured in an email about the billboards from Max Cananzi, president of Horizon, on November 23, 2011:

This is basically a community advertisement to pave the way for a Collus / PowerStream [*sic*] deal for the utility. Gone are the other 3 three [*sic*] utilities that have also participated in this launch.

This is buying goodwill in the community. Residents are getting comfortable seeing Collus's brand and PowerStream's brand together on billboards. The perceptions being created are that they are already getting along and working on business together, so a more formal arrangement is no big deal.

The fix is in. PowerStream will be declared the winner of the competition.

In his evidence, Mr. Houghton said he did not consider whether this billboard campaign would have an impact on the integrity of Collingwood's RFP process. I do not accept this evidence. Mr. Houghton was an experienced executive. His approach to marketing the solar attic vents demonstrated that he understood the importance and the impact of public marketing and

messaging. He would have been well aware of the positive effect that marketing a co-branded initiative would have on the public perception of PowerStream as the right partner for Collus Power.

Disbursement of Solar Attic Vent Profits

Mr. Houghton's involvement in the solar attic vent project went beyond arranging for Collus Power to purchase vents from International Solar Solutions. As I set out below, Mr. Bonwick and Mr. Houghton were instrumental in shaping and implementing the company's business plan and marketing the vents to end consumers. Contemporaneous correspondence among Mr. Houghton, Mr. Budd, and Mr. Bonwick suggests that Mr. Houghton had a financial interest in the vents, yet all three denied any such interest.

Mr. Houghton testified he could not have been involved in International Solar Solutions because he was working for the Town of Collingwood and too busy with commitments he already had. He testified that the vent project was something he was "trying to do for Collingwood, for the [Ontario Power Authority] ... for the people of Ontario." He said he could not be paid for his work on the vents while he was employed with Collus Power, though he was unable to articulate why. He did not rule out the possibility of becoming involved in the company after he retired from Collus Power. The documents disclosed to the Inquiry show, however, that Mr. Houghton was involved in many aspects of the solar attic vent business. He helped to shape International Solar Solutions' business plan; introduced the project to potential collaborators; worked to further vent testing; helped to plan and execute the launch event in Collingwood; and was also involved in staffing discussions.

Although the evidence before the Inquiry, including Mr. Houghton's testimony, was that the parties never finalized a shareholder arrangement, on September 12, 2011, International Solar Solutions provided Mr. Bonwick's consulting company, Compenso Communications Inc., with a statement showing its percentage of the profits from the sale of vents to Collus Power and PowerStream. The statement showed payment of \$35,001.75 owing to Compenso and identified it as 35 percent of the "Gross Profit for Disbursement" and set out how it was calculated.

Table 5.1: ISSI Statement Issued to Compenso Communications Inc., September 12, 2011

<i>Quantity</i>	<i>Item description</i>	<i>Cost per unit</i>	<i>Gross total</i>
1,000	NP – Solar roof vents Purchased Jointly by Collus and PowerStream for Pilot Project	\$155.00	\$155,000.00
1,000	Cost of units	\$60.00	-\$60,000.00
–	Warranty fund	–	-\$2,500.00
–	Assembly facility Rent, Utilities, Office Admin. (Aug.)	–	-\$2,000.00
–	Assembly facility Rent, Utilities, Office Admin. (Sept.)	–	-\$2,000.00
35% Nature's Power	Gross profit for disbursement Compenso Communications 35% HST Disbursement to Compenso		\$88,500.00
35% Compenso Communications			\$30,975.00
30% Budd Energy			\$4,026.75
			\$35,001.75

Source: September 12, 2011, invoice issued by International Solar Solutions Inc. to Compenso Communications Inc.

On September 28, Compenso then issued an invoice to International Solar Solutions for “Consulting Services related to LDC’s” for a total of \$35,001.75. A handwritten note stated, “Sales commission paid.” Compenso deposited \$35,001.75 into its bank account on October 3, 2011.

Three days later, Compenso paid Mr. Houghton’s wife, Shirley Houghton, \$19,350. Ms. Houghton, Mr. Houghton, and Mr. Bonwick all told the Inquiry that this payment was for two items: \$1,350 in compensation for Ms. Houghton’s work for Compenso, and \$18,000 for Mr. Bonwick’s rental of the Houghton’s Florida property. I discuss this payment in more detail below.

For the next four months, until early 2012, email correspondence among International Solar Solutions and Mr. Houghton and Mr. Bonwick showed that Mr. Bonwick’s and Mr. Houghton’s financial interest in the solar attic vents remained a topic of discussion.

In September 2011, Mr. Budd proposed to Mr. Bonwick and Mr. Houghton that they take a \$50 “flat fee per unit reflecting your 35 percent.” Mr. Houghton forwarded Mr. Budd’s proposal to his wife’s Gmail account. Ms. Houghton testified that Mr. Houghton periodically forwarded his

emails to her Gmail account because he liked using her computer, though he did not do so often. Mr. Houghton explained that he forwarded the email because he wanted to look at it on a computer screen, not his Blackberry screen, and Ms. Houghton had her computer open.

Shortly thereafter, Mr. Budd copied Mr. Houghton and Mr. Bonwick on an email to his accountant. Referring to them as “our two LDC marketer [*sic*] partners,” Mr. Budd asked his accountant to let Mr. Houghton and Mr. Bonwick “[adjust] the spreadsheet to reflect their sales projections to the company.” Mr. Bonwick, Mr. Houghton, and Mr. Budd testified that Mr. Bonwick and Mr. Houghton never met with Mr. Budd’s accountant, but the contemporaneous email correspondence suggests otherwise.

In a November 3 email to Mr. Houghton and Mr. Bonwick, Mr. Budd sought to “step up our discussions respecting the expectations of the participants in the proposed [International Solar Solutions marketing corp.]” Mr. Budd wrote:

[B]efore you both, the LDC marketers[,] joined, the deal was 70/30 TB/PB on everything from sales, costs, mktg, etc.

Then, with Paul and Ed, with the inaugural LDC deal in sight, we established an amended sharing arrangement: 35/35/30 for TB/EH/PB/PB. That worked well. Tom agreed to it. Cash was fully distributed to Compenso and partially to PB/TB.

Mr. Budd went on to propose that the International Solar Solutions marketing corporation “be owned and shared 33.3/33.3/33.3 for EH/PB/PB.” Despite this email correspondence, Mr. Budd denied that Mr. Houghton shared in the proceeds from the solar attic vents. About a week later, Abby Stec, who worked with Mr. Bonwick, sent Mr. Houghton a draft business plan for the International Solar Solutions marketing company and asked for his feedback.

In early December, Mr. Houghton corresponded with Mr. Budd and Mr. Bonwick about a hiring decision Mr. Budd had made. In the course of that correspondence, Mr. Bonwick wrote:

I didn't realize when we spoke that you had hired an additional person to work on regulatory matters related to the solar initiative. The three of us need to meet asap to reaffirm the approach we discuss [*sic*] several weeks ago.

I was under the impression we had agreed on an approach...

Let's try to coordinate a call early tomorrow if Ed is available.

Mr. Houghton emailed Mr. Budd directly to schedule a call with him to discuss the hiring issue: "Can we chat later tonight about this issue? I see both sides of the story but I need to understand the rationale better before our conversation with Paul tomorrow."

On January 21, 2012, Mr. Budd emailed Mr. Houghton and Mr. Bonwick about the "new era" International Solar Solutions and to schedule a meeting "to discuss the structural issues surrounding ISSI and the marketing successes and general company plans for 2012." Mr. Budd wrote:

1. There will be a separate marketing company established, funded and owned presumably and exclusively by Ed and Paul ('EPCO').
- ...
7. All units will be sold by ISSI to EPCO at a predetermined price, which shall be adjusted to whatever makes sense according to the decision of EPCO and ISSI.
8. EPCO will earn a minimum of \$30 to a maximum of \$50 per unit above the wholesale price.

Mr. Bonwick responded that he was looking forward to "sitting down with everyone to cement relationship that will produce significant wealth for all involved."

Mr. Houghton testified that he called the meeting off once he became aware that his financial participation in International Solar Solutions would be discussed at the meeting. Mr. Bonwick and Mr. Budd testified they could not recall the meeting. Mr. Bushey stated in his affidavit that he attended the meeting along with Mr. Budd, Mr. Bonwick, and Mr. Houghton. No one sought to cross-examine Mr. Bushey on his affidavit, and Mr. Budd didn't take issue with or dispute Mr. Bushey's statement. Mr. Houghton testified he

did not recall this email exchange.*

I am satisfied the meeting took place.

Mr. Houghton, Mr. Bonwick, and International Solar Solutions did not work together on the solar attic vents for much longer. Although Mr Houghton, Mr. Budd, Mr. Bonwick, and Mr. Bushey gave differing evidence about the end of the relationship, they all testified that it came to an end in 2012.

Shirley Houghton's Payment

As I discuss above, three days after International Solar Solutions paid Compensio \$35,001.75 for Mr. Bonwick's share in the solar attic vent initiative profits, Mr. Bonwick wrote Ms. Houghton a cheque for \$19,350.

Ms. Houghton swore an affidavit in which she explained that on or around September 30, 2011, she visited Mr. Bonwick at Compensio's offices to deliver a \$1,350 invoice for work she had completed for him. During their conversation, Mr. Bonwick enquired about renting the Houghtons' property in Naples, Florida, for the upcoming winter. Ms. Houghton told Mr. Bonwick they would charge him \$4,500 a month, the "typical rate" they charged renters. Mr. Bonwick agreed to rent the property for four months. On the spot, he wrote her a cheque for \$19,350, representing \$1,350 for her work and \$18,000 for the rental.

The sum of \$18,000 is approximately half the \$35,001.75 that International Solar Solutions paid Compensio for the solar attic vent initiative, consistent with the profit-sharing arrangement among International Solar Solutions, Mr. Bonwick, and Mr. Houghton that Mr. Budd described in his emails.

Mr. Bonwick and Mr. Houghton testified that the \$18,000 represented the rent on the Florida property. I do not accept this evidence for the following reasons.

First, the Houghtons charged Mr. Bonwick, a friend and employer, more than they charged other renters. For example, the year earlier, they rented the property for US\$4,000 a month.† In 2013, they rented the property for \$3,750.

* Mr. Budd sent his January 21 email to Mr. Houghton's personal Gmail account. Mr. Houghton forwarded the email from his personal Gmail account to his Town of Collingwood email account.

† In 2011, the Canadian and America dollars were effectively at par.

Second, despite paying \$18,000 in advance, Mr. Bonwick testified he stayed at the property for only a few days at the end of 2011 and not at all in 2012. On January 13, 2012, Mr. Bonwick emailed Mr. Houghton about a different house he was renting in Boca Raton, Florida. Ms. Houghton testified that Mr. Houghton had told her Mr. Bonwick had asked for a refund. Mr. Houghton directed Mr. Bonwick to speak with Ms. Houghton, but Mr. Bonwick never sought to recover any portion of the \$18,000.

Third, the Houghtons did not follow their usual renting practices. They did not send Mr. Bonwick their prepared terms and conditions of rental, as they did with other renters. They also charged Mr. Bonwick in Canadian dollars, not American. Further, the Houghtons typically rented the property for two months in the year, but they purportedly rented to Mr. Bonwick for four months.

Finally, concerning timing, Ms. Houghton changed her testimony on the period of the rental. In her affidavit on June 13, 2019, she swore that Mr. Bonwick rented the property from November 2011 to February 2012. In his testimony the next day, on June 14, Mr. Bonwick said he rented the property for November and December 2011 and April and May 2012. When Ms. Houghton was examined on her affidavit later the same day, she testified that her affidavit was wrong and that, in fact, Mr. Bonwick had rented for the months he identified. She stated she had noticed the error when she swore the affidavit and left a note for her counsel, Mr. Chenoweth. I do not accept this explanation.

In the circumstances, I cannot accept that Mr. Bonwick paid Ms. Houghton an additional \$18,000 in September 2011 to rent the Florida property.

Development of the RFP Criteria

As I discuss in Part One, Chapter 4, Mr. Houghton advised Council at its June 27, 2011, meeting that the “preferred option” for Collus Power’s future was to pursue a 50 percent share sale, which he called a “strategic partnership.” On Mr. Houghton’s recommendation, Council struck a task team to explore the option further.

The Strategic Partnership Task Team comprised Mr. Houghton, Collus

Power chair Dean Muncaster, Collus Power director David McFadden, Collus Power CFO Tim Fryer, Collingwood Utility Services director Doug Garbutt, Mayor Sandra Cooper (also a Collus Power director), Deputy Mayor Rick Lloyd, and CAO Kim Wingrove. The Task Team was responsible, among other things, for meeting with potential buyers, developing the RFP criteria, and, based on those criteria, selecting a winner to recommend to Collingwood Town Council.

The pursuit of a strategic partner, however, was flawed from the outset.

As I discuss in Part One, Chapter 4, Mr. Houghton told Council on June 27 that a strategic partner was the best way to achieve the Town's objective of "[ensuring] that the Municipality is receiving the most value for its dollar." Council, unaware that no assessment had been made of the strategic partnership option from the Town's perspective, accepted this recommendation. From that point onward, Council and the Strategic Partnership Task Team believed that, in pursuing a strategic partner, they were working in the interests of both Collus Power and the Town. However, the fact that the Town's perspective was not considered when the strategic partner option was created meant that the pursuit of such a partner prioritized the interests of Collus over those of the Town.

This reality was reflected in the evidence members of the Task Team gave at the Inquiry. Mr. Lloyd testified:

My personal feeling was that the monetary end of it wasn't nearly as important as all the other aspects ... factually[,] what our objective was, to find a strategic partner that would ... assist in growing Collus. That was really the focus, what we're trying to do, and that's what we did.

Mr. Fryer testified that the purpose of finding a strategic partner was to "grow the value of the organization" and allow it to continue through changing market and regulatory conditions. He said this partnership would enable the utility to provide cost-effective services to its customers, but acknowledged he "didn't know the specifics" of whether reducing the Town's costs was a goal the team was pursuing. Similarly, Mr. McFadden testified that the team's goals were "the Town getting money" and "strengthening the company, making it more resilient and ... better [able] to deal with the kind

of challenges we were facing. And – that would be good for the community, for employees, as well.”

Focus on Finding a Strategic Partner

The Strategic Partnership Task Team held its first meeting on August 3. The meeting minutes record that the team focused on strengthening Collus Power through the addition of a strategic partner. They do not reference any discussion about reducing the Town’s debt. A second meeting was scheduled for August 29 to discuss the format for the bidder interviews. The minutes state that a “Team Strategy Session” would be scheduled so the team could brainstorm issues related to the RFP.

Mr. McFadden was not able to attend the second meeting. He sent an email on August 28 providing his input on how the Strategic Partnership Task Team should proceed. His email is telling in what he suggested, though his advice was not followed. In particular, he stated that the team would need to understand the governance structure proposed for the new partnership. He advised that “[t]he composition of the Board of Directors will be critical to this.” As things transpired, however, the minutes from the August 3 team meeting do not reflect any discussions about corporate governance, and, while the August 29 meeting minutes reference governance matters, they do not record any decisions made.

Mr. Houghton, who took the lead on retaining and instructing the professional advisors from KPMG who worked on the earlier valuation and the strategic options analysis, the RFP, and the share-sale transaction, testified that the Task Team discussed potential governance issues posed by a 50/50 partnership and agreed there were ways to address them.

KPMG’s Involvement

At its second meeting on August 29, the Strategic Partnership Task Team agreed to retain KPMG to assist in preparing an RFP and to investigate the cost of having the firm help with the evaluation of the bids. Before this decision, neither the Town nor Collus Power had received any professional advice on pursuing a 50 percent strategic partnership through an RFP. However, by

the time KPMG was retained, the RFP process was already underway and focused on finding a strategic partner for Collus Power. KPMG, like the Task Team, followed this same direction in its work.

The day after the meeting, on August 30, Mr. Houghton emailed John Herhalt, a partner at KPMG, with the subject line “Strategic Partnership Plan” and asked to arrange a call. In response, Mr. Herhalt wrote: “What is the strategic partnership plan about?” This communication was the first time he became aware of the term strategic partnership.

Following discussions with Mr. Houghton about the strategic partnership plan, KPMG agreed to assist Collus Power with the RFP. Mr. Herhalt testified that KPMG’s role included attending meetings the Strategic Partnership Task Team held with the bidders, providing a framework for the RFP document, suggesting options for the team’s consideration, and putting the factors they identified to paper.

KPMG’s role was outlined in a retainer letter dated September 9, 2011, which stated that KPMG would provide the following services:

- Participate in the interviews of the 4 potential strategic partners identified – Hydro One, Veridian Power, PowerStream, and Horizon Utilities These interviews will take place on September 12th and 19th, 2011.
- Prepare and discuss a request for proposal document for issue to the potential strategic partners.
- Assist with the evaluation of the proposals received from the potential strategic partners.

Mr. Houghton signed the letter on behalf of Collus Power. Neither the retainer letter nor Mr. Herhalt indicated that KPMG was a member of the Strategic Partnership Task Team. Moreover, neither the Collingwood Council nor the Task Team reviewed or approved KPMG’s contract.

As with the valuation and the strategic options analysis, KPMG’s client was Collus Power, not the Town. The engagement letter provided that KPMG was retained to help Collus Power, defined in the letter as KPMG’s “Client,” and the Town of Collingwood “with the pursuit of a Strategic Partner.” Mr. Herhalt testified he primarily took instructions from Mr. Houghton, but

he understood they “really came” from the Strategic Partnership Task Team as a whole. Mr. Herhalt believed that Collus Power and the Town of Collingwood had authorized the team to provide instructions on their behalf, though he was never explicitly advised that the team had this authority. He inferred that the team had authorized Mr. Houghton to provide instructions to KPMG.

By the time KPMG had been retained, significant steps had already been taken toward an RFP for a 50 percent share sale, including the initial meetings with potential bidders. The Strategic Partnership Task Team had already met twice and had discussed RFP criteria. Mr. Herhalt also testified that, when KPMG was retained, the team had already scheduled meetings with the four remaining bidders.

Secret Advantage to PowerStream

The misunderstanding flowing from Mr. Houghton’s recommendation to Council at the June 27 meeting – that pursuing a strategic partnership would best meet the Town’s goals of debt reduction and increased efficiencies – was not the only matter undermining the efforts of the Strategic Partnership Task Team. The team was also not advised about the advantages that PowerStream had already enjoyed.

At its first meeting on August 3, the Strategic Partnership Task Team was advised that Mr. Muncaster and Mr. Houghton had attended initial informal meetings with potentially interested bidders to gauge their interest and to explain and discuss the RFP process. The team was also told that, in making their presentation Mr. Houghton and Mr. Muncaster had used a consistent introduction at each meeting. The team was not told that only PowerStream was offered the opportunity to partner in the Solar Strategic Alliance.

Mayor Cooper testified that a level playing field promotes real competition among the bidders, and that treating them all the same way drives up the price. Her evidence, which I accept in this regard, indicates that it is essential to treat all bidders similarly not only to ensure fairness but also to obtain the most value for the shareholder.

Mr. Houghton did not inform the Strategic Partnership Task Team that he had significant previous contact with PowerStream and had discussed

a potential purchase of Collus Power shares with PowerStream CEO Brian Bentz. Nor did he disclose that he had assisted Mr. Bonwick in securing a retainer with PowerStream to work on the Collus Power RFP, or that he and Mr. Bonwick had worked to implement the Solar Strategic Alliance between Collus Power and PowerStream. Mr. Houghton also did not disclose the degree to which he and Mr. Bonwick were involved in the solar attic vent project or that the vent company was paying Mr. Bonwick.

This lack of disclosure placed the Strategic Partnership Task Team in an awkward position. All the team members, except Mr. Houghton, believed they were creating and maintaining a level playing field for the bidders. Without the information that Mr. Houghton withheld from them about PowerStream, they were unknowingly working in an unfair environment.

Failure to Involve Legal Counsel

No legal advice was sought from the Town's solicitors at Aird & Berlis as the RFP development process began. It goes without saying that the Strategic Partnership Task Team would have benefited from legal guidance as it began setting the parameters of its search for a strategic partner. As the individual overseeing the process, Mr. Houghton should have recognized that it would be prudent to obtain legal advice on the partial sale of one of the Town's largest assets. Had Mr. Houghton ensured that Aird & Berlis was involved at this point of the sale, many of the issues I will address later in this Report could very well have been avoided.

Ian Chadwick's Weekly News Summary

Concurrent with the launch of the solar attic vent initiative and the RFP planning by the Strategic Partnership Task Team, Mr. Bonwick entered into a business relationship with one of Collingwood's Town councillors, Ian Chadwick, who had worked as a journalist.

Mr. Bonwick approached Mr. Chadwick in August 2011 and asked him if he would be willing to create a weekly news summary about the energy

and electricity industries. He explained that he planned to send the review to clients of his company, Compenso Communications Inc. Mr. Chadwick accepted the offer: he worked for Compenso from August to December 2011 and again from February 2012 until April 2014, charging \$700 a month.

Early on, Mr. Chadwick became aware that PowerStream was one of Mr. Bonwick's clients and a recipient of the news summary. He recognized that this contract could place him in a conflict of interest in his role as councillor of the Town of Collingwood.

On October 3, 2011, Mr. Houghton updated Council *in camera* on the sale process and the proposed RFP for a 50 percent sale of Collus Power. Although the minutes do not record a vote or a decision to proceed, the RFP was released the next day. Mr. Chadwick told the Inquiry that, at the time, he considered he would "probably have to stand aside from the table, just in case [PowerStream] got involved in any of the bidding or any further process." He did not declare a pecuniary interest at this meeting because he did not see the RFP as "specific to any company ... not specific to any business," and he did not believe that Council had yet made a decision to sell anything.

On December 5, before Mr. Houghton presented the results of the RFP to Council *in camera*, Mr. Chadwick recused himself on the basis that he provided consulting services for "electricity sector clients." He said he would not participate in the *in camera* discussion until it was known "whether his client has submitted an RFP for the Collus Partnership."

Mr. Chadwick did not recuse himself, however, at two other important Council meetings where councillors discussed the RFP and PowerStream. In each case, he should have.

On January 16, 2012, Collingwood Town Council received a privileged, *in camera* update on the negotiations with PowerStream. Mr. Chadwick did not declare a conflict. A week later, on January 23, Council voted to sell 50 percent of the shares in Collus Power to PowerStream. Again, Mr. Chadwick did not declare a conflict. In both cases, Mr. Chadwick gave the Inquiry the same explanation: he had stopped working for Compenso at the end of December 2011. Although true, two other elements need to be considered.

First, Compenso had not yet paid him for his work in December. Mr. Chadwick's only other source of income during December 2011 and

January 2012 was his Council stipend. The December invoice remained outstanding until after he had voted in favour of the sale of Collus Power shares to PowerStream on January 23, 2012. Second, Mr. Chadwick was seeking further work from Compenso during the period he was not actively contracted to provide the news summaries.* On December 30, 2011, Mr. Chadwick wrote in an email to Mr. Bonwick, “Hope I can do more work for you in 2012.” He repeated his request for more work on January 4, 2012.

Mr. Chadwick’s continuing relationship with Compenso placed him in a conflict of interest when it came to Council’s decisions about the RFP. Mr. Chadwick gave evidence that his work for Compenso did not affect his decisions about PowerStream. Although that may be so, one of the harms flowing from an unaddressed apparent conflict of interest, as I discuss in this Report, is the public perception that the conflict tainted related municipal actions. The emails between Mr. Bonwick and Mr. Chadwick during the January 23, 2012, meeting and later are precisely the kind of correspondence that could spark such a suspicion.

On January 23, in a public session, Council authorized the sale of Collus Power shares to PowerStream. Mr. Bonwick emailed Mr. Chadwick shortly after the meeting started, writing, “I was going to ask if you could speak to Industry trend [*sic*] and leading the way. You likely know more about the industry than others at the table.” Mr. Chadwick made a statement before he voted in favour of the transaction. At no point did he disclose his relationship with Compenso or with PowerStream through Compenso.

Shortly after the Council meeting, Mr. Chadwick emailed Mr. Bonwick to request payment for his December invoice, explaining that it had “[b]een a lean month for [him], income-wise.” Mr. Bonwick replied, “Yes[,] we should meet ... would like to discuss growth strategy as well. They are interest [*sic*] in expansion that requires monitoring. Tomorrow afternoon works for my office.” On January 28, Mr. Chadwick followed up with Mr. Bonwick again, asking if PowerStream was interested in further work. Mr. Bonwick replied, “[Y]es ... please keep going until we chat.”

Whether or not Mr. Chadwick’s vote was influenced by his work for

* January 1–28, 2012.

PowerStream, these emails give rise to an apparent conflict of interest. A reasonably well-informed person would conclude that Mr. Chadwick might have been influenced by his past work for Mr. Bonwick and the prospect of future work.

PowerStream had become aware that Mr. Bonwick had hired Mr. Chadwick through a September 1, 2011, Compensio invoice that sought to pass the cost of his work on to PowerStream. PowerStream CFO John Glicksman explained that PowerStream refused to pay for this media monitoring service, partly because paying for Mr. Chadwick's services would raise conflict of interest issues. He explained his reasoning to Mr. Bonwick at the time.

Mr. Bonwick testified he did not advise Mr. Chadwick that PowerStream was not receiving the news summary. Instead, in January 2012, he told Mr. Chadwick that PowerStream was interested in more work.

Mr. Chadwick's experience also shows the limits of the current *Municipal Conflict of Interest Act*. Mr. Chadwick understood that the *Act* comprehensively covered the field when it came to conflicts of interest. He stated that nobody at Town Hall could provide councillors with advice on the *Act*. Councillors were required to seek their own legal advice on conflict of interest issues, thereby presenting a cost constraint.

I accept Mr. Chadwick's evidence that he believed he was complying with the applicable conflict of interest law as it related to his work for Compensio. However, even though he was acting in good faith, his participation in Council's decisions regarding the Collus RFP and share sale on January 16 and January 23 was inconsistent with his obligations to the municipality.

Meetings with the Bidders

The Strategic Partnership Task Team hosted meetings with each of the four potential bidders in early September 2011. The purpose of the meetings was to allow the interested parties to discuss how Collus Power would fit into their future and to ensure they understood the RFP criteria. The meetings were to be confidential. Mr. Bonwick, however, was able to obtain information about the presentations of the potential bidders as well as the reactions of the team to them. He shared that information with PowerStream officials.

Brian Bentz, John Glicksman, and Dennis Nolan took no steps to address this breach. Neither did Mr. Houghton, who also knew that Mr. Bonwick had learned about the confidential discussions with the other bidders.

Confidentiality Essential

The Strategic Partnership Task Team meetings were confidential. Dean Muncaster sent letters to each of the bidders in advance clearly stating that the meetings were confidential. The bidders were required to sign mutual nondisclosure agreements with the Town of Collingwood and Collus Power. The fact that the Town was considering divesting a portion of its interest in the utility company was not publicly disclosed until near the end of the Strategic Partnership Task Team's tenure. The team members who appeared before the Inquiry all understood, first, that the bidders had provided information that the team would keep to itself; and, second, that their own deliberations were secret.

Each of the witnesses from the other bidding LDCs spoke to the importance of confidentiality in an RFP. Neil Freeman, who at the time of the events examined by the Inquiry was Horizon's vice-president business development and corporate relations, explained the importance of confidentiality in the RFP process. He stated that the vendor would be undermining itself if it did not maintain confidentiality: "[T]hey have an interest ... in the bidders wanting to ... give their best foot forward and not walk away because they feel ... their information is being shared."

I am satisfied that everyone involved in this process understood the importance of confidentiality and the significance of being indiscreet with confidential information.

Although no minutes were taken of the meetings between the Strategic Partnership Task Team and the bidders because of these confidentiality concerns, the Inquiry received a record of the meetings in the form of contemporaneous notes taken by Mr. Herhalt, who was there. It would have been better, however, if minutes had been retained of all the team meetings and stored in the Town's files.

Leakages of Confidential Information

Material information about the confidential deliberations of the Strategic Partnership Task Team was leaked to Mr. Bonwick from the beginning of the share-sale process. Mr. Bonwick provided this confidential information to PowerStream.

Mr. Bonwick emailed Mr. Bentz after the first team meeting on August 3, 2011, offering to provide him with “an update as it relates to Collus presentation this morning” and asking him to call his cell phone. Mr. Bentz did not recall having a discussion with Mr. Bonwick after receiving this email. He did remember Mr. Bonwick providing an update that the chair and CEO of Collus Power had met with the bidders, they were proceeding with the RFP in the fall, and there could be interviews.

On September 14, two days after the team met with Veridian and Hydro One, Mr. Bonwick sent a competitive analysis memo to Mr. Houghton for his review and comment. The memo provided information about the confidential presentations Hydro One and Veridian had made to the team on September 12. For example, concerning Hydro One, it advised that, “while the presenter demonstrated integrity and an in-depth knowledge of the industry, trends and more particularly the South Georgian Bay Region[,] the assessment committee was not enamored with the concept or direction Hydro One presented.” The memo also reported on the content of Veridian’s presentation and the team’s reaction to it. It identified, among other things, that Veridian’s proposal to implement a contribution fund for discretionary gifting on behalf of the mayor and Town Council “resonated well” with the team.

The confidential nature of the information in the memo is apparent from a plain reading of the document. The potential harm flowing from the leakage of such confidential information is reinforced by the strong reactions during the Inquiry hearings of the witnesses from the other bidding companies. All those witnesses indicated that knowledge of the leaks undermined their confidence in the RFP process.

Mr. Bonwick told the Inquiry that the memo was a compilation of information he received from Mr. Muncaster, Mr. Houghton, and Mr. Lloyd, along with information from the Internet and other public sources. Mr. Houghton and Mr. Lloyd denied they provided the information in the

memo to Mr. Bonwick. For the reasons I discuss in Chapter 6, I am satisfied that Mr. Houghton and Mr. Lloyd provided Mr. Bonwick with confidential information about the bidder meetings.

Mr. Houghton and Mr. Bonwick both testified that Mr. Houghton contacted Mr. Bonwick after receiving the memo. Mr. Houghton's evidence about the conversation that followed was inconsistent, but he indicated that Mr. Bonwick sourced the information in the memo from the Internet and from discussions with various people including Mr. Muncaster. He said he told Mr. Bonwick, "[T]his isn't something we should be putting out to anybody," and he would speak to Mr. Muncaster about it in the morning. According to Mr. Houghton, Mr. Bonwick agreed to consider his comments.

Mr. Bonwick testified that Mr. Houghton did not object to his having confidential information about the deliberations of the Strategic Partnership Task Team. Rather, Mr. Houghton objected to his sharing this information with PowerStream.

Mr. Houghton said he took the issue to Mr. Muncaster, who cross-referenced the memo against the invitation letters that had been sent to the bidders and determined that "there is virtually little here from a commercial value, if anything from a commercial value." Mr. Muncaster told Mr. Houghton he would deal with it. According to Mr. Houghton, Mr. Muncaster dealt with it by telling the Strategic Partnership Task Team at their next meeting to "remember to keep the information amongst these four walls."

I do not accept that this consultation with Mr. Muncaster took place. Mr. Muncaster, who passed away in 2012, was a well-respected and experienced businessman. He would have understood that maintaining confidentiality was essential to attracting the most desirable bidders and ensuring they were provided with the necessary safeguards to permit them to share business information and, ultimately, make their best bids. He also would have realized that the disclosure of information internal to the Strategic Partnership Task Team would undermine its deliberative secrecy and its ability to function. Finally, he would have appreciated that compromising confidentiality would undermine bidder confidence in the administration of the RFP and be detrimental to the corporation's interest in attracting the best bids.

I am satisfied that Mr. Houghton, as an experienced public servant,

understood the significance of the confidential information contained in the memorandum. However, he did nothing meaningful to prevent Mr. Bonwick from passing on the information.

Mr. Bonwick, Mr. Bentz, and Mr. Nolan, PowerStream's general counsel and corporate secretary, all testified that Mr. Bonwick conveyed some of the memo information to PowerStream. Mr. Glicksman could not recall if any of the information in the memo was communicated to PowerStream. He observed that the community gifting fund was the only item that made its way into PowerStream's RFP but testified he could not recall whether that idea came from Mr. Bonwick or PowerStream. Mr. Bentz recalled Mr. Bonwick advising that one of the other bidders might or would include a community fund, so PowerStream should include one, which it did. Mr. Bentz and Mr. Nolan also stated that the information was confidential and should not have been possessed by Mr. Bonwick or disclosed to PowerStream.

I am satisfied that Mr. Bonwick conveyed all the information in the memo to PowerStream. It would make no sense for him to prepare a memo describing the bidders' presentations and then convey only a portion of that information to his client.

The failure of Mr. Bentz, Mr. Glicksman, and Mr. Nolan to disclose that PowerStream's paid consultant had provided the company with confidential information concerning the deliberations of the Strategic Partnership Task Team is troubling. Certainly, it is far removed from the standard of disclosure that PowerStream's Audit and Finance Committee had insisted on as a condition of Mr. Bonwick's retainer.

Mr. Houghton's failure to take any steps to address Mr. Bonwick's possession of confidential information endangered the Town's ability to attract quality bids on this, and future, RFPs. Mr. Bonwick continued to furnish confidential information about the RFP, as I discuss in more detail below.

Leakage of the Team's Reactions to PowerStream's Presentation

The Strategic Partnership Task Team met with Horizon and PowerStream on September 19, 2011. On September 20, Mr. Bonwick sent Mr. Glicksman information about the team's reactions to PowerStream's presentation and

provided suggestions on the best way to leverage the team's views to PowerStream's advantage. He also advised that "at least one of our competitors (Horizon) will submit a proposal providing a 50% ownership scenario." Both Mr. Bentz and Mr. Glicksman testified that this information was confidential and should not have been conveyed to PowerStream.

Once again, however, Mr. Bentz, Mr. Nolan, and Mr. Glicksman did not disclose the fact they were receiving confidential information from Mr. Bonwick.

Discussions Between PowerStream's Lawyer and a Collus Power Director

PowerStream retained Robert Hull, a lawyer at Gowling WLG, to act for it in responding to the Collus Power RFP. At the request of Mr. Nolan, Mr. Hull asked David McFadden, his law partner and a Collus Power director, about the RFP process and dates. Mr. Hull then provided the information he received to PowerStream.

Mr. Nolan testified that the purpose of these inquiries was to seek assurance that Collus Power was proceeding with the RFP and to confirm the general timing. PowerStream also wanted clarity on whether there was any possibility for PowerStream to submit a bid for 100 percent of the Collus Power shares as an alternative to the 50/50 ownership structure. Mr. Nolan explained that he and Mr. Hull discussed whether this request could place Mr. McFadden in an "inappropriate position" and agreed that it would be limited to "whatever he felt that he was at liberty to provide, that would be proper for him to provide."

On September 28, after PowerStream had made its presentation to the Strategic Partnership Task Team, Mr. Hull asked Mr. McFadden for any information about the Collus Power RFP that Mr. McFadden was at liberty to share. Mr. Hull's notes of his conversation with Mr. McFadden included "presentation was great," "expected dates 4th and Nov. 16," "likely best not to do in the alternative," and "other bidders seem OK with 50/50." This information should not have been disclosed.

Mr. Nolan testified that although the RFP determined how PowerStream constructed its response, the information Mr. Hull provided helped turn PowerStream's focus away from constructing an alternative bid. He did not

recall discussing the RFP dates, the political composition of the board, or the fact that the other bidders were “ok with 50/50” with Mr. Hull, but acknowledged that this information would have been good to know.

In further testimony, Mr. Nolan agreed that the information about the other bidders’ stance on the 50/50 ownership structure was confidential and ought not to have been shared with PowerStream. In its closing submissions, PowerStream acknowledged that it ought not to have made this request of Mr. Hull. The other bidders who testified at the Inquiry stated that, although it was not possible to determine the impact of sharing this information with PowerStream, all the bidders should have had the same information.

The Draft Request for Proposal and Paul Bonwick's Raise

After completing its meetings with four potential strategic partners in mid-September 2011, the Strategic Partnership Task Team began to finalize the contents of the request for proposal (RFP) that it would send to potential bidders. The team's work continued to focus on finding the best strategic partner for the company, leading to an RFP that emphasized non-financial factors over the proposed share purchase price.*

Collus Power retained KPMG, the accounting and consulting firm that conducted the valuation and options analysis, to assist with the preparation and administration of the RFP. Collus Power did not ask or retain KPMG to advise whether the strategic partnership concept served the Town's interest. During this period, Paul Bonwick and PowerStream negotiated a new retainer that saw an increase in his compensation in lieu of a success fee for the completion of a transaction with Collus Power.†The new retainer also contained explicit success fees in the event of further deals with other utility companies in the region. Brian Bentz, PowerStream's president and CEO, Dennis Nolan, its general counsel and corporate secretary, and John Glicksman, its chief financial officer, did not require Mr. Bonwick to disclose the new retainer or compensation structure to the Town, and no such disclosure occurred.

* The members of the team were Collus Power chair Dean Muncaster, Collus Power chief executive officer Ed Houghton, Collus Power chief financial officer Tim Fryer, Collus Power director David McFadden, Collingwood mayor and Collus Power director Sandra Cooper, Collingwood deputy mayor Rick Lloyd, and Collingwood chief administrative officer Kim Wingrove.

† A success fee is defined as a payment to an advisor for successfully completing a transaction.

During the retainer negotiations, Mr. Bonwick continued to provide PowerStream with confidential information. He also placed the company in a position to assist Mr. Houghton on the RFP communications strategy for Collus Power and the Town. Mr. Houghton did not advise either the Town or the Strategic Partnership Task Team that PowerStream was advising and assisting in the RFP communications strategy.

Ron Emo, Collingwood's former mayor, warned the current mayor, Sandra Cooper, about the risks if the Collus Power sale process was not transparent. In a September 26 email to Mayor Cooper, before the release of the RFP on October 4, 2011, Mr. Emo wrote:

I don't know what is going on with COLLUS & PowerStream but it should not be something done behind closed doors. Selling off all or part of our Utility is not [something] to be done lightly. It was never mentioned during the campaign and if not handled responsibly will be a very divisive local issue.

Mr. Emo's email was prophetic. The RFP was released without providing notice to the public.

The Draft RFP

The Inquiry received little information on how the RFP was developed, including the amount of input the Strategic Partnership Task Team provided on the content of the RFP. What is evident is that the RFP document prioritized Collus Power's interest in obtaining a strategic partner over the Town's interest in decreasing its debt and increasing efficiencies for the taxpayer.

Collus Power retained the consulting group KPMG to assist in preparing the RFP. On September 25, KPMG's John Herhalt sent a draft slide presentation on the RFP to Collus CEO Ed Houghton, which Mr. Houghton circulated to the Strategic Partnership Task Team for discussion at its next meeting, scheduled for September 28.

Mr. Herhalt testified that he prepared the draft slide presentation after attending the September 12 and 19 Strategic Partnership Task Team's

confidential meetings with the potential bidders: Horizon Utilities Corporation, Hydro One Incorporated, PowerStream Incorporated, and Veridian Corporation. Mr. Herhalt took notes of the team's discussions, the only record of those meetings that the Inquiry received.

Mr Herhalt based his draft presentation partially on what he considered the team's goals to be. Mr. Herhalt determined the Strategic Partnership Task Team's goals from the two bidder meetings he attended and his participation in discussions with the team before and after the meetings. Other segments of the presentation included components that, based on Mr. Herhalt's professional experience, needed to be included in an RFP. Some aspects of the RFP – such as the weight to be assigned to particular criteria – were left blank, as Mr. Herhalt was of the view that these matters warranted further discussion among members of the Strategic Partnership Task Team.

The presentation identified five “key needs” a strategic partner would be required to satisfy, including “[s]upport in growing the Collus Power business, both organically and through acquisition.” It also set out a list of criteria for RFP bidders to address in their responses and contemplated that the team would score the bids using a point-based system. However, it did not include the allocation of the points for each criterion. Mr. Herhalt's presentation contemplated bids for 50 percent of the shares of Collus Power, and alternative bids for acquiring more than 50 percent of the Collus Power shares.

The Task Team met to discuss the RFP on Wednesday, September 28. Mr. Herhalt testified that, at this meeting, the team reviewed his slide deck and then arrived at a consensus on the RFP elements. He also testified that the point allocations for the RFP criteria were assigned at this meeting. However, Mr. Herhalt noted that the team had discussed many of the criteria before he had arrived, and that he worked with the team to flesh out “what were the most important things to the task team.” The primary goals of the team, he said, were reflected in what turned out to be the three most heavily weighted criteria of the RFP: receiving appropriate value for 50 percent of Collus's shares; receiving specialized resources from a potential strategic partner; and receiving support from a potential partner in growing the Collus Power business.

The next day, Mr. Herhalt prepared a revised draft of the RFP slides,

which included the points assigned to each of the RFP criteria. The weight accorded to non-financial categories, such as “support in growing Collus business” and “cultural and synergistic fit,” was 70 points. The financial offer and related matters category (e.g., the proposed capital and governance structures) was assigned a weighting of 30 points. Bidders were to submit the proposals in two envelopes, one containing the financial bid and the other containing the non-financial proposal. The revised draft did not include the option to submit a proposal for the purchase of more than a 50 percent interest in Collus Power.

Mr. Houghton circulated a revised draft of the RFP slides to the Strategic Partnership Task Team on Friday, September 30, and scheduled an update to Council the following Monday at the October 3 Council meeting. The Inquiry did not receive any records indicating that changes were made to this draft, which was substantively the same as the RFP that would be sent to bidders the following week.

It is clear from Mr. Herhalt's evidence that the genesis of the RFP criteria occurred before KPMG had been retained to assist with the process. Mr. Houghton testified that the Strategic Partnership Task Team engaged in brainstorming on the RFP criteria at three meetings: on August 3, August 29, and September 28. The first two meetings occurred before Mr. Herhalt was retained. None of the other Task Team members who appeared as witnesses before the Inquiry had a detailed memory of how the team developed the RFP or provided input on the RFP criteria.

The witnesses did recall discussing the relative weight to be assigned to each criterion. Mr. Houghton testified that the team allocated the non-financial factors a 70 percent weighting because “we really wanted to have somebody that was going to allow us to be bigger, better, and stronger.” Deputy Mayor Lloyd explained that he supported assigning 70 percent of the evaluation to non-financial criteria because the Task Team's objective was to find a strategic partner that would assist in growing Collus Power.

When asked whether he was satisfied the RFP criteria weighting was in keeping with what he considered the wishes of Collus and the Town to be, Mr. Herhalt responded, “Certainly the wishes of the strategic partnership task team.”

Ultimately, Mr. Herhalt's role in developing the RFP was to propose

a structure for the document to the Strategic Partnership Task Team and leave the final decisions about content up to the team. Mr. Herhalt also testified that “at the time we were retained, we weren’t really advising on the transaction ...”

The Strategic Partnership Task Team emphasized non-financial factors in the interest of finding the best strategic partner because, at the June 27 Council meeting, Mr. Houghton recommended the Town pursue a strategic partner. As explored earlier in the Report, the process that led to that recommendation was flawed in several respects, but in particular because it failed to consider and prioritize the Town’s goals of debt reduction and finding efficiencies. The pursuit of a strategic partner continued to promote the interests of Collus over those of the Town throughout the preparation of the RFP.

For example, while Mr. Herhalt’s first draft of the RFP contemplated that bidders would be permitted to bid on 50 percent of the shares of Collus Power and would also be able to submit alternative bids for more than 50 percent, the final RFP explicitly prohibited bids for more than 50 percent of the Collus Power shares. This prohibition demonstrates that the Task Team’s objective was to find a strategic partner and that learning how much cash the Town would receive if it sold a larger stake in the company was not a priority.

It was in the Town’s interests to understand all available options so it could make an informed decision about the portion of Collus Power that it was prepared to sell.

Mr. Herhalt testified that Mr. Houghton was his “direct liaison through a lot of this” and that Mr. Houghton retained KPMG and provided instructions. He said he understood that the Team had authorized Mr. Houghton to instruct KPMG. The Strategic Partnership Task Team was KPMG’s sole source of information. KPMG was not retained to advise the Town about how best to meet its debt reduction objective through the RFP process.

Although Mr. Herhalt may have been of the view that in serving the interests of the Strategic Partnership Task Team he was serving the interests of both Collus and the Town, the reality of the situation was that the team’s goals represented Collus Power’s goal of finding a strategic partner and not the Town’s interests in reducing debts and finding greater efficiencies.

A Fair Process That Wasn't Followed

Had its requirements been followed, the RFP provided for a confidential, well-documented, and fair process. It incorporated the non-disclosure agreements among each of the bidders, the Town, and Collus Power. It also provided for a fair, confidential, and documented communications process for the bidders, who were directed to submit all questions to KPMG's John Herhalt by email. It granted the Strategic Partnership Task Team the discretion to share "the substance of any inquiries for additional information and responses to these inquiries" with all the bidders. This approach would have allowed the team to maintain a level playing field, ensuring that all the bidders received the same information. It also would have provided a comprehensive, confidential record of the communications with the bidders if any questions arose about the RFP process.

The RFP permitted the Strategic Partnership Task Team to meet with any of the bidders to discuss or otherwise clarify their proposal after the closing date. However, any additional information obtained would form part of the proposal. Had this provision been used, the Task Team could have sought the information it required to compare the bids accurately.

Unfortunately, and as discussed in further detail below, the safeguards built into the RFP were ignored.

Mr. Houghton's RFP Presentation

Collingwood Council was not provided with the opportunity to consult with KPMG or relevant Town staff before the RFP was issued.

Mr. Houghton provided a confidential update on the RFP to Collus Power staff on September 29. The next day, he offered to provide an *in camera* update to Town Council at its October 3 meeting. Mayor Cooper and Deputy Mayor Lloyd agreed the *in camera* update was a good idea. Mayor Cooper voiced concern about the rumours and emphasized the need to dispel them and highlight KPMG's assistance.

On October 3, Mr. Houghton provided an *in camera* update on the RFP to Council.

Mr. Houghton's slide presentation at the October 3 *in camera* Council meeting outlined the RFP criteria, the two-envelope response requirements,

the permitted communications channels for the RFP proponents, and the anticipated timeline for the receipt and evaluation of the RFP. It also set out the evaluation criteria and associated weightings. As I noted elsewhere, the final RFP criteria and weightings prioritized Collus Power's interest in identifying a strategic partner over the interests of the Town.

The minutes from the meeting stated that Mr. Houghton provided a detailed presentation. They did not include any information on the contents of the presentation. The minutes also reported that Mr. Houghton addressed questions from Council but did not record the questions asked or the responses provided by Mr. Houghton. According to the minutes:

Mr. Houghton indicated that COLLUS will be working with KPMG and issuing a Request for Proposal's [*sic*] (RFP) to determine interest and if a partnership would be advantageous ... an evaluation team would be established to thoroughly review the proposals that will be presented back to their Board and Council for review.

The RFP was officially sent to PowerStream, Horizon, Veridian, and Hydro One on October 4. The deadline for responses was November 16.

Confidential Information Obtained Through Mr. Bonwick

After the RFP was issued, Paul Bonwick continued to provide advantages to PowerStream. Meanwhile, PowerStream considered extending Mr. Bonwick's retainer. Each of the several situations discussed below should have been a red flag to PowerStream that Paul Bonwick was obtaining confidential information. PowerStream's president and CEO, Brian Bentz, its chief financial officer, John Glicksman, and its executive vice-president of corporate services, Dennis Nolan, a lawyer, ought to have addressed these warning signals.

However, they took no steps to identify the sources of Mr. Bonwick's information. Nor did they alert the Town of Collingwood that PowerStream had received confidential information.

A Favour for the Deputy Mayor's Friend

On October 4, Deputy Mayor Lloyd asked Mr. Bonwick to assist a business in Barrie, Ontario, operated by a friend of the deputy mayor. The business was experiencing problems with a transformer and required assistance from PowerStream. PowerStream provided the requested help.

Both Mr. Bonwick and PowerStream recognized the advantage that this request provided to PowerStream in the RFP. On October 5, Mr. Bonwick advised PowerStream that assisting the deputy mayor would be “very useful as it provides [Deputy Mayor Lloyd] an opportunity first hand to blow our horn during review stage.” PowerStream executive Mark Henderson asked Mr. Bonwick to subtly inform the deputy mayor that PowerStream went “beyond the norm” in response to the deputy mayor's request.

Mr. Bonwick forwarded an email to Deputy Mayor Lloyd that day and asked him to “chat.” Mr. Bonwick drafted the following message for the deputy mayor, which the deputy mayor sent to Mr. Henderson on October 14:

Hi Mark:

Please accept my sincere thanks to you and your team for all your efforts on the recent matter I brought to your attention.

Your actions only reaffirmed the high level of confidence I have in the Powersteam [sic] organization. I have had an opportunity to follow up with [redacted] and I can also state that he could not be more pleased with the level of service your team has provided.

When we meet next I will more properly thank you but until that time I offer you my thanks.

Sincerely,

Rick Lloyd

Deputy Mayor,

Town of Collingwood

Deputy Mayor Lloyd, who had asked Mr. Bonwick to draft the email, told the Inquiry that while he was appreciative of PowerStream's assistance, these events did not influence his scoring of the RFP responses. The deputy

mayor testified that he already believed the RFP was “PowerStream’s to lose.” At the time, PowerStream had not yet submitted its bid.

Deputy Mayor Lloyd explained that he did not disclose the transformer transaction to the Strategic Partnership Task Team because the assistance PowerStream provided to his Barrie friend, at his request, was unrelated to the RFP. In his closing submissions, Mr. Lloyd said he did not know in October whether Mr. Bonwick was assisting PowerStream with its response to the Collus Power RFP.

I do not accept that Deputy Mayor Lloyd did not know Mr. Bonwick was assisting PowerStream with the RFP.

As I discuss in Part One, Chapter 1, Deputy Mayor Lloyd was a close friend of Mr. Bonwick’s. He also had a history of providing Mr. Bonwick with private and confidential Town Council information to assist Mr. Bonwick in his business dealings. It is noteworthy that Mr. Bonwick forwarded to Deputy Mayor Lloyd Mr. Henderson’s email asking Mr. Bonwick to “subtly” let the deputy mayor know that PowerStream had “gone beyond the norm” to help the deputy mayor’s friend during the bid review stage. I am satisfied Deputy Mayor Lloyd knew Mr. Bonwick was assisting PowerStream with its bid.

In his closing submissions, Deputy Mayor Lloyd stated that he did not receive any personal benefit for arranging PowerStream’s assistance. Deputy Mayor Lloyd also maintained that the recipient of PowerStream’s assistance was not a Collingwood resident, and that no confidential information was shared in the course of the transformer transaction.

None of those facts mitigates against the harm caused by the undisclosed conflict of interest in which the deputy mayor placed himself when he sought and obtained special treatment from PowerStream (through its agent, Mr. Bonwick) for his friend. The deputy mayor had asked one of the RFP bidders for a favour, which materialized. PowerStream performed a favour for the deputy mayor during the procurement process, creating a reasonable concern that the deputy mayor might owe, or might believe he owes, PowerStream a favour in return. The deputy mayor exacerbated that conflict when he chose to send the thank you note, drafted for him by Mr. Bonwick, to PowerStream executive Mark Henderson.

The deputy mayor’s intervention with PowerStream placed him in a

conflict of interest that ought to have been disclosed to Town Council as well as the Strategic Partnership Task Team. Disclosure of the conflict would have allowed the Town Council to consider his continued participation in the RFP, evaluation of the bids, and the Town's decision regarding a strategic partner.

Confidential Information Provided by Mr. Bonwick to PowerStream

As PowerStream prepared its response to the Collus Power RFP, Mr. Bonwick continued to provide PowerStream with information that was not available to the other bidders, some of it confidential.

The day after the RFP was issued, October 5, Mr. Bonwick sent Mr. Bentz, Mr. Nolan, Mr. Glicksman, and other PowerStream staff a memo addressed to the "PowerStream EVP Team." The memo provided recommendations for the company's bid that Mr. Bonwick indicated were "based on input over the last several weeks." Mr. Bonwick recommended adding a discretionary gifting fund, a recommendation he had made in his September 14 memo regarding Veridian's confidential presentation to the Strategic Partnership Task Team, as well as highlighting PowerStream's involvement in the solar attic vent initiative (see Part One, Chapter 5). Mr. Bonwick also advised that Veridian had "emphasized synergies with same Union."

In his closing submissions, Mr. Houghton denied he had provided Mr. Bonwick with information that Veridian emphasized union synergies in its confidential presentation to the Strategic Partnership Task Team. Mr. Houghton also took the position that this information was "obvious to all bidders and therefore of no particular significance." This view was not shared by Michael Angemeer, Veridian's CEO at the time. In his testimony, Mr. Angemeer confirmed Veridian included this information in its presentation to the team and stated that the emphasis Veridian placed on this issue was confidential.

I agree with Mr. Angemeer. Regardless of whether it was public that Collus Power and Veridian employees belonged to the same union, how

Veridian chose to use this information in its efforts to win the RFP was confidential. Veridian was entitled to rely on the non-disclosure agreement.

Bidders engaged in municipal procurement processes must trust that information provided to the municipality will be carefully protected. Without this trust, the municipality will not attract the best responses and resources to meet its needs.

Mr. Bonwick also provided PowerStream with confidential information concerning Collus Power employees. In preparing PowerStream's response to the Collus Power RFP, a PowerStream employee circulated an email to BDR (PowerStream's valuation consultant) and Paul Bonwick which sought information about Collus Power's employees. Mr. Bonwick provided Mr. Glicksman with an email summarizing important employee information, which Mr. Glicksman forwarded to PowerStream staff and its consultant. On October 12, Mr. Bonwick also sent Mr. Glicksman a document that contained the names of Collus Power employees and included their positions, employment status, birthdates, current ages, hire dates, years of service, and early retirement and normal retirement dates.

Mr. Bonwick testified that he obtained this information by asking for it through Mr. Houghton or his executive assistant, Pam Hogg, and then personally appearing at the Collus office to retrieve it. Some of this information was eventually made available to the other bidders through Collus Power's data room. Nevertheless, Mr. Bonwick provided this information to PowerStream, which supported the notion that he could add value to PowerStream's response to the RFP.

Mr. Glicksman did not inquire into the source of the employee information that Mr. Bonwick provided to PowerStream. Mr. Glicksman testified that he did not consider whether the employee information was confidential because it "did not seem to be very important." I do not accept Mr. Glicksman's assertion that the information was unimportant because his statement is inconsistent with PowerStream's efforts to obtain this information while preparing its RFP response.

Feedback on PowerStream's Proposal

On November 6, an internal PowerStream memo reported that Mr. Bonwick had suggested PowerStream structure its bid in “the best possible light” by following the approach that KPMG had taken. This approach structured the offer to provide that PowerStream pay the purchase price before Collus Power took on debt to reach the Ontario Energy Board's (OEB's) deemed debt-to-equity threshold.

As I discuss in Part One, Chapter 2, the OEB assumed local distribution companies (LDCs) carried a debt-to-equity ratio of 60 percent debt to 40 percent equity. Until the strategic partnership transaction, Collus Power had not taken on debt up to the level permitted by the OEB. In October 2011, Collus's debt-to-equity ratio was 30 percent debt to 70 percent equity.

The Collus Power RFP document stated that bidders' offers to purchase 50 percent of the utility's shares could include proposed changes to the company's capital structure.* In their RFP responses, all the bidders proposed that Collus Power assume debt to achieve the 60 percent debt to 40 percent equity ratio used by the OEB.

If Collus Power accepted a bid that involved increasing Collus Power's debt to 60 percent, Collus Power would receive a large cash payment in the form of a loan – in addition to the money the successful bidder would pay for 50 percent of the Collus Power shares. The internal PowerStream memo discussed two approaches to how that large loan payment could be distributed. The first approach, which had been proposed by BDR, PowerStream's consultant, was to have Collus Power take the loan and then declare a dividend to its sole shareholder before the shares were sold to the strategic partner. In this scenario, Collingwood Utility Services Corporation, which the Town wholly owned, would receive the full loan payment. The second approach, which Mr. Bonwick recommended and attributed to KPMG, was to have the dividend declared after the buyer purchased 50 percent of the shares. In this scenario, Collingwood Utility Services Corporation would receive 50 percent of the loan, and the successful bidder would receive

* Part One, Chapter 2, includes additional information on this point.

the other 50 percent. If PowerStream took the second approach, it could recover some of its purchase price for the Collus Shares, which would allow its bid to appear higher. As explained by Brian Bentz, “if you offer [the recapitalization dividend] after the fact, your bid appears higher, because ... you’re going to get 2½ million dollars back. So your bid appears 2½ million dollars higher.”

Mr. Bentz testified that he did not want to present the purchase price that way and PowerStream did not follow the approach recommended by Mr. Bonwick.

Mr. Bonwick’s recommendation about how to structure the share purchase is important for two reasons. First, it undermines Mr. Bonwick’s argument that I discuss later in this chapter that he was working in the Town’s best interests while he was retained by PowerStream. It was not in the Town’s best interests to receive PowerStream’s proposed purchase price presented in a way that made it appear higher than it was. Second, this recommendation provides another example of Mr. Bentz and Mr. Glicksman ignoring a red flag about their agent’s actions. Even though Mr. Bonwick reported that his suggested approach was the approach that Collus Power’s consultant, KPMG, had taken, and Collus Power had not disclosed any KPMG valuation of Collus Power in the data room, Mr. Bentz and Mr. Glicksman failed to inquire into the source of Mr. Bonwick’s information.

Mr. Bentz said it did not occur to him to ask about where Mr. Bonwick got the information. This question would have been an obvious one to ask.

Mr. Bonwick provided further comments on PowerStream’s draft response to the Collus Power RFP. In particular, Mr. Bonwick recommended removing language regarding the provision of backroom support, advising:

While the offer for back office support will become a reality I highly recommend removing it at this time. A general offer of support will be more warmly received than [*sic*] telling them what we will provide. The senior person for this department is presently very supportive. I don’t want us to lose that support.

Mr. Bonwick and Mr. Houghton believed the “senior person” referred

to in Mr. Bonwick's email was Larry Irwin, director of operations and IT services for Collus Power and the Town. Mr. Bonwick did not identify who provided him with this information, though he testified that he had "made enquiries through staff that I know, through Mr. Houghton, through Mr. Lloyd, in terms of as this situation is unfolding, how staff are reacting." Both Mr. Houghton and Deputy Mayor Lloyd denied they provided this information to Mr. Bonwick.

PowerStream used this information. Dennis Nolan, PowerStream's general counsel and corporate secretary, responded to Mr. Bonwick's email and advised that PowerStream had made Mr. Bonwick's recommended change. Neither Mr. Nolan nor John Glicksman, PowerStream's chief financial officer, who was copied on this email exchange, inquired into the source of Mr. Bonwick's information.

Collus Power's RFP Communications Strategy

Mr. Houghton consulted with Mr. Bonwick and PowerStream on Collus Power's RFP communications strategy before the bidders had submitted their responses and before anyone had informed Town staff about the RFP. No other bidder engaged with Collus Power or the Town on the RFP communications strategy. Mr. Bonwick asked Mr. Houghton if he had a communications strategy in place for the RFP and offered to assist him with it. Mr. Houghton accepted the offer and consulted with Mr. Bonwick and Eric Fagen, PowerStream's director of corporate communications, on the Collus Power RFP communications strategy. Mr. Bonwick and Mr. Fagen reported back to PowerStream on October 25.

On October 26, Mr. Houghton made an *in camera* presentation on the RFP communications strategy to the Collus Power board of directors, describing it to the Inquiry as the strategy's "bones." Mr. Houghton shared the presentation with PowerStream through Mr. Bonwick on November 10, six days before the bidders submitted their responses to the RFP.

Mr. Houghton's slide presentation indicated that a draft of the news release would be published on November 17 (after receipt of the responses to the RFP) and stated that the communications strategy would:

- begin immediately following the call of the RFP on November 16, 2011;
- state that the strategic partnership was an exciting opportunity;
- describe how Collingwood Town Council came to the decision to take on a strategic partner in [its] local distribution company;
- describe the advantages of a strategic partnership and how it fit into the current electricity environment;
- explain that the Town of Collingwood would receive a large dividend;
and
- describe cost savings resulting from the strategic partnership.

The slide presentation also stated there should be one designated media spokesperson and that members of the board of Collus Power and Collingwood Town councillors would receive speaking notes if they needed to comment on the RFP.

In explaining why he shared the presentation with Mr. Bonwick, Mr. Houghton maintained it contained nothing confidential. He acknowledged in his evidence that he should have made the presentation available to the other bidders, and he testified that he would have provided it to them had they asked, but none of the bidders did.

It is not surprising that the other proponents did not ask about the communications strategy. The RFP provided a list of the data available in the data room. The list of available data did not include documents concerning Collus Power's RFP communications strategy.

The failure to treat all bidders equally is another example of Mr. Houghton providing preferential treatment to PowerStream. It was reasonable for the bidders to assume that the Town would share relevant information about the RFP with everyone. Failure to do so risks undermining public confidence in the integrity of the RFP process.

By November 14, Mr. Houghton and Mr. Bonwick were corresponding about the text of a Collus Power press release that would announce the RFP. Mr. Houghton did not inform Mayor Cooper that he was consulting with her brother about the Collus Power RFP communications strategy. PowerStream was the primary drafter of the Collus press release. Mr. Houghton explained to the Inquiry that he had handed the pen to PowerStream because Collus did not have communications staff. He also testified that Collus Power chair

Dean Muncaster and director David McFadden approved PowerStream's assistance in drafting the press release.

I do not accept Mr. Houghton's evidence that Mr. Muncaster and Mr. McFadden approved his outsourcing of the drafting of the Collus Power press release to PowerStream. As I discuss in Part One, Chapter 4, both Mr. Muncaster and Mr. McFadden were experienced and well-respected professionals. Neither would condone endangering the integrity of the RFP by inviting one of the bidders to consult on the communications strategy of Collus Power or the Town. Mr. Houghton introduced this evidence when he testified at the Inquiry, following Mr. McFadden's testimony.

When Mr. McFadden testified, Mr. Houghton's counsel did not ask Mr. McFadden if he approved outsourcing the drafting of the Collus Power press release to PowerStream before completion of the RFP process. The failure to ask Mr. McFadden about this assertion is consistent with my finding.

In addition, Mr. Houghton's rationale for including PowerStream in the communications strategy does not withstand scrutiny. Regardless of whether Collus had a communications department, the Town communicated with the public regularly about Town business.

Mr. Houghton was part of a November 14 conference call with Mr. Bonwick and Mr. Fagen, during which he provided PowerStream with the following "tentative public disclosure and decision timelines for the Collus Power / Collingwood RFP":

November 17 (a.m.)	COLLUS Power to issue news release that the utility is seeking a strategic partnership
November 17 (p.m.)	COLLUS Power updates Town Council on the status of the RFP process
November 22 (p.m.)	Public Information Session in Collingwood
November 23	COLLUS Power Strategic Partnership Task Force begins review of RFP responses
December 2	COLLUS Power Strategic Partnership Task Force brings recommendation forward to COLLUS Power Board of Directors
December 5	COLLUS Power Board of Directors brings recommendation forward to an in-camera session of Collingwood Town Council
December 12	Resolution brought forward to Collingwood Town Council

Mr. Nolan acknowledged in his evidence that this conference call may have been premature. He could not recall whether he knew Mr. Fagen (who reported to him) was providing Collus Power with comments on its draft press release, but stated that he might have known this consultation was taking place. Mr. Bentz was aware of the conference call, but assumed “that Ed Houghton was representing Collus in the RFP process and that ... the communication with him ... was made in that context.” Mr. Glicksman testified that he believed this information was available to all the bidders.

Collus Power issued the press release on November 17. It was branded with the Collus Power logo and identified Mr. Houghton as the sole media contact.

In email correspondence related to Collus Power’s announcement of the RFP, Mr. Bonwick informed Mr. Fagen and Mr. Nolan on November 18 that,

Collus was advised on Wednesday at the time of submission that one of the four proponents did not yet have shareholder approval for their proposal and as a result requested not to be named ... there is apparently an internal discussion taking place today with the review team as to whether the proposal will be accepted ... By the end of this day there may only be three in contention.”

Mr. Nolan did not recall “focusing” on this email communication.

Alectra Utilities, the successor company to PowerStream, acknowledged in its closing submissions that PowerStream’s involvement in Collus Power’s communications strategy might have been “premature.” Alectra argued that its “extremely limited involvement in the development of the Communications Strategy and press release did not rise to the level of an attempt to influence Collus’s intent or direction in approaching either one, nor the result of the RFP process.” Mr. Bonwick’s and Mr. Fagen’s involvement in Collus Power’s communications strategy was another red flag that PowerStream’s agent, Mr. Bonwick, was engaging in problematic conduct that Mr. Bentz, Mr. Nolan, and Mr. Glicksman failed to identify and address.

Mr. Houghton took the position that his consultation with PowerStream on the communications strategy did not affect the bidding process.

I do not agree.

Mr. Houghton compromised the integrity of the RFP process by providing PowerStream with the opportunity to work directly with the CEO of the asset it was bidding on. The CEO was also a voting member of the team that would be scoring its response to the RFP. Even if this opportunity did not provide PowerStream with a material advantage over the other bidders, it contributed to the uneven playing field for the bidders.

Mr. Houghton's decision to include Mr. Bonwick, and therefore PowerStream, in the creation of the RFP communications strategy for Collus Power, and his failure to disclose this information to either the Town or the Strategic Partnership Task Team, undermined the Town's ability to oversee the sale. Because the Town was unaware there was an issue, it could not address it.

Mr. Bonwick's New Retainer

On November 9, 2011 PowerStream and Mr. Bonwick executed an amended and extended retainer agreement after two months of negotiation. The new agreement increased Mr. Bonwick's fee from \$10,000 a month plus \$1,000 in monthly expenses to \$15,000 a month plus \$1,500 in monthly expenses. Mr. Bonwick's term of engagement was also extended, from August 30, 2011 to December 31, 2012, although this extension was contingent on PowerStream completing a transaction with Collus Power by June 30, 2012. Finally, the new agreement provided that Mr. Bonwick would be paid an \$80,000 success fee for each successful CHEC group* merger or acquisition after Collus Power. No explicit success fee was specified for a successful transaction with Collus Power.

On October 19, Brian Bentz, Dennis Nolan, and John Glicksman recommended to PowerStream's Audit and Finance Committee that PowerStream sign a new retainer agreement with Mr. Bonwick. Mr. Bentz, Mr. Nolan, and Mr. Glicksman told the committee that Mr. Bonwick had "proven to be a valuable asset in providing strategic and communication advice and

* Cornerstone Hydro Electric Concepts Association Group, a group of 12 local distribution companies that shared resources.

in assisting us to be successful both with respect to the Collus bid and other utilities in the CHEC group” and recommended PowerStream retain Mr. Bonwick on a long-term basis.

In their evidence before the Inquiry, however, Mr. Bentz, Mr. Nolan, and Mr. Glicksman were less enthusiastic about the value Mr. Bonwick provided. Mr. Bentz, who testified that Mr. Bonwick reported primarily to Mr. Glicksman, had considerable difficulty describing what Mr. Bonwick delivered. He said Mr. Bonwick delivered little in the way of value on the action items set out in the retainer letter, other than his pre-existing relationships with the mayor, deputy mayor, and Mr. Houghton, and his involvement in the solar attic vent initiative.

Mr. Glicksman, who told the Inquiry that Mr. Bonwick dealt more with Mr. Bentz, identified the solar attic vent initiative as Mr. Bonwick’s main contribution to PowerStream’s efforts to acquire an interest in Collus Power. Mr. Nolan told the Inquiry that he was concerned about retaining Mr. Bonwick from the outset and remained unenthusiastic about Mr. Bonwick’s retainer throughout the engagement. Mr. Nolan was worried about the appearance of a conflict and told the Inquiry that he did not think PowerStream required Mr. Bonwick’s assistance. Mr. Nolan was “skeptical about the – the value for – for the dollar.”

I accept Mr. Bentz’s evidence that Mr. Bonwick’s value arose from his pre-existing relationships with the mayor, deputy mayor, and Mr. Houghton, as well as facilitating the solar attic vent initiative. This is why PowerStream extended his retainer.

At the outset of the negotiations, Mr. Bonwick had requested a success fee of \$150,000 for every LDC – including Collus Power – that PowerStream acquired over the course of Mr. Bonwick’s retainer. Although the new agreement did not provide a success fee for the acquisition of Collus Power, it provided for a longer term in the event a Collus Power transaction proceeded.*

Both Mr. Bentz and Mr. Nolan testified that the increase in Mr. Bonwick’s fee was to account for the fact that PowerStream was not giving Mr. Bonwick a success fee for Collus Power.

* The November 9, 2011, retainer agreement did include Collus Power on the list of LDCs for which Mr. Bonwick could be paid a success fee, but its inclusion was an error.

PowerStream provided that the agreement would terminate on June 30, 2012, if there was no executed Collus Power share transaction agreement. This provision meant that if a Collus Power transaction proceeded, Mr. Bonwick's retainer would extend for another six months, until the end of December 2012. During those six months, Mr. Bonwick would earn an additional \$80,000 in fees, which was the same amount as the success fee for the acquisition of any other CHEC group LDC. In his evidence, Mr. Bonwick agreed that, if a transaction between Collus and PowerStream did not come to fruition, Compenso Communications Inc.'s new retainer with PowerStream would "no longer [be] applicable," because PowerStream's growth strategy would no longer be viable. Mr. Bonwick noted that if the transaction did not take place his retainer would have been terminated, requiring a discussion with Brian Bentz to determine whether any other opportunities would be available for him at PowerStream.

Alectra, in its closing submissions, argued that PowerStream and Mr. Bonwick agreed Mr. Bonwick would not be paid a success fee in relation to a potential Collus share sale and that no such fee was paid. According to Alectra, the primary purpose of the November retainer was for PowerStream to achieve regional consolidation in the areas surrounding Collingwood. The Collus transaction was simply a stepping stone to this greater goal. It was for this reason Mr. Bonwick was to receive success fees for other CHEC LDCs, but not Collus Power.

The evidence of Mr. Bentz and Mr. Nolan undermines this argument. Both men testified that the increase in Mr. Bonwick's fee was to account for the fact that PowerStream was not giving Mr. Bonwick a success fee for Collus Power.

The November 2011 retainer letter contained the same disclosure provision found in Mr. Bonwick's original retainer with PowerStream executed in June:

Bonwick agrees to make all necessary and prudent disclosures of his / CCI's engagement with PowerStream. Any such disclosures shall be discussed and authorized by PowerStream in advance. Specifically, with respect to any authorized activity on PowerStream's behalf, relating to COLLUS Power, Bonwick represents and warrants that he has disclosed the scope of his services and his retainer by PowerStream to the Mayor

and Clerk of the Town of Collingwood, and shall provide written evidence of such disclosure to PowerStream ...

The November retainer letter did not explicitly require Mr. Bonwick or Compenso to disclose the extension of the retainer. In its closing submissions, Alectra did not address Mr. Bonwick's disclosure obligations under the November retainer, other than acknowledging that both retainer letters made use of the same disclosure requirement language.

Regardless of the intention behind the disclosure provision in the November retainer, Mr. Bentz, Mr. Glicksman, and Mr. Nolan did not ask Mr. Bonwick to disclose the November agreement, and Mr. Bonwick did not make any disclosure. Neither of the agreements between PowerStream and Compenso required disclosure of the financial terms of the retainer. At the time, PowerStream did not see a reason to disclose the fee.

Sources of Confidential Information

Throughout the request for proposal (RFP) process, Paul Bonwick obtained confidential information that he provided to PowerStream Incorporated. This information included details from the other bidders' September 2011 presentations to the Strategic Partnership Task Team, from the contents of the other bids, and the Task Team's deliberations.

Mr. Bonwick testified that he received the information from conversations with "at least three" members of the Strategic Partnership Task Team: Ed Houghton, Collus Power Corporation's chief executive officer (CEO); Deputy Mayor Rick Lloyd; and Dean Muncaster, chair of Collus Power's board of directors.

I do not accept that Dean Muncaster was one of Mr. Bonwick's sources. Mr. Muncaster was an experienced and sophisticated businessman. I am satisfied he understood the importance of confidentiality and fairness in the RFP process. It was Mr. Muncaster, after all, who sent the bidders a non-disclosure agreement in advance of the September 2011 bidder meetings, advising them it was "drafted to protect all parties from the disclosure of highly confidential and proprietary information."

That leaves Mr. Houghton and Deputy Mayor Lloyd. I am satisfied both men provided Mr. Bonwick with confidential information about the RFP process, the bidder meetings, and the Strategic Partnership Task Team, despite their denials at the Inquiry's hearings.

Mr. Houghton was in regular contact with Mr. Bonwick about Collus Power and the RFP process, including confidential and sensitive matters such as KPMG's valuation and the RFP media strategy. Mr. Houghton acknowledged he might have told Mr. Bonwick in late May or early June 2011 that KPMG had completed the valuation, testifying that he "wouldn't be surprised if ... [Mr. Bonwick] had said, you know, how'd that valuation go? Oh, it's done." There is no reason to believe Mr. Houghton did not continue to share confidential information that he thought might assist PowerStream with Mr. Bonwick.

Further, Mr. Houghton repeatedly failed to guard against disclosure of confidential information despite knowing that Mr. Bonwick was sharing information with PowerStream. After discussing a potential Collus Power RFP with Mr. Bentz, he connected the two men. Mr. Houghton then involved Mr. Bonwick in drafting the mayor's letter directing Collus Power to undertake a valuation in January 2011, despite his knowledge that Mr. Bonwick was actively soliciting a retainer with PowerStream to assist in its pursuit of an interest in Collus Power.

Mr. Houghton also knew Mr. Bonwick had confidential information about the bidders and took no steps to protect the RFP process. Specifically, on September 14, 2011, Mr. Bonwick emailed Mr. Houghton a memorandum he prepared for PowerStream's executive team that contained confidential details about presentations by Hydro One Incorporated and Veridian Corporation to the Strategic Partnership Task Team for his "review and comment." Mr. Bonwick had no reservations sharing with Mr. Houghton what he had learned about the confidential bidder presentations. Although Mr. Houghton testified that he told Mr. Bonwick not to share the information with PowerStream, he did not take any steps to prevent Mr. Bonwick from obtaining further confidential information. Instead, he involved Mr. Bonwick in the creation of the RFP communications strategy, then the Town's execution of the transaction documents.

Turning to Deputy Mayor Lloyd, as I discuss in Part One, Chapter 1,

Mr. Lloyd told the Inquiry that it was his practice as a member of Council to share information about Council matters with local businesses, including Mr. Bonwick and his clients, that might interest them. In the same period as the Collus Power share sale, there were multiple instances where the deputy mayor provided Mr. Bonwick with confidential and, on occasion, privileged Town information.

When Inquiry counsel asked Deputy Mayor Lloyd why he would not continue his practice of sharing information with Mr. Bonwick when it came to the Collus RFP, Mr. Lloyd testified that he did not share information with Mr. Bonwick because Mr. Bonwick did not ask.

I do not accept this answer.

There was no reason Mr. Bonwick would not ask for information about the RFP. He was seeking information to provide to PowerStream. Deputy Mayor Lloyd was on the Strategic Partnership Task Team and in possession of information that was important, sensitive, and confidential. Mr. Bonwick would be eager to ask Deputy Mayor Lloyd about the attitudes and deliberation of the team members. The fact that Deputy Mayor Lloyd testified that he was leaning towards PowerStream after its presentation to the Strategic Partnership Task Team in September 2011 reinforces my conclusion.

No Justification for Obtaining Confidential Information

In his testimony and closing statements, Mr. Bonwick sought to justify the gathering and sharing of information about the RFP process and the Strategic Partnership Task Team on the basis that none of his sources told him the matters were confidential. I do not accept that Mr. Bonwick, an intelligent experienced politician, businessman, lobbyist, and government relations consultant, did not understand that the information he received about the RFP process and the other bidders was confidential and should not have been disclosed to him, or by him, to PowerStream.

Mr. Bonwick also argued he was acting in the Town's best interests in his work for PowerStream. As I discuss throughout my Report, his assistance gave PowerStream an unfair advantage and deprived the Town of the opportunity to assess the bidders on an even playing field. It also called into question the legitimacy of the entire procurement process. And it deprived

PowerStream of claiming its bid was genuinely superior to the others. Mr. Bonwick obtained and shared this information to assist PowerStream, his client. As I explained above, Mr. Bonwick had a vested interest in PowerStream winning the RFP because that would extend his contract with the company.

PowerStream's Failure to Act

During the RFP process, PowerStream's Brian Bentz, Dennis Nolan, and John Glicksman did not take any steps to address the confidential information Mr. Bonwick was providing. Mr. Glicksman, who was PowerStream's chief financial officer and Mr. Bonwick's primary point of contact during the RFP process, testified that no one from PowerStream ever told Mr. Bonwick to stop providing confidential information.

Mr. Bentz testified that, at some point after the Town had selected PowerStream, there were internal discussions within PowerStream about the propriety of the information Mr. Bonwick had provided in the RFP process. Mr. Bentz confirmed that, despite the internal concerns, PowerStream did not raise the issue with the Town.

In its closing submissions, PowerStream acknowledged that it "should have ... (i) asked Mr. Bonwick what the sources of his information were; (ii) made clear to Mr. Bonwick that it did not wish to receive confidential information ...; (iii) ... informed Collus and/or the SPTT [Strategic Partnership Task Team] that it had received such confidential information through Mr. Bonwick."

At the same time, PowerStream argued, among other things, that (1) it received much of the information before the RFP was released and the information was therefore not of significance; (2) much of the information received was publicly available or could be surmised by PowerStream; and (3) there is no evidence that receiving the information gave PowerStream any advantage in the RFP process. Mr. Houghton made similar arguments in his closing arguments.

In making these arguments, PowerStream and Mr. Houghton sought to diminish the seriousness of what Mr. Houghton, Mr. Bentz, Mr. Glicksman, and Mr. Nolan allowed to happen. The seriousness cannot be diminished.

The disclosure of confidential information undermined the integrity of the share sale. Among other issues, it gave one proponent an unfair advantage. All bidders in an RFP should be provided with the same information. None of the bidders should be provided with the confidential information of another bidder.

Neil Freeman, who was vice-president of business development for Horizon Utilities Corporation, explained the negative effects of an unfair procurement. Commenting on the information Mr. Bonwick obtained, Mr. Freeman testified that “if you don’t have a procurement process that is – is beyond question, that you basically lose confidence in the marketplace and you – you won’t get the best prices for – from your suppliers,” adding that the “good suppliers will – will sort of stop bidding if they don’t feel that they’re – they’re getting a fair shake.” Mr. Freeman further stated that “if it was all sort of a predetermined conclusion,” Horizon probably would not have participated “to save ourselves the embarrassment.”

In its closing submissions, PowerStream argued that it was reasonable for the company to assume all bidders were receiving the same information that Mr. Bonwick obtained and disclosed.

I reject this argument. The bidders understood the importance of confidentiality in the RFP process. They all signed agreements at the outset of the process to protect against the disclosure of highly confidential and proprietary information.

Representatives of the unsuccessful bidders testified at the Inquiry. Michael Angemeer (CEO of Veridian at the time), Horizon’s Mr. Freeman, and Kristina Gaspar (manager of strategy and risk at Hydro One) testified that their presentations to the Strategic Partnership Task Team were confidential. Mr. Angemeer said in his evidence, “[W]hen somebody’s having an RFP, it is essentially understood and, you know while we often write confidentiality agreements, it – it goes without saying that the material has to be confidential, or – or frankly, the – the vendor is possibly undermining its own interest ...” Ms. Gaspar testified that “it is just assumed and standard practice for anything dealing with any activity to be highly confidential, and that is just the way transactions occur.”

Like Mr. Freeman, Mr. Angemeer, and Ms. Gaspar, PowerStream’s Mr. Bentz, Mr. Nolan, and Mr. Glicksman are experienced and sophisticated

executives. I cannot accept that they didn't understand the importance of confidentiality.

In his testimony, Mr. Nolan suggested that the Town or Collus condoned the disclosure of confidential information because "the assumption was that the information was coming from Collus or from the Town." I do not accept this suggestion.

For any municipal procurement process to be effective, all parties must abide by the rules. Municipalities, their representatives, and proponents must all strive to protect the integrity of the process to avoid undermining their interest in a competitive RFP process. The sale of a public asset, like the procurement of a public asset, has to be transparent. Real and apparent conflicts of interest and unfair advantages must be avoided. There is a practical reason for this policy; namely, the maintenance of public confidence in both the councillors and the senior staff. If the public loses confidence in the integrity of its elected representatives and administrative personnel, regaining trust can take considerable time and expense.

PowerStream also said the information it received from Mr. Bonwick was similar to what Mr. Houghton provided to other bidders. The company pointed to a few examples, including:

- telephone conversations Mr. Houghton had in July 2011 with Horizon CEO Max Cananzi and with Veridian CEO Michael Angemeer;
- a conversation between Horizon's Neil Freeman and Mr. Houghton on August 22, 2011, about the solar attic vent initiative;
- an October 2011 discussion between Veridian and KPMG inquiring into whether Collus Power would accept a bid for more than 50 percent of Collus Power; and
- a conversation Mr. Cananzi had with Mr. Houghton on November 16, 2011, the date the RFP responses were due. Mr. Cananzi reported internally that he spoke with Mr. Houghton about

our bid to smooth the waters for us and for him to have the background to our thinking. He [Mr. Houghton] received the information well and looked forward to reading our proposal. He also mentioned that he would be releasing this news release since the word had got out and they wanted to get out in front of it. He was approached by other LDCs

[local distribution companies] and was asked what he was doing since they were considering something similar. As expected we may see more of these not less.

There is no comparison between those isolated interactions and the early, frequent, and ongoing communications that PowerStream, through Mr. Bonwick, had with Ed Houghton and Deputy Mayor Rick Lloyd before, during, and after the RFP.

Information About Bid Scoring Received by PowerStream

PowerStream's failure to appropriately address the receipt of confidential information about the RFP process continued after it won the RFP. As I discuss in Part One, Chapter 8, Collus Power retained the law firm Aird & Berlis to assist with the share sale to PowerStream. Aird & Berlis began working in mid December 2011. On January 4, Aird & Berlis sent PowerStream Vice President, Rates & Regulatory Affairs Colin Macdonald a copy of the slide presentation that Mr. Houghton presented to Council *in camera* on December 5, 2011.* The presentation contained details about PowerStream's, Horizon's, Hydro One's, and Veridian's financial offers, and how those bids were scored.

Mr. Macdonald sent the slide presentation to Mr. Glicksman, who forwarded it to Brian Bentz, writing, "[w]e got it from Aird & Berlis when we like [*sic*] shouldn't have. It shown [*sic*] our ranking in detail along with other interesting points on our proposed transaction ..."

Mr. Bentz, Mr. Nolan, and Mr. Glicksman testified that PowerStream should either have deleted the presentation or alerted Aird & Berlis or the Town to the disclosure of confidential information. Alectra repeated this acknowledgement in its closing submissions. Mr. Bentz testified that he thought Mr. Macdonald did raise the matter with Aird & Berlis, but Mr. Bentz did not follow up to confirm. The Inquiry did not receive any documents indicating that Aird & Berlis was advised of the disclosure. I am satisfied they were not.

* This presentation is discussed further in Part One, Chapter 7.

In their evidence, Mr. Bentz, Mr. Nolan, and Mr. Glicksman sought to downplay the utility of the information contained in the slide presentation. Mr. Bentz and Mr. Nolan stated that information regarding the other RFP proponents' bids was not useful because, by January 2012, the RFP process had ended and PowerStream was already negotiating the share sale with Collus. Mr. Glicksman testified that PowerStream "did not do anything" with the information contained in the presentation. Alectra's closing submissions reiterated these statements and argued that some of the information in the slide presentation may have been useful to the MAADs application.* Alectra also pointed out that the Ontario electricity industry is highly regulated and that detailed financial information relating to LDCs in Ontario is publicly available on the Ontario Energy Board's website.

I agree with Alectra's acknowledgement that Mr. Bentz, Mr. Nolan, and Mr. Glicksman should have taken steps to inform Aird & Berlis or the Town that it received the information and deleted the presentation. The sensitivity of the information should have compelled them to confirm whether it was intentionally disclosed, regardless of how useful they believed the information was at that point in time. Once again, Mr. Bentz's, Mr. Nolan's, and Mr. Glicksman's failure to acknowledge the receipt of confidential information risked further undermining the perceived fairness of the RFP and share sale.

RFP Made Public

The four bidders submitted their responses to the Collus Power RFP on November 16, 2011. The following day, Collus Power issued the PowerStream-authored press release announcing the Strategic Partner RFP.

Mr. Houghton provided an *in camera* update to Council on November 17. This update was the first that Council had received since October 3, the day before the RFP was issued. Mr. Houghton informed Council that "Collus staff" was preparing to issue a press release announcing a public information session on the RFP process, scheduled for November 22, 2011. The Council

* MAADs (mergers, amalgamations, acquisitions and divestitures) applications, which are filed with the Ontario Energy Board, are discussed in Part One, Chapter 2.

minutes indicate that Mr. Houghton and Mr. Muncaster responded to concerns about the magnitude of the partnership and that the sale of Collus Power was happening quickly. The minutes did not record details of those exchanges.

The public announcement of the RFP received some media coverage, which in turn generated concern from members of the CHEC group. Shortly after the press release, Mr. Fryer reported he had received calls from six CHEC group LDCs, all of whom questioned statements in the press release that the share sale would not affect the Town's dividend. Specifically, they asked how Collus Power could grow without using the money from the share sale to fund the utility's growth.

As I discuss in Part Two of the Report, Town Council did not retain any of the sale proceeds to invest in the future growth of the LDC. The Town did not use the money from the share sale to reduce the Town's debt. The Town's treasurer, Marjory Leonard, gave evidence that using the proceeds from the Collus share sale to do so would not have been cost efficient because paying down the debts at once would result in substantial early repayment penalties.

On November 22, Collus Power hosted a public information session on the RFP. Although Mayor Cooper and John Rockx of KPMG delivered some remarks, Mr. Houghton presented most of the information. A slide presentation stated that Collus Power retained KPMG to "look at our value, to provide us with a review of what is happening to our industry, to provide insight to what might happen in the future and to provide us with options."

The slide presentation identified three options: status quo, sale, and strategic partnership, stating that those options were "discussed by the Board and Council in detail and it was decided that the best approach is the Strategic Partnership." It listed only benefits that would flow from a strategic partnership, did not identify any risks, and set out a high-level description of the evaluation criteria and the points assigned to each category. It also presented a "timeline of key events," which included both the initial bidder meetings and the bidder meetings with the Strategic Partnership Task Team.

The timeline that Ian Chadwick, a councillor at the time of the sale, prepared for this Inquiry indicated that 200 people attended the meeting.

Mr. Chadwick conceded, when he testified, that he was guessing the number of attendees and that fewer people may have been at the public information session.

Neil Freeman, who at the time of the events examined by the Inquiry was Horizon's vice-president of business development and corporate relations, attended the public information session and reported to his colleagues the next day. He noted that 32 people, mainly municipal and LDC representatives, attended, commenting, "There are only 48 employees in water and electric, so this is not a significant turnout." He stated that the meeting was well managed, with only two questions raised, "one of which was a question / statement from a large customer supporting the Strategic Partnership for rates purposes which was obviously a setup."

Mr. Freeman also sent Horizon a photo of the billboard (see Part One, Chapter 5) advertising Collus Power and PowerStream's solar attic vent partnership, writing: "COLLUS is not only giving away these vent fans for less than cost ... it is paying for billboards to do so." Horizon's CEO, Max Cananzi, made these comments in response:

This is basically a community advertisement to pave the way for a Collus / PowerStream [sic] deal for the utility. Gone are the other 3 three utilities that have also participated in this launch.

This is buying goodwill in the community. Residents are getting comfortable seeing Collus's brand and PowerStream's brand together on billboards. The perceptions being created are that they are already getting along and working on business together so a more formal arrangement is no big deal.

The fix is in. PowerStream will be declared the winner of the competition. This is my prediction.

I just pray that PowerStream, knowing we were in the hunt, overpaid.

The Successful Bidder: PowerStream

After receiving the request for proposal (RFP) bids, the Strategic Partnership Task Team scored the submissions. PowerStream Incorporated received the highest score for the non-financial criteria and was the overall winner of the RFP despite not having offered the most money for 50 percent of the shares of Collus Power Corporation. This result was less than surprising, given the emphasis placed on seeking a strategic partner for Collus rather than reducing the Town's debt and the advantages PowerStream enjoyed throughout the process. Although Hydro One's offer was \$3.85 million higher than PowerStream's, this fact was not put before Council when it chose to partner with PowerStream.

Evaluating the Bids

The RFP required bidders to submit their proposals in two envelopes: one containing the non-financial criteria, and the other the financial bids and related matters. On reviewing the non-financial proposals, KPMG associate partner John Rockx remarked to his colleagues, "[M]y gut sense is that they are similar in terms of quals etc. The second envelope with the proposed purchase price / business terms will likely be the differentiator." John Herhalt, a partner at KPMG who had helped to draft the RFP, agreed.

They were wrong.

Although KPMG expected the financial offers to be the determinative factor, the Strategic Partnership Task Team selected PowerStream as its recommended bidder based on the perceived superiority of its non-financial bid, even though it did not offer the highest price.

The Two-Envelope Approach

The four bidders delivered their RFP responses on November 16, 2011. The Strategic Partnership Task Team used a two-envelope approach to review the bids, which involved reviewing the non-financial bids and financial bids separately.* Kim Wingrove, the Town of Collingwood's chief administrative officer (CAO), explained that the Town typically used a two-envelope approach when it purchased goods and services. In this way, the non-financial components of the bids were evaluated based on their merit and not influenced by the cost of the good or service.

For the Collus Power RFP, this system meant that the Task Team would assess a bidder's partnership qualities without knowing what it had offered to pay for the shares.

Record Keeping

Pam Hogg, Ed Houghton's executive assistant who also served as board secretary for the Collus corporations and provided administrative support to the Strategic Partnership Task Team, testified that her approach to taking minutes at Task Team meetings followed the same practice she used for Collus board meetings: no minutes were taken of confidential discussions. As a result, Ms. Hogg stated she did not take minutes of the discussions at the scoring meetings because she understood the subject matter was confidential. She did, however, record minutes of the first two Task Team meetings, which, she said, she did not consider to be sensitive or confidential.

I accept that Ms. Hogg believed she was keeping appropriate records and was, in good faith, striving to protect the team's confidential deliberations.

KPMG was not consulted with regard to the recording of the contents of the November 23, 2011, Task Team meeting – the one where the non-financial bids were scored. Mr. Herhalt testified that recording and retaining minutes of this meeting would have been beneficial and consistent with “normal

* PowerStream's lawyer Robert Hull delivered both the financial and the non-financial bid to David McFadden, his law partner and a Collus Power director, on November 16. Mr. McFadden testified that he deleted that correspondence from his computer.

practice.” Certainly, a complete record of the Task Team’s independent evaluations of the non-financial criteria and its deliberations about the scores awarded to the bidders would have assisted the Town when questions arose about the process leading to the sale of the Collus Power shares.

To maintain public confidence, the Town of Collingwood must operate a fair RFP process. It also needs to be able to demonstrate the fairness of its RFP if questions or issues arise later. A comprehensive documentary record of the communications, considerations, and decisions related to the RFP process enhances public confidence in the administration of the municipality’s business.

The Non-financial Bids

Before the November 23 meeting, Ms. Hogg distributed the submissions to members of the Strategic Partnership Task Team for their consideration. On November 20, Mr. Houghton emailed the team, advising that he and Collus Power board chair Dean Muncaster had decided that RFP submissions should be scored as follows:

[F]or each criteria, the best proposal shall receive the full points. For example, if you feel respondent “A” has the best proposal regarding the “Support for Employees and Their Careers[,]” then they shall get the full 10 points. The other three respondents will be then judged and provided points based on the best proposal. If in your opinion, there is a tie[,] then they should both [sic] receive 10 points.

Mr. Herhalt testified that Mr. Houghton did not consult with him regarding this decision or how best to evaluate the RFP responses. He stated that it would have been useful to provide clarity and guidance on scoring the second-, third-, and fourth-ranked bidders. As things turned out, the only Task Team members who followed the November 20 instructions for every category were Mr. Houghton and Deputy Mayor Rick Lloyd.

Because he was travelling on business, Mr. Herhalt attended the November 23 meeting by telephone. Mr. McFadden was unable to attend the meeting and submitted his scores in advance.

In an affidavit and in her testimony at the Inquiry, Ms. Hogg explained that, at the November 23 meeting, all members of the Strategic Partnership Task Team read out their scores for each category. She recorded the results in a spreadsheet projected on a screen in the meeting room. She stated that the Task Team discussed the results after all members had scored a category, but she could not recall any details.

The only written record of the team's scores that the Inquiry received was a copy of Ms. Hogg's spreadsheet. Although Ms. Wingrove, Mr. Lloyd, Mayor Sandra Cooper, and Collus Power chief financial officer (CFO) Tim Fryer testified they completed their scoring on a template that was turned in at the meeting, no such templates were provided to the Inquiry.

Scoring the Non-financial Bids

Before the November 23 meeting, Mr. Houghton asked KPMG to rank the non-financial bids. Mr. Herhalt completed a ranking based on his review and comments by his KPMG colleagues John Rockx and Jonathan Erling. Mr. Erling considered Hydro One's proposal to be "the most professional looking, and one of the most specific in terms of detail." Mr. Rockx said it was "[d]ifficult to rank parties as significantly better or worse." Mr. Herhalt noted that ranking the non-financial proposals was "not all that easy" because some of the non-financial elements were "a little fuzzy" and required judgment calls. He also stated that he was travelling at the time, which made his review "a little more difficult." Mr. Herhalt ranked the bids as follows: (1) PowerStream, (2) Hydro One, (3) Horizon, and (4) Veridian. He emailed this ranking to Mr. Houghton before the meeting and, as I note above, attended the meeting by telephone.

During the meeting, Mr. Herhalt was asked to assign scores to the non-financial bids, which he did. Mr. Houghton testified that Mr. Muncaster asked Mr. Herhalt to score the responses, but Mr. Herhalt could not recall if the request came from Mr. Houghton, Mr. Muncaster, or both of them. As I discuss below, although he was not a member of the Strategic Partnership Task Team, Mr. Herhalt's scores were included in the evaluation, and, later, he was presented to the Town Council in that capacity too.

Mr. Herhalt considered that KPMG's role on the bid review would mean

attending both Task Team and bidder meetings, assisting in developing the RFP, and helping with the bid evaluations. He testified that making a recommendation was not appropriate because that function should have been restricted to members of the Strategic Partnership Task Team. Mr. Herhalt testified he did not know that his scores had been included in evaluating the bidder responses, and he learned of it only in 2012. He testified that had KPMG been asked to assume the same role as members of the Strategic Partnership Task Team, he would have responded that it was not logical: KPMG “needed to have some ability to stand apart from the team that was actually being charged with making the recommendation.” He noted that acting as a member of the team that KPMG had been retained to advise “seemed to be in conflict ... to put us in that position, I would have thought.”

The Apparent Winner: PowerStream

After the Strategic Partnership Task Team reviewed the non-financial scores on November 23, it became apparent that PowerStream had won the RFP, scoring 594 out of a total of 630 points. The second-place bidder, Horizon, was more than 100 points behind, with a score of 491 points. Although it is not possible to determine whether PowerStream would have fared equally well without the advantages it received before and throughout the RFP process, the perception of advantage colours the result.

PowerStream’s non-financial bid impressed the Strategic Partnership Task Team. Mr. McFadden said its presentation “stood out”: it “was really first class” and “clearly ... [a] class almost by itself in terms of the scope, what [it] was offering the Town[,] what [it] was offering staff and everything else.” These comments, however, would have carried more weight if all the bidders had been on an equal footing throughout the RFP process.

Although I recognize that PowerStream had certain inherent advantages, such as geographical proximity to Collingwood, the company also had access to the information its paid consultant Paul Bonwick provided about deliberations of the Strategic Partnership Task Team and the team’s assessment of two of the other bidders (see Part One, Chapter 5). These advantages enabled PowerStream to tailor its presentation to the task team’s subjective inclinations.

Before reviewing and scoring the non-financial submissions, Ms. Cooper and Mr. Lloyd did not disclose their respective conflicts of interest or recuse themselves. As I discuss below, the mayor was in a conflict as a result of her brother's work for PowerStream, and the deputy mayor had obtained a favour from PowerStream. Their participation undermined the fairness of the RFP process and created, at the very least, the perception of another unfair advantage to PowerStream.

The Financial Offers

Toward the conclusion of the November 23 meeting, the bidders' financial offers were opened and distributed to the Strategic Partnership Task Team. It quickly became apparent that the bidders had taken different approaches in structuring their bids, with the result that the Task Team could not perform a meaningful immediate comparison. Mr. Houghton testified that the Task Team asked KPMG to review the financial bids to enable it to make an "apples to apples" comparison of the cash payment each bidder had offered to the Town.* Mr. Herhalt testified that it was Mr. Houghton who made this request.

I accept Mr. Herhalt's evidence.

Two days later, on November 25, Mr. Rockx emailed Mr. Houghton a spreadsheet containing his preliminary comparison of the financial bids. The spreadsheet was not forwarded to the rest of the Strategic Partnership Task Team. The PowerStream and Hydro One bids are set out in Table 7.1.

To compare the bids on an "apples to apples" basis, Mr. Rockx made certain assumptions about the bids, and he adjusted the bids based on these assumptions. In particular, he reduced Hydro One's bid by \$4.112 million and PowerStream's bid by \$1.412 million on the assumption that certain debts and liabilities held by Collus Power had not been considered.

Mr. Rockx testified that after completing this preliminary analysis, he wanted to clarify aspects of both PowerStream's and Hydro One's bids so he

* The RFP asked for proposals to purchase up to 50 percent of the shares in Collus Power, which was wholly owned by Collus Utility Services Corporation. The Town in turn wholly owned Collus Utility Services Corporation.

Table 7.1: Excerpt from John Rockx’s “Comparison of Proposals – Financial Considerations,” November 25, 2011

Further clarification required	Key areas of difference / significance	
Business Issue	Hydro One	Powerstream
Binding / Non-binding	Non-binding	Non-binding
Exclusivity	Yes	
Shares	Up to 50% of the common shares of Collus Power; would consider lower share % with price adjustment	50% of shares of Collus Power
Share Purchase Price	\$13.6 million for a 50% share interest	\$7.3 million for a 50% share interest
Unassumed Liabilities	\$4.112 million of unassumed liabilities	\$1.412 million of unassumed liabilities
Net Share Purchase Price	\$9.488 million for shares	\$5.888 million for shares
Recapitalization	Recapitalization to 60% / 40% debt to equity Borrow \$8.1 million of new debt \$3.2 million dividend to Town \$3.2 million dividend to Hydro One \$1.71 million to repay shareholder loan	Recapitalization to 60% / 40% debt to equity Borrow \$7.2 million of new debt \$5.5 million pre-closing dividend to Town \$0 million dividend to Powerstream \$1.71 million to repay shareholder loan
Existing Shareholder Loan	\$1.71 million payout	\$1.71 million payout, option of the Town
Total cash consideration to the Town of Collingwood	\$14.398 million in cash (\$13.6 million + \$3.2 million + \$1.71 million less \$4.112 million of unassumed liabilities)	\$13.098 million in cash (\$7.3 million + \$5.5 million + \$1.71 million less \$1.412 million of unassumed liabilities)
NBV of 50% share interest (Higher is better, less debt)	\$4,457,500.00 Extra value of \$900K to \$1.35 million (1.5X) due to lower leverage)	\$3,557,500.00
Closing Date	Upon OEB approval	Upon OEB approval MADD application required
Future Dividend Policy	Pay dividends in profitable years Board of Directors to make decision based on cash needs etc.	Dividend policy to be determined based on policies of other LDCs Expect to pay dividends in 2013 forward Expect to pay out 50% of future net income, subject to sufficient net working capital, capex needs etc. Estimate of \$400K to \$500 (100% basis) of dividends paid in 2013

Note: Although Mr. Rockx made adjustments to the Horizon and Veridian offers, those utilities were not given further consideration. His treatment of their bids is therefore not addressed in this report.

could confirm his adjustments. Accordingly, on November 27, the day before the Strategic Partnership Task Team was scheduled to review the financial bids, Mr. Rockx sent separate emails to PowerStream and Hydro One requesting specific clarifications.

The Strategic Partnership Task Team met on November 28 to rate the financial bids.* The meeting took place before Hydro One responded to Mr. Rockx’s request for clarifications. Although PowerStream responded on November 28, Mr. Rockx did not incorporate that response into his analysis

* Mr. Herhalt, who was still travelling, attended by telephone.

before the meeting. He presented his preliminary analysis to the Task Team as planned and advised that further clarification was required, in particular concerning the amount of liabilities each bidder had assumed. The team evaluated the financial bids at the meeting. Several witnesses from the team stated they relied on KPMG's analysis in assessing the bids.

The bidders' financial proposals set out not just a monetary offer but also pre-closing conditions, representation on Collus Power's board of directors, dividend proposals, capital structure, and buy-sell arrangements, including rights of first refusal and "shotgun" provisions.* All these matters would have an impact on the Town's continued ownership of the utility, and, as I discuss below, some would have an impact on the total cash paid to the Town.

Mr. Houghton testified that although the other items were discussed, "the conversation didn't really take very long" because it was "pretty clear that PowerStream was ... the chosen proponent, or potentially the chosen one," and that the governance and shareholder issues could be negotiated. As I discuss below, Mr. Rockx testified that the Strategic Partnership Task Team was concerned that PowerStream had proposed a shotgun provision as part of its bid. That proposal should not have been surprising: the RFP expressly stated that the shareholders' agreement between Collus Power and the successful bidder would include a shotgun clause. Mr. Rockx testified that at the November 28 meeting, however, the Task Team decided it no longer wanted a shotgun clause and wished to negotiate this item with PowerStream.

The Inquiry heard different accounts of how the financial bids were scored. Mr. Houghton and Mr. Herhalt testified that the Task Team members and Mr. Herhalt scored the financial bids, Mr. Houghton said that Hydro One was given "full points" because its bid was the highest, and the team members assigned scores to the other bids. Mr. Rockx stated that either Mr. Houghton or Ms. Hogg collected the scores for the financial proposals, but he did not know how the total scores were tabulated. Mr. Lloyd testified that KPMG assigned the scores for the financial bids. Ms. Wingrove did not recall assigning scores for the financial bids. Ms. Hogg did not remember

* A shotgun clause is a mechanism whereby one partner can trigger the end of a partnership. Although the details can vary, a shotgun provision typically provides that, if partner A offers to buy partner B's share at a set price, partner B must either sell the shares or buy partner A's shares at the same price.

how the bids were scored. Mr. Fryer stated he recalled giving Hydro One the highest score, but he did not remember how he scored the other bidders.

It is not apparent how the financial bids were scored. Ms. Hogg did not take minutes of the November 28 meeting to preserve the confidentiality of the process. The spreadsheet Ms. Hogg provided to the Inquiry also included the total number of points the Strategic Partnership Task Team assigned to each financial bid, though it did not specify the individual scores each member assigned. Hydro One received a full score of 270, which suggests each individual team member gave it the full 30 points. In contrast, PowerStream received 243 points, Veridian 207 points, and Horizon 191 points. None of the witnesses from the review team recalled how these totals were arrived at other than Mr. Houghton, who testified that Hydro One received full points for submitting the highest bid.

As I set out below, Hydro One's bid was approximately \$3.85 million higher than PowerStream's bid. The Strategic Partnership Task Team did not have this information when it was scoring the financial bids. The effects of the team not receiving this information were minimal, as the RFP's emphasis on locating a strategic partner over reducing the Town's debt meant that PowerStream would have won the RFP on the strength of its non-financial score regardless of how high Hydro One's financial bid proved to be. The fact remains, however, that the team did not know how much money the Town of Collingwood was leaving on the table by choosing PowerStream as its strategic partner.

In any event, by the time the Strategic Partnership Task Team scored the financial bids, PowerStream was too far ahead to make the financial offers meaningful.

Dissolution of the Strategic Partnership Task Team

At the end of the November 28 Strategic Partnership Task Team meeting, PowerStream had the highest overall score. Mr. Muncaster then led a conversation about the need to "stand back and have a sober second thought" regarding the RFP result. They had ranked PowerStream the winning bidder, he cautioned, but Hydro One had submitted a higher financial bid. The

Task Team thereupon decided there should be a meeting with PowerStream “to see if there was anything else that they might be able to offer.” Because Mr. Rockx had indicated clarification was necessary, the team also wanted to look further into Hydro One’s financial offer.

As I discuss below, PowerStream increased its offer at a meeting with Mr. Houghton and Mr. Muncaster, and Hydro One spoke with Mr. Rockx about the clarifications he sought. However, the team did not meet to discuss PowerStream’s increase to its bid, the Hydro One offer or the impact, if any, that Mr. Rockx’s clarifications might have on the results of the RFP.

Meeting with PowerStream

On November 29, 2011, the day after the Strategic Partnership Task Team meeting, Ed Houghton advised Dean Muncaster, John Herhalt, John Rockx, and Pam Hogg that he had arranged a meeting with PowerStream scheduled for two days hence, December 1.

Later that same day, Mr. Herhalt asked Mr. Rockx to report back to him on the meeting. Mr. Rockx responded that he was interested in ascertaining how PowerStream would respond to the “proposed elimination of the shotgun clause and the possible entry into a long-term 50/50 relationship with the Town.” He concluded his email with the comment, “Ideally, all the proponents really want to own 100% of Collus.”

On November 30, Mr. Rockx presented an agenda for the meeting to Mr. Houghton and Mr. Muncaster. The proposed items included “no shotgun clause” as well as service agreements, purchase price, avoiding tax, corporate structure, future acquisitions, and assistance in seeking Ontario Energy Board approval of the transaction.[†] Mr. Rockx also attached the second version of his spreadsheet detailing the financial elements of the RFP bids.

* As I noted earlier, a shotgun clause is a mechanism whereby one partner can trigger the end of a partnership. Although the details can vary, a shotgun provision typically provides that if partner A offers to buy partner B’s share at a set price, partner B must either sell the shares or buy partner A’s shares at the same price.

† A Mergers, Acquisitions, and Divestiture application, colloquially referred to as a MAADs application.

In his testimony, Mr. Rockx said he included the shotgun clause on the agenda because the Strategic Partnership Task Team had raised concerns about the clause at the November 28 meeting. Given that the RFP had advised bidders that a shotgun clause would be part of the arrangement, he believed that the team wanted to ascertain whether PowerStream would agree to a different exit strategy if the partnership broke down.

Mr. Houghton explained the inclusion of the shotgun clause differently. He testified that he wanted to raise the shotgun clause at the meeting because he did not know what the term meant. He testified that Mr. McFadden explained that it had to do with liquidity. Mr. Houghton told the Inquiry that he did not know what that term meant either, saying it was “something still completely foreign to me.” He therefore wanted to raise the matter with PowerStream to determine the meaning it ascribed to “shotgun clause.”

The December 1 meeting took place at PowerStream’s offices and was attended by Collus Power representatives Mr. Houghton and Mr. Muncaster, KPMG’s Mr. Rockx, and three PowerStream executives, John Glicksman, CFO; Brian Bentz, president and CEO; and Dennis Nolan, general counsel and corporate secretary. The discussion focused on both financial and non-financial considerations.

Financial Considerations

The primary financial issue related to the amount PowerStream was willing to pay for 50 percent of the Collus Power shares. In its original response to the RFP, PowerStream had offered \$7.3 million for the shares.

At the meeting, Mr. Muncaster and Mr. Houghton informed the PowerStream executives that their company had scored the highest overall points in the RFP, but its financial bid was the second highest. They asked whether PowerStream would increase the amount of its bid. Before the meeting, the PowerStream board of directors had authorized Mr. Bentz to offer up to \$8 million for the Collus shares. Accordingly, Mr. Bentz increased the PowerStream offer to \$8 million.

Non-financial Considerations

Mr. Houghton testified that several non-financial considerations were also discussed at the meeting. Given his own limited understanding of shotgun clauses, he sought information on the nature of a potential shotgun clause between the two parties. They also discussed shared services that PowerStream might provide to Collus Power, whether the transaction would involve the sale of shares in Collus Power or Collingwood Utility Services, and the eventual filing of a MAADs application with the Ontario Energy Board.

The Inquiry heard contradictory evidence about the status of a potential shotgun clause. Collus Power seemingly came into the meeting with a desire to do away with the clause. Mr. Houghton testified that both Collus Power and PowerStream agreed that, while they did not like the term “shotgun,” they should allow for a similar mechanism, though under a different, less “heavy handed” name.

However, Mr. Rockx wrote in an email to Mr. Herhalt immediately after the meeting that the shotgun clause would be removed. He also testified he left the meeting with a sense that the shotgun clause would be replaced with other resolution mechanisms, such as a right of first refusal. Mr. Nolan and Mr. Bentz testified they did not recall discussing a shotgun clause.

No Legal Advice

Mr. Houghton testified he did not believe it was necessary to have anybody from Aird & Berlis – the law firm he had retained to prepare the transaction documents – attend the meeting.* Ron Clark, the lead Aird & Berlis lawyer on the share sale transaction, confirmed that he was not involved in any discussions concerning the December 1 meeting. When asked why Aird & Berlis was not asked to attend, Mr. Houghton responded that he and Mr. Muncaster were comfortable relying on Mr. Rockx’s expertise. He added he did not ask Aird & Berlis to attend because no one on the Strategic Partnership Task Team told him that Collus Power ought to have legal representation at the meeting.

As an experienced executive and, moreover, the individual overseeing the process, Mr. Houghton should have recognized that, before entering into

* The Aird & Berlis retainer is discussed in Part One, Chapter 8.

negotiations in a transaction as significant as this one, it would be prudent to obtain legal advice. He did not need the Task Team to give him explicit directions on this matter. Members of the team testified that they relied on Mr. Houghton during this process.

KPMG Analysis of Hydro One's Bid

After the Strategic Partnership Task Team met to review the financial bids, KPMG completed two further comparative analyses of PowerStream's and Hydro One's bids. The final analysis was ultimately presented to the Collus Power board and to Town Council. These analyses were based on unconfirmed assumptions about Hydro One's bid. As a result, the version of Hydro One's bid presented to both Collus and the Town was undervalued.

No Confirmation with Hydro One

As I discuss above, on November 27, Mr. Rockx emailed Hydro One and PowerStream with questions about their bids. He wanted answers to two questions: whether the bidders would assume all Collus Power's long-term liabilities; and how Collus Power's net working capital would affect PowerStream's proposed recapitalization dividend. PowerStream had made the amount of the dividend conditional on Collus Power's actual working capital matching the Ontario Energy Board's deemed net working capital.

PowerStream advised Mr. Rockx it would assume all Collus Power's liabilities and that "the net working capital calculation at December 31, 2010 resulted in an approximate \$1.1 million shortfall (i.e. price reduction to PowerStream's benefit)." Mr. Rockx testified that the shortfall effectively decreased the dividend component of PowerStream's bid by \$1.1 million.

On November 29, 2011, Rick Stevens of Hydro One responded to Mr. Rockx's inquiries, reiterating that "the Town would receive total cash proceeds of approximately \$18.5 million" and confirming that Hydro One would assume "the estimated pro rata share of assets and liabilities, based in part on the detail provided in the 2010 audited financial statements." He went on to specify liabilities that Hydro One would assume, including

net regulatory liabilities and “Ontario infrastructure debt of \$2.7 million.” Despite this information, Mr. Rockx remained unconvinced that Hydro One would assume all Collus Power’s long-term liabilities. In his next analysis, discussed below, Mr. Rockx accepted that Hydro One would assume \$2.7 million in infrastructure debt, but he still made a \$1.412 million deduction for Collus Power’s other long-term liabilities.

Mr. Rockx spoke to Mr. Stevens after receiving his email to seek further clarity. Following the conversation, Mr. Rockx reported to Mr. Houghton that Mr. Stevens was not prepared to discuss Hydro One’s bid further unless Collus Power agreed to negotiate exclusively with Hydro One. That stipulation meant that Collus Power would not be able to continue its discussions with PowerStream or other bidders. Although Hydro One requested exclusivity for further discussions, Mr. Stevens did say the company was willing to look over KPMG’s calculations and the assumed adjustments.

Mr. Rockx then asked Mr. Houghton: “*Can I provide Hydro One with the one-page summary of their offer to see if they agree with the assumed purchase price adjustments?*” [emphasis in original]. Mr. Houghton responded he would speak with Mr. Muncaster, but his first reaction was to “leave as is for now.” Mr. Rockx did not receive any instructions to confirm his calculations with Hydro One.

Mr. Houghton testified that he and Mr. Muncaster were uncertain whether Hydro One would provide further information to KPMG, and that Mr. Muncaster decided that KPMG’s one-page summary should not be sent to Hydro One for clarification. Mr. Houghton also said there was an aversion to Hydro One.

KPMG conducted its second analysis after obtaining the information discussed in this section and before the December 1 meeting between Collus and PowerStream representatives. This analysis was shared with Mr. Houghton and Mr. Muncaster. There is no evidence it was shared with anyone else.

Hydro One’s Bid Undervalued

After obtaining the additional information and the meeting with PowerStream, Mr. Rockx conducted another analysis of the bids. KPMG’s third analysis, which Mr. Rockx acknowledged included errors that undervalued

Hydro One's bid and overvalued PowerStream's bid, was presented to the Collus Power board and to Collingwood Town Council. As a result, Council was told that Hydro One's bid was only \$988,000 higher than PowerStream's bid. In fact, Hydro One's bid was \$3.85 million higher than PowerStream's.

Mr. Rockx testified he made two adjustments to Hydro One's bid in his third analysis. First, owing to KPMG's concern that Hydro One would not assume all the Collus liabilities, he deducted \$1.412 million in estimated net long-term liabilities. Second, he deducted \$1.1 million from Hydro One's bid: his spreadsheet indicates that the deduction was for "estimated [net working capital] shortfall from deemed [net working capital]." Mr. Rockx said that this deduction should not have been made; it reflected a condition that PowerStream had placed on its recapitalization dividend. Hydro One's bid contained no such condition. Mr. Rockx did not make this deduction to PowerStream's bid. In cross-examination, he offered an alternative deduction that could have been made to Hydro One's bid to account for the different amounts of debt Hydro One and PowerStream proposed to inject into Collus Power, but he stated that this alternative deduction should have been only \$550,000.

In this third analysis, Mr. Rockx testified that he also made two adjustments to PowerStream's bid: he added the \$700,000 increase in the bid; and he applied a \$200,000 deduction "for estimated additional net working capital adjustment." He agreed that this deduction should have totalled \$1.1 million. Mr. Rockx also commented on the lack of Town involvement in this review and in the analysis of the financial bids:

Typically, if you're in a situation like this ... you would expect maybe somebody ... [with] financial capacity with either the Town or the Collus Power would be involved in those reviews ... I would have expected ... other people would be looking at this as well. It's not just usually in isolation.

The product of Mr. Rockx's third analysis was presented to Council on December 5, 2011.

Although an additional 3.85 million may have better served the goal of reducing the Town's debt, the RFP, as a result of the recommendation to find a

strategic partnership, was created to favour the non-financial criteria, not the highest bidder. In addition, Hydro One had already earned full marks when its bid was presented as \$988,000 more than PowerStream's bid. Presenting the difference as \$3.85 million would not have affected the RFP scoring.

Collus Board Meeting, December 2, 2011

On December 2, 2011, there was a joint meeting of the boards of directors of Collus Power and Collus Solutions. The attendees included directors Dean Muncaster, Mayor Sandra Cooper, David McFadden, Joan Pajunen, Doug Garbutt, and Mike Edwards; executives Ed Houghton and Tim Fryer; board secretary Pamela Hogg; and four guests: Deputy Mayor Rick Lloyd, John Herhalt and John Rockx of KPMG, and Ralph Neate of Gaviller & Company LLP. Mr. Neate, the auditor responsible for auditing Collingwood Utility Services, Collus Power, Collus Solutions, and Collus Energy, attended at the request of Town treasurer Marjory Leonard. Ms. Leonard had asked Mr. Fryer to invite the auditor to the meeting. As with the PowerStream negotiation meeting the day before, Kim Wingrove, the Town's chief administrative officer, was not present.

Mr. Houghton testified that at the meeting, the Collus entities' boards heard there was about \$1 million difference between PowerStream's and Hydro One's bids. He did not state who led these discussions. Mr. Rockx testified that he provided a "brief" presentation of his financial analysis at the meeting. He informed the boards that Hydro One had the best financial offer, but that certain assumptions still needed to be clarified.

Mr. Herhalt did not recall attending the meeting.

The Collus Board Resolution

The minutes of the December 2 meeting state that no conflicts were declared and the board passed the following resolution:

Upon motion duly made, seconded and unanimously carried[,] the Board approved that COLLUS Power Corp Board hereby accepts the findings of

the Strategic Partnership Task Force Team and recommends to Collingwood Council that Collus Power Board be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement;

And further that the results of these negotiations be brought back to Collingwood Council in a timely fashion for further review and consideration.

A presentation to Collingwood Council will be made in-camera on Monday, December 5th, 2011.

The Council Meeting, December 5, 2011

Mr. Houghton presented the results of the RFP to Council three days later during an *in camera* session on December 5. Before speaking, he exchanged emails with Mr. Bonwick, who wrote that Mr. Houghton “might want to start with a bit of humour considering what they just with [*sic*] through with that public meeting ... good luck.” Mr. Houghton responded, “I will try ...” Mr. Bonwick replied, “Chin up ... when the going gets tough the tough get going!”

After an introduction by Mayor Cooper, Mr. Houghton presented a slide deck that explained the RFP process and reported the Strategic Partnership Task Team’s scoring for both the non-financial and the financial criteria. As Table 7.2 shows, he used two slides for the financial results.

Table 7.2: Excerpts from Ed Houghton’s December 5, 2011, Presentation to Council

Proposal Evaluation Summaries				
	Horizon	Hydro One	PowerStream	Veridian
Total cash consideration to Town of Collingwood	3rd	1st	2nd	4th
Provision of strategic and specialized resources, support in growing COLLUS			1st 9 out of 9	
Support for employees and their careers	1st 2 out of 9		1st 6 out of 9	1st 1 out of 9
Customer experience and satisfaction, supporting the interests of the communities			1st 9 out of 9	
Competitive distribution rate and cost structure of COLLUS	1st 8 out of 9			1st 1 out of 9
Cultural and synergistic fit			1st 9 out of 9	
	1st	1st	1st	1st
	Totals 10 out of 45	0 out of 45	33 out of 45	2 out of 45

Proposal Evaluation Summaries				
Business Issue	Horizon	Hydro One	PowerStream	Veridian
Binding/Non-Binding	Non-Binding	Non-Binding	Non-Binding	Non-Binding
Shares	50%	50% or less	50%	50%
Unassumed Liabilities	unconfirmed	unconfirmed	confirmed	unconfirmed
Recapitalization	60%/40% Debt to Equity \$2.65 M to Town \$2.65 M to Horizon	60%/40% Debt to Equity \$3.2 M to Town \$3.2 M to Hydro One	60%/40% Debt to Equity \$5.3 M to Town \$0.0 to PowerStream \$1.71 M payout Town's option	60%/40% Debt to Equity \$2.65 M to Town \$2.65 M to Veridian
Promissory Note	\$1.71 M payout	\$1.71 M payout	50% Town	\$1.71 M payout
Governance	50% Town 50% Horizon Majority Independent	20% Town 20% Hydro One 60% Independent	50% PowerStream Majority Independent 2 Co-Chairs	50% Town 50% Veridian 100% Independent
Total cash consideration to Town	\$11.86 million in cash	\$15.998 million in cash	\$15.010 million in cash	\$10.86 million in cash

Town councillor Kevin Lloyd testified that the slide deck was the only information he received on the financial offers and that Council did not receive the original proposals, so members saw only KPMG's version of Hydro One's offer.

Mr. Houghton testified that Mr. Rockx did discuss the financial bids during the presentation to Council. Mr. Rockx stated, however, that Mr. Houghton was the primary speaker and that his role was limited to answering questions. He could not recall if he spoke at all. Mr. Rockx also testified that he was not provided with a copy of the presentation before the meeting. He had no recollection whether he explained to Council that Hydro One's offer was \$18.5 million on its face, as compared to the \$15.998 million set out in the presentation. He also did not recall explaining his adjustments or that he had not been able to confirm his assumptions with Hydro One.

I am satisfied that Council was not provided with any additional meaningful information regarding the financial bids beyond what was presented on the slides. As a result, Council presumably believed that Hydro One was offering only \$988,000 more than PowerStream. In fact, though, as I explained above, Hydro One was offering \$3.85 million more.

Further, although the recapitalization dividend was subject to change based on Collus's financial position, Mr. Rockx could not recall whether this fact had been shared with Council. This item was particularly relevant in a comparison of the two highest financial bids, from Hydro One and

PowerStream. PowerStream offered more cash from the dividend than it did for the shares. Although the dividend payment for any bidder was subject to change, the amount offered for the Collus shares was not. As a result, while Hydro One was committing to pay \$13.6 million in any event, PowerStream was committing to pay only \$8 million. During the hearings, an issue arose about whether Council was confused about what exactly it would receive in exchange for 50 percent of Collus Power. Any confusion at this juncture was particularly problematic because this meeting was the only opportunity Council had to consider all four bids.

The presentation included a misleading list of “Key Events” that ran over two slides. As Table 7.3 shows, the first slide listed 12 events with dates.

Table 7.3: Excerpt from Mr. Houghton’s December 5 Council Presentation



Key Events:

- June 27, 2011 - Met with Council & received approval to investigate Strategic Partnership
- July 7, 2011 - Meeting with Strategic Partner 1
- July 20, 2011 - Meeting with Strategic Partner 2
- July 20, 2011 - Meeting with Strategic Partner 3
- July 26, 2011 - Meeting with Strategic Partner 4
- July 26, 2011 - Meeting with Strategic Partner 5
- August 3, 2011 - First Meeting with Strategic Partnership Task Team
- August 29, 2011 - Second Meeting of Strategic Partnership Task Team
- Sept. 12, 2011 - Interview with Strategic Partner 4 and Strategic Partner 2
- Sept. 19, 2011 - Interview with Strategic Partner 1 and Strategic Partner 5
- Sept. 28, 2011 - Third Meeting of Strategic Partnership Task Team
- Sept. 29, 2011 - Met with Collus Staff and provided confidential update

This slide included the dates on which Mr. Houghton and Mr. Muncaster had introductory meetings with potential bidders in July 2011 and, in September 2011, when the entire Strategic Partnership Task Team met with bidders. The list of events did not include, however:

- the early meeting on December 3, 2010, that Mr. Houghton had with Brian Bentz, the president and CEO of PowerStream, the company that won the RFP; and
- any dates relating to the solar attic vent initiative from the summer of 2011 – an event that purportedly constituted a “litmus test” for the bidders (see Part One, Chapter 5).

Given this missing information, no councillor could appreciate the advantages from which PowerStream benefited over the course of the RFP process.

The Vote and Conflict of Interest

Town councillor Ian Chadwick recused himself from the December 5 *in camera* discussion on the RFP. He advised Council he had a pecuniary interest in the matter because he had provided consulting services for electricity sector clients and did not know whether his client had bid on the RFP (see Part One, Chapter 5). He thought that PowerStream, as Mr. Bonwick’s client, received the weekly news summaries he prepared, and he considered, on this occasion, that he might be in a conflict of interest.

Mayor Sandra Cooper and Deputy Mayor Rick Lloyd also had potential conflicts when they participated in Council discussions about the RFP results. However, they did not follow Mr. Chadwick’s lead and recuse themselves at the December 5 meeting. Ms. Cooper’s potential conflict arose from her relationship with her brother Mr. Bonwick, who acted as her advisor while assisting PowerStream with its RFP bid. Mr. Lloyd’s conflict arose from the favour PowerStream had provided to a friend at his request (see Part One, Chapter 6). The fact that both these Town leaders did not recuse themselves is not surprising; as members of the Strategic Partnership Task Team they had not recused themselves when confronted with the same conflicts. Their continued participation in key decisions heightened the risk that the process for selecting PowerStream as the strategic partner would be seen as being less than objective.

Contemporaneous emails illustrate how a reasonably informed person would conclude that the favour PowerStream did for Deputy Mayor Lloyd’s friend may have influenced his vote. During the December 5 meeting,

Mr. Bonwick and Mr. Lloyd exchanged emails. As Council moved into the *in camera* session to discuss the RFP, Mr. Bonwick wrote to Mr. Lloyd: “Try to lighten things up a bit when you go in-camera ... we need them in a good mood for other things.” Mr. Lloyd testified that he could not recall the email exchange or why Mr. Bonwick asked him to lighten things up.

With respect to Ms. Cooper, before the Council meeting, Mr. Bonwick emailed his sister speaking notes about the Collus Power RFP. Among other things, he wrote that Council had “the opportunity to correct the terrible economic situation we inherited and once again put Collingwood in strong financial shape for future generations.” Ms. Cooper testified that the notes were unsolicited. She said she may have used a portion when speaking, but not in their entirety. Ms. Cooper stated she did not turn her mind to Mr. Bonwick’s relationship with PowerStream when he sent her the speaking notes. She said she was under the impression that Mr. Bonwick continued to do public relations work, but she did not think to ask him whether he had assisted with the RFP. When questioned about the speaking notes, Ms. Cooper testified that, as of that point, she had not asked Mr. Bonwick a single question about his work for PowerStream.

Conclusion

Regardless of whether the mayor and deputy mayor voted impartially, these communications, coupled with their relationship to Mr. Bonwick and PowerStream, would leave a reasonably informed person with the impression they might have been open to influence.

The risk of a public perception of partiality did not end with the December 5, 2011, meeting. After Council directed Collus Power to continue negotiations with PowerStream, Mr. Bonwick began dealing directly and more openly with his sister, Mayor Cooper, and his friends, Mr. Houghton and Deputy Mayor Lloyd. Mr. Bonwick pushed to have the sale finalized in the first half of 2012 – before the deadline of his extended retainer with PowerStream. I discuss these developments in more detail in the following chapter.

Finalization of the Share Sale

From January to March 2012, Collus Power Corporation and PowerStream Incorporated negotiated and finalized the agreements for the 50 percent share sale. Collus Power's chief executive officer (CEO), Ed Houghton, retained Ron Clark from Aird & Berlis to prepare the transaction documents. Mr. Clark was a corporate lawyer who specialized in the electricity industry. Mr. Houghton instructed Mr. Clark, and Mr. Clark believed the Town had authorized Mr. Houghton to provide instructions on its behalf, in addition to providing instructions on behalf of Collus Power.

Leo Longo, another lawyer at Aird & Berlis and one of the Town's municipal solicitors, reviewed the transaction documents directly for the Town. However, Mr. Longo testified that his work was limited to reviewing a draft bylaw and transaction documents from a municipal perspective. Mr. Longo told the Town that he lacked the corporate law experience to review the financial elements of the transaction. No other lawyers provided advice directly to the Town about the financial elements of the transaction, despite Mr. Longo having advised Mayor Sandra Cooper and Deputy Mayor Rick Lloyd that Mr. Clark was representing Collus Power's interests and that those interests may not be identical to the Town's interests. Although it may have appeared that lawyers from Aird & Berlis were advising the Town on the transaction, Mr. Houghton withheld and filtered the information the Town received.

Council received an *in camera* update on negotiations between Collus and PowerStream at a meeting on January 16 and then publicly voted to authorize the mayor and the Town clerk to execute transaction documents at the January 23 meeting. Council's vote was undermined by the fact that three of the eight councillors who voted had, at the very least, apparent conflicts of interest that had not been disclosed.

Paul Bonwick helped Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton to arrange meetings with Mr. Longo so that the Town could sign the first transaction documents on March 6, 2012. In the process, Mr. Bonwick obtained privileged information that should never have been disclosed to an agent of PowerStream, the Town's counterparty to the transaction. Mr. Houghton testified that Mr. Bonwick's involvement was okay because PowerStream was "part of the family." PowerStream was not. The Town signed the final transaction documents on July 31, 2012, after the transaction received approval from the Ontario Energy Board.

Professional Advisors on the Transaction

Aird & Berlis's Involvement Late in the Transaction

Three lawyers from Aird & Berlis were involved in finalizing the share sale, albeit to varying degrees.

The first lawyer was Mr. Clark. Near the end of October 2011, Mr. Houghton called Mr. Clark and asked him to assist with the planned sale of 50 percent of Collus Power to the successful bidder in the request for proposal (RFP). Mr. Clark was a corporate commercial lawyer and specialized in Ontario's electricity sector.*

Although Mr. Houghton contacted Mr. Clark before the bidders submitted responses to the RFP, Mr. Houghton did not ask Mr. Clark for advice until mid-December 2011, after the Town had selected PowerStream as the successful bidder. Mr. Clark provided no legal advice before or during the RFP process. He testified that, by the time he began assisting in the share sale, a number of key decisions had already been made, including:

- that PowerStream would be the strategic partner;
- that 50 percent of the company's shares would be sold;
- the specific amount of money that would be paid to the Town as a result of the transaction; and

* In 2000, Mr. Clark helped Collus incorporate under the *Ontario Business Corporations Act*. He did not provide any other assistance to the utility between that point and the time of the events examined by this Inquiry.

- that a portion of this money would be the result of a recapitalization dividend.

Mr. Clark testified that he was disappointed he was involved in the transaction at such a late stage.

When asked to describe his overall role in the share transaction, he stated that he had been retained to draft transaction documents which reflected decisions that had already been made. He also testified that he was not retained to give any other advice regarding the sale.

The second lawyer was Corrine Kennedy, an associate with Aird & Berlis, who assisted Mr. Clark. She helped draft transaction documents and served as a liaison between Mr. Clark and Collus Power.

The third lawyer was Leo Longo, one of two municipal lawyers at Aird & Berlis who provided legal services to the Town on an as-needed basis.

Mr. Longo first became aware of the Collus Power share sale in early January 2012. Like Mr. Clark, he did not advise the Town about the RFP process or the implications of selling 50 percent of Collus's shares. As the share sale progressed in January 2012, Mr. Longo provided advice on a handful of discrete issues that I discuss later in this chapter. Because Mr. Longo's expertise was municipal and not corporate law, he did not provide any advice on the transaction's financial elements.

The Town received no legal advice regarding the sale until after an RFP bidder had been selected and critical terms of the sale had been negotiated. This situation is obviously unsatisfactory. It is difficult to believe the RFP process would have been beset by as many problems had legal counsel been engaged from the outset.

Individuals Instructing Legal Counsel

Mr. Clark testified that he represented both the Collus corporations and the Town of Collingwood. He thought he did because he received instructions from Mr. Houghton who, he believed, had been authorized by the Town to provide instructions on its behalf, in addition to providing instructions on behalf of the Collus corporations. Mr. Clark described Mr. Houghton as the "point person" on the transaction who, he explained, was "the person who is

instructing [counsel]; who is reviewing documentation; who is informing other stakeholders of the progress of the transaction; who is, you know, in my world, the immediate contact person.”

In his testimony, Mr. Houghton confirmed he was the primary point of contact for Mr. Clark and that he did provide instructions on behalf of both Collus Power and the Town to the extent he was able to understand the financial intricacies of the transaction. In his closing submissions, Mr. Houghton argued that David McFadden, a director of Collus Power, had played a large role in instructing Aird & Berlis, particularly when it came to matters beyond Mr. Houghton’s knowledge. I address this argument later in the chapter. I am satisfied Mr. Houghton was the primary person instructing Mr. Clark.

I do not accept, however, that Mr. Houghton was authorized to provide instructions to Mr. Clark on behalf of the Town. Instead, Mr. Houghton proceeded to run the transaction, and the mayor and deputy mayor acquiesced.

Mr. Houghton testified that his authority emanated from two sources. First, he took the position that his authorization stemmed from the August 29, 2011, Strategic Partnership Task Team meeting at which the team requested he retain a lawyer.* I do not accept that this request was a grant of authority to instruct the Town’s lawyers in respect of the share sale transaction. The minutes of that meeting state that Mr. Houghton was asked to contact Aird & Berlis lawyer John Mascarin for the specific purpose of discussing bidder non-disclosure agreements. There is no evidence that the team either asked Mr. Houghton to instruct Mr. Mascarin to undertake any other work or asked Mr. Houghton to hire corporate counsel to assist with the transaction. In any event, the Strategic Partnership Task Team did not have the authority to decide who would instruct outside counsel on behalf of the Town regarding the sale transaction. That was Council’s decision to make.

Second, although Mr. Houghton acknowledged there was no official documentation authorizing him to instruct Aird & Berlis on behalf of the Town, he asserted that Council was comfortable with him instructing the

* See Part One, Chapter 5. The Task Team was responsible, among other things, for meeting with potential buyers, developing the RFP criteria, and, based on those criteria, selecting a winner to recommend to Collingwood Town Council.

legal firm because, when Council was presented with the transaction documents later in the sale process, it approved them.

I also reject this argument.

As I state in Part One, Chapter 3, waiting for an objection is not an appropriate approach. Authorizing anyone to instruct lawyers to protect the Town's interests in a complex transaction is an important decision. This approval must be issued in a clear, recorded manner. It should not be assumed through silence.

In his testimony, Mr. Clark also stated that he presumed Mr. Houghton reported back on his discussions to the mayor, the CAO, and Council. Any reports, however, did not take place in the manner Mr. Clark expected. Ms. Wingrove testified that while she assumed it was Mr. Houghton who was instructing Aird & Berlis, she played no role because she had been told many times that she should not concern herself with Collus matters. Rick Lloyd testified that, as deputy mayor, he did not know who provided instructions to Aird & Berlis, and that Council's role was "limited" during negotiations of the transaction documents. Sandra Cooper stated that Mr. Houghton kept her informed of the progress of the transaction but that the information she received was "in general terms" and "not detailed."

I am satisfied that Mr. Clark believed that Mr. Houghton had the authority to instruct him on behalf of the Town and, in doing so, Mr. Houghton was consulting with Council. This was not the case. As I discuss in this chapter, Mr. Houghton did not update or obtain directions from Council during the negotiations and finalizing of the share sale to PowerStream.

Dismissal of Solicitor's Caution

On January 11, 2012, Mayor Cooper emailed Mr. Longo to request a meeting to discuss the Collus share sale. Mr. Longo forwarded the email to Mr. Clark and Ms. Kennedy. Ms. Kennedy responded: "I spoke with Ed this morning and he made it clear that the Mayor had expectations that there be no red flags that come up Monday night – this may be what she is calling about but we can discuss further later."

Mr. Longo spoke with the mayor that day, along with Deputy Mayor Lloyd and Mr. Houghton.

Mr. Longo testified that, during the call, the mayor, deputy mayor, and Mr. Houghton advised that they wanted him to review the agreements and “perhaps say that from the Town solicitor’s perspective, the agreements were fine.”

At the hearings, Mr. Longo testified that he was not a corporate lawyer and did not have the ability to comment on the transaction’s financial or corporate elements. He stated that he did not raise this point on the January 11 call because he had never given the Town corporate law advice and he believed the Town knew it was not within his area of expertise. In any event, Mr. Longo did raise it in an email five days later.

On January 16, Mr. Longo emailed Mayor Cooper and Deputy Mayor Lloyd to advise that he was reviewing the representations and warranties in the agreements “to ensure the Town can make these statements,”* adding: “What I cannot comment on are the financial aspects of the deal. Has the Town received advice that it is receiving fair value?”

Mr. Longo testified that the financial elements of the transaction were beyond his knowledge and he had “no idea” if the Town was receiving fair market value. He added that he also could not provide advice on other corporate matters, such as the unanimous shareholders agreements’ buy-sell provisions (also called the shotgun clause), the composition of the board of directors, or the list of decisions that would require unanimous agreement of the Town and PowerStream. Mr. Longo testified that his email was to advise the mayor and the deputy mayor that he could not assist with these matters. He emailed them because they were the people with whom he had spoken on January 11.

Mayor Cooper responded that Collus had Mr. Clark and Ms. Kennedy review the documents, while Mr. McFadden reviewed “other electricity agreements.” She noted that KPMG had been an “observer in all aspects including the financial part. They feel the agreement is very fair.”

Mr. Longo replied that Mayor Cooper’s response “partially” addressed his comments. He then noted that “Ron and Corrine are advising Collus, not the Town. I just want to note that the Town’s interests may not be identical

* As an example, Mr. Longo explained this included confirming that certain Town or Collus properties were free of environmental contamination.

to Collus.” At the Inquiry, Mr. Longo testified that he was not aware of any specific issue where the interests might diverge, but he did not have enough “independent knowledge” of the financial and corporate elements to “form an opinion one way or another.”

Deputy Mayor Lloyd replied:

The fact is that the best interest of the Town has been the driving force and objective for this entire initiative ... on a consistent basis Council has been fully briefed and provided unanimous support to continue with this direction.

At this point, Mr. Longo added Mr. Houghton to the email conversation, writing:

My earlier email addressed something different; i.e. that the lawyers preparing the agreements are representing entities other than the Town.

I simply wished to bring that to your attention as you move forward on this.

It is clear that those drafting the agreements wanted Town input (and Town eyes) on the proposed reps and warranties. John Mascarin and I will be doing so.

Ed is “in the loop” on this.

Deputy Mayor Lloyd responded that he was:

pleased that the firm of Aird and Berlis will be in general looking after the interests of the Town of Collingwood and its ownership of Collus. I only expect that you and your colleagues provide the best guidance possible to us and our company of Collus. I totally understand your responsibility and that of Aird and Berlis in general ... and look forward to a very positive outcome of this transaction.

Mr. Longo testified that, at this point, he had raised his concerns and the message back was: “Thanks for raising it, but we think there’s no issue there. Let’s move on.” He did not push the matter further because “there didn’t

seem to be a door open to even have that conversation with them. They were saying that they were satisfied that the interests were being protected.”

Ms. Cooper testified that, despite Mr. Longo’s caution, she felt comfortable because Mr. Longo’s email indicated that four lawyers from Aird & Berlis were involved in the transaction.

Rick Lloyd testified that his reaction to Mr. Longo’s caution that Collus interests may not be identical to the Town’s interest was “we were all one.” He also said he would have expected Mr. Longo or Aird & Berlis to advise the Town to seek independent legal advice if he or Aird & Berlis had “an absolute concern on this thing.” Later, Mr. Lloyd testified that, while he understood the interests may not be identical, “we’ve been briefed ... we are steering the ship, the Town of Collingwood, and we ... felt very comfortable ... that the end result was going to be positive.”

Mr. Houghton testified that he spoke to the mayor and the deputy mayor about Mr. Longo’s emails and they

were taken aback by the fact that they felt that Aird & Berlis, being Ron Clark and Corrine Kennedy and others, were actually looking after the interests of...the Town of Collingwood and Collus.

And they ... didn’t understand why Leo was injecting himself into this. And they ... instructed me to ensure that we ... need to keep the ... the fees and things like that to at least a bit of a dull roar, which is a common terminology.

I am satisfied that Mayor Cooper and Deputy Mayor Lloyd should have acted on Mr. Longo’s caution and raised the matter with Ms. Wingrove or Council, such that the Town could retain counsel who could assist with the financial and corporate elements of the transaction. I accept Mr. Houghton’s evidence that, one of the reasons they did not, was out of concern about the cost of retaining additional counsel.

In his submissions to the Inquiry, Rick Lloyd reiterated his belief that the Town and Collus Power’s interests were aligned, and he asserted that “it was up to the CAO and town’s legal firm to ensure that the town’s interests were represented in any negotiations, not the responsibility of elected representatives.” This submission overlooks the circumstances of this transaction. First,

Mr. Houghton, not the CAO, was overseeing the process and had assumed the role of instructing legal counsel. Second, it was Mayor Cooper and Deputy Mayor Lloyd who had initially involved Mr. Longo in the matter. When Mr. Longo raised the issue with them, the deputy mayor dismissed the caution and the matter went no further.

Both Rick Lloyd and Sandra Cooper argued in their submissions that, at this point in the process, Council had determined that the Town's and Collus's interests were aligned as a result of the Town being the sole shareholder of the Collus holding company. There was no evidence, however, that the issue of whether the Town needed separate legal representation was ever put before Council. To the extent Council made the determination that their interests were sufficiently aligned (which I am satisfied it did not), it did not know that the Town's solicitor disagreed, as the mayor and deputy mayor did not pursue Mr. Longo's concern.

Witnesses provided different evidence about who Mr. Clark and Mr. Longo represented and the roles the two men played. For example, Clerk Sara Almas believed Mr. Clark had been retained by Collus and that Mr. Houghton instructed him on behalf of only Collus. She believed Mr. Longo was assisting the Town. Rick Lloyd testified that Mr. Clark and Ms. Kennedy represented the Town and Collus, and that Mr. Longo had no role in the transaction. Kevin Lloyd testified that Mr. Clark was the Town's lawyer.

This confusion could have been avoided had the people instructing the lawyers required a retainer agreement. Retainer agreements should identify the outside counsel's client or clients, identify the individual or individuals authorized to provide instructions, and specify the scope of the engagement.

Mr. McFadden's Role in the Transaction

One other matter arose concerning who was instructing Aird & Berlis on behalf of the Town. In his closing submissions, Mr. Houghton argued that it was, in fact, Collus Power director David McFadden who had instructed Aird & Berlis on behalf of both Collus Power and the Town during the negotiations. In support of this argument, Mr. Houghton pointed to a number of email exchanges among Mr. McFadden, Mr. Clark, and PowerStream about

the transaction documents. During the hearings, Mr. Houghton's counsel questioned Mr. McFadden about this correspondence. Mr. McFadden agreed that he reviewed the documents, provided comments to Mr. Clark to ensure the documents were headed in a satisfactory direction, and provided instruction regarding the documents where he felt appropriate.

Mr. Houghton's counsel never directly asked Mr. McFadden if he instructed Aird & Berlis about the transaction. However, when Inquiry counsel directly asked him about it, Mr. McFadden responded: "[T]hose instructions came from Dean Muncaster [chair of Collus Power's board of directors] and/or Ed Houghton ... I wasn't giving instructions. I was giving comments." When asked specifically whether he instructed Aird & Berlis on behalf of Collus Power, Mr. McFadden stated, "I never thought that [Collus Power's lawyers] were ever reporting to me." When specifically asked whether he gave direction to Aird & Berlis on behalf of the Town, he responded: "I was never asked by the Town to give direction." And when asked whether he was aware of the process the Town used to approve an individual to instruct legal counsel on behalf of the Town, Mr. McFadden replied: "I was never involved with Town Hall, so I don't know how they handle their business and – and who approved what."

Mr. Clark used a variety of terms to describe Mr. McFadden's role in the transaction, but none of them involved Mr. McFadden instructing counsel. He agreed that Mr. McFadden had an "opportunity" to provide Mr. Clark with instructions on the transaction documents, but did not state that he had received instructions from Mr. McFadden. In addition, Mr. Longo testified that he was not aware of Mr. McFadden's involvement in the transaction.

Based on the evidence, I find that Mr. Houghton was the primary point of contact with Aird & Berlis and was the individual who provided instructions to legal counsel. Given the complexity of the transaction, I have no doubt there were instances in which Mr. McFadden used his knowledge of the electricity industry to assist and provide helpful information to Aird & Berlis. However, it is clear from the evidence that the directions provided to Mr. Clark came from Mr. Houghton.

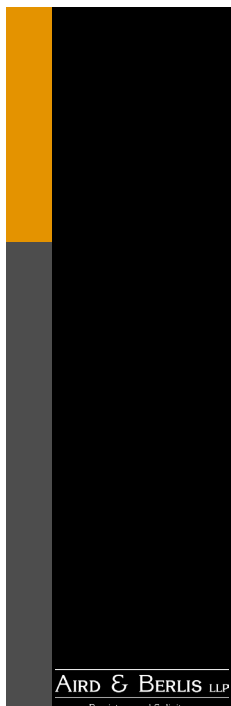
Update on the Negotiations

Aird & Berlis lawyer Ron Clark provided Town Council with an *in camera* update on the transaction during the January 16, 2012, Council meeting.

Mr. Clark testified that the purpose of his presentation was to inform Council about the transaction documents and to respond to questions. Council did not make any decisions about the transaction at the meeting.

Mr. Clark's presentation covered several topics. First, it explained why it would be beneficial for the Town to sell 50 percent of its shares in Collingwood Utility Services (parent company to Collus Power) as opposed to shares in Collus Power. The genesis of this decision is explored below.

The presentation also explained that the Town would receive three payments in connection with the share sale transaction, as depicted on two slides (see Figure 8.1).

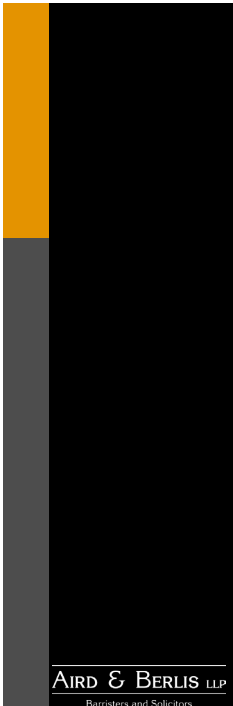


Transaction Structure (cont'd)

Share Purchase Agreement ("SPA")

1. Timing:
 - a) Pre-Execution and Due Diligence
 - b) Execution of Agreements
 - c) Interim Period – fulfillment of conditions
 - d) Closing Target Date - April 2012 following:
 - i. financial arrangements
 - ii. Infrastructure Ontario consent
 - iii. Amendment to Service Agreements
 - iv. OEB filing
 - v. Interim 2011 Financial Statements
2. Consideration (see Article 2 of SPA):
 - a) PowerStream pays \$8M for 50% of shares of CUS
 - b) \$5.2M – Estimated dividend arising from debt injection by PowerStream (or Third Party) through Collus and up to Town

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SPA (Cont'd)

- i. based on draft Working Capital numbers
 - ii. adjusted post-closing
 - iii. Holdback Amount of \$1M
- c) \$1.7M – Repayment of Promissory Note to Town
- d) Dispute resolution mechanism for disagreements on calculation of final numbers
- 3. Reps and Warranties (see Section 5.1(a) and (b))
 - a) Basic reps of Town with respect to the Town
(corporate power and authority, enforceability, no bankruptcy, no violation of by-laws and contracts by entering into transaction)
 - b) More extensive reps by Town and CUS re CUS and Subsidiaries (ie. Collus, Energy, Solutions)
(Issued capital, ownership of shares, no third party rights to purchase shares, no violations of by-laws and contracts by entering into the transaction, compliance with laws, real property and leased property, intellectual property, environmental, insurance, employees and plans, litigation, taxes, service agreements with Town)

AIRD & BERLIS LLP
Business and Solutions

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Figure 8.1: Payments in Connection with the Share Sale Agreement

Source: “A Strategic Partnership Between Collingwood Utility Services and PowerStream Inc.; Proposed Transaction: Purchase of 50% of Collingwood Utility Services Inc. Shares by PowerStream Inc., Town of Collingwood Council.” Prepared by Ron Clark, January 16, 2012.

Mr. Clark testified that he did not have a detailed recollection of his presentation but agreed his slides likely contained all the information presented to Council. He did not recall any member of Council expressing significant concerns about the transaction.

In his testimony, Kevin Lloyd recalled being told at the Council meeting that the amount of the dividend was not certain and would be finalized toward the end of the transaction, based on the final financial figures for both the Town and Collus in 2011. He testified that no one explained the specific factors that might cause the amount of the dividend to increase or decrease. Other witnesses who testified at the Inquiry – Ed Houghton, Sandra Cooper, Kim Wingrove, Ian Chadwick, and Rick Lloyd – had limited recollections of what was explained.

Mr. Longo attended the January 16 *in camera* Council meeting to learn more about the transaction in the event the Town’s CAO had further

questions. He was not asked any questions at the meeting and played no role in the preparation of Mr. Clark's presentation. He testified that some of the financial elements described on the slides were not within his area of expertise.

The Inquiry heard contradictory evidence concerning the involvement of KPMG's John Rockx at the *in camera* January 16 Council meeting. Mr. Houghton and Mr. Longo testified that Mr. Rockx spoke about financial aspects of the transaction during the presentation.

Mr. Rockx testified that although he attended the meeting, he did not present any information to Council. The draft minutes of the meeting listed the speakers; Mr. Rockx was not identified as someone who addressed Council.

I am satisfied that Mr. Rockx did not present at the *in camera* session of the January 16 meeting.

Council Advised to Sell Holding Company Shares

At the January 16 meeting, Mr. Clark advised Council of a significant change to the structure of the transaction. The RFP had originally contemplated that the successful bidder would purchase 50 percent of the shares of Collus Power from Collingwood Utility Services Corporation, a holding company that also owned Collus Solutions Corporation and the inactive Collus Energy Corporation. Mr. Clark advised Council that PowerStream would instead buy 50 percent of the holding company directly from the Town (the sole shareholder). The reason given for the change was that KPMG had determined it would be more beneficial from a tax perspective. Mr. Clark's presentation suggested that the Town of Collingwood would avoid a capital gains tax estimated at \$350,000.

The potential tax advantage of selling the holding company instead of Collus Power arose in late October 2011, after the release of the RFP. Prompted by a question from Hydro One Incorporated, one of the bidders, Jonathan Erling of KPMG sent Mr. Houghton an email explaining, among other things, that Collingwood Utility Solutions would incur capital gains taxes if Collus Power shares were sold. Five days later, Mr. Erling circulated a draft answer to Hydro One's question internally. It stated that proposals

were to be based on the purchase of Collus Power alone, but the possibility of selling at the holding company level was being investigated. Collus's chief financial officer (CFO) Tim Fryer responded to Mr. Erling's draft answer, stating that the transaction "will most likely be the Collingwood Utility Services Corp's shares being sold by the Town of Collingwood." There was no evidence that Mr. Erling's draft response was sent to Hydro One or any of the other bidders.

The possibility of selling shares in the holding company instead of Collus Power was raised again, during a December 12, 2011, meeting that Mr. Houghton arranged with PowerStream to discuss purchasing the Collus holding company. Mr. Houghton wrote in an email that "we are struggling" with what entity should be sold. Discussions between PowerStream and Collus Power continued and, ultimately, the decision was made that PowerStream should purchase 50 percent of the holding company, Collingwood Utility Services.

Dennis Nolan, PowerStream's general counsel and corporate secretary at the time of the events examined by this Inquiry, testified that this change was cost neutral for PowerStream. On the other hand, a report from PowerStream's valuator, BDR, suggested that purchasing the holding company would increase the value to PowerStream because it would then have more control over Collus Solutions, the shared services company that employed many of Collus Power's staff.

The change in shares being sold did not escape the notice of the other bidders. In internal emails, employees of Veridian Incorporated discussed this departure from the RFP, noting: "Somewhere along the way, Collingwood seems to have lost their rigidity on the form of proposals that they would consider. Remember that the response we got from them was that if we submitted something that wasn't within the scope of their RFP, then we would be rejected and disqualified."

Fortunately for the Town, none of the bidders decided to turn this into an issue.

Authorization of the Transaction Before Finalization of Documents

Overview of Transaction Documents

Two contracts governed the share sale transaction: the share purchase agreement, and the unanimous shareholders agreement. The share purchase agreement set out the terms by which the Town agreed to sell PowerStream 50 percent of the shares in Collingwood Utility Services, the holding company that owned Collus Power and Collus Solutions. The unanimous shareholders agreement set out the terms by which the Town and PowerStream agreed to jointly own and control the Collus companies going forward.

CAO and Town Solicitor Overruled

PowerStream and the Collus companies negotiated the share purchase agreement and the unanimous shareholders agreement in January 2012.

Leo Longo from Aird & Berlis prepared a bylaw for Council to pass that would formally authorize the Town to execute both agreements. The authorizing bylaw was scheduled to be presented to Council on January 23, 2012, but, at that time, the transaction agreements had not been finalized. Mr. Longo testified that they were “still very draft” and were not “in any way, shape or form in a final form.” Both Mr. Longo and CAO Wingrove sought to include provisions in the authorizing bylaw that ensured that Council and the Town solicitor had the opportunity to review any changes before the mayor and clerk executed the agreements.

Their efforts were defeated when Mr. Houghton, without telling Mr. Longo or Ms. Wingrove, engaged with Dennis Nolan to review and comment on the draft bylaw. Mr. Houghton testified that both Mayor Cooper and Deputy Mayor Lloyd insisted on proceeding without those protections, despite Mr. Longo’s advice that they be included.

Mr. Longo sent an initial draft of the authorizing Council bylaw to Mr. Houghton on January 17, 2012, copying Clerk Sara Almas, Town CAO Kim Wingrove, and Aird & Berlis partner John Mascarin. Mr. Longo’s initial

draft (1) authorized the mayor and clerk to execute transaction documents once those documents were “in a form and content to the satisfaction of the Town’s Solicitor”; and (2) required Town staff and the Town solicitor to report back to Council as required and before the final closing of the share purchase transaction.

Mr. Longo, in his email, also asked Mr. Houghton, “Who handles the legal work for [Collus]? Will that person / firm be preparing the necessary corporate minute(s) authorizing the draft agreements from CUS’s [Collingwood Utility Services’] perspective?” Mr. Houghton testified that he interpreted these questions to mean that “Aird & Berlis obviously is not looking after ... our interests.” He said he did not know what else to do, so he reached out to Dennis Nolan.

I do not accept Mr. Houghton’s explanation for why he consulted Power-Stream, the Town’s counterparty in the share sale transaction, for assistance with the Town’s bylaw. If Mr. Houghton wanted assistance, his obvious choices included the Town clerk, the Town’s chief administrative officer, and the corporate lawyers at Aird & Berlis who he had retained to work on the transaction.

Mr. Nolan sent Mr. Houghton a draft of the Town’s authorizing bylaw on January 18, 2012. Mr. Nolan’s draft removed (1) the requirement that the Town solicitor be satisfied with the transaction documents; and, (2) the requirement that Town staff and the solicitor report to Council before the final closing of the transaction. Mr. Nolan’s draft required the transaction documents to be “in a form and content to the satisfaction of the mayor.”

Mr. Houghton did not disclose to anyone Mr. Nolan’s involvement in drafting the Town’s bylaw. Mr. McFadden and Mr. Nolan testified that it was not unusual for counterparties in a transaction to review the bylaw, but both men agreed that, where a counterparty is conducting such a review, it is done with the full knowledge of both parties. Mr. Nolan testified that he assumed Aird & Berlis was intending to review his proposed changes to the draft bylaw.

Mr. Houghton sent Mr. Nolan’s draft to Mr. Longo that day, but he did not identify Mr. Nolan as its source. Mr. Longo understandably believed he was being provided with the Town’s (his client’s) comments on the draft bylaw. He testified that, although he thought it was inappropriate to remove

both clauses, “the hill to die on” was the requirement that staff and the Town solicitor report back to Council.

CAO Wingrove also wanted the reporting requirement included in the bylaw because Council was being asked to provide final approval on transaction documents that were not yet finalized. Ms. Wingrove testified that Council is never asked to make a final decision on materials that are not completed and available for Council’s review, but told the Inquiry that her “perspective had not won the day.”

Later on January 18, Mr. Longo circulated a revised version of the draft bylaw without removing the provision. His covering email stated that the provision requiring Town staff and the solicitor to report back to Council could be removed “if it [was] felt that such provision is unnecessary or undesirable.” Mr. Longo testified that he included this language because he did not want to appear difficult or unreasonable.

On the afternoon of January 19, Ms. Kennedy sent a new draft of the bylaw to Leo Longo and others at Aird & Berlis that included the requirement that the Town solicitor report back to Council. That evening, Mr. Houghton sent the final version of the bylaw to Mayor Cooper, Ms. Wingrove, Ms. Almas, Deputy Mayor Lloyd, and Dean Muncaster. This version did not include the reporting requirement. Mr. Houghton testified that he removed the reporting requirement from the final version of the bylaw at the direction of the mayor and deputy mayor.

Ms. Almas testified that the clauses requiring that the documents be to the Town solicitor’s satisfaction and requiring Town staff and the solicitor to report back to Council were not necessary because staff generally consulted with lawyers and Council would generally be informed of any major changes to the deal. Alectra Utilities Corporation (the successor to PowerStream) also made this point in its closing submissions.

While perhaps not strictly necessary, these requirements were important protections for the Town that Mr. Houghton removed despite the Town’s solicitors’ repeated suggestion they be included.

Privileged Information Obtained by Mr. Bonwick

PowerStream consultant Paul Bonwick emailed the mayor, the deputy mayor, and Mr. Houghton on January 19, 2012, to orchestrate a meeting among the mayor, deputy mayor, Mr. Houghton, Mr. Longo, and CAO Wingrove on that afternoon. He suggested the mayor and deputy mayor “provide clear direction” at the meeting to Mr. Longo and CAO Wingrove. Witnesses’ recollections of the conversations that followed this email differed, but Ms. Wingrove, Rick Lloyd, and Mr. Houghton agreed that the mayor and deputy mayor directed the removal of the reporting requirement from the Town’s authorizing bylaw. Ms. Cooper, in her testimony, recalled the meeting but did not have a detailed recollection.

Mr. Longo testified that corporate lawyers Ron Clark and Corrine Kennedy took on the next draft of the bylaw on January 18 and that “the pen had been taken out of [his] hand.”

Although the reporting requirement survived a further round of drafting by Mr. Clark and Ms. Kennedy, Mr. Houghton directed its removal from the bylaw’s final version. Mr. Houghton testified that he was carrying out instructions from the mayor and the deputy mayor, who did not want to pay Mr. Longo to report to Council when they were already paying Mr. Clark and Ms. Kennedy to put the contracts together. I do not accept Mr. Houghton’s evidence, and, in any event, he should have brought this issue to all of Council.

Mr. Bonwick reported back to PowerStream on the evening of January 18, noting:

The meeting went very well this afternoon with the Town’s lawyers Mayor, Deputy Mayor, CAO and Ed. The motion is completely in keeping with our discussion. It [*sic*] subject to the satisfaction of the Mayor with no mention of their lawyer ... All is moving ahead as per our discussion.

In his testimony, Mr. Bonwick stated that Mr. Houghton told him what happened at the meeting. In doing so, Mr. Houghton disclosed confidential communications between the Town’s representative and its lawyer.

Mr. Bonwick’s involvement in the finalizing of the authorization bylaw is remarkable in at least four respects. First, while Mr. Bonwick acted as an

advisor to the mayor during this time, he was also acting as a representative for PowerStream in this transaction. Second, in this capacity, Mr. Bonwick was seeking to arrange internal meetings with the Town's solicitor so that the authorization bylaw would be finalized in the manner preferred by PowerStream. Third, Mr. Bonwick obtained privileged information about that meeting, which he then disclosed to PowerStream. Fourth, and finally, Mr. Bonwick's involvement was remarkable because Mr. Houghton, Deputy Mayor Lloyd, and Mayor Cooper allowed it, despite knowing Mr. Bonwick worked for PowerStream, creating conflicts of interest. When cross-examined by the counsel for the Town, Ms. Cooper agreed that she should not have allowed Mr. Bonwick to be involved in discussions about meetings with Mr. Longo because she knew he was being paid to advance PowerStream's interests.

Mr. Houghton testified that he believed that dealing with Mr. Bonwick at this stage was fine because "PowerStream was part of the family." As I discuss below, PowerStream was not part of the family. In any event, there was no justification for involving Mr. Bonwick in confidential discussions regarding the authorization bylaw.

The Recapitalization Dividend – Less Than Expected

On January 18, 2012, after Collus and PowerStream had agreed on the formula to calculate the recapitalization dividend, Mr. Rockx of KPMG advised Mr. Houghton that the recapitalization dividend would likely be lower than \$5.2 million. Mr. Rockx explained:

Based on the 2010 financial statements we are at \$4.6 M from Collus Power + \$0.2 M from Solutions = \$4.8M. PowerStream [*sic*] estimates that the recap dividend from Collus Power alone will be \$5.6 M once calculated based on 2011 financial statements.

I think PowerStream [*sic*] is too aggressive ...

So – \$4.8M of dividends is real (based on 2010 financial statements) + an estimated increase of \$400k to \$500k for 2011 +/- a possible pick-up for the stub period from December 31, 2011 to the closing date.

Two days later, on January 20, Mr. Houghton emailed PowerStream's president and CEO Brian Bentz, its CFO John Glicksman, and Paul Bonwick to try to negotiate a guaranteed minimum dividend. Mr. Houghton wrote: "[W]e have been telling Council that our goal is to provide them with approximately \$15 million ... made up of \$8 million from 50 percent of the shares, \$1.7 million from the promissory note and \$5.3 million from the recap dividend." He asked PowerStream for a guaranteed minimum dividend of \$5.1 million.

Unsurprisingly, in an email sent midday on January 23, PowerStream refused to agree to a guaranteed minimum for the recapitalization dividend.

In an internal PowerStream email, John Glicksman described Mr. Houghton's request as "simply an increase in the amount we are paying for the equity," noting, "We had provided them with a detailed illustration of our recapitalization calculation on Nov 28th prior to the meeting where we went from 7.3M\$ to 8M\$ for the equity."

Mr. Houghton did not believe the Town should have been involved in the discussion about the dividend calculation. He testified that:

[T]his was the dividend that Collus was putting together to be able to provide to their shareholder. So, we were doing the work. And then we would provide the dividend.

...

But because PowerStream is now going to be the 50 percent partner, they needed to be involved because they needed to agree that what we were doing in the recapitalization is correct and – and fair for both companies.

So, Collus and PowerStream were working jointly together to be able to determine exactly the recapitalization dividend that then we would be in turn giving to the Town of Collingwood.

...

Again, the dividend comes from Collus ... if they had wanted to challenge the dividend, they certainly could have challenged them [*sic*].

Not only did Mr. Houghton not involve the Town in the dividend discussions but, as I discuss below, he did not subsequently advise Council that

the amount was less than expected at the January 23 meeting, where Council voted to proceed with the transaction.

Mr. Houghton's withholding of information undermined the Town's ability to oversee the transaction. There can be no question the Town should have been involved in discussions about the amount of the dividend. When Mr. Houghton presented the bidders' financial offers at the January 23 Council meeting, which I discuss below, he included the estimated dividend amount as part of the potential proceeds of the transaction. When the expected amount changed, Council should have been informed so it could consider its options.

Instead, when Mr. Houghton learned the dividend would be less than expected, he elected not to share that information with Council.

Approval of Sale at Public Council Meeting

At the January 23, 2012, public Council meeting, Council voted to enact the bylaw that authorized the mayor and the Town clerk to execute the share purchase agreement and the shareholders agreement. It was the first Council meeting at which the RFP and the sale process were discussed in a public session, not *in camera*. It was the first time the public learned the details of the deal.

The agenda package prepared for the public included a staff report that identified CAO Wingrove as the author. Mr. Houghton also prepared a slide presentation, which was displayed during the meeting.

The staff report and the slide presentation were consistent with and elaborated on Mr. Houghton's presentation to Council on June 27, 2011, in which Mr. Houghton presented the strategic partnership as the "preferred option" for the Town.

For example, the staff report suggested that KPMG had developed the concept of a strategic partnership. In particular, the staff report stated that, after KPMG had examined various options, the "strategic partnership option was chosen for several reasons." Further on, the staff report stated: "Upon review of the strategic ownership options prepared by KPMG, Town Council gave direction to Collus to further investigate the Strategic Partnership

options through the creation of a Strategic Partnership Task Team.” When the strategic partnership concept was introduced at the June 27 Council meeting, Mr. Houghton did not advise that KPMG never analyzed that option.

In addition, the staff report stated that “the Town of Collingwood will receive cash and other considerations valued at approximately \$15M.” The slide presentation provided more detail, saying the proceeds were estimated at \$14–\$15 million and noted the calculation was “predicated on three considerations: 50 percent share purchase, recapitalization, and redeeming of historical promissory note.” The presentation did not identify how much each element contributed to the estimated total.

At the Inquiry, Ms. Wingrove testified that the staff report was misleading to the extent it suggested the Town was receiving \$15 million for its shares, rather than \$8 million for the shares and the remainder for recapitalization and the promissory note.

Earlier in her evidence, Ms. Wingrove agreed the promissory note’s repayment and the recapitalization dividends were not “net benefit[s]” to the Town. In both cases, although the Town received a benefit (in the form of repayment of the loan and a dividend from recapitalization), Collus Power incurred a corresponding loss because repayment of the loan would deplete the company’s value and recapitalization would increase the company’s debt. Since the Town wholly owned Collus Power through the holding company, Ms. Wingrove agreed the dividend and repayment of the promissory note were neutral and that the only “new money” the Town received was the \$8 million cash payment from the shares.

Ms. Wingrove also testified that it was misleading for the staff report to suggest the Town was receiving \$15 million for the shares, when only \$8 million was a net benefit to the Town. Ms. Wingrove noted that the presentation identified that the \$15 million estimate comprised three components. She also testified, however, that the presentation was misleading because, although it identified three sources of money, it suggested that all of them were “new money,” when the recapitalization and promissory note were, in effect, neutral for the Town.

In response to Ms. Wingrove’s evidence, Mr. Houghton insisted Council was not confused about the sale’s financial elements. He argued in his closing submissions that he and KPMG’s John Rockx presented and explained

the financial offers at the December 5, 2011 Council meeting and that Council received a second explanation at the January 16, 2012 meeting. As a result of these meetings, Mr. Houghton argued in his closing submission, it would have been “virtually impossible” for a reasonable councillor to have been confused.

Kevin Lloyd testified that, while he recalled being told at the January 16 Council meeting that the amount of the dividend could change, no one explained the factors that might cause the dividend to increase or decrease.

Kevin Lloyd’s evidence at the Inquiry was consistent with email correspondence he and Councillor Chadwick sent around the transaction’s closing in July and August 2012.

On July 30, right before the transaction closed, Councillor Chadwick had questions about the final amount the Town would receive. That morning, Mr. Houghton, then the Town’s acting CAO, advised Council that the dividend would amount to approximately \$4 million in addition to the \$8 million for the shares and \$1.7 million for the payment of the promissory note. Councillor Chadwick responded: “Wait ... that’s \$12 million. I thought the total was \$15 million. What happened to the rest?” Mr. Houghton then explained that, as a result of Collus Power reducing its regulated liabilities in 2011, the dividend was less than expected.

In August, Mr. Chadwick continued to have questions about what the Town was receiving. On August 24, Treasurer Marjory Leonard sent Mr. Chadwick information regarding the funding available for new recreational facilities.* In the email, Ms. Leonard mentioned the Town having “\$8 million from COLLUS.” Councillor Chadwick replied to Ms. Leonard and Mr. Houghton: “Woah. Did I miss something? \$8 million from Collus. It started out as \$15m, then got reduced to \$13, how it it [*sic*] dwindle to \$8m?”

Mr. Houghton responded:

You never missed anything. This \$8M was the portion that PowerStream gave to the Town. The Town still holds the \$1.7M promissory note and the recapitalization was just of [*sic*] \$4M which was just slightly north of \$14M. The amount was always mentioned to be between \$14–\$15M with

* The recreational facilities are the focus of Part Two of my Report.

the real difference that we paid down more than a \$1.0M in regulated liability. This made our bottom line better (ie reduced liabilities by \$1M) but reduced the recapitalization by \$0.5M to the Town.

Councillor Chadwick forwarded Mr. Houghton's email to Deputy Mayor Lloyd and Councillor Kevin Lloyd, writing: "Are either of you aware that the Collus money was down to \$8 million? I don't recall that discussion. Did I miss something? It seems like an awful tumble from the optimism of \$15m back when the sale was first proposed."

Councillor Kevin Lloyd responded: "I believe there is another 7 plus million to come."

Councillor Chadwick responded: "Never mind. Ed called me and explained it. Brain fart. We have the money, but are keeping some for other projects ... or we can spend it all. Our choice."

The staff report was also the subject of comment by John McNeil of BDR, who valued the Collus Power shares for PowerStream when it was preparing its RFP response. Mr. McNeil emailed John Glicksman on the morning of January 23, before the Council meeting, with congratulations, writing: "I understand (and I am sure that you are aware) that the following staff report will be submitted tonight. It is drafted such that it 'sounds like' PowerStream is paying \$15 million for 50% of the shares! ... Well done!"

At the hearings, there was a disagreement about who authored the staff report. Ms. Wingrove and Mr. Houghton each said the other was responsible for the content of the staff report. Although identified as the author of the report, Ms. Wingrove testified that she prepared it using notes provided by Mr. Houghton. She said the information in the report was derived from Mr. Houghton and that she focused on formatting, clarity, and areas where she felt additional information was needed. Mr. Houghton denied he had generated the content of the staff report. He testified that Ms. Wingrove prepared the report and that he did not provide any input aside from minor edits.

Mr. Houghton was the primary speaker at the January 23 public Council meeting, as he was at the December 5 Council meeting.* Although KPMG's

* The January 23 Council meeting was recorded on video. A transcript of the meeting was prepared for the Inquiry.

Mr. Rockx attended the January 23 meeting, Mr. Houghton alone addressed the transaction's financial components. Mr. Rockx was asked to speak solely on the background of the electricity industry in Ontario, not the transaction's financial components – a subject on which he had detailed knowledge.

Mr. Houghton's comments mirrored the staff report and the slide presentation. Concerning the dividend, although Mr. Houghton indicated that the dividend component was a "moving target," he did not advise Council that, earlier in the day, he was told the dividend would be less than anticipated. This was a serious omission. Council should have had the opportunity to consider this information before voting to authorize the mayor and clerk to finalize the share sale transaction.

I pause here to make a final observation about Mr. Houghton's January 23 presentation to Council. Mr. Houghton confirmed what I have observed: that the strategic partnership concept prioritized Collus Power's interests over the Town's interests. Near the end of his remarks, Mr. Houghton stated, "We went out to the market and got money but that wasn't was important to us what we wanted to do was have a partner that could offer additional resources to our customers [*sic*]."

After the presentation, all eight Town councillors present voted in favour of authorizing the mayor and the clerk to execute the share purchase agreement and the unanimous shareholders agreement. During the Inquiry, it was suggested that Council's January 23, 2012, vote to proceed with the PowerStream transaction – and the earlier vote to pursue negotiations with PowerStream after the RFP – demonstrate it was Council, not Mr. Houghton or the Collus Power board, that made the final decision to proceed with the transaction. In this vein, Mr. Houghton's counsel argued in closing submissions that "[n]ever once during these many meetings did Mr. Houghton ever put his hand up to vote on the decisions to be made. Never once did we hear any evidence that Mr. Houghton forced the decisions of the Collus Power Board or Collingwood Council."

Mr. Houghton's submission misses the point. Council's decision to proceed with PowerStream was coloured by the issues I have identified throughout this Report. Council was not advised of the advantages PowerStream enjoyed throughout the process, including the early discussions with Mr. Houghton and the solar attic vent initiative (see Part One, Chapters 3-5).

Council's decision was also rooted in Mr. Houghton's misrepresentations at the June 27 Council meeting, which led the Town down the path toward a strategic partner. Finally, Council's decision was undermined by the fact that Mr. Houghton instructed Mr. Clark without providing updates to the Town, or seeking direction from the Town.

Mr. Houghton did not force Council's decisions but, through these actions, effectively thwarted any meaningful consideration of other options.

Council's vote was also undermined by the fact that three of the eight councillors who voted had, at the very least, apparent conflicts of interest that had not been disclosed. The mayor was in an undisclosed conflict as a result of her brother's work for PowerStream; the deputy mayor had obtained a favour from PowerStream; and Councillor Chadwick was awaiting payment for his work for PowerStream's agent, Mr. Bonwick.

As I discuss in Part One, Chapter 5, from August to December 2011, Mr. Bonwick's company paid Mr. Chadwick to prepare weekly news summaries about the energy industry, which Mr. Bonwick shared with his clients. Mr. Chadwick understood PowerStream was one of Mr. Bonwick's clients and, at the December 5 meeting, recused himself from the meeting before the RFP was discussed. However, he testified that he did not recuse himself on January 23, on the basis that he was no longer working for Mr. Bonwick. As I explain in Part One, Chapter 5, Councillor Chadwick should have recused himself because, among other reasons, Mr. Bonwick still owed him money for his work and Mr. Chadwick was interested in further work. A reasonably informed person would be left with the impression that Mr. Chadwick might have been open to influence.

Deputy Mayor Lloyd emailed Mr. Bonwick during the Council meeting. Following CAO Wingrove's remarks on the Collus Power sale, the deputy mayor sent Mr. Bonwick an email that simply said, "HOME RUN." Mr. Bonwick forwarded the deputy mayor's email to John Glicksman at PowerStream later that evening. Mr. Glicksman replied: "Thanks and thanks so much for your support."

Transaction Documents Signed

Mr. Bonwick Asked to Arrange for Signatures

PowerStream and Collus Power continued negotiating the transaction documents in February 2012. On February 29, Ron Clark sent Leo Longo copies of the transaction documents to be signed by the mayor and the clerk, along with a memo “for the purposes of [his] briefing [them].”

Mr. Longo forwarded the documents to Mayor Cooper and Clerk Almas, offering to “discuss this with you at your convenience,” copying CAO Wingrove and Ed Houghton. Mr. Houghton forwarded the email chain along with the Aird & Berlis memo to Mr. Bonwick, asking him to “ensure that this takes place before end of day Friday.” Mr. Bonwick subsequently sent the email chain to his sister, Mayor Cooper, asking her to chat. He then forwarded this email chain including the memo and the emails from Ron Clark and Leo Longo, to Ed Houghton, Brian Bentz, John Glicksman, Dennis Nolan, and PowerStream executive Mark Henderson, advising that a meeting to sign the documents had been scheduled.

Although Sandra Cooper’s evidence about this email exchange was inconsistent, she did testify that she was “frustrated” that Mr. Bonwick instead of Mr. Houghton – who had been “involved in the ... transaction throughout” – contacted her about signing the documents.

This email chain is another example of Mr. Houghton discussing confidential Town business with Mr. Bonwick and PowerStream, without the Town’s knowledge. Mr. Houghton testified that he asked Mr. Bonwick to ensure the mayor and clerk signed the documents because it was the easiest way to facilitate the task and, “at this point in time, that PowerStream was part of the family.” Mr. Bonwick gave similar evidence, asserting that Mr. Houghton’s request was made “post-transaction.”

PowerStream was not a “part of the family.” It was a for-profit corporation negotiating the terms of an impending business transaction in its own best interest. Mr. Houghton should have treated it as such. Instead, he provided PowerStream with a legal memo intended for the Town and asked the company’s agent to coordinate the Town’s execution of the documents.

Mr. Longo, Mr. Clark, and Mr. Nolan agreed the memo was protected

by solicitor-client privilege. In its closing arguments, Alectra “acknowledge[d] that it did not take any steps to address with Mr. Bonwick that the Aird & Berlis memorandum which he forwarded to PowerStream was a privileged communication.” Failure to acknowledge receipt of the memo and return it is another example of the failure of Mr. Bentz, Mr. Glicksman, and Mr. Nolan to responsibly address red flags raised by the actions of Mr. Bonwick, their agent. I appreciate that one can debate whether the memo’s information was significant, but that misses the point. Legal advice that the Town received about the documents to be signed found its way to Mr. Bonwick, who was representing the party on the other side of the transaction. Disclosure of this kind of information leads to the conclusion that the Town’s information was not being kept confidential in a transaction involving the sale of an interest in one of Collingwood’s most significant assets.

In his email advising PowerStream and Mr. Houghton that the meeting had been arranged, Mr. Bonwick suggested Mr. Houghton attend because “[t]heir solicitor on occasion is not as constructive as one would hope.”

The meeting to review the transaction documents was scheduled for March 1, 2012, but witnesses had differing memories about who participated. Ms. Cooper, Ms. Almas, and Mr. Longo agreed they were involved in the meeting along with CAO Wingrove. Ms. Cooper recalled they met in person, while Ms. Almas and Mr. Longo agreed Mr. Longo attended by phone. Ms. Cooper also recalled that Ron Clark and Corrine Kennedy called into the meeting. Ms. Almas testified that Mr. Houghton called in, but also said she did not have a detailed recollection of the meeting. Mr. Clark did not recall if he met with anyone from the Town before the documents were signed.

The Inquiry also heard different accounts of what took place at the meeting.

Ms. Almas testified that Ms. Wingrove raised concerns at the meeting, but she could not recall what those concerns were. She further recalled that Mr. Longo, who was not familiar with the electricity sector aspects of the agreements, provided general information and Mr. Houghton sought to explain why certain decisions had been made. At points, Ms. Almas recalled that the discussion was “a little heated” because CAO Wingrove was “asking

some targeted questions.” Ms. Almas said she was comfortable signing the documents after the discussion because they had been provided to the Town by Aird & Berlis and reviewed by Leo Longo.

Mr. Longo was present on the call, but did not have a detailed recollection of what was discussed. He said he was “not asked much.”

Mayor Cooper, Clerk Almas, and CAO Wingrove did not review the transaction documents before they were executed.

Two crucial issues were not meaningfully discussed at all with the mayor or the clerk before they executed those documents: the change in the recapitalization dividend the Town would receive; and a “letter of intention” about the shared services agreements among Collus Power, Collus Solutions, the Collingwood Public Utilities Service Board, and the Town of Collingwood.

The Decreased Dividend – Briefing of the Mayor

By March 5, 2012, Collus Power and PowerStream knew the recapitalization dividend would be significantly lower than originally estimated. Mr. Houghton advised the Town of the decrease in July.

On March 5, Corrine Kennedy wrote to Leo Longo, advising him the dividend would be “significantly less than the original \$5.6M that was expected ... Though the parties had a sense it would be lower and was getting lower as the deal went on, I think they are surprised by the number.” On March 6, Ms. Kennedy informed Mr. Longo that “Ed Houghton has confirmed that he is briefing the mayor and dealing with this directly and there is nothing for us to do on our end.” Mr. Longo did not discuss this information with anyone from the Town.

Mr. Houghton “took it upon [himself]” to brief the mayor because finance was not Mr. Longo’s area of expertise. Mr. Houghton testified that finance “was certainly not [his] area of expertise either,” but John Rockx had briefed him. Mr. Houghton said he met with the mayor and explained Mr. Rockx’s recapitalization dividend calculations.

Mr. Houghton sent Ms. Cooper an email on the afternoon of March 6, providing her with a draft email for her “consideration to send to Leo [Longo].” The draft stated that Mr. Houghton had explained to her that the

recapitalization dividend would be about \$4.126 million. Mr. Houghton advised the mayor that the email should be copied to Ron Clark, Corrine Kennedy, John Rockx, Dean Muncaster, Kim Wingrove, Sara Almas, and himself. Ms. Cooper forwarded Mr. Houghton's email to her executive assistant, asking her to craft a letter for the mayor's review and directing her to Mr. Houghton for any clarification.

Ms. Cooper testified that, before she signed the transaction documents, she did not recall anyone informing her that the recapitalization dividend would be lower than originally expected. There is no evidence that Town Council was advised of the significant decrease in the recapitalization until July 29, 2012, two days before the transaction closed.

Shared Services Unresolved

On March 6, 2012, the Town, the Collus entities, and PowerStream entered into a share purchase agreement and related documents. Among other things, the share purchase agreement required the parties to amend or confirm the shared services agreements prior to the closing of the transaction.

On the same day the mayor and the clerk signed another document, one not included in the documents provided by Aird & Berlis. It was a letter regarding the shared services agreements in place among Collus Power, Collus Solutions, the Collingwood Public Utilities Service Board, and the Town of Collingwood. The letter stated that the Town would continue to purchase services under the agreements and that any amendments to the agreements would comply with Ontario Energy Board regulations.

It is not clear who negotiated this letter on behalf of the Town. It wasn't Aird & Berlis or Collus Power CFO Tim Fryer. There is no evidence that anyone from the Town reviewed the letter before it was signed. In a March 5 email, Ms. Kennedy alerted Mr. Longo to its existence, but Mr. Longo did not have further discussions with the mayor or Town clerk. As I discuss below, the shared services agreements were not dealt with before the transaction closed. As I discuss in Part One, Chapter 10, the status of the agreements remained an unresolved issue after the share sale transaction closed.

Share Sale Approved by the OEB

The share purchase agreement between the Town and PowerStream stated that PowerStream would prepare and submit a MAADs (mergers, amalgamations, acquisitions, and divestitures) application to the Ontario Energy Board (OEB).^{*} The application was filed on March 9, 2012. On April 25, the OEB informed Collus Power that its application would be considered on the basis of written documents submitted by the applicants.

On July 12, the OEB approved the Town's and PowerStream's MAADs application. As discussed in Part One, Chapter 2, the board considers the "impact of the proposed transaction on price, reliability and quality of service; and on the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector." In assessing the application, the OEB does not typically consider the purchase price of the transaction, the process by which the vendor decided to sell its utility to the purchaser, or whether an alternative transaction would be more beneficial.

Closing of the Transaction

The Unanimous Shareholders Agreement

The sale of 50 percent of the shares in Collingwood Utility Services to PowerStream was completed on July 31, 2012. The transaction was finalized with the signing of a unanimous shareholders agreement among the Town of Collingwood, the Collingwood Utility Services Corporation, and PowerStream, along with a number of other documents.

The unanimous shareholders agreement contained certain clauses that would govern the relationship between the Town and PowerStream as joint owners of Collingwood's electric utility. The agreement contained a buy-sell provision, or "shotgun clause," which allowed the Town or PowerStream to offer to purchase all the shares of the other shareholder at any time. Such an offer would trigger a 20-day period during which the other shareholder

* MAADs applications are discussed in Part One, Chapter 2.

had either to accept the offer and sell all its shares or to buy the offering shareholder's shares at the offered price per share. The provision could not be used within the first 30 months of the partnership.

The agreement also stated that certain corporate actions could not be taken unless both the Town and PowerStream agreed to them. These included actions taken to:

- a. acquire, merge, or amalgamate with another electricity distributor;
- b. dispose of, rent, or sell any part of Collus PowerStream;
- c. spend more than \$500,000;
- d. borrow money outside the ordinary course of business;
- e. make, amend, or repeal corporate by laws; and
- f. change Collus PowerStream's dividend policy.

Under the unanimous shareholders agreement, the Town, and PowerStream also granted each other a right of first refusal: neither party could sell all or part of its shares to a third party without first giving the other shareholder the opportunity to purchase the same number of shares for the same price.

The Town also decided at the closing of the transaction that it would not immediately request repayment of the promissory note. Under the share purchase agreement signed on March 6, the Town retained the right to request the note's repayment at any time.

Ron Clark testified that he did not have a recollection of the mechanics of the closing and the way in which the documents were signed, though he noted he likely coordinated with Corrine Kennedy on the matter and that she probably would have been aware of the transaction closing. Nor could Mr. Clark recall whether anybody from Aird & Berlis was present at the closing of the transaction.

Mr. Longo was not involved in any of the discussions or negotiations leading up to the document signing on July 31. He did not provide any advice on elements of the agreement such as the shotgun clause, and he did not know whether the Town sought this advice from anyone else regarding the agreements. Mr. Longo did not participate in the closing of the transaction.

Sara Almas, who was present when the transaction closed, did not recall whether she received a memo outlining the agreement, similar to the one

she had received before signing the share purchase agreement in March 2012. She did not read the unanimous shareholders agreement before signing it, but testified that she relied on others to advise her on its contents.

The Shared Services Side Letter

The closing of the transaction also involved the execution of a document regarding the shared services agreements' status. By July 31, 2012, the new shared services agreements still had not been finalized.

Mr. Houghton testified that the agreements were not finalized for two reasons. First, he was of the view that all parties were complacent because they wanted the agreements to continue. Second, Collus Power staff was extremely busy in the months leading up to the transaction's completion, and it was difficult to assemble all the information and devote the required amount of labour to finalize the agreements. As I discuss in Part One, Chapter 9, Mr. Houghton had been appointed acting CAO of the Town of Collingwood in April 2012. While admitting that, in that capacity, he should have devoted more attention to the agreements, he said his many responsibilities to the Collus corporations, the Collingwood Public Utilities Service Board, and the Town left him unable to do so.

Mr. Fryer similarly testified that he was not surprised the agreements were not finalized before the closing of the transaction, given the amount of work required to complete them. Collus controller Cindy Shuttleworth also believed the volume of work required to complete the transaction was an impediment to the agreements' finalization. Mr. Nolan was of the view that the agreements were not finalized because of insufficient time to perform the necessary due diligence before the closing of the transaction.

Mr. Nolan and Ms. Shuttleworth also testified that they could not recall any discussions of pushing back the transaction closing date to ensure the shared services agreements were completed and finalized.

There was conflicting evidence at the Inquiry about which members of Collus's management were responsible for finalizing the shared services agreements before the transaction closed. Mr. Fryer testified that, around March 2012, responsibility for finalizing the shared services was assigned to Ms. Shuttleworth and Mr. Houghton. By contrast, Ms. Shuttleworth

believed the finalization was Mr. Fryer's responsibility. Ms. Almas stated that Mr. Houghton and Mr. Clark were responsible for negotiating the agreements. In his closing submissions, Mr. Houghton argued that Collus Power director David McFadden instructed the lawyers on the agreements.

The shared services agreements were not finalized. Instead, Collingwood Utility Services, the Collus corporations, the Town of Collingwood, and PowerStream signed a letter agreeing to waive a requirement in the share purchase agreement that the shared services be reviewed, amended, or confirmed before the closing of the transaction.

This letter stated that the service agreements would be reviewed and amended within 12 months of the closing of the transaction and would comply with certain conditions, which included:

- a. That Collus PowerStream would provide services to the Town of Collingwood on a fully allocated cost basis plus a return on investment;
- b. That Collus PowerStream would not pay more than the fair market value for any services supplied by the Town of Collingwood;
- c. That the shared services agreements would be reviewed annually so that the costs of the services under the agreements could be revised. If the parties could not agree on a revised cost of services, the cost would increase by 3.5% of the previous year's costs;
- d. That there would be a five-year term of the Service Agreements; and
- e. If the parties were unable to determine the cost of services, the cost would be determined by an independent accounting firm.

The letter was signed by Clerk Almas and Mayor Cooper on behalf of the Town; Mr. Houghton on behalf of Collingwood Utility Services and all the Collus corporations; and Mr. Nolan on behalf of PowerStream.

As with the March 6, 2012, letter of intention regarding the shared services agreements, it is unclear who negotiated or reviewed the letter on behalf of the Town. Mr. Fryer was not involved in the negotiation, nor was he consulted in any way about how shared services should be addressed after the share sale. Ms. Shuttleworth similarly testified that she did not recall reviewing the letter before it was signed. Mr. Houghton, who testified

that Ms. Shuttleworth and Mr. Clark reviewed the agreement before it was signed, had no knowledge of whether anybody from the Town reviewed the agreement.

Mr. Clark similarly had no knowledge of anybody providing advice to the Town before the letter was signed. Mr. Longo, who testified that he was not consulted at any point on how the shared services agreements might affect the transaction, further stated that he was never shown the July 31 letter and was never asked to advise on it.

Ms. Almas stated that somebody explained the letter to her before she signed it, but she did not recall who provided the explanation. She also indicated she would generally consult with the CAO before signing such agreements. However, she did not do so in this case because the CAO was Mr. Houghton, who was already signing the agreement on behalf of the Collus corporations.

Rick Lloyd testified that no one told him that selling 50 percent of the shares of Collus would require negotiation of the shared services agreements.

As I discuss in Part One, Chapter 10, the shared services agreements were the subject of ongoing negotiations between the Town and Collus PowerStream and were never finalized.

Future Acquisitions

The closing documents also included a letter dated July 31, 2012, from Dennis Nolan, PowerStream's general counsel and corporate secretary, to Mayor Cooper. Among other things, Mr. Nolan wrote:

This letter is to confirm that it is the intent of PowerStream Inc. ("PowerStream") and The Corporation of the Town of Collingwood ("Town of Collingwood") to pursue significant growth opportunities on a prudent and profitable basis, where it enhances the Corporation's strategic position, and creates economies of scope and scale. Specifically, the Corporation will pursue opportunities for the acquisition, merger or other business arrangements with local distribution companies within the CHEC Group of LDCs, and consider other opportunities for acquisition, merger or other business arrangements, upon the recommendations of the Management and the Board of the Corporation, and such proposals shall

be reviewed and considered by each Shareholder, acting in good faith, in the best interests of the Corporation.

In accordance with Section 14.11 of the Shareholders Agreement, this is also to confirm that PowerStream and the Town of Collingwood agree that the Corporation shall have the first right to evaluate and or pursue such M&A [mergers and acquisitions] opportunities that may arise with CHEC Group of LDCs, and that PowerStream will first consider pursuing M&A activities with LDCs having less than 20,000 customers, and within a reasonable geographic proximity to Town of Collingwood through the Corporation, prior to pursuing such opportunities through PowerStream.

Mayor Cooper and Clerk Almas signed the letter on behalf of the Town of Collingwood, and Mr. Nolan on behalf of PowerStream. Mr. Nolan testified that, according to the letter, every time PowerStream considered acquiring or merging with a local distribution company (LDC) in the CHEC group,^{*} it was required to provide the Town with the opportunity to participate in the merger or acquisition through the strategic partnership. If the Town indicated it was not interested in the transaction, then PowerStream could pursue a merger or acquisition of a CHEC group LDC on its own.

Ms. Almas did not have a specific recollection of signing this letter. Mr. Longo testified that no one showed him the letter before it was signed.

Council Advised of Final Proceeds from the Transaction

Two days before the transaction closed, Ed Houghton updated Council on the proceeds the Town would receive. In an email to Council on July 29, 2012, he wrote:

If all goes well Monday and Tuesday morning, the transaction between Collus Power and PowerStream will take place late Tuesday afternoon.

In Councillor Cunningham's terms, we will be delivering two suitcases of money. One suitcase with \$8,000,000 from PowerStream and one from

* The CHEC group was made up of 12 local distribution companies, including Collus, that shared resources (see Part One, Chapter 2).

Collus Power with approximately \$4,000,000 (the recapitalization dividend calculation is being completed tomorrow). As you know, the Town of Collingwood will still hold the Promissory Note in the amount of \$1,710,000.

As noted above, Councillor Chadwick responded: “Wait ... that’s \$12 million. I thought the total was \$15 million. What happened to the rest?”

Mr. Houghton replied:

The estimates we discussed with Council was [*sic*] based on 2010 Financials and were between \$14 and \$15 M. The totals I noted are just under \$14 M if you include the Promissory Note which Council has requested to not be monetized at this time. The good news for Collus is we have reduced our regulated liability by almost \$1 M since December 31st, 2010 and that helps out the balance sheet but reduces the recapitalization dividend by \$1/2 M.

There will also be a true up once we have completed the 2012 Financials up to July 31st. The totals also exclude the transaction costs.

This is still a good news story.

Draft Dividend Calculations

In the fall of 2012, Collus adjusted the dividend paid to the Town. The adjustment was based on financial statements showing the financial position of Collus Power and Collus Solutions as at July 31, 2012. On September 26, Cindy Shuttleworth sent John Rockx draft financial statements for Collus Power and Collus Solutions dated July 31. Mr. Rockx replied: “We will need to be creative to get an additional dividend due to all the changes in accounting etc.” The following day, Mr. Rockx sent Ms. Shuttleworth draft dividend calculations that provided for a declared dividend of \$20,443 from Collus Solutions and a declared dividend of “about \$276k” from Collus Power. According to Mr. Rockx, the declaration of the Collus Power additional dividend would “require PowerStream [*sic*] to agree to certain changes to the formulas in the Share Purchase Agreement.”

On September 27, Ms. Shuttleworth sent an email to Mr. Houghton, stating: “On a scale of 1 to 10 where does your opinion fall? ... [w]ith 1 being not concerned over the town getting any further dividend. And 10 being, lets

[sic] get the maximum we can push for.” Mr. Houghton responded: “I for sure.” Ms. Shuttleworth forwarded Mr. Houghton’s response to John Rockx, stating: “See below. We are interested in wrapping up the dividend adjustment in the quickest way and path of least resistance. Don’t want to push hard with PowerStream.”

This email chain serves as further confirmation that Mr. Houghton was not providing updates on the negotiations to, or seeking direction from, Town Council at this stage in the transaction.

Payments Made

To the Town in Connection with the Share Sale

The Town received payments related to the share sale transaction from three sources:

1. PowerStream, which paid the Town cash for the Collus shares it bought.
2. Dividends – a recapitalization dividend and another dividend from the Collus companies.
3. Collus PowerStream, which repaid the promissory note the Town had issued to Collus Power.

These payments are summarized here.

PowerStream’s Payments to the Town for the Collus Shares

The Town received a total of \$7,999,970 from PowerStream in payment for the Collus shares. The Town paid \$30 in service charges in connection with PowerStream’s share payments.

Recapitalization Dividend and Other Dividends Paid to the Town

The Town received two dividends on the transaction’s closing: \$4,363,960 recapitalization dividend, and \$234,429 additional dividend.

Repayment of the Promissory Note in 2015

At the closing of the transaction, the parties agreed that the Town could request the promissory note's repayment at any time. The Town requested repayment in 2016, and the Town received repayment totalling \$1,710,170 on December 31, 2015.

Bonus Payments to Collus Staff

In March 2012, Collus CEO Ed Houghton received a \$40,000 bonus for his work concerning the share sale to PowerStream. Two other staff members received bonuses. Pam Hogg, Mr. Houghton's assistant and Collus board secretary, as well as Collus controller Cindy Shuttleworth each received \$15,000. Ms. Hogg and Ms. Shuttleworth testified that they understood the bonus was compensation for the many additional hours they worked to support the transaction.

During their audit for the 2012 fiscal year, Collus's auditors did not find a record showing the board had authorized the bonus payments. Rather, the auditors received a memorandum from Joan Pajunen, chair of Collus Solutions' Human Resources Committee, stating that the committee had approved the bonuses. There were no minutes from the Human Resources Committee meeting, however. The auditors noted that significant bonuses should be approved by the board prior to payment.

Since the payments were recorded in Collus's financial records and reviewed by its auditors, I accept that the payments to Ms. Hogg and Ms. Shuttleworth were compensation for their additional efforts in supporting the transaction.

In an email to a friend on March 26, 2012, Ms. Shuttleworth wrote: "I have been working like a dog for two months. Not much to envy. Well then again I did get 15,000 on Thursday for my work closing the PowerStream [*sic*] deal. Paid off my car in full. :) Shhhhh. Secret."

In an affidavit, Ms. Shuttleworth explained she used the word "secret" in this email because she was disclosing salary information, which was typically confidential. She added that she was not told by anyone to keep the payment secret. Ms. Hogg also testified that she was never told the bonus was a secret but understood it to be confidential in the same way as any salary information.

When Ms. Shuttleworth's email is coupled with the auditors' difficulty in confirming board authorization for the sale, questions are naturally raised. After considering all the evidence, I accept Ms. Shuttleworth's testimony that the bonuses were paid for additional work done. The only other bonus paid in relation to the transaction was a \$30,000 bonus to Dean Muncaster.

PowerStream's Payments to Compenso

In 2011–12, PowerStream paid Mr. Bonwick's company, Compenso Communications Inc., \$323,997 in fees and expenses as shown in Table 8.1.

Table 8.1: Amounts PowerStream Paid to Compenso Communications Inc.

<i>Date</i>	<i>Cheque no.</i>	<i>Monthly amount'</i>	<i>Additional expenses</i>	<i>Invoice total</i>
1-Jun-11	717	12,300	898	13,198
1-Jul-11	720	12,300		12,300
1-Aug-11	726	12,300		12,300
1-Sep-11	731	12,300	5,373	17,673
1-Oct-11	735	12,300	2,820	15,120
1-Nov-11	738	19,450	1,462	20,912
1-Nov-11	739	14,300		14,300
1-Dec-11	745	19,450		19,450
1-Jan-12	751	19,450		19,450
1-Feb-12	759	19,450		19,450
1-Mar-12	766	19,450		19,450
1-Apr-12	776	19,837	479	20,317
1-May-12	784	19,775		19,775
1-Jun-12	791	19,775		19,775
1-Jul-12	799	19,775		19,775
1-Aug-12	807	19,775		19,775
1-Sep-12	812	19,939	1263	21,202
1-Oct-12	821	19,775		19,775
Total		\$311,701	\$12,295	\$323,997

Note: 1. None of the amounts were disclosed to Council or the Strategic Partnership Task Team.

Source: Foundation Document 1.

From Collus Power / Collus PowerStream to Compenso

On January 1, 2013, Collus PowerStream paid Paul Bonwick's company, Compenso, \$16,950. The payment followed a conversation between Brian Bentz and Ed Houghton.

According to Mr. Bentz, sometime in 2012, Mr. Houghton phoned him and suggested the transfer of Mr. Bonwick's retainer with PowerStream to Collus PowerStream. Mr. Bentz agreed with the suggestion. At the time, the PowerStream board had already contemplated that Mr. Bonwick's fee should be shared because he was working on the growth strategy for both Collus and PowerStream. Mr. Bentz testified that Compenso's contract with PowerStream was then moved to Collus PowerStream.

In his testimony, Mr. Houghton denied that moving Mr. Bonwick's contract was his idea. He testified that, although there had been discussions about moving Mr. Bonwick's contract to Collus, he pushed back because he wanted to keep costs low. Mr. Houghton then testified that, at some point, Mr. Bentz said PowerStream would pay Mr. Bonwick's monthly fee until the end of 2012, at which time it would shift to Collus PowerStream for a three-month trial. Mr. Houghton testified that he considered this arrangement to be fair.

Cindy Shuttleworth, Collus PowerStream's controller and later CFO at the time of the events examined by this Inquiry, testified that before January 1, 2013, Mr. Houghton advised her that Collus PowerStream had retained Compenso to develop a communications strategy concerning Collus PowerStream's plans for future growth. She said the board did not approve the arrangement, and she did not review Compenso's contract because the monthly fee fell within Mr. Houghton's authorization limit. Ms. Shuttleworth did not know how long the arrangement would last. Still, she assumed it would be short term because the monthly fee "was a significant amount of money" that would negatively affect the company's profitability.

As I discuss further in Part One, Chapter 10, this arrangement was short-lived. On February 1, 2013, Collus PowerStream made a second payment to Mr. Bonwick for \$16,950. However, it was subsequently clawed back after a news report in March 2013 stated that the Ontario Provincial Police were investigating matters relating to Mr. Bonwick and the Town.

Related to Solar Attic Vents and to Shirley Houghton

As I describe in Part One, Chapter 5, Collus Power and PowerStream purchased solar-powered attic vents – an invention intended to reduce home energy costs – from International Solar Solutions Inc. (ISSI) as part of a marketing campaign. ISSI in turn paid a portion of the profits for the sale of the vents to Mr. Bonwick’s company, Compenso. Contemporaneous emails from Peter Budd, a co-founder of ISSI, suggest Mr. Bonwick, Mr. Houghton, and Mr. Budd had entered into an arrangement whereby Mr. Bonwick and Mr. Houghton would share in the profits of the sale of the vents. Mr. Houghton, Mr. Bonwick, and Mr. Budd denied that any such arrangement was finalized.

ISSI’s financial records show sales to Collus Power totalling \$100,750 and to PowerStream totalling \$77,500 during the year ended June 30, 2012. These sales are set out in Table 8.2.

Table 8.2: ISSI Sales to Collus Power and PowerStream

<i>Date</i>	<i>Invoice number</i>	<i>Purchaser</i>	<i>Amount</i>
2-Sep-11	2	Collus Power Corp.	15,035
21-Sep-11	4	Collus Power Corp.	62,465
20-Oct-11	6	Collus Power Corp.	23,250
			\$100,750
2-Sep-11	3	PowerStream Inc.	15,035
21-Sep-11	5	PowerStream Inc.	62,465
			\$77,500

Source: Foundation Document 1.

ISSI, in turn, made two payments to Compenso in 2011 relating to the sales to Collus Power and PowerStream: \$35,001.75 (including HST) on September 3, 2011, and \$4,844.28 (including HST) on November 30, 2011, which total \$39,846.03 (including HST).

Compenso paid Shirley Houghton a total of \$27,390 between December 1, 2010, and December 31, 2012, including \$19,350 shortly after Compenso received \$35,001.75 from ISSI for the sales to PowerStream and Collus Power. The payments to Shirley Houghton are set out in Table 8.3.

Table 8.3: Payments from Compenso to Shirley Houghton

<i>Date per bank statement</i>	<i>Payee per general ledger</i>	<i>Cheque number</i>	<i>Amount (\$)</i>	<i>Notes</i>
9-Mar-11	Shirley Houghton	18001	240	1
8-Jun-11	S. Houghton	1861	360	
8-Jul-11	S. Houghton	1867	2,000	
29-Aug-11	S. Houghton	1878	540	
11-Sep-11	S. Houghton	1888	2,400	
6-Oct-11	S. Houghton	18942	19,350	2
3-Aug-12	S. Houghton	20493	2,500	3
Total			27,390	

Notes:

1. Cheque memo line indicates February Services. The Compenso general ledger classifies this cheque as a consulting expense.
2. Cheque memo line indicates Florida house / office.
3. Cheque memo line indicates July 27/12 invoice.

Source: Foundation Document 1.

As I discuss in Part One, Chapter 5, Ms. Houghton, Mr. Houghton, and Mr. Bonwick testified that \$18,000 of the \$19,350 Compenso paid to Ms. Houghton on October 6, 2011, was for the rental of the Houghtons' Florida property. I do not accept that evidence. As a result, the \$18,000 paid to Ms. Houghton remains unexplained.

Conclusion

After the transaction closed, Collus became Collus PowerStream. In the meantime, the company's CEO, Mr. Houghton, had also been appointed as the Town's acting CAO. Council terminated Ms. Wingrove's employment in April 2012.

Mr. Houghton stepped down as acting CAO a year later, in April 2013, after which tensions grew between the Town and its utility. The strategic partnership did not survive.

Changing Collingwood's CAO

Kim Wingrove was fired as chief administrative officer (CAO) of the Town of Collingwood on April 3, 2012, but the process leading up to her termination had been going on for some weeks. Throughout March and April 2012, Deputy Mayor Rick Lloyd kept Paul Bonwick informed of his criticisms of Ms. Wingrove's performance as CAO, as well as of the process leading to her termination. Mr. Bonwick offered advice to his sister, Mayor Sandra Cooper, directly on some aspects of this process. Mr. Lloyd and Mr. Bonwick then together persuaded Ed Houghton to accept the position of acting CAO.

By April 12, 2012, a CAO who, according to Mr. Lloyd, had a "lack of ability" had been replaced by Mr. Houghton, who was considered by Mr. Lloyd to be a "friend," and who had directed Mr. Bonwick toward two business relationships that proved to be lucrative: PowerStream Incorporated and International Solar Solutions Inc.* As I explore in Part Two, Mr. Lloyd, Mr. Houghton, and Mr. Bonwick would go on to become central figures in the Town of Collingwood's decision to construct two new recreational facilities: an arena and pool.

Council Terminates Kim Wingrove's Employment

Discussions Before Termination

Mr. Bonwick discussed the CAO's performance with the mayor and deputy mayor at various points during Ms. Wingrove's tenure. On January 19, 2011, Mr. Bonwick emailed Ms. Cooper, "Also curious how you made out with the

* Mr. Houghton and Mr. Bonwick worked together both formally and informally on other active business ventures. See Part One, Chapter 1, for more details.

CAO in clarify [*sic*] roles and conduct.” At the Inquiry hearings, Ms. Cooper could not recall why Mr. Bonwick emailed her about the CAO but acknowledged speaking with him.

On June 16, 2011, Ms. Cooper forwarded to Mr. Bonwick an email she had sent to Council and the CAO cancelling a strategic planning session Ms. Wingrove had arranged for Council. Ms. Wingrove testified that she had retained a consultant to facilitate a day-long planning session involving Town department heads and Council members. The purpose of the session was to develop a shared understanding of Council's priorities and to provide order and structure to how Council and staff would move forward. Ms. Wingrove could not recall if the mayor gave her any notice that she intended to cancel the session, other than the email to Council.

On March 2, 2012, Mayor Cooper instructed Ms. Wingrove to “stand down” on a water utility matter in an email chain, including Mr. Lloyd. Mr. Lloyd once again forwarded the chain – which concerned a private instruction from the mayor to the CAO – to Mr. Bonwick.

I have already discussed that Mr. Bonwick was involved in privileged discussions about the share sale transactions which resulted in the Town passing a bylaw that did not include certain protections Ms. Wingrove wanted to include.

Matters appear to have come to a head on March 10. Mr. Lloyd emailed Ms. Cooper and Mr. Bonwick:

Sandra I would really like to meet with you and Paul ASAP.

I need to discuss my concerns I have about Kim. I have had enough and the lack of ability. I am so pissed I want to deal with it ASAP.

I haven't really expressed how I really feel YET!!!! But feel if we don't deal with her I'm going to explode!!!!

Mr. Lloyd then sent a follow-up email to Mr. Bonwick, “Hehehehehehe.”

Mr. Lloyd testified that he included Mr. Bonwick on the email to Mayor Cooper because Mr. Bonwick was the mayor's advisor. However, Mr. Lloyd said that he did not recall why he sent the email or about what he was angry. He did not share these frustrations with anyone else on Council at the time, nor did he inform Council members that he had sent this email to Mayor

Cooper and Mr. Bonwick. Mr. Lloyd said that he wasn't expecting any outcome from his email; he "just wanted to vent." He also did not explain why he felt Mr. Bonwick should be at a meeting with himself and the mayor to discuss his concerns about the Town's CAO. In response to Mr. Lloyd's email, Ms. Cooper wrote that she would call him shortly.

Ms. Cooper told the Inquiry that the deputy mayor's frustration had built up over time. She testified that Mr. Lloyd believed that "items at the Council table weren't being addressed in a timely fashion." When asked if she shared his concerns, Ms. Cooper replied that she thought that Ms. Wingrove was not a "good delegator." Ms. Cooper testified that she spoke with Mr. Lloyd after receiving this email and suggested that Council as a whole should provide input on this issue. She also told Mr. Lloyd that including Mr. Bonwick on his email was inappropriate. Mr. Lloyd testified that Ms. Cooper "ream[ed] him out" about including her brother on email correspondence concerning Town staff.

Ms. Cooper and Mr. Bonwick disagreed about whether they discussed Mr. Lloyd's email.

Mr. Bonwick said in his evidence that he did not know why Mr. Lloyd included him in the email. Mr. Bonwick testified that he forwarded Mr. Lloyd's email to his sister, asking her to give him a call. He claimed that he told Ms. Cooper, "this is pretty bizarre, you ... might want to deal with this." Ms. Cooper, however, denied speaking with her brother about Mr. Lloyd's email or, more generally, about Ms. Wingrove at any time between receiving Deputy Mayor Lloyd's March 10, 2012, email and Ms. Wingrove's termination. Ms. Cooper explained that she did not address the inappropriateness of Mr. Bonwick's involvement in discussions about Town staff with him because she had dealt with the deputy mayor and felt "that would be the end of it." Council terminated Ms. Wingrove's employment on April 3, 2012.

Mr. Bonwick testified that he did not follow up with either the mayor or deputy mayor about this issue, and they did not follow up with him. As I discuss below, this testimony was not accurate.

Mr. Lloyd acknowledged that he should not have included Mr. Bonwick in his email to the mayor about a member of Town staff. Nevertheless Deputy Mayor Lloyd continued to involve Mr. Bonwick in managing the fallout from Ms. Wingrove's termination and her replacement by Mr. Houghton. I discuss this below.

Council Votes on Kim Wingrove's Termination

Council decided to terminate Kim Wingrove in an *in camera* session on April 2. During the Council meeting, Mr. Lloyd emailed Mr. Bonwick to advise him that Ms. Wingrove's "Most important" termination was "DONE!!" Mr. Lloyd did not recall who placed the CAO's performance review on the April 2 Council agenda, though he did acknowledge that it was "quite possible" that he had done it. When asked who initiated the discussion at the Council meeting, Mr. Lloyd responded, "no doubt that I was aggressive about it or talking about it."

Ms. Wingrove testified that she was called into the mayor's office on April 3 to find the mayor and the deputy mayor present. They told her that the Council had decided to terminate her employment, and asked her to resign. Ms. Wingrove refused to resign, and so she was fired.

Effect of Ms. Wingrove's Firing

Town Clerk Sara Almas was "shocked" by Ms. Wingrove's termination. She testified that, to her knowledge, Council did not follow the Town's progressive discipline policy, and she believed that she would have known if they had. Other than the performance review that Ms. Cooper prepared but did not share with Ms. Wingrove in April 2011 (see Part One, Chapter 1), the Inquiry did not receive any formal record about Ms. Wingrove's performance. Ms. Almas said she knew that individual members of the Council were not satisfied with Ms. Wingrove because she did not want to pursue their agendas.

Ms. Almas testified that she knew that Mr. Lloyd, the most influential Council member, was instrumental in Ms. Wingrove's termination. She said:

The deputy mayor was the strongest and ... had the most power over members of council ... in that council term ... if the deputy mayor didn't agree, then it didn't happen ... And if ... the deputy mayor wanted something, he got it.

Although Ms. Almas stated under cross-examination that she regretted wording her evidence that way, she reiterated that the deputy mayor "did

have power, a lot of influence, and in a council of nine (9), you only need five (5), and a lot of the decisions happened to go in the favour that he was influencing.” She said that staff had to “walk a very fine line on what [they were] going to object to and why,” and further commented that “the culture at that time was ... much harder.”

Town treasurer Marjory Leonard also testified that, after Ms. Wingrove’s termination, “it was always in the back of [my] mind that it could happen to any one of us.” She acknowledged that a consequence of the Wingrove termination was that she “may have” held back from raising concerns about Town business.

Ed Houghton Becomes Acting CAO

Ms. Cooper and Mr. Lloyd offered Mr. Houghton Ms. Wingrove’s job before Council decided to terminate the CAO at the April 2 Council meeting. Mr. Houghton testified that the mayor and deputy mayor called him three times in the afternoon on April 2, asking him to take on the Town chief administrative officer’s role. Mr. Houghton said “no” the first two times. According to Mr. Houghton, the third time they called, “they said ... we are going to be making this decision ... would you consider it at least in the short term.” Mr. Houghton asked for time to consider it, and ultimately agreed to the role with three “caveats”: (1) the appointment be short-term (they discussed two months); (2) he not be blamed for Ms. Wingrove’s departure; and (3) he not be paid for this new role. Ms. Cooper testified that Mr. Lloyd had suggested appointing Mr. Houghton as acting CAO. She said that Council did not at that point in time consider any options to fill the CAO role other than Mr. Houghton.

Mr. Lloyd gave somewhat contradictory evidence about Mr. Houghton’s appointment as acting CAO, testifying that he first tried to convince Mr. Houghton to take on the role immediately after the April 2 Council meeting. He testified that Kim Wingrove’s termination placed Council in an awkward position, explaining, “I think we were somewhat in a ... problem, not having a CAO. I think the Municipal Act reads that we must have a CAO ... we made the decision. It may have been rash about ... Ms. Wingrove.

It was quickly [*sic*]. We had to respond to have a CAO.” When asked why Council did not have a plan in place to replace the CAO, Mr. Lloyd said he did not know. He also testified, however, that he “would think that Ed Houghton was discussed at that point” as “somebody interim ... to steer the ship.” He didn’t specifically recall a discussion about Mr. Houghton at the Council meeting but explained, “I don’t think we would ... let our CAO go without a plan ... I believe the plan was that Mr. Houghton would be the acting CAO until we could fill that seat.”

Mr. Bonwick testified that Mr. Lloyd contacted him and explained that they were trying to persuade Mr. Houghton to take on the acting CAO role but he had declined. Mr. Lloyd asked Mr. Bonwick to encourage Mr. Houghton to accept the position. Mr. Bonwick could not recall whether he spoke to Mr. Houghton about it. In his testimony, Mr. Lloyd denied that he and Mr. Bonwick worked together to arrange for CAO Wingrove to be terminated and replaced by Mr. Houghton.

I am satisfied that, after arranging to have Ms. Wingrove terminated, Mr. Lloyd wanted Mr. Houghton in the CAO’s chair. I am also satisfied that he and Mayor Cooper secured Mr. Houghton’s agreement before Council decided to terminate Ms. Wingrove. Mr. Lloyd then sought Mr. Bonwick’s assistance to facilitate Mr. Houghton’s appointment. The deputy mayor also continued to consult with Mr. Bonwick about Mr. Houghton’s transition to the CAO’s role. In certain instances, Mr. Bonwick also directly advised the mayor on how to handle this transition.

On April 9, Mr. Lloyd emailed Mr. Houghton offering his assistance and said:

I like the way direction was given this morning and this is exactly what is required!

Kick ass if need be as you know where we need to be and that is exactly the direction required not only this issue but all.

It is time the Corporation is managed as staff have been doing what ever [*sic*] but now clear concise direction will prevail.

Glad to see someone finally steering the ship.

CAO don’t make friends of staff they give direction to staff and that has been lacking for a long time.

Mr. Lloyd forwarded this message to Mr. Bonwick, who responded, "Perfect." Mr. Lloyd testified that he had asked Mr. Bonwick to convince Mr. Houghton to take on the role, because he knew they were friends. However, Mr. Lloyd stated that he did not have a detailed recollection of that conversation. He said that he sent Mr. Bonwick this email to inform him that Mr. Houghton had agreed to assume the CAO's role.

I reject Mr. Lloyd's explanation. Mr. Houghton had already accepted the position by this time. This email correspondence was simply an excerpt from Mr. Lloyd's ongoing conversation with Mr. Bonwick about issues the deputy mayor thought important. This time the significant issue happened to be the installation of Mr. Houghton as acting CAO.

Mayor Cooper issued a press release dated April 10 announcing Ms. Wingrove's "departure." The press release stated: "The Mayor, Council and staff are thankful for Ms. Wingrove's service and contribution during her tenure and wish her every success in the future," and it directed any inquiries to Mayor Cooper. Mr. Lloyd forwarded the news release to Mr. Bonwick, who replied, "That's not a news release ...". Mr. Lloyd testified that he sent the press release to Mr. Bonwick to "take it to his attention."

On the morning of April 11, Mr. Lloyd forwarded to Mr. Bonwick two email chains in which he and councillor Dale West discussed their concerns that the mayor was not providing a sufficient response to a local reporter, Ian Adams, about Ms. Wingrove's dismissal. Mr. Bonwick forwarded the email chains in turn to his sister, warning her that the issue is "about to explode on you!" In the email Mr. Bonwick asked to speak to her, also advising her to "get on top of this quickly."

Mr. Lloyd testified that he forwarded this correspondence to Mr. Bonwick because he knew that Mr. Bonwick was one of the mayor's advisors. He explained that, "some things I just didn't touch ... it was easier for me to go through Paul [Bonwick]." Mr. Bonwick denied that he was involved in the CAO's termination and testified that he was simply providing advice about the mayor's media relations.

On April 11, Ian Adams' article in the Collingwood *Enterprise-Bulletin* reported:

A week after town councillors huddled behind closed doors to discuss the performance of their chief administrative officer, the woman hired to do the job less than three years ago is out the door.

...

On Thursday, council was scheduled to meet behind closed doors; one of the topics on the agenda was discussion on the acting-CAO position. Cooper said council had an individual in mind for the role ...

Sources say Collus president, and the Town's executive director of public works, Ed Houghton, will be tapped to head up the town's management team.

The next day, Mr. Lloyd reported to Mr. Bonwick, advising that he "Just met with Adams and he is going to wrote [*sic*] the EB blog about Council making the right decision and how wonderful Ed is." Mr. Bonwick approvingly responded, "You are the man."

Mr. Lloyd testified that his discussion with Ian Adams about Mr. Houghton's impending appointment was "damage control." He explained that he reported his conversation to Mr. Bonwick, because Paul Bonwick "was one of our advisors."

When the clerk's department circulated an agenda for the April 12 Council meeting without listing the acting CAO position, Mr. Lloyd emailed Mayor Cooper, asking, "I thought you were going to place Personel Personal [*sic*] on the Incamera [*sic*] agenda? Re: Acting CAO." Once again he forwarded the email chain to Mr. Bonwick, writing, "?????????????" The clerk's department circulated a revised agenda shortly thereafter, which added "Discussion re Acting CAO." Mr. Lloyd forwarded the revised Council agenda to Mr. Bonwick.

Mr. Lloyd consulted Mr. Bonwick again when Councillor Keith Hull sought to delay the discussion about replacing the CAO. Mr. Hull, responding to the revised agenda, emailed Council asking, "I am not able to attend Thursday's meeting. Why can these items not wait until Monday?" Councillor Joe Gardhouse agreed, writing, "We certainly don't need to making [*sic*] big decisions with a councillor not present unless it's absolutely necessary. It is my understanding that the town clerk can make any necessary signings." Mr. Lloyd forwarded this email correspondence to Mr. Bonwick,

who responded, “Who cares what he says ... tell Sandra to stay the course.” Mayor Cooper responded to Councillor Hull’s email that evening: “The item regarding CAO by-law must come forward due to documents that will signing [*sic*] authority ... If you have further questions, please call or email. I have an open door policy if anyone wishes to stop by the office. I invite each member of council and I will provide the coffee.”

Despite the objections of Councillors Hull and Gardhouse to the appointment being dealt with in the absence of Councillor Hull, Council appointed Mr. Houghton acting CAO on April 12, 2012.

I find that the mayor and deputy mayor consulted with Mr. Bonwick on terminating Ms. Wingrove. The deputy mayor then enlisted Mr. Bonwick’s assistance in convincing Mr. Houghton to accept the role of acting CAO. It was to Mr. Bonwick’s advantage and benefit to have a friend serve as the Town’s most senior staff member. As I discuss in Part 2, this advantage was apparent when Council decided to construct two recreational facilities, for which Mr. Bonwick’s company earned a fee of \$756,740.42, including HST.

The Breakdown of the Strategic Partnership

In March 2013, seven months after the share sale transaction closed, the CBC reported that Collingwood citizens had complained to the Ontario Provincial Police about Paul Bonwick's role as a consultant to PowerStream, raising questions about his involvement in the share sale. Shortly afterwards, in April 2013, Ed Houghton stepped down as acting chief administrative officer (CAO) and, in July, was replaced by a new CAO, John Brown. Mr. Brown began asking questions about the nature of the shared services agreements between the Town, its water utility and Collus Power (now Collus Power-Stream Corp.) and whether they provided good value. Mr. Brown's inquiries broadened to include questions about the process leading to the Collus share sale. He commissioned multiple reports in search of answers but these reports yielded more questions. By 2017, the strategic partnership would be dissolved, and the Town would sell off the entirety of its hydro utility.

Following the completion of the share sale, a number of reports were commissioned, including reports that Mr. Brown commissioned as part of his efforts to understand the strategic partnership transaction and its implications for the Town. I describe these reports to help explain the context in which the Town continued to investigate the Collus share sale transaction. I do not necessarily adopt all of their findings and conclusions.

New Corporate Structure

Before the share sale, the Town was the sole shareholder of Collingwood Utility Services Corporation, which was the sole shareholder of Collus Power Corporation, Collus Solutions Corporation, and Collus Energy

Corporation. After the sale, the Town became the 50 percent shareholder of a new entity, Collingwood PowerStream Utility Services Corporation. PowerStream owned the other half of the shares. Collingwood PowerStream Utility Services owned the Town's utility, and the name of the utility was changed from Collus Power to Collus PowerStream Corporation. Collus Solutions and Collus Energy were changed to Collus PowerStream Solutions and Collus PowerStream Energy, respectively.

Under the unanimous shareholders agreement, the Town and PowerStream each had the right to appoint three members to the board of directors of each of the corporations and the same six individuals were appointed to each. The Town appointed David McFadden (previously a director of Collus Power), Mayor Sandra Cooper, and David Garner. PowerStream appointed Brian Bentz (PowerStream's president and chief executive officer), Jeff Lehman (mayor of Barrie), and Dan Horchik (a Markham city councillor). Ed Houghton remained as the president and CEO of Collus PowerStream. Cindy Shuttleworth stepped into the role of chief financial officer (CFO) of Collus PowerStream, replacing Tim Fryer, and Pam Hogg continued at the company as the executive assistant to Collus PowerStream's CEO, director of human resources, and secretary for the Collingwood Public Utilities Service Board (CPUSB).

The CPUSB, the Town's water utility, remained under the control of the Town.

Delayed Shared Services Updates

As I discussed in Part One, Chapter 8, the Town, PowerStream, and the Collus corporations did not update the shared services agreements between the Town, the Collus companies, and the CPUSB in advance of closing the Collingwood Utility Services share sale. Instead, the parties signed a side letter on July 31, 2012, agreeing to update the agreements within one year of the closing of the transaction (the side letter). Some efforts were undertaken to update the agreements within the first year of the strategic partnerships, but they did not result in amended agreements.

As I discuss in Part One, Chapter 2, one of the primary transactions

under the shared services agreements was Collus Solutions billing Collus Power and the CPUSB for the services that Collus Solutions' employees provided to the Town's power and water utilities. However, both Tim Fryer and Cindy Shuttleworth testified that the process by which Collus Solutions' costs were allocated differed from the cost allocation process contemplated in the agreements.

The HSG Report and Initial Shared Services Negotiations

On January 4, 2013, Collus PowerStream CFO Shuttleworth hired a consultant, Howard Gorman of HSG Group, to analyze the distribution of Collus PowerStream Solutions' costs to Collus PowerStream, the CPUSB, and the Town. Mr. Gorman presented the HSG report to Collus PowerStream and the CPUSB on July 22, 2013. The report identified the services each employee of Collus PowerStream Solutions provided to Collus PowerStream, the Town, and the CPUSB. It determined that Solutions' costs were distributed as follows:

Collus PowerStream (power)	59.4%
CPUSB (water)	32.7%
Town	7.9%

The HSG report concluded:

The methodology developed for Collus PowerStream Solutions Corp. to distribute its costs among the businesses it serves is cost-based, consistent with OEB precedent and regulatory practice, and is transparent and efficient.

Although the HSG report concluded that the process used was transparent and efficient, it did not assess whether the process complied with the shared services agreements or whether the current approach provided the best value to the Town.

Regardless of whether Collus PowerStream Solutions' cost allocation methodology was appropriate, it was crucial that the agreements regulating

these services be updated to reflect the services being provided. First, the transaction documents required that the agreements be updated. Second, ensuring that the services provided by Collus PowerStream Solutions were accurately reflected in the agreements would allow the Town to know whether it was receiving value for the money it and the CPUSB paid for these services. As will be seen below, when the Town of Collingwood hired a new CAO, it was not immediately clear to him whether the Town was receiving value for money under the shared services agreements. This confusion, among other things, led Collingwood's new CAO to investigate the share sale.

As I discuss in Part One, Chapter 3, KPMG first identified in March 2011 that a transaction could affect the provision of services between the Town and Collus. At that time, Mr. Houghton instructed KPMG not to complete a detailed review of how costs were distributed. I pause here to note that Mr. Gorman completed his review in just over six months.

In his closing submissions, Mr. Fryer argued that the completion of the HSG report was one step in the agreement-updating process; the next step was to negotiate amendments to the agreements as necessary. It appears that these negotiations started in the first year of the partnership but were not completed. Mr. Bentz testified that there were "a couple" of meetings to negotiate the agreements in the first year but he acknowledged that these negotiations were not significant. Mr. Nolan could not recall why the agreements were not updated.

The shared services agreements were not an issue while Ed Houghton was Collingwood's CAO. Those agreements, however, became increasingly contentious when Collingwood hired a career CAO to replace him.

CBC Story on Paul Bonwick's Role

On March 8, 2013, the CBC published an article titled "Collingwood mayor's brother paid by casino, power companies." The article reported that citizens had complained to the Ontario Provincial Police about Mr. Bonwick's role as a consultant to PowerStream at the time of the Collus Power sale. The news made waves.

PowerStream learned about the CBC article two days before publication when the reporter asked the company for comment. At 8:46 a.m. on March 6, 2013, Sandra DiPonio, Brian Bentz's assistant, emailed Mr. Bentz with the subject "!!Important" and wrote: "Dennis [Nolan] is extremely concerned and would like to speak to you (with Eric) asap ... re: an investigative reporter call and raising the issue with Paul Bonwick." Mr. Nolan testified that his concern was the same one he had at the outset of PowerStream's relationship with Mr. Bonwick: that PowerStream's retainer would create an appearance of a conflict of interest.

Mr. Bentz testified that, before the CBC article was published, PowerStream was aware of "talk in the community" regarding Mr. Bonwick and allegations of undue influence relating to the Collus share sale. As a result, Mr. Bentz explained, PowerStream was more cautious in how it engaged Mr. Bonwick and asked Mr. Bonwick to be sensitive to the optics of the situation.

The Collingwood *Enterprise-Bulletin* also published an article on Mr. Bonwick on March 8, 2013, which stated Mr. Bonwick denied that he had lobbied members of Council or municipal staff on the PowerStream transaction. It also reported:

PowerStream [CEO] and president Brian Bentz, in an interview with QMI Agency in May, 2012, said Bonwick played no role in the sale – and the idea that a third party would act as a broker in any deal "would not be normal practice in our industry."

Mr. Bentz recalled giving an interview in May 2012 and testified that the quote printed by the *Enterprise-Bulletin* was inaccurate. Mr. Bentz recalled being asked whether Mr. Bonwick acted inappropriately, to which Mr. Bentz responded "no." He further testified that, when he referred to third parties in the interview, he was trying to say that PowerStream did not typically use third-party consultants in transactions. Mr. Bentz testified that, when the article was published, he discussed with Dennis Nolan, PowerStream's general counsel and corporate secretary, and Eric Fagen, PowerStream's director of communications, whether to ask the newspaper for a correction. They decided it was better not to draw further media attention to the matter.

Mr. Bonwick gave an interview to a *Collingwood Connection* reporter for an article also published on March 8, 2013. The article quoted Mr. Bonwick as saying that, before entering an agreement with PowerStream, he met with Dean Muncaster, Clerk Sara Almas, CAO Kim Wingrove, and Mayor Sandra Cooper and “laid out the strategy that PowerStream [*sic*] was considering offering me a contract.” The article also reported: “Bonwick said his role was to develop a communications strategy regarding the future of local distribution companies and to ‘educate the public and elected officials without having any direct involvement with elected officials.’”

Mr. Bonwick agreed these statements were inaccurate. He testified that he did not see the article when it was published and did not recall making the statements. Mr. Bonwick suggested that the quote regarding his role with elected officials was taken out of context.

Termination of Compenso Agreement

The CBC article led to the termination of Mr. Bonwick’s consulting agreement with Collus PowerStream through his company, Compenso. As I discuss in Part One, Chapter 8, in late 2012, the agreement had been transferred from PowerStream to Collus PowerStream. Following the transfer, Collus PowerStream made two payments of \$15,000 (plus HST) to Compenso on February 13 and February 26, 2013. At the time the CBC article was published, the cheque for the second payment had not been cashed.

CFO Cindy Shuttleworth testified that, following the news report, Mr. Houghton advised her that Collus PowerStream needed to terminate Mr. Bonwick’s retainer because his “reputation had been so damaged by the media.” She also noted that the public would be critical if it learned that Collus PowerStream continued to pay Compenso \$15,000 each month, adding: “It would be very difficult to do work with other utilities and talk about strategic partnerships and mergers with a company that had been – their reputation had been so damaged.”

Mr. Houghton also directed Ms. Shuttleworth to cancel the second payment. On March 12, 2013, Mr. Houghton and Ms. Shuttleworth had the following email exchange regarding the payments to Compenso:

Mr. Houghton: We are only going to look at the two in 2012. Is that correct?

Ms. Shuttleworth: No they have to do subsequent events. So for sure they will look at the 2013 ones.

Mr. Houghton: The one should be removed

Ms. Shuttleworth: It is reversed. I got Dian to do it after I spoke to you.

But it still shows up in the vendor history for Compenso.

Mr. Houghton: Let's chat

In her affidavit, Ms. Shuttleworth explained that she understood Mr. Houghton was asking about which payments to Compenso would be reviewed by Collus's auditors for the 2012 year. Collus PowerStream had made two payments to Compenso in 2012: 1) \$1,262.73 for a dinner in March 2012 after the signing of the share purchase agreement, as well as accommodations for Brian Bentz (the attendees included Mayor Cooper, Deputy Mayor Rick Lloyd, and PowerStream's executive management team), and 2) for the cost of half a table at the Liberal Party's heritage dinner (PowerStream paid the other half). Ms. Shuttleworth explained to Mr. Houghton that, in addition to these two 2012 payments, both 2013 payments for \$15,000 (plus HST) would be reviewed, even though the second payment had been reversed.

Mr. Houghton testified that Brian Bentz instructed that the payment be reversed. Mr. Houghton gave this evidence after Mr. Bentz had testified at the Inquiry. As Mr. Houghton's counsel did not question Mr. Bentz to confirm whether he recalled any such conversation, Mr. Bentz did not have the opportunity to address Mr. Houghton's evidence on this point.

In light of the CBC article, it is clear that Mr. Bonwick's involvement in the Collus PowerStream share sale created an apparent conflict of interest in that it caused a reasonable apprehension among the public that Mr. Bonwick's relationship with certain councillors might influence how these councillors exercised their elected responsibilities. In such cases, the appropriate response would have been to disclose all of Mr. Bonwick's work to the parties involved.

As discussed in detail in previous chapters, proper disclosure did not take place. As a result, once word of Mr. Bonwick's involvement reached the media and public, the transaction's credibility was undermined, which harmed the reputation of the Town, its utility, and PowerStream. The public

backlash in response to the CBC article is an indication of the dangers of failing to properly address conflicts of interest.

Ed Houghton's Resignation as Acting Collingwood CAO

On April 15, 2013, Ed Houghton stepped down as Collingwood's acting CAO and executive director of public works, effective immediately. I discuss Mr. Houghton's resignation further in Part Two, Chapter 14.

KPMG Governance Review

On April 17, 2013, the Town hired KPMG to review all the municipality's services. Bruce Peever of KPMG presented the initial results on May 13. Among other things, Mr. Peever advised Council that the Town's senior management should be employees of the Town, noting that "even employees of 'sister' organizations – such as Collus – should not be considered as part of the [executive management] team."* He added: "If there are two employers... the individual would have somewhat of a conflict of whose interest (that person) is representing [*sic*]."

Mr. Peever's comments struck a nerve with Ed Houghton. On May 31, 2013, he sent John Herhalt at KPMG an email titled "Another KPMG Slam," writing:

I'm sure you are not involved but I wanted to let you know that one of your colleagues, Mr Bruce Peever, has destroyed 35 years of a good partnership between the utility and the Town of Collingwood. His actual quote in the local paper in reference to what I have personally been doing for years is "The importance of having your senior leadership being employees of the Town (not employees of Collus) can't be understated."

I cannot believe this and I am so saddened by this.

Regretfully Ed.

* The executive team referred to is discussed further in Part Two, Chapter 2.

Although Mr. Herhalt had assisted with the Collus Power RFP, he was not involved in KPMG's review. Nevertheless, Mr. Houghton's email initiated a series of communications within KPMG and between KPMG and the Town that ended with Mr. Peever and a colleague recommending to Council on June 10 that their review be halted until Council hired a new CAO. KPMG, according to the minutes, also "provided clarification of the benefits and interaction of a shared service provider such as the Town's relationship with [its] utilities and Collus." I discuss KPMG's governance review further in Part Two, Chapter 14.

CAO John Brown and the Shared Services

Council hired a new acting CAO, John Brown, in July 2013. Mr. Brown had 40 years of municipal experience, with 30 years in city management as either assistant city manager or city manager.* At that point, he had worked for seven municipalities in three provinces.

In the fall of 2013, Mr. Brown began considering the shared services between the Collus PowerStream corporations, the Town, and the Collingwood Public Utilities Service Board as part of an overall organizational review. This led him to inquire further about the Collus share sale transaction, including questions about where he could find records of the transaction and who acted as the Town's lawyer. Mr. Brown testified that he was concerned by his difficulty in obtaining information about the transaction. He commissioned several reports relating to the Collus share sale and the shared services agreements. The reports identified issues with the share sale process and risks the partnership posed to the Town. These issues, in turn, contributed to the breakdown in the relationship between the Town, Collus PowerStream, and PowerStream.

Some of the reports I discuss in this chapter were criticized at the time they were being drafted and/or upon their release. During the Inquiry hearings and in closing submissions, certain participants took issue with Mr. Brown's approach to the matters discussed in this chapter. Those matters are

* He explained that this role was equivalent to the CAO role.

irrelevant to the issues in the Terms of Reference of this Inquiry. However, the fact that the Town undertook an intensive investigation into the share sale less than five years after it occurred is relevant to the Inquiry. Through the Town's efforts to understand the share sale after the fact, it became clear that elements of the Collus PowerStream share sale important to the Town had not been sufficiently considered.

The Town's Organizational Review

As CAO, Mr. Brown immediately began examining organizational matters at the Town, including matters related to the services Collus PowerStream Solutions was providing to the Town and the CPUSB. On December 4, 2013, Council identified priority items to be addressed in 2014, including "Governance review," "Strategic Financial Plan," "Corporate restructuring review," and "Facility management and development strategy."

The BMA Report on Collingwood's "Financial Health"

One of the first steps the Town took to address its strategic goals was to obtain an assessment of its "financial health" from BMA Management Consulting Inc. Published in January 2014, the BMA report found that Collingwood was in a negative financial position and predicted that, "without action to address the Town's financial position, the Town will become increasingly challenged to provide the services and infrastructure that citizens expect and value." It recommended, among other things, that the Town "conduct an operational review of all corporate expenditures to identify operating cost reductions and efficiencies thereby ensuring that taxpayers are receiving value for money."

The Beacon 2020 / True North Operational Review

On July 21, 2014, Council directed staff, together with the Collingwood Public Utilities Service Board, to conduct an independent operational review of the January 1, 2003, services agreement between CPUSB, the Town, and Collus PowerStream Solutions to determine whether it provided the Town with

sufficient value for money. The Town and the CPUSB retained Beacon 2020, Inc., and True North Consultants, Inc., to conduct the review. The authors of the Beacon 2020 / True North Report were unable to determine whether the Town was receiving value for money.

The Beacon 2020 / True North Report stated that the agreement may have expired and recommended, among other things, terminating the agreement. The status of the shared services agreements would become a source of increasing tension in the Town's relationship with PowerStream and the Collus PowerStream companies over the next two years, as the Town struggled to understand the deal it had made, and negotiate a way forward for the utility.

The Beacon 2020 / True North Report also advised against allowing individuals to hold roles within both the Collus PowerStream corporations and the CPUSB. Mr. Brown raised this with Ms. Shuttleworth and Ms. Hogg by email in March 2014. They did not agree with the report's conclusions, adding to the outstanding issues to be addressed by the Town and Collus PowerStream.

In addition, the Beacon 2020 / True North Report identified a conflict between the Town and PowerStream arising from their different fiscal goals for Collus PowerStream Solutions: the Town viewed it as a "break even" company,* while PowerStream's stated objective was stable regulated returns.

This difference in views should not have come as a surprise. As early as March 2011, KPMG identified to Collus Power that a transaction could affect the shared services (see Part One, Chapter 3). Mr. Houghton, however, directed KPMG not to review the agreements as part of its options analysis. The agreements were not given serious consideration again until after the transaction closed.

Although Collus PowerStream, the CPUSB, and certain Town councilors criticized the report,† all agreed that the shared services agreements

* The Town's view of Solutions as a "break-even" company was confirmed by Inquiry witnesses and is discussed further in Part One, Chapter 2.

† Representatives from the power and water utilities, as well as Ian Chadwick, submitted written responses rebutting some of the report's findings. These were provided to the report's authors, who replied by letter dated February 12, 2015, that "the recommendation and conclusions in the Report remain the same."

should be updated and clarified. The authors considered responses on the report before finalizing it on February 12, 2015.

Shared Services and the Sale Reviewed

While Beacon and True North completed their work, a new Council was elected on October 26, 2014. Sandra Cooper retained her position as mayor, while Brian Saunderson was elected as the new deputy mayor. The other councillors from the 2010–14 Council to retain their seats were Mike Edwards and Kevin Lloyd. The balance of the newly elected Council consisted of Tim Fryer, Cam Ecclestone, Kathy Jeffery, Deb Doherty, and Bob Madigan. The Council was sworn in on December 1, 2014.

On February 17, 2015, the new Council resolved to receive and approve the Beacon Report and to

defer the recommendation to provide notice of termination of the current agreement until the Board and CAO have an opportunity to review and report back to Council by no later than May 13, 2015 of the required services.

The Side Letter of July 31, 2012

On March 24, 2015, about a month after Council directed staff to review and report back on the Beacon 2020 / True North recommendations, Brian Bentz sent Mr. Brown a copy of an important document pertaining to the shared services that Mr. Brown had not been aware of: the July 31, 2012, side letter between Collingwood Utility Services, the Collus corporations, the Town, and PowerStream. This letter set out an agreement between all the parties that the shared services agreements would not be updated before closing the share sale and their commitment to update the agreements within the next 12 months. Mr. Bentz offered to convene a meeting to advance the negotiation of new shared services agreements.

Collus PowerStream had considered the letter internally on February 24, 2015. PowerStream board member Dan Horchik forwarded information

about it to Mr. Bentz, David McFadden, Sandra Cooper, Jeff Lehman, and Ed Houghton. In the email, Mr. Horchik noted that the letter had been overlooked by the Beacon 2020 / True North Report authors,* writing: “I think that at the right time we may have to remind the Town of the contents of this letter.”

Mr. Brown testified that the side letter’s existence “came as a real surprise.” Although it was included in the closing books for the transaction, the Town did not have a copy of the closing books. Mr. Brown, worried that the side letter superseded the original shared services agreements discussed in the Beacon 2020 / True North Report, sought legal advice and further information about the share sale transaction. He also began discussing the next steps for the service agreements with PowerStream representatives. The ongoing uncertainty about the shared services agreements led to increasing tension between Mr. Brown, PowerStream, and Collus PowerStream.

Legal Opinion of Aird & Berlis and the Closing Books of the Transaction

After discovering the July 31, 2012, side letter, Mr. Brown asked law firm Aird & Berlis for a legal opinion on “whether the provisions of the Purchase Agreement would create any issues in relation to the conclusions in the [Beacon 2020 / True North Report] concerning the termination of the [shared services agreements].” He also sought a copy of the closing books and continued to try to understand the extent of the Town’s legal representation during the transaction. Mr. Brown’s efforts to learn more about the shared services agreements and the Town’s legal representation yielded additional concerns that the Town’s interests were not protected over the course of the share sale.

As I noted above, the Town did not have a copy of the closing books for its share sale. Mr. Brown ultimately obtained a copy from Ron Clark at Aird

* Mr. Brown testified that this document was not included in the Beacon 2020 / True North Report because nobody involved in commissioning the report (i.e., the Town and the CPUSB) knew it existed. Tim Fryer, who served as a Town councillor during Mr. Brown’s tenure, testified that the Town’s new Council did not become aware of the letter until the various reviews commissioned by Mr. Brown brought it to light.

& Berlis in March 2015.* On March 26, Aird & Berlis provided the Town with a draft memo on the extent to which the share purchase agreement and the side letter affected the shared services agreements' legal status. The memo did not provide a definitive answer to whether the July 31 side letter created legal obligations. Instead, it identified potential arguments about the enforceability of the side letter and noted that it was "open to the Town to take the position that the terms of the [July 31 side letter] ... merely amount to a non-enforceable 'agreement to agree.'" It also stated that the Town and Collus PowerStream had failed to comply with the side letter's requirements to assess appropriate costs and conditions for the service agreements and to review the agreements annually.

In discussions with Aird & Berlis, the Town also learned that it could be subject to a \$1.7 million penalty if it terminated the shared services agreements. Mr. Brown described this potential penalty as "a major threat." Further, Leo Longo, who provided municipal solicitor services to the Town, raised the concern that PowerStream might react to the Town's position on the shared services agreements by initiating the shotgun share sale process (see Part One, Chapter 7), noting, "The 'threat' of such provisions being invoked is now a constant concern going forward and will loom over any future discussions the Town and PowerStream may have on any matter." Town Clerk Sara Almas testified that competing views over the letter's binding nature impeded the shared services agreements negotiations between the Town and PowerStream.

The Town's Legal Representation

Mr. Brown had also been trying to determine which lawyers had represented the Town in the transaction negotiations. This question proved difficult.

Mr. Brown testified that he was concerned about the extent to which certain elements of the agreements, such as the shotgun and right of first refusal clauses, compromised the Town's interests. He felt that a discussion with the lawyer who represented the Town during the transaction could help him

* As described in Part One, Chapter 8, Mr. Clark helped draft the transaction documents for the Collus PowerStream share sale.

understand what had transpired, and so he emailed Mr. Houghton in July 2014 to ask who represented Collus and the Town over the course of the share sale. Mr. Houghton responded the next day: “Collus worked through Ron Clark, the Town through Mr. Longo.”

On March 2, 2015, Mr. Longo told Mr. Brown that he did not provide general advice to the Town on the transaction but rather responded to the Town’s specific legal questions. Shortly thereafter, Mr. Brown asked Ron Clark who represented the Town in the transaction. Mr. Clark forwarded Mr. Brown’s email to Mr. Longo on March 4, asking for his thoughts. Mr. Longo responded:

The question posed by the CAO is who was the lawyer of record that represented the Town on the transaction. It wasn’t you. I don’t know what entity you billed but I don’t believe it was the Town. It wasn’t me ... as I was never involved in the negotiation of any of the agreements and other closing documents. Frankly, I believe the Town chose not to have a lawyer of record on this transaction.

In response, Mr. Clark indicated he had understood that Mr. Houghton instructed both Mr. Clark and Mr. Longo on behalf of both the Town and Collus Power. The following day, Mr. Clark advised Mr. Brown that he represented both Collus and the Town during the transaction, and that he took instructions from Mr. Houghton.

Mr. Brown emailed Ed Houghton on March 19, 2015:

This is by way of an update to our earlier e mail exchange related to the Towns [*sic*] legal representation, and your advice to me that Leo Longo represented the Town in this transaction, while Ron Clark represented Collus.

Following discussions with both of these gentlemen, I can now advise you that Leo Longo was not the Towns lawyer of record. Ron Clark was. Mr. Clark represented both the Town and Collus.

With respect to the Town, Mr. Clark advised me that he reported directly to you and took instructions from you.

Mr. Houghton forwarded this email to Mr. Clark, stating: “As you know, Leo was involved. Please provide a correction to Mr. Brown.” Mr. Clark forwarded Mr. Houghton’s email to Mr. Longo, who replied: “As we have discussed, my peripheral ‘involvement’ was minimal and I was not the lawyer of record for the Town respecting that transaction ... Please do not suggest otherwise.” Mr. Longo also emailed Mr. Brown, explaining that his involvement in the transaction was “sporadic and minimal” and limited to responding to specific legal questions from the Town.

Miller Thomson’s Legal Opinion on the Sale and Agreements

After receiving Aird & Berlis’s memo, Mr. Brown’s continued concern that the Town might be subject to a \$1.7 million penalty if it terminated the shared services agreements, as well as his questions about the Collus PowerStream share sale, led him to seek a legal opinion from the firm Miller Thomson.

In its opinion, provided to the Town on May 15, 2015, Miller Thomson concluded that there was a strong argument that the January 1, 2003, services agreement remained in force, and that the July 31, 2012, side letter did not amend the 2003 agreement. The Miller Thomson Report set out options including termination or amendment of the shared services agreement.

The report also opined that the share sale was valid and binding and discussed the Town’s apparent lack of involvement in the share sale process. It identified the lack of Town participation in key decisions in the transaction, noting that the decision to change the shares sold in the transaction from Collus Power shares to Collingwood Utility Services shares appeared to have “occurred without significant, or any, Council review or input.” The Report stressed that the decision on which shares would be sold “should not and cannot be delegated.”

Miller Thomson also stressed that it was essential for the Town to be actively involved in all aspects of a major transaction such as the Collus Power share sale transaction and reported there was confusion about which lawyers were acting on the transaction and which parties these lawyers were representing. The Miller Thomson Report concluded that, in such a major transaction as the sale of half of the Town’s shares in Collus Power to a third party, the parties involved ought to have considered several issues, including:

- a) whether it was appropriate for the Town, [Collus] and [its] Subsidiaries to all have the same legal representation;
- b) whether the interests of all these parties were fully aligned;
- c) whether independent legal advice was necessary or advisable for any or all of these parties;
- d) even if all of the parties believed it was appropriate to be represented by the same law firm, whether each party should have designated a different person to give instructions to their lawyer within that law firm and to determine if any conflicts of interest arose; and
- e) whether a 50% co-ownership structure was in the best interests of the Town.

The report also commented on the implications of the “far-reaching authority” the authorizing bylaw granted to the mayor or clerk to complete the transaction and “enter into other significant agreements without having to return to Council.” The report recommended that “such a broad grant of authority for significant transactions not be repeated in the future, and that Council maintain its role as overseer of such matters.”

Mr. Brown testified that, when Jean Leonard of Miller Thomson presented the report to Council, she advised that the Town was not at risk of incurring a \$1.7 million penalty with regard to the shared services agreements. Nonetheless, the opinion raised questions about the transaction process and whether there was sufficient legal and Council oversight of the share sale. Mr. Brown worried about whether Council was sufficiently advised on the strategic partnership’s governance structure before the transaction took place. Given that many of the questions raised by the Miller Thomson report are issues pertinent to this Inquiry, it is understandable that Mr. Brown would seek a deeper understanding of the share sale.

Council accepted Mr. Brown’s recommendation to consider the strategic partnership’s vulnerabilities and what the Town’s future options were. As I discuss below, the Town retained Mark Rodger, a partner with Borden Ladner Gervais LLP, on October 5, 2015, to conduct a detailed review of the share sale and options for the Town.

Water and Wastewater Services Report

While the Town investigated the share sale, it retained BMA Management Consulting Inc. and DFA Infrastructure International Inc. to assess the Town's water and wastewater operations. The report, published on June 16, 2015, recommended that the Town assume direct control of the water and wastewater services, estimating that savings of \$706,521 annually would result. The report also reiterated concerns previously identified in the KPMG review and the Beacon Report about the dual roles certain people had at the Town and the Collus PowerStream corporations. After the BMA/DFA Report was presented to Collingwood Council on June 22, 2015, Council voted to shift control of Collingwood's water and wastewater service delivery from the CPUSB to the Town.

Mr. Brown testified that, after the water services issues were resolved, he continued negotiations with PowerStream in the hope of settling the shared services agreements problems.

Valuation Report

The Town retained Henley International Inc. to undertake a valuation of the parent company Collingwood PowerStream Utility Services Corp. in or about 2015. Henley's report, published on June 16, 2015, set its firm value between \$26.5 and \$30.3 million and its equity value at approximately \$15.7 million. The report also stated that Collingwood and PowerStream's joint ownership of Collus PowerStream restricted the Town's ability to sell its interest in the company and potentially made the company less attractive to buyers.

Mr. Brown testified that he was alarmed by the report's findings on the Town's ability to sell its shares. He stated that he was unable to obtain any concrete information about who originally recommended a 50/50 partnership and what research was behind the recommendation to the Town.

Report on the History of the Collus Companies

As noted above, the Town retained Mark Rodger of Borden Ladner Gervais (BLG), to prepare a detailed report on the history of the Collus companies and to provide “go forward” alternatives for its interest in the Collus PowerStream corporations.

Findings of the Report

On March 31, 2016, after preparing various drafts, Mr. Rodger presented his final report to Council. Council voted to receive the report and authorized Mr. Rodger’s continued retainer. The report’s findings included:

- a) There did not appear to be any consensus as to why Collus decided to sell 50 percent of its shares in 2012. Interviewees provided conflicting information on this point, including that the transaction was caused by concerns that Collus needed to partner with a more sophisticated entity to survive upcoming government-forced consolidation of LDCs, and that the transaction was caused by a desire to provide the Town with a cash infusion;
- b) Neither the Town nor Collus-PowerStream were able to provide BLG with any rationale as to why a 50 percent sale of Collus’s shares was chosen in 2012 as opposed to a 100 percent sale, the sale of a smaller percentage of Collus’s shares, or a merger;
- c) BLG had difficulty locating information regarding Collingwood Council’s:
 - establishment of the Strategic Partnership Task Team;
 - approval of the criteria used in the 2012 RFP process; and
 - goals and preferred approach for negotiations with RFP bidders.

As with earlier efforts to understand the Collus PowerStream share sales’ genesis, the BLG report raised more questions than it supplied answers. Mr. Brown agreed that, at the time of this report, the relationship between the Town and Collus PowerStream had become “difficult.” Five weeks after the BLG report was published, Collingwood Council voted to authorize Mark Rodger to explore options to sell the Town’s remaining

50 percent interest in Collus PowerStream and effectively end the strategic partnership.

Drafts of the Report

The approach that Mr. Brown took to Mr. Rodger's preparation and presentation of his report was controversial. He directed that the first draft be written and provided to Council without consulting Collus PowerStream representatives. Mr. Brown testified that he wanted to ensure the report's contents did not "leak" before Mr. Rodger's presentation to Council. Collus PowerStream and others criticized this decision, as well as the draft report. Mr. Brown and Treasurer Marjory Leonard took issue with changes that Mr. Rodger made in subsequent drafts of the report.

I was not surprised to learn that, by this point in time, tensions had developed between the Town and Collus PowerStream. As Mr. Rodger observed in his final report,

[I]t is clear to us that a breakdown in communication and, at some levels, a mutual erosion of trust exists between Collus and the Town with respect to matters (especially regarding certain events occurring in the prior years and process resulting in the 50% share sale in 2012).

Regional Consolidation Attempts

PowerStream acquired 50 percent of Collus Power because it saw the utility as a stepping stone to consolidation within the South Georgian Bay region and, in particular, with the other members of CHEC.* In his testimony, Brian Bentz attempted to justify Paul Bonwick's retainer, stating that, after the transaction with Collus Power, Mr. Bonwick could assist with regional consolidation. Dennis Nolan also testified that Mr. Bonwick's role was to assist with Collus PowerStream's consolidation strategy.

* Cornerstone Hydro Electric Concepts Association Group, a group of 12 local distribution companies that shared resources.

After the share sale closed, the Collus PowerStream board held a planning session to discuss its consolidation strategy. The plan, however, never came to fruition. According to Mr. Bentz, consolidation never took place because the Town was not as interested in consolidation as PowerStream, and the two shareholders' views of a consolidation strategy did not align. Mr. Houghton similarly testified that the Town lacked interest in consolidation.

Deputy Mayor Lloyd told the Inquiry that none of the proceeds from the share sale transaction were set aside for the future growth of Collus PowerStream. He did not recall why the Town did not allocate a portion of the proceeds to fund the Town's participation in future acquisitions.

Mr. McFadden testified that consolidation efforts were initially hampered by a lack of interest among other local distribution companies (LDCs). He stated that Mr. Houghton met with various LDCs including those in Wasaga Beach and Orangeville, but none were interested in joining Collus PowerStream. Mr. McFadden also noted that, later on in the strategic partnership, the ongoing conflict between the Town and Collus PowerStream halted any efforts to consolidate and further reduced any interest among other LDCs in partnering with Collus PowerStream.

The EPCOR Sale, July 2016–October 2017

On July 11, 2016, Collingwood Council voted to authorize Mark Rodger to explore options for selling the Town's 50 percent interest in Collus PowerStream. In December 2016, PowerStream's successor corporation, Alectra, submitted an offer to buy the Town's half of Collus PowerStream's shares. The offer was a traditional offer to purchase and was not made pursuant to the shotgun clause in the unanimous shareholders agreement. Alectra offered to pay a premium for the shares similar to that which PowerStream paid for 50 percent of Collingwood Utility Service's shares in 2012. The Town rejected this offer.

On October 23, 2017, Collingwood's Council voted to sell the Town's 50 percent stake in Collus PowerStream and issued a buy-sell offer to Alectra for \$13 million pursuant to the shotgun clause in the unanimous shareholders agreement. On November 9, 2017, Alectra informed the Town that it had

chosen to sell its shares of Collus PowerStream back to the Town. The Town sold 100 percent of the shares of Collus PowerStream to EPCOR. On October 1, 2018, EPCOR completed its acquisition of Collus PowerStream.

Conclusion

The events described in these chapter should serve as a cautionary tale. They show what can happen when the sale of a Town's major asset occurs without transparency and accountability.

The revelation by the media of Paul Bonwick's involvement in the transaction damaged the reputation of Collus PowerStream and the Town. Meanwhile, after John Brown was hired as CAO, his efforts to acquire what should have been routine information about the shared services agreements and the genesis of the share sale laid bare issues at the core of the transaction that have been examined in this report.

Mr. Brown was unable to determine how crucial details of the deal were decided upon or whether the Town's interests were adequately protected throughout the transaction. Mr. Brown's efforts to unearth additional information from those involved and third-party experts raised further questions about the shared services agreements and the share sale itself. These compounding concerns eventually contributed to the undoing of the Collus PowerStream strategic partnership. The final outcome could have been worse, but that was a matter of good luck not good management.

Had Mr. Houghton ensured KPMG consulted with Council on its valuation and options analysis work and been forthright with Council regarding the origins of his strategic partnership recommendation, Mr. Brown's questions might not have needed to be asked. Had Mr. Bonwick's work for PowerStream been adequately disclosed, there would have been no issues concerning the share sale for the media to investigate or Council to inquire into. Had the share sale been conducted in a fully transparent manner from the outset, there would have been no suggestion that the decision to sell the utility happened behind closed doors.



Transparency and the Public Trust

Report of the Collingwood Judicial Inquiry

VOLUME III

Associate Chief Justice Frank N. Marrocco

COMMISSIONER

VOLUME I

Executive Summary and Recommendations

VOLUME II

Part One – Inside the Collus Share Sale

VOLUME III

**Part Two – The Arena and the Pool:
The Real Cost of Sole Sourcing**

VOLUME IV

Recommendations and Inquiry Process

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VOLUME III

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- III *Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing*
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VOLUME IV

Recommendations and Inquiry Process

Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing

When the process is not transparent, when the facts have been spun, courses of action can be fairly questioned. Public trust in the integrity of the Town's decision making is easy to lose. When public trust is lost, the road back can be long and hard.

Collingwood's Need for Recreational Facilities

Part Two of the Inquiry examined the circumstances surrounding the construction of two recreational facilities in Collingwood in 2012 and 2013: an ice arena in Central Park near downtown and a cover for the outdoor pool at Heritage Park in the west end of the Town. The Town selected an atypical construction material for the exterior of both facilities: a fabric membrane stretched across aluminum arches. They are often referred to as the Sprung structures for the company that supplied the materials, Sprung Instant Structures Ltd. The Town used the proceeds from the Collus Power Corporation share transaction to pay for a substantial portion of these facilities.*

This chapter provides an overview of Collingwood's existing arena and pool facilities at the beginning of 2012 and the Town's earlier attempts to expand those facilities. It also describes the Town's purchasing bylaw and staff's confusion about who was responsible for ensuring compliance with it.

This background sets the stage for what transpired between early May and late August 2012. As I discuss in the following chapters, during these four months Council turned away from an approved plan to pursue one large multi-use facility and, instead, voted to sole source the pool and arena facilities.

Overview of Water and Ice Facilities

At the beginning of 2012, the Town of Collingwood had insufficient arena and pool facilities to meet the community's needs.

* The two facilities cost \$13,906,886.17 in total. The Town applied \$10,081,989 of the Collus Funds to that amount.

The Town had only one indoor municipal arena: the Eddie Bush Memorial Arena, a historic facility attached to the Town hall. It also had an outdoor arena at Central Park, a large public park close to Collingwood's downtown. The outdoor arena, however, could be used for only a few months, during the winter.

Collingwood also had only one indoor pool, owned and operated by the Simcoe / Muskoka YMCA. This indoor pool was in Central Park, on land the YMCA leased from the Town. The Town operated an outdoor pool at Heritage Park. Volunteers built the outdoor pool in 1967 to commemorate Canada's Centennial. A 2003 feasibility study concluded that the outdoor pool had operational problems and was of little appeal to the general public. The same review concluded that the YMCA pool was not an appropriate size to meet the Town's needs.

Previous Efforts

Many witnesses at the Inquiry testified that, in 2012, there was public demand for new recreational facilities, in particular "water and ice" – a common shorthand for describing pool and arena facilities.

This demand was not new. Throughout the 2000s, Council and staff investigated and assessed how to build and fund new recreational facilities, but without success.

One effort in particular was the subject of some questioning at the Inquiry's hearings.

In 2003, Council retained architectural consultants to complete a feasibility study into building a multi-use recreational facility (MURF) in Collingwood. The study confirmed, among other things, that the Town needed additional facilities, particularly for swimming and skating. It estimated that a multi-use facility which included an ice pad, three types of pools (lap swimming, warm-water therapy, and leisure shallow-water swimming) and other recreational amenities would cost approximately \$18.86 million. The study also found that residents supported a MURF. Funding the construction was a primary concern.

After the architectural consultants presented their report, Council passed a motion on October 16, 2003, recommending that the incoming Council finance a multi-use recreational facility from the following sources:

\$3.3 million from land sales, \$2 million from debt financing, and \$2.54 million from a grant program called “Super Build.” Council also recommended that the incoming Council build the facility at one of four potential locations, among them a property on the Tenth Line next to Fisher Field, a 25-acre park with soccer fields.

On February 5, 2004, the new Council discussed whether to proceed with an application for Super Build funding to construct a multi-use facility. Initially, following some debate about the new facility’s location, Council voted against proceeding with an application. Later, at the same meeting, it reversed its decision. After learning that, by not proceeding with the application the Town would lose grant funding for the library, Council voted in favour of pursuing an application to build on Fisher Field.

Less than three weeks later, on February 23, 2004, Council voted to reverse its decision to construct a multi-use facility at Fisher Field, effectively turning down the Super Build grant funding that the Town would otherwise have qualified to receive.

During the questioning of several witnesses at the Inquiry, Paul Bonwick raised Council’s change of direction when it came to the Fisher Field multi-use facility as an example of how, in the two decades before 2012, Council had unsuccessfully tried different processes to address Collingwood’s recreational needs. Mr. Bonwick also suggested in his examination of Clerk Sara Almas that the fact that Council had been unable to “deliver” in the past justified the expedited process for the construction of the two fabric recreational facilities that are the subject of Part Two of this Report. Mr. Bonwick made a similar suggestion in his closing submissions. The reasons previous councils did not construct new recreational facilities fall outside the scope of this Inquiry. As a general matter, however, I reject any suggestion that earlier councils’ decisions justify or excuse the problems with the procurement of the two fabric buildings that I discuss throughout Part Two.

Overview of the Parks, Recreation and Culture Department

The Department of Leisure Services historically managed the Town’s recreational services and facilities. On May 17, 2010, Marta Proctor was

appointed director of that department, beginning her term in or about September of that year. Ms. Proctor reported to the chief administrative officer (CAO).

Ms. Proctor had more than two decades of experience in recreational programming. She began her career at the Regional Municipality of York and then became an area supervisor for the City of Toronto, where she managed four pools, two arenas, and a variety of community recreational spaces. Ms. Proctor moved to Collingwood in 2010 after four years as director of parks for the Halton Region Conservation Authority, where she had been involved in several infrastructure projects.

By January 24, 2011, the Department of Leisure Services had become the Department of Parks, Recreation and Culture.

Creation of the PRCAC

On March 7, 2011, Council established a Parks, Recreation and Culture Advisory Committee (PRCAC) with the stated mission of providing “recommendations on the development of policies and programs in the area of parks, recreation and culture, in accordance with approved corporate strategic objectives.” Penny Skelton served as the chair of the committee. In 2011 and 2012, when the Town began exploring the construction of a new multi-use recreational facility in Central Park, Ms. Skelton sat on the volunteer Steering Committee tasked with developing proposals for the facility. She provided input and acted as a line of communication between the committee and the PRCAC.

Town Commitments to the YMCA of Simcoe / Muskoka

In 2003 Collingwood Town Council identified the YMCA as a potential partner for the operation of a new recreational facility. In 2008 it set aside \$1.5 million for the expansion of the YMCA’s Collingwood pool facility, maintaining that commitment until 2011. In the spring of 2011, the Town began discussing partnering with the YMCA on the construction and management of a multi-use recreational facility in Central Park.

Purchasing Bylaw and Unsolicited Proposals Guideline

During the 2010–14 Council term, all purchases by the Town were subject to bylaw 2006-42, a “By-Law to Provide for the Purchase of Goods and Services” (the “Purchasing By-Law”), which provided that

- a. Department Heads shall ensure that all provisions of the by-law are complied with (2.1(c));
- b. Purchases over \$50,000 shall be obtained by tender (3.1);
- c. Purchases over \$25,000 must be approved by Council as evidenced by the passing of a resolution or by-law (4.3);
- d. Certain circumstances may arise where competitive tendering is undesirable, including where there is only one known source for particular goods or services (called “sole source”), provided that such measures are not taken for the purpose of avoiding competition, discriminating against any Supplier or circumventing any requirement of the Purchasing By-Law (6.7); and
- e. Where an unsolicited proposal is received, the Town shall follow the procedure described in the Town’s “Unsolicited Proposals Guideline” (2.1(d)).

In 2012, the Town also had an unsolicited proposals guideline, which prescribed a process for how staff and Council should handle situations where the seller of a product or service approaches the Town, on its own initiative, with a proposal. The guideline stated that the Town welcomed unsolicited proposals from the private sector, but

Where an unsolicited proposal is accepted and the proposed solution implemented, the process must be fair and be seen to have been fair, by taxpayers and by the supplier community. Similarly, where an unsolicited proposal is not accepted, either because it was ultimately ruled out for any reason or it failed to generate any interest, the process followed must have been fair and be seen to have been fair.

This guideline set out a three-step procedure. First, the relevant Town department would review the proposal and decide whether to recommend proceeding with a more detailed consideration. Second, if the department supported a more detailed review, the proposal would then be considered by an ad hoc committee of senior staff, including the CAO. Third, if that committee decided to recommend Council approve the proposal, it would be put forward to Council.

Responsibility for the Bylaw and the Guideline

The purchasing bylaw contemplated that the Town would have a purchasing manager responsible for ensuring the bylaw's policies and procedures were "consistently applied in the corporation" and serving as "a resource to Departments in support of the purchasing function." If there was no purchasing manager, the bylaw provided that the relevant department head for each purchase was the deemed the purchasing manager.

In 2012, the Town did not have a purchasing manager on its organizational chart but did have a manager of fleet, facilities and purchasing. Dave McNalty, who held this position in 2012, testified that he served the function of purchasing manager for the purposes of the purchasing bylaw. He also stated that his role included assisting the Town's departments with procurements. The assistance Mr. McNalty provided varied by project, but generally it included drafting project scope documents; editing, posting, and advertising tendering documents; opening bid processes; and evaluating bids.

Mr. McNalty began his career as a draftsman for a starch plant in Collingwood. He was eventually promoted to engineering and maintenance manager and, later, plant manager. In these roles, Mr. McNalty oversaw several significant construction procurement processes. In 2009, he left the plant and joined the Town as manager of fleet, facilities and purchasing. He initially reported to the executive director of public works, Ed Houghton. When Kim Wingrove became chief administrative officer, Mr. McNalty began reporting to the CAO. Before working for the Town, Mr. McNalty had no experience in the design or construction of recreational facilities.

There was some confusion at the Inquiry about which staff members were responsible for ensuring compliance with the purchasing bylaw in 2012.

Mr. McNalty testified that, although he fulfilled the functions of purchasing manager contemplated by the purchasing bylaw, the department heads were jointly responsible for ensuring compliance when their departments procured the goods or services in question. He also noted that the CAO had the “ultimate responsibility” for the bylaw.

Mr. McNalty testified that, beyond department heads and the CAO, the treasurer had an interest in ensuring the bylaw was followed because it “fell under” the Treasury Department. Mr. McNalty said that, when he had a question about the bylaw, he asked the treasurer. Ms. Proctor testified that she did the same.

Clerk Sara Almas testified that the treasurer was responsible for ensuring compliance with the purchasing bylaw generally, but later noted that the “waters got a little muddy” because Mr. McNalty, who was responsible for overseeing individual procurements with the relevant department head, did not report to the treasurer.

Marjory Leonard was the Town’s treasurer in 2012. A certified professional accountant and certified financial planner, she had worked at a chartered accounting firm for more than 27 years before becoming treasurer in 2005. As treasurer, she was responsible for maintaining the financial integrity of the Town and overseeing the budget process.

In her testimony, Ms. Leonard said she believed Mr. McNalty was responsible for overseeing compliance with the purchasing bylaw because that is what the bylaw stated. She explained she did play a role in monitoring procurements, but said this task took place only after the purchase was mostly complete and she needed to sign the cheque. As an example, Ms. Leonard noted that she would ensure the purchase monies were assigned to appropriate departmental budgets. She also pointed out, though, that a department head was not required to submit purchases to her for approval before they took place.

The Town treasurer’s formal job description stated that the treasurer’s duties and responsibilities included overseeing “the development and administration of the corporate purchasing function” and “monitoring the implementation and administration of purchasing policies.” When asked about this description, Ms. Leonard testified that fulfilling these roles was largely out of her hands because the Town’s purchasing manager did not

report to her, and her oversight role was limited to reviewing purchases after they had largely been finalized.

Training on the Bylaw

Almost all the Town councillors and staff who testified at the Inquiry did not receive any formal training on the purchasing bylaw or unsolicited proposals guideline. Mr. McNalty testified that he received a copy of the bylaw when he first began working for the Town and, while he did not receive formal training, he likely had “discussions” about the bylaw and the guideline.

Similarly, Ms. Proctor testified that she did not receive specific training on the bylaw, but that she was “oriented” toward the Town’s policy and procedures. Ms. Proctor also stated that she would have asked about the applicable procurement bylaw “by nature.”

Although he supervised Mr. McNalty, Mr. Houghton did not receive any training on the bylaw either. When asked whether he was aware of the bylaw before Council appointed him acting CAO in April 2012, Mr. Houghton responded, “Probably on the periphery.”

Mayor Sandra Cooper and Deputy Mayor Rick Lloyd both testified that they received no formal training on the purchasing bylaw. As well, Mr. Lloyd stated that his role as the Town’s chair of finance (see Part One, Chapter 1) did not include any responsibility to administer the purchasing bylaw. Concerning the unsolicited proposals guideline, Mayor Cooper testified she did not receive training on its contents, but would involve staff when approached with an unsolicited proposal. Deputy Mayor Lloyd testified he was not familiar with the guideline and could not recall if he knew it existed.

Treasurer Leonard, in contrast, testified that she effectively received training on the bylaw because she was involved in its creation. However, she did not recall receiving specific training about when it was appropriate for the Town to proceed by sole-source procurement.

Council's Consideration of Recreational Facilities

The 2010–14 Collingwood Council first focused on Central Park as it tried to address the Town's long-acknowledged need for additional recreational facilities. It established a Steering Committee to examine the design, cost, and funding for a multi-use recreational facility in the park – a complex that incorporated existing amenities such as the YMCA pool and the Town curling club.

As the Steering Committee deliberated and worked on its report and recommendations, private companies, including Sprung Instant Structures Ltd., made overtures to the Town about its potential development in the park. Shortly after the Steering Committee delivered its final report, Council terminated the employment of Chief Administrative Officer (CAO) Kim Wingrove and replaced her with Ed Houghton as acting CAO. Mr. Houghton viewed his position differently from other CAOs and appointed a new administrative entity, the Executive Management Committee, to assist him in his new role.

The Central Park Steering Committee

In 2011, the YMCA was already planning an expansion and renovation of its facility in Central Park. On March 28, 2011, Marta Proctor, the Town's director of parks and recreation, and Tom Coon, chief executive officer (CEO) of the Simcoe-Grey YMCA, made a joint presentation to Council proposing that the Town and the YMCA partner to redevelop Central Park and create a new multi-use recreational facility there. The proposal contemplated an expansion of the YMCA's pool and the addition of an ice pad.

After the presentation, Council unanimously endorsed the partnership and directed staff to investigate design, costs, and funding options, including government and alternative funding, and to facilitate community consultation. Staff were asked to report back to Council in eight weeks.

Meanwhile, on May 2, Council also established a volunteer Steering Committee to investigate the redevelopment of Central Park. It had eight members – three from the YMCA and five representing the Town.* They were all selected through a public volunteer application process that considered their communication and facilitation skills, experience in the design and construction of major capital projects, success in obtaining public and private funding, and understanding of Collingwood’s recreational infrastructure requirements.

The committee’s work was guided by terms of reference and followed a detailed work plan, both of which were provided to Council. In addition, the committee established a community and stakeholder consultation program, a communications plan, and a memorandum of understanding between the Town and the YMCA which outlined shared operational values to guide the development and operation of the multi-use facility. Council did not provide the Steering Committee with a budget or any other parameters for its work. However, in August 2011, in an email to Mayor Sandra Cooper and Ms. Wingrove, Councillor Keith Hull raised the need for Council to consider the recreational facility costs “sooner than [*sic*] later.”

Over the next 10 months, until March 2012, the Steering Committee held regular meetings and consulted with the public through an online blog and survey, newspaper advertisements, and stakeholder interviews. It maintained detailed minutes of its meetings, and Town staff provided five public updates to Council, reporting on the committee’s progress, providing recommended options for the project’s next steps, and obtaining Council’s directions on its work.

Ms. Proctor assisted the committee, testifying that she acted as the liaison and facilitator between its members and Town staff. Robert Voigt, the Town’s

* The YMCA representatives were Rob Armstrong, Tom Coon, and David Grass. The Collingwood representatives were Brian Saunderson, former mayor Terry Geddes, Claire Tucker-Reid, Dr. Don Paul, and Dr. Geoff Moran.

manager, planning and infrastructure projects, also attended the committee meetings. Other members of Town staff provided input and assistance where required, including Dave McNalty, the manager, fleet, facilities and purchasing, and Ron Martin, the deputy chief building official.

The committee also benefited from professional advice and assistance. On June 27, Council approved the retainer of an architectural firm to develop and cost preliminary design options for the multi-use recreational facility. Following Council's directions, the Town issued a request for proposal (RFP) on July 28 for "a professional design team led by an architect" along with a landscape architect, structural engineer, electrical engineer, civil engineer, and mechanical engineer. The RFP set out the goals for the project, presented a detailed description of the "absolute minimum" desired design elements, and listed background information and resources available to the successful proponent such as Town plans, applicable bylaws, the Town's urban design manual, utility services information, and stakeholder interview findings. The RFP also stated that assistance would be available from Town staff, the Town's Heritage and Parks, Recreation and Culture Advisory committees, and YMCA staff. At the end of the RFP process, Council accepted the Town staff's recommendation to retain WGD Architects Inc. – a Toronto group specializing in the design of leisure and hospitality buildings – as the successful respondent.

The Preferred Design for the Multi-Use Facility

On September 13, 2011 WGD provided the committee with six preliminary design options for a multi-use facility. At the committee meeting on September 19, Mr. Voigt gave feedback on each design and committee members made their choice.

The preferred design included a twin-pad arena and a new six-lane 25 metre pool with deck space for competitions. It converted the existing pool for therapeutic use. In addition, it contemplated the repair and integration of the current curling rink and common areas for "community centre" use. WGD analyzed the selected option and, on November 10, provided a more detailed report that estimated the cost of constructing the multi-use recreational facility and related park development at \$35,251,965.11.

The Committee's Final Report

The Steering Committee issued a final, 66-page report dated March 5, 2012. The report set out a “cohesive strategy [consisting] of a Recommended Development Scenario, management partnership framework, and financing options” to address the Town’s need for pool and arena facilities. It also included a detailed description of the Steering Committee’s public consultations and the business case for the development. In addition, it outlined the stages of the committee’s work, which included the following:

Review and Analysis

The Committee reviewed current policy direction, demographic projections, recreational trends and demand assessment reports in order to define service area, and articulate gaps in service provision. Three development scenarios were drafted to determine design options and site characteristics and, refine the terms of reference for the design firm.

Design and Funding

The Committee procured a design firm to develop conceptual feasibility drawings and scenarios for the site in response to an RFP. Subsequent meetings centered on the needs of the community[,] resulting in a recommended conceptual design. Potential capital funding streams were researched.

Verifying Priorities

The Committee integrated public and stakeholder consultation throughout the project in order to provide timely updates to the community and measure demand for recreation facilities in Collingwood. Stakeholders and the community were engaged in discussions regarding service models, design scenario, partnerships opportunities and preferred phasing.

Final Recommendations

The Committee developed a facility recommendation for how to best respond to the highest priority needs. An operational model and

partnership framework between the Town and the YMCA was developed with capital budget implications and a five-year operational budget.

The report projected capital construction costs of approximately \$35 million. That estimate included construction of the multi-use recreational facility and “works necessary to relocate the displaced ball diamond and repair deteriorating curing rink walls,” along with a 10 percent allowance “to account for design and pricing unknowns” and a “higher than average” 20 percent contingency. It also reproduced design and pricing information that WGD had prepared.

According to the report, sharing the maintenance and operation of the facility with the YMCA would provide overall cost savings. “The Recommended Development Scenario with a twin pad arena integrated with the new pool facility will,” it predicted, “be less costly to run and maintain than options where the aging facility of Eddie Bush Arena maintains its use.”

The report also set out a series of recommendations, including that Council authorize staff to investigate funding options. It also recommended Council develop a joint-venture agreement with the YMCA which outlined an operating model and established key roles and responsibilities.

Staff Presentation to Council

Town staff incorporated the Steering Committee’s final report into a staff report, which Ms. Proctor presented to Council on March 5, 2012. The committee co-chairs, Brian Saunderson and Clair Tucker-Reid, also attended the meeting to respond to questions from Council.

The staff report made three recommendations. Council should endorse the recommended Central Park redevelopment scenario; approve the development of a funding strategy, with recommendations to be presented within six months; and authorize staff to develop actions and timelines for all other recommendations outlined in the Steering Committee’s final report and to present them to Council within six months. The staff report also summarized the Steering Committee’s recommendations for further development of the project:

- Complete the development of design in preparation for site development
- Continue to assess community recreation program needs and respond to service gaps
- Establish a process to consider repurposing options for the Eddie Bush Facility
- Establishes [*sic*] a reserve funding mechanism to adequately maintain facilities through a capital asset management program
- Explore potential public private opportunities to attract investment capital for the Central Park Project by leveraging existing municipally owned assets
- Develop and launch in cooperation with the Simcoe-Muskoka YMCA, a capital fundraising campaign for the Central Park Project
- Develop a Joint Venture Agreement with the Simcoe-Muskoka YMCA that outlines an operating model and roles and responsibilities
- Develop a plan for relocating the existing ball diamonds based on feedback from slo-pitch and minor ball representatives

The staff report discussed the importance of establishing a funding strategy for the redevelopment and identifying potential funding sources, including public-private partnerships, noting that the 2012 budget included funding to develop a funding strategy. Staff sought Council authorization to retain an external consultant to conduct market sounding, a process by which the Town would gauge the interest of potential public-private partners. Staff also sought authorization to work co-operatively with the YMCA on a capital funding campaign.

Finally, the report proposed “a strategy to set a funding formula [to] be completed over the next 6 months[,] at which time comprehensive options will be presented to Council for approval along with an actionable implementation plan.”

Council Response to the Committee's Recommendations

At its March 5 meeting, Council unanimously approved the staff's recommendation that a funding strategy for the multi-use facility be presented in six months. They deferred the other recommendations until the Council planning and development meeting on March 19.

On March 19, Council unanimously endorsed the Steering Committee's recommended Central Park redevelopment scenario "in principle." It also authorized Town staff to develop actions and timelines for the Steering Committee report's other recommendations "to be presented within 6 months."

The Town issued an RFP for "Market Sounding of PPP [public-private partnership] Opportunities" on April 5. The RFP stated that the goal of the market-sounding process was to "identify opportunities to leverage existing municipally owned assets that could generate investment capital or an ongoing revenue stream to assist in funding a \$35 million multi use community recreation project."

Seven companies submitted proposals in response to the RFP. Staff from the Parks, Recreation and Culture, Planning, and Finance departments reviewed the proposals and, based on the firms' skills and relevant experience, identified three for consideration. Of those three, staff recommended awarding the contract, with a maximum fixed price of \$43,474 plus taxes and pre-approved disbursements, to Deloitte & Touche LLP. Staff explained that Deloitte & Touche offered the lowest price and that its proposal "outlined a thorough and comprehensive work plan which clearly [addressed] the requirements outlined in the RFP."

On May 7, staff provided Council with this recommendation and an update on the Central Park redevelopment funding strategy in a staff report. This report included the following proposal:

1. Continue open lines of communication between Council and Public on the status of this project.
2. Establish a new Council approved "Phase 2 Steering Committee" to champion the Community Recreation Centre Project and oversee;

- * Fundraising
 - * Government relations
 - * Future direction of the Eddie Bush Arena
3. Staff complete a comprehensive review of funding sources and options through;
 - * Internal town funding (reserves, sale of assets, development charges etc.)
 - * External funding (infrastructure funding through other levels of government)
 - * Expression of Interest – to solicit construction and partnership options for this project
 - * Other possible town-wide PPP opportunities through market sounding
 4. Staff review and identify options with associated costs to relocate the ball diamonds / displaced infrastructure.
 5. Complete traffic and engineering studies to consider implications / recommendations regarding the surrounding flow of traffic and parking.

At the May 7 Council meeting, Treasurer Marjory Leonard stated that the Town's 2012 budget included \$100,000 to complete a market sounding and business case for the Central Park recreation centre project.

Deputy Mayor Rick Lloyd and Councillor Ian Chadwick both advised other Council members at the meeting that they did not support retaining a professional firm to conduct the recommended market sounding. Mr. Chadwick suggested that staff should do the work. Councillors Keith Hull, Dale West, Michael Edwards, Joe Gardhouse, and Sandy Cunningham, however, indicated that they supported retaining Deloitte & Touche. Council then voted unanimously to create the Phase 2 Steering Committee and, by a split vote, deferred the question of retaining Deloitte & Touche for a week.

The objections from Mr. Lloyd and Mr. Chadwick were an early indication that at least some councillors were reconsidering the viability of proceeding with the multi-use facility proposal.

Following the May 7 Council meeting, the Town solicited applications for volunteers to sit on the Phase 2 Steering Committee. Ultimately, selecting these volunteers was never brought to a Council vote.

Need for a Competitive Tendering Process for Construction

While the Steering Committee and the Council were exploring the possibility of building a new multi-use recreational facility, two private companies requested a meeting with Council to discuss a joint proposal for a new recreational facility. These companies were Ameresco Canada Inc., an energy services company, and Greenland International Consulting Ltd., a landscape architecture firm.

On February 21, 2012, Anthony DaSilva, Ameresco vice-president and chief operating officer, sent a letter to Collingwood Council requesting a meeting to present a proposal for a recreational facility. A timeline of events that Ameresco prepared in June 2013 indicated that Ameresco had already met with Town representatives on two occasions before sending the February 21 letter.

After Council approved the Steering Committee report in principle, Councillor West emailed Mayor Cooper, Deputy Mayor Lloyd, and CAO Wingrove, asking that Ameresco be contacted to set a meeting regarding a potential recreational facility. Mr. Lloyd responded that important procurement-related issues needed to be considered before such a meeting took place. He stated that a request for quotation (RFQ) process should be put in place before any meeting with Ameresco:

[M]eeting with Amereso [sic] could put them and the Municipality in conflict as we will have received all their information then go out publicly for RFQs. This could be very unfair to Ameresco and maybe a potential liability to the town if it appears that we shop their idea specially if another firm puts forth a similar proposal and we select another firm. That is why months ago that I wanted to go RFQ. We need to do this right.

Mr. West replied that a high-level meeting with Ameresco, in which the Town did not go into “heavy details” but indicated it might be interested in Ameresco’s services, could be appropriate. Mr. Lloyd agreed.

When asked to elaborate on this email at the Inquiry, Mr. Lloyd stated he was concerned that, if the Town were to proceed with a competitive

procurement process, Ameresco, in contrast to other prospective bidders, would have had an unfair advantage to promote itself to the Town. This evidence demonstrates that Mr. Lloyd had a sophisticated understanding of how to conduct a fair RFP process and why it is important to do so.

Ms. Wingrove expressed similar concerns regarding Ameresco the following week, on March 13, 2012, when she sent an email asking the mayor's executive assistant to arrange a meeting between Ameresco and Mayor Cooper, Ms. Proctor, Councillor West, and herself. When Councillor West received the invitation to the meeting, he proposed that Councillor Hull and Deputy Mayor Lloyd also be invited. Ms. Wingrove responded, stating:

I wondered who would be best to include at this stage. My only concern is with prejudicing a potential procurement. I want to keep this very clean and fair. If we have significant meetings with a particular proponent, who ends up being successful in an RFP, and someone should object – it might be difficult to claim that we were entirely impartial in our decision making. If you want to have a larger group, we can make that happen if we are careful about the agenda and taking good notes.

Before the meeting could be arranged, on April 2, Council voted to terminate Ms. Wingrove's employment with the Town of Collingwood (see Part One, Chapter 9). On April 17, Ameresco and Greenland met with Town representatives, including Ms. Cooper, Mr. Lloyd, Mr. West, Mr. Hull, and the newly appointed acting CAO, Ed Houghton (see below). Ms. Cooper stated in her evidence that no one prepared an agenda for the meeting, and no one took notes.

Ameresco first gave a slide presentation outlining the Town's history of unsuccessful recreational facility projects, describing the key elements in a proposed recreational facility, and discussing different construction and funding options available to the Town, including public-private partnerships. Mark Palmer, Greenland's president and CEO, also spoke at the meeting. Among other things, he stated that Ameresco and Greenland could help expedite the current process so that a "bricks and mortar" project could be completed in the next two years and at a much lower cost. "The Ameresco

Team understands that a path forward after the meeting today and involving any Public-Private Partnership for the Collingwood MURF [multi-use recreational facility] must," he said, "be completely open and transparent."

At the Inquiry hearings, Mr. Houghton testified he did not think there was anything improper about the meeting with Ameresco and Greenland. The companies were simply introducing their product to Town representatives. Ms. Proctor, however, testified that the Town should not have been meeting with Ameresco at this stage. She said the Town was not at a point where it should have been engaging with potential vendors.

Ed Houghton Appointed as Acting Chief Administrative Officer

As I describe above, a sudden switch in CAO for the Town of Collingwood occurred just as Council began to pursue the proposal put forward by the Central Park Steering Committee (see Part One, Chapter 9). In the weeks leading up to the termination of Ms. Wingrove's employment, Deputy Mayor Rick Lloyd sent Mayor Sandra Cooper and his friend, Paul Bonwick, emails expressing frustration with Ms. Wingrove. Hours before the meeting at which Ms. Wingrove was dismissed, Ms. Cooper and Mr. Lloyd called Mr. Houghton and offered him the position of CAO. Initially, he declined.

Over the next week, Ms. Cooper, Mr. Lloyd, and Mr. Bonwick worked in tandem to convince Mr. Houghton to take on the position of CAO, in addition to his many other responsibilities. Once Mr. Houghton agreed to become CAO, Ms. Cooper and Mr. Lloyd consulted with Mr. Bonwick about the process through which Mr. Houghton should be hired. They also consulted with him on the media communications announcing both the departure of Ms. Wingrove and the appointment of Mr. Houghton as her replacement (see Part One, Chapter 9).

Mr. Houghton's View of His Role as CAO

Mr. Houghton testified that he agreed to become Collingwood's CAO on three conditions: he did not want to be blamed for the departure of Ms. Wingrove; he wished to be designated "acting" CAO to indicate he was serving as CAO only until the Town could find a replacement; and he did not want to receive any compensation for this additional role.

When asked whether he felt he had the skills and experience necessary for the position, Mr. Houghton responded that he had the skills and experience to serve as CAO for only a short period before the appointment of a new CAO. He also indicated that he did not think about whether he was qualified to serve as CAO because he never planned on serving as CAO. He further stated in his evidence:

I didn't have ... all the ins and outs of ... municipal work at all, because even though I ... did public works, I was not involved with Town Hall. So I don't ... I didn't have the any of the ... education from a municipal perspective, those ... things.

Mr. Houghton testified he did not review the Town's official CAO job description before or during his tenure as CAO. He said he believed his responsibilities as the acting CAO were different from the traditional duties of a CAO. Specifically, he believed he would not get involved in staff discipline or making any changes "from an operational perspective." He testified he did not explain his limited view of his role as CAO to anyone at the Town.

Mr. Houghton also noted that he did not seek or receive any education or training on how to carry out his role as CAO. Mr. Lloyd testified that Council, in turn, did not consider any training for Mr. Houghton:

I think Council was excited to get Mr. Houghton in there in a temporary position to keep things moving. Keep things moving, keep the municipality in a proactive way [*sic*], in a direction that was very positive for the community.

As he had requested, Mr. Houghton was not paid for his work as the Town's CAO, though he noted that, at one point during his tenure, he received

a bonus of between \$20,000 and \$30,000. In his testimony, he agreed that the lack of compensation did not diminish the obligations he owed to the Town as acting CAO.

When providing evidence on his perceptions and understanding of his responsibilities as CAO, Mr. Houghton stressed at several points that, when he first assumed the role of CAO, he thought he would serve in the role for only a few months. This assumption proved to be wrong.

Mr. Houghton served as the Town's acting CAO for about a year. Mr. Lloyd testified that because Council was satisfied with Mr. Houghton's work, it did not search for a permanent replacement for him. However, Mr. Houghton claimed he told Council several times during his tenure that the position was becoming too stressful for him, that he could not serve as acting CAO for much longer, and that Council should begin searching for a new CAO.

The other evidence on this issue was inconsistent. The only documented instance of Mr. Houghton indicating to Council that it should hire a new CAO was on November 5, 2012, when Council and staff faced scrutiny from the public regarding the sudden decision to build two fabric recreational facilities. Town Clerk Sara Almas did not recall Mr. Houghton ever indicating to Council that the CAO position was causing him stress. Mr. Lloyd, in contrast, agreed with suggestions by Mr. Houghton's counsel that Mr. Houghton "from time to time" indicated to Council that he no longer wished to serve as CAO.

During his tenure as acting CAO, Mr. Houghton would oversee, among other projects, the purchase of two recreational facilities for a combined price of \$13,906,886.17.

Formation of the Executive Management Committee

When Mr. Houghton took on the role of Collingwood's acting CAO, he continued to serve as the president and chief executive officer of both the Collus entities and the Town's water utility as well as the Town's executive director of public works and engineering. Mr. Houghton testified that he established an Executive Management Committee (EMC) soon after his appointment to "make sure that nothing fell off the table, to make sure that someone ... who understands the municipal business ... would be able to assist." The

committee consisted of Town Clerk Sara Almas, Town Treasurer Marjory Leonard, and Larry Irwin, the director of information technology for the Collus entities. Although Mr. Irwin worked for Collus, in 2012 he also provided IT services to the Town.

Council was not asked for input on who should serve on the EMC, and it never passed a bylaw or resolution to create the EMC formally. No terms of reference governed its role or how it should operate. In her testimony, Ms. Almas said there was no formal process for appointment to the EMC – Mr. Houghton simply asked her to join the committee. Ms. Leonard stated that her experience was similar. In his testimony, Mr. Houghton acknowledged that the EMC was not formally recognized by Council.

During the time that Collingwood Council deliberated on and eventually approved the construction of a new pool and a new arena, the EMC did not have regularly scheduled meetings. When the committee did meet, no one took formal minutes.

The Inquiry received conflicting testimony about the way the EMC made decisions. Mr. Houghton testified that the committee did so by consensus, explaining that it would not proceed with a decision unless all members agreed. He said that the absence of objection – as opposed to clearly indicated approval of a given decision – also constituted consensus.

Ms. Leonard and Ms. Almas similarly testified that the EMC reached consensus on a “no objection” basis, explaining that consensus was deemed to have occurred when nobody issued an objection. They also indicated that the consensus model was not always followed. Ms. Leonard recalled that regardless of whether the EMC reached consensus, Mr. Houghton held a “final veto” regarding every decision. Ms. Almas testified that there was at least one instance in which an EMC decision went forward without the committee’s consensus.

There was also some confusion among witnesses as to whether the EMC had authority to make decisions that would typically be made by the CAO alone, or whether Mr. Houghton was the sole decision maker, with the committee serving an advisory role.

In his testimony, Mr. Houghton said he did not believe, as acting CAO, that he was ultimately responsible for the decisions made by the EMC. Rather, he felt that the EMC had a shared responsibility for these decisions.

Ms. Leonard testified that the EMC was, for the most part, a committee whose purpose was to advise the acting CAO. However, she noted that certain of Ms. Wingrove's responsibilities were assigned to EMC members.

Ms. Almas told the Inquiry that some of the decisions that were generally the responsibility of the CAO were made by Mr. Houghton. She also noted that Mr. Houghton did not work at Town Hall but, rather, operated out of the Collus PowerStream offices. In instances where one of the CAO's responsibilities needed to be carried out, but Mr. Houghton was not available, the task would generally fall to Ms. Almas or Ms. Leonard. In particular, Ms. Almas noted that, as a result of Mr. Houghton's absence from Town Hall, she became responsible for interacting with the public in instances where the CAO would normally have done so. When she first joined the EMC, she did not expect to be asked to assume so much responsibility, though she was eager to take on the challenge. She did not believe, however, that being a member of the EMC meant that Town staff were required to report to her as though she was the CAO.

Town councillors and staff outside the EMC also seemed confused about whether the EMC exercised the same authority as the CAO. When asked at the hearings whether the EMC could make decisions that would normally be the responsibility of the CAO, Ms. Cooper responded: "Ultimately the acting CAO would ... be able to make that decision. And ... as I understand it ... collectively with [the EMC]." Mr. Lloyd had a positive opinion of the EMC:

I think rather than one person being the CAO looking after it as it is today, he [Mr. Houghton] had a team of people that would consult and come up with ... very positive stuff for ... the municipality to deal with.

Neither Ms. Cooper nor Mr. Lloyd attended the EMC meetings.

Marta Proctor, the director of parks, recreation and culture, indicated that no one explained the EMC's role to staff and that, initially, she did not understand the committee's role. Over time, she learned that the EMC made "key corporate decisions" together, sometimes on its own and sometimes with the assistance of other staff members. She testified that the creation of the EMC made her work for the Town more difficult in two ways. First, given Mr. Houghton's frequent absence from Town Hall, she was compelled to seek

out Ms. Almas or Ms. Leonard when she had questions that, formerly, she would have asked of the CAO. She testified that there was “no clarity or consistency” with regard to the person she should contact when seeking direction from the CAO’s office. Second, Ms. Proctor stated that the EMC “created another layer of decision making”: when the committee relayed instructions to staff, it was not clear whether these directions emanated from Council decisions.

Dave McNalty, Collingwood’s manager of fleet, facilities and purchasing, understood that the EMC was a collaborative group that made decisions by consensus – decisions that would formerly have been the responsibility of the CAO alone. He also stated, however, that in some instances he took direction from individual members of the EMC. He testified that the frequency of his communications with the CAO did not change when Mr. Houghton replaced Ms. Wingrove, and that he continued to meet with the CAO every week or two. If Mr. Houghton was not available to discuss an issue, he would contact Ms. Leonard to discuss financial issues and Ms. Almas for procedural issues.

The Initial Contact from Sprung

Sprung Instant Structures is a Canadian company that supplies fabric membrane structures. Sprung supplied the fabric structures that were used to construct the arena and the pool that are the subject of Part Two of this Report. Tom Lloyd,* a regional sales manager for Sprung, testified that, as of 2012, Sprung structures were primarily used for military, mining, and oil and gas purposes, although recreational facilities were becoming close to 50 percent of the company’s business.

Pat Mills, one of Sprung’s sales representatives, contacted Brian Saunderson, co-chair of the Central Park Steering Committee, on March 27, 2012. He requested an opportunity to discuss the Town’s “needs” for recreational facilities in Central Park. Mr. Saunderson forwarded his email correspondence with Mr. Mills to Ms. Proctor and asked for advice on how to respond. Ms. Proctor suggested that Mr. Saunderson respond that the Central Park project was not yet considering design features.

* Tom Lloyd is not related to Deputy Mayor Rick Lloyd or to Councillor Kevin Lloyd.

On April 13, Mr. Mills also reached out to Mr. Houghton, now acting CAO. He attended Mr. Houghton's office, sent promotional materials via email, and requested a meeting. On April 18, Mr. Houghton invited Ms. Proctor to attend a meeting with Mr. Mills to discuss Sprung buildings. When she responded that she had a scheduling conflict, Mr. Houghton decided to meet with Mr. Mills on his own.

Mr. Houghton testified that, at the time Mr. Mills contacted him, he was unaware that "there was really even that much going on from a recreation facility" point of view because he was focused on the Collus PowerStream transaction (see Part One, Chapter 8). He said he became aware that "there was some activities going on regarding recreation facilities" when he was invited to attend a meeting with Ameresco. Mr. Houghton explained that he had not read the Central Park Steering Committee report and that he met with Sprung in an attempt to fulfill his "due diligence in the sense of finding out what was ... going on."

Mr. Mills and Mr. Houghton met at the Park Hyatt Hotel in Toronto on April 25. Mr. Houghton testified that Mr. Mills "explained the attributes of the Sprung structures" at their meeting. Mr. Mills later followed up with Mr. Houghton, asking for an opportunity to present to the Central Park Steering Committee.

This communication would not be the last that the Town heard from Sprung.

Council's Sudden Change in Direction

On May 8, 2012, the day after Council voted unanimously to create a Phase 2 Steering Committee, some councillors began to question the financial feasibility of the Central Park Steering Committee's recommended multi-use recreational facility. In response, Mayor Sandra Cooper instructed staff to organize a strategic planning workshop for Council. At the workshop – essentially a Council brainstorming session – councillors continued to express concern about the cost of the proposed recreational facility and raised numerous alternatives. Council did not, however, determine a budget or select a direction.

Steering Committee Recommendations Questioned

In the days after the May 7 Council meeting, councillors began exchanging emails questioning the Steering Committee's recommendation to hire Deloitte & Touche to conduct market sounding for a public-private partnership. They also questioned the general viability of the Steering Committee's proposed recreational facility.

On May 8, Councillor Kevin Lloyd started the exchange with an email to Council and Marta Proctor, director of parks, recreation and culture, suggesting that the Town delay hiring Deloitte & Touche until the Phase 2 Steering Committee reported back on funding options. Councillor Lloyd noted that the Phase 2 Steering Committee “might deem the process of little value.” He also urged the creation of a “back up scenario” in which a recreational facility would be constructed in phases over a number of years. He concluded his email,

I hate to be the one who rains on anyone's parade, however, we must be pragmatic. I believe this project will not fly at a price tag of 35 million (today). We can get what the public wants now and complete the vision over time. We don't want to come out of this with nothing but bills and no bricks and mortar. It's time to pinch ourselves, and face the facts.

Ms. Proctor responded to Councillor Lloyd's email:

I would like to respectfully mention that the recommendations you propose below would be outside the current Council approved mandate and would require a new feasibility study. We could certainly consider this option should that be the decision and direction of Council versus responding to the recommendations and directions presented in Central Park Steering Committee's final report.

Ms. Proctor testified that the May 8 email from Councillor Kevin Lloyd was one of several messages she received at this time asking that something other than the Steering Committee's recommendation be pursued. Ms. Proctor testified that these messages left her wanting clear direction from Council:

The CAO was let go. There was no clarity or consistency in who I could speak to on direction. There seemed to be multiple messages coming about what we're doing next and how we're to do it without a defined course of action. And I was trying to understand where these messages were coming from and how we bring them in front of council to set clear direction and policy for staff to follow.

Deputy Mayor Rick Lloyd testified that Kevin Lloyd's email was one of the first in a series of communications that led councillors to question proceeding with a multi-use recreational facility. Ms. Proctor also testified that around this time councillors began to suggest that the facility might be too costly.

On May 13, Mayor Cooper sent an email to Ed Houghton, Kevin Lloyd, Sara Almas, and Marta Proctor, stating:

Just a heads up I am hearing from some members of council making comment to the deferred motion of Central Park. It may be that this deferred motion continue to be deferred for approx one month ...
I would like a workshop of council within the timeframe being suggested.
(30 days)

Mr. Houghton responded that the mayor's suggestion was a "great idea" and that "Spending time with Council finding out exactly their thoughts will be beneficial." Ms. Proctor sent a separate email to Mr. Houghton agreeing that it was the best way to approach the project.

Mayor Cooper testified that she asked for a workshop because there "were emails flying around" and members of Council "were hearing from the public" about recreational facilities. She believed that, despite the work done by the Steering Committee reviewing options for recreational facilities, it would be best for Council to "come together and give their ideas, give their suggestions, give their views."

In May 2012, Mr. Houghton testified, some councillors were becoming less enamoured with the facility proposed by the Steering Committee and had expressed these feelings to the mayor. He felt that Council was "starting to really fracture" and that it was a good idea for the mayor to request the workshop so Council could determine a way forward. He also testified that it was around this time that he first read the Central Park Steering Committee's report. Before this, Mr. Houghton said, he "hadn't really paid too much attention" to the committee's work. When he did read the report, he explained, his primary concern was the cost.

Steering Committee's Plans Placed on Hold

After the mayor suggested a strategic planning workshop, the Town's focus shifted away from the Steering Committee's recommendations and toward organizing a strategic planning workshop. On May 14, Council voted to withdraw the motion to award the market sounding to Deloitte & Touche. The minutes recorded that "[t]he dates for the Strategic Workshop relating to Central Park will be announced at a future date." Mayor Cooper, on June 4,

sent a letter to the Central Park Steering Committee members to thank them and advise that “the work of the [Central Park] Steering Committee was formally concluded.”

Strategic Planning Workshop Preparations

At the mayor’s request, Ed Houghton organized a strategic planning workshop for Council to discuss recreational facilities on June 11. On June 7, four days before the workshop, he emailed Council and the Town’s department heads explaining that he would begin the session by explaining the workshop’s goals and objectives, and that Marta Proctor would supply a detailed summary of the work completed to date. Marjory Leonard, the Town’s treasurer, would then provide “a very brief look at funding options which will include, money already identified, the money from the Collus PowerStream partnership, funding opportunities and debenture costs.”

This reference to the “money from the CollusPowerStream partnership” was the first time a member of staff or Council publicly referred to the use of the share sale proceeds to fund new recreational facilities. There was no evidence that the allocation of the funds had been discussed before June 2012. Councillor Ian Chadwick’s response to Mr. Houghton’s email also indicates that Council had not considered the matter before:

I must have missed the discussion that said how or even if we would spend the Collus partnership money. If that discussion wasn’t held, shouldn’t it be held before we discuss the park project? To discuss it at the same time implies that decision has already been made. What if we decide later not to spend it and instead bank it in reserves?

Mr. Houghton’s June 7 email to Council and department heads went on to explain that, at the strategic planning workshop, each councillor would have five minutes to share his or her views on how to proceed with the Central Park project. Mr. Houghton advised that he and Mayor Cooper would then facilitate a discussion, following which “we are hoping to arrive at a consensus on firm direction [*sic*] that staff can then work towards.”

Ms. Proctor prepared a slide presentation for the workshop. As part of the presentation, Treasurer Leonard provided Ms. Proctor with an outline of the following potential sources of funding for new recreational facilities:

YMCA funds set aside	\$1,500,000
Potential DC's Indoor Sports	\$900,000
Potential DC's Ice Rink Roof	\$360,000
Debenture (no tax increase)	\$2,700,000
COLLUS funds approximately	\$8,000,000
Total	\$13,460,000

Note: DC refers to development charges.

Concerning the Collus funds, the document noted: “Council has committed to a public process to determine how best to allocate these funds and there is the potential that the public would like to see these funds applied to this project.”

Ms. Proctor’s slide presentation identified “Collus” as a potential source of funds for recreational facilities, but did not include a specific amount:

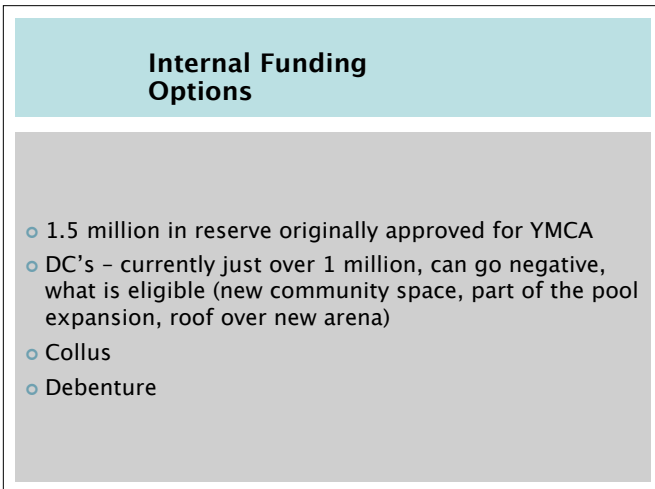


Figure 3.1: Central Park Redevelopment Project Review, June 11, 2012

As staff prepared for the June 11 strategic planning workshop, Mr. Houghton asked his assistant to advise Sprung sales representative Pat Mills about the workshop and let him know that Mr. Houghton would contact him

afterward.* Mr. Houghton testified that he did not ask his assistant to alert anyone else about the workshop. He explained that he notified Mr. Mills because he had earlier agreed to let Mr. Mills know if he heard anything about Council's plans.

The Strategic Planning Workshop

Council met on June 11, 2012, at the Collingwood Public Library for the Central Park Strategic Planning Workshop. To provide some transparency, the Council invited the media and the Central Park Steering Committee. A news report about the meeting described the discussion as a “wide-ranging, two-hour session.” The minutes, recorded by Clerk Sara Almas, reflect the breadth of ideas and issues discussed:

Each member of Council provided comments on their vision for this redevelopment. Comments included:

- Proceed with/without market sounding
- Should the recommended scenario be “phased-in”
- Priorities are ice pad and aquatic infrastructure
- Should the Eddie Bush be refurbished
- Should we look at a Performing Arts Centre
- Concept design has too much parking, need more civic space
- \$35M is too much / \$35M is needed to provided needed service
- Not considering use of COLLUS \$\$\$ at this point.
- Keep ball diamonds at park or determine where they are going
- Concern with limiting the location to Central Park / should another location be investigated
- Real or perceive economic impact of the downtown
- Convert Eddie Bush – need (or seasonal use?)
- Need to be responsible with finances
- Is there partnership opportunities with another municipality
- The concept is supported

* I introduce Sprung in Part Two, Chapter 2.

- Cost of displaced infrastructure
- Cover the outdoor ice surface
- Should funds be given to the YMCA

Staff also created a spreadsheet summarizing the numerous comments and questions councillors voiced during the meeting.

Among other suggestions, many councillors spoke in favour of constructing new facilities in phases, with the first phase focusing on “water and ice.” Councillor Kevin Lloyd first raised the notion, advising: “We need to keep this affordable and meet the immediate needs.” Several other councillors also expressed concern about how the Town would fund a \$35 million multi-use facility, and questioned the value of retaining Deloitte & Touche to conduct market sounding for a public-private partnership. The news report about the meeting indicated that the \$35 million estimated cost was the “major sticking point for councillors.”

Mayor Cooper testified there was a “common theme that \$35 million was too much.” She also stated that Council never discussed how much to pay for the new recreational facilities. Deputy Mayor Rick Lloyd similarly testified that Council did not discuss what would be an acceptable budget for recreational facilities, commenting:

I think they were working towards coming up with some solution. And when a solution was determined, then a budget could be – at that point in time, see if it was realistic. I could have come out with a solution for a hundred million dollars, but it just wasn't realistic for the taxpayers of this community. Never did we ever say it could only be this plateau or this plateau.

Ms. Proctor testified that she hoped to get clarity from Council at the workshop on how it wished to proceed with the Central Park development. No decisions or directions were made at the strategic planning workshop. Instead, the minutes stated: “Staff will prepare options based on the discussion for consideration at a future Council meeting.”

Mayor Cooper testified that she understood this meant staff would research the feasibility of some of the options but did not know how they

would select which options to research. Mr. Houghton, in contrast, testified that he understood that staff would simply compile the comments from the meeting and present them to Council for direction on how to proceed.

At the end of the workshop, the public would have been unsure of what, Council intended to do about the recreational facilities. Mr. Houghton agreed that the public would have believed that Council was waiting for staff to report back on the options discussed, at which time Council would decide how staff should proceed.

Many witnesses at the Inquiry testified that Deputy Mayor Rick Lloyd spoke about Sprung Instant Structures at the meeting and distributed pamphlets about the company.* As explained in Part Two, Chapter 4, the deputy mayor learned about the fabric structure company at a conference in Saskatchewan a week earlier. Ms. Proctor, however, testified that neither Sprung nor fabric buildings were raised at the meeting. Deputy Mayor Lloyd, for his part, testified that he recalled distributing Sprung information at a Council meeting, but did not believe it was at the June 11 workshop.

I am satisfied that the deputy mayor did not publicly raise Sprung or fabric buildings more generally at the workshop. The minutes and staff spreadsheet do not record any discussions on the topic. It also was not reported in the detailed news article about the workshop. Finally, as I explain in Part Two, Chapter 4, in the days after the workshop, Deputy Mayor Lloyd requested that staff look into pricing for two Sprung structures. Nothing in those emails indicates that this was a matter he had already raised with Council a few days earlier.

During the workshop, Mayor Cooper sent Deputy Mayor Lloyd an email, asking: "Same process as Collus going forward???" Mayor Cooper testified that she was not referring to an RFP process but rather to inviting public input before Council made its final decision. In November 2011, before Council reviewed the RFP submissions for the 50 percent sale of Collus, it had held a public information session to answer questions from residents about the sale (see Part One, Chapter 6). Despite the mayor's apparent desire, no sessions inviting public input took place for the recreational facilities.

* Mr. Houghton, Mr. McNalty, and Mayor Cooper all testified they recalled the deputy mayor discussing Sprung.

During her testimony, Mayor Cooper countered the suggestion that no public input sessions took place by pointing out that anybody from the public could have requested to speak at or attend a Council meeting.

Deputy Mayor Lloyd also testified that he understood that Mayor Cooper's "same process as Collus" statement referred to a "public process," not an RFP process. He stated that he did not consider a public consultation process for the recreational facilities because Council's deliberations would be public.

Approaching Sprung Outside the Public Process

About a week before Council’s strategic planning workshop, Deputy Mayor Rick Lloyd encountered Sprung Instant Structures Ltd. at a conference. The deputy mayor was apparently enamoured with Sprung’s fabric structures and their pricing, although he did not raise fabric buildings at the public workshop. Instead, the day following the workshop, he directed acting Chief Administrative Officer (CAO) Ed Houghton to obtain estimates from Sprung on covering the outdoor arena in Central Park and the outdoor pool in Heritage Park. He included Council and certain staff members in a subsequent request, but only after Mr. Houghton had already contacted Sprung to request prices.

Town and Sprung representatives met and spoke on multiple occasions during June and July, 2012. On July 11, Sprung presented its product directly to Mayor Sandra Cooper, the deputy mayor, Mr. Houghton, and other members of staff. This meeting made two staff members apprehensive, but they did not feel comfortable raising their concerns.

Deputy Mayor Lloyd and Sprung Structures

Introduction to Sprung

Deputy Mayor Rick Lloyd was introduced to Sprung when he attended the Federation of Canadian Municipalities’ annual conference and trade show in Saskatoon on June 1–4, 2012. Mr. Lloyd testified that he had two conversations “at the most” with Sprung’s personnel, although he did not recall whom he spoke with or how long he spoke with them. When asked at the Inquiry hearings what he learned, Mr. Lloyd responded: “Everything.”

He specifically said he learned Sprung structures were fabric buildings reinforced with aluminum that could be repurposed easily, that they had three arenas in Calgary, that they did “stuff” for the federal government, and that “they’d done stuff in Afghanistan ... temporary buildings ... and so on.”

Tom Lloyd (no relation), Sprung’s regional business development manager responsible for Ontario, appeared as a witness at the Inquiry. He testified that he did not attend the conference and that the deputy mayor likely spoke with Sprung representatives from Calgary. Tom Lloyd could not recall whether anyone from Sprung alerted him to the deputy mayor’s apparent interest.

Deputy Mayor Lloyd testified that Sprung appealed to him because the Central Park Steering Committee’s proposal was “unreachable,” Sprung was a Canadian company that had been in business for a long time, and it “seemed like a natural fit” based on the recreational facilities featured in Sprung’s promotional material. During the deputy mayor’s conversation at the trade show, Sprung personnel provided him with a “ballpark” price of \$10 to \$15 million to cover an outdoor pool and an outdoor rink. Mr. Lloyd was enthusiastic about the estimate.

Deputy Mayor Lloyd could not recall whether Sprung indicated that it had successfully covered an outdoor pool in the past.

Mr. Lloyd testified that “over the years, we’ve quite often said, oh, we should cover the outdoor pool.” When pressed to explain who specifically had discussed covering the outdoor pool, Mr. Lloyd responded that his family had discussed it, there was discussion in the community, and he thought former Collingwood councils had considered it. Covering the outdoor pool was not raised at the June 11 strategic planning workshop.

Deputy Mayor Lloyd left his discussions with Sprung personnel believing that the company both supplied and constructed its structures. As I explain in Part Two, Chapter 6, Sprung referred most of its Ontario clients to a separate company, BLT Construction Services, to construct the structures.

Discussions Between the Deputy Mayor and the CAO

On the morning of the June 11, 2012, strategic planning workshop, Deputy Mayor Lloyd met with Mr. Houghton.

Mr. Houghton testified that, during their meeting, the two discussed the

deputy mayor's questions about the upcoming workshop and Mr. Lloyd's meeting with Sprung at the conference. Mr. Houghton, who told the deputy mayor that he had also recently met with Sprung, forwarded Mr. Lloyd some of his correspondence with Sprung representative Pat Mills.

Mr. Houghton did not recall whether he and Mr. Lloyd explicitly discussed using Sprung buildings for the recreational facilities. Still, he understood that the deputy mayor was enthusiastic about Sprung's products, explaining: "I think the conversation was, you know, a little bit more generic but obviously that this could be ... an answer that could allow us to move forward with the multi-use facility ... in the future."

Deputy Mayor Lloyd did not recall discussing Sprung at his meeting with Mr. Houghton. However, he did remember speaking with Mr. Houghton about Sprung after returning from the Saskatoon conference, testifying that he "spoke to everybody that would listen" about the company's product.

The Deputy Mayor's Direction to Investigate Fabric Buildings

On June 12, 2012, the day after Council's strategic planning workshop, Deputy Mayor Lloyd emailed Mr. Houghton to ask him to obtain a price for "a fabric cover to completely go over the Centennial Pool and building at Heritage Park" and "a fabric building to go over the outdoor ice pad at Central park."

Mr. Houghton forwarded this email to Town Clerk Sara Almas, who responded that the deputy mayor "really shouldn't be directing you to do this." Ms. Almas confirmed in her testimony that she sent this email because she believed that an individual member of Council should not be directing staff without at least alerting the other councillors. Mr. Houghton replied: "I need to delegate! Hmmmmm! Just kidding."

Ms. Almas responded and suggested Mr. Houghton ask the deputy mayor to send another email to Mr. Houghton that included all of Council and Marta Proctor, the director of parks, recreation and culture. At that point, Ms. Almas wrote, if no one objected, staff could obtain pricing from Sprung."

The next day, Mr. Mills, the Sprung sales representative, followed up with Mr. Houghton by email and requested a meeting with the "Central

Park Redevelopment Team.” Mr. Houghton responded: “I have been asked by a member of Council to get a ‘rough’ estimate for the installation of two fabric buildings. Can we discuss this?” Mr. Mills replied that he would provide an estimate, “but the cost will be determined by the facilities.” He suggested a meeting and asked several questions about the proposed facilities. Mr. Houghton forwarded this email to the deputy mayor.

On June 14, after Mr. Houghton had requested estimates from Sprung, Deputy Mayor Lloyd emailed Mr. Houghton, Council members, Ms. Proctor, and the Executive Management Committee, writing:

Good afternoon Ed

I would like to request if at all possible to have a price for a building that would enclose the complete Centennial Pool.

A building structure that I would be interested in is the building produced by Sprung Building Products.

I know that they have representatives in Ontario and they would come and price a structure.

As well I would recommend to get a price as well for one of their structures to cover the Outdoor Rink.

Sprung Building systems are used for Ice Rinks, single, double and triple ice rinks as well [as] Swimming Pools.

These Buildings are well insulated and have a Warranty I think of 30 years

Thanking you in advance

Mayor Cooper and Councillors Sandy Cunningham and Kevin Lloyd responded in support of the suggestion. Ms. Proctor asked a member of Town staff to “confirm some approx pricing and what specifically it would / could include for both.” She emailed Mr. Houghton, advising that “[w]e’ve done some preliminary work in this area for the ice rink, their [*sic*] are some limitations. Will expand for the pool and I’ll provide you with an update once we’ve compiled the info.”

Mr. Houghton, in his closing submissions, argued that it was appropriate for staff to obtain pricing on Sprung structures at the deputy mayor’s direction because no one from Council objected to Mr. Lloyd’s email. I do

not accept this explanation. Mr. Houghton asked Mr. Mills from Sprung for pricing on June 13, before the deputy mayor had emailed the other Council members and before he could know whether any other councillors might object. Mr. Houghton was clearly acting at the direction of Deputy Mayor Lloyd, not Council.

As I describe in Part Two, Chapter 2, earlier that year, in March 2012, the Deputy Mayor cautioned against meeting with Ameresco Canada Inc. to discuss recreational facilities because he understood the risks of interacting with a single vendor when a competitive procurement was on the horizon. In his testimony, he explained that, if the Town met with Ameresco “ahead of time and they gave us all their information ... It could have put them into a conflict, I felt.” Despite this rather insightful observation, the deputy mayor did not have the same reservation when it came to pursuing his preferred plan for recreational facilities.

Deputy Mayor Lloyd knew well the risks posed by pursuing quotes from a single vendor when the circumstances required an open, transparent, and public bidding process. I am also satisfied that Mr. Houghton understood the risk in approaching a potential supplier for quotes in circumstances where a competitive procurement would be expected. Mr. Houghton was an experienced member of staff and a long-time CEO of the public utility. In 2012, he had worked for Collingwood for more than 30 years and had steadily advanced to hold senior public service positions. Mr. Houghton understood the conflicts that can arise from meeting with prospective suppliers outside the bidding process. He also understood the need for the Town to conduct an open and transparent procurement process.

Mr. Houghton testified that the strategic planning workshop was an attempt by Council to achieve openness and transparency in its pursuit of new arena and pool facilities. Despite Council’s desire for openness and transparency, Mr. Houghton acknowledged that the first time the subject of covering the outdoor pool came up was in an email that Deputy Mayor Lloyd sent him on June 12, the day after the strategic planning workshop.

The Town's Engagement with Sprung

Sprung's Initial Look at the Arena

In response to the deputy mayor's direction, Dennis Seymour, the Town's manager of recreation facilities and arena supervisor, met with Sprung representatives Tom Lloyd and David MacNeil on June 19, 2012. Tom Lloyd testified that the purpose of the meeting was for Sprung to take a look at the arena and discuss covering it. The next day, Mr. MacNeil, Sprung's territory sales executive, emailed Mr. Seymour "drawings and renderings" and advised him that he would "begin putting some budget numbers together shortly."

Request for Cost Estimates

On June 19, the same day Mr. Seymour met with Sprung, Mr. Houghton arranged a June 21 teleconference to include himself and Deputy Mayor Lloyd, and, from Sprung, Pat Mills, Tom Lloyd, and David MacNeil.

Mr. Houghton testified that he asked Rick Lloyd to join in the phone call because the Sprung structures were "his concept," and he wanted the deputy mayor to provide input. Mr. Houghton did not invite Ms. Proctor, the director of parks, recreation and culture, to participate in the call. He testified he "didn't put [his] mind" to inviting Ms. Proctor because the specific request to seek a price for fabric buildings had come from Deputy Mayor Lloyd.

Mr. Houghton testified that, during the call, the Sprung representatives provided general information about their structures, after which he and Deputy Mayor Lloyd requested rough cost estimates for Sprung structures to cover Centennial Pool and the outdoor ice rink at Central Park. Deputy Mayor Lloyd stated in his evidence that he did not recall the conversation.

Mr. Houghton testified that, at the meeting, he and Deputy Mayor Lloyd learned that Mr. Seymour had met with Sprung two days earlier. Mr. Houghton later explained that, although he was aware Ms. Proctor was taking steps to contact Sprung, he was surprised to learn that the contact had already happened. He testified that this discovery led Deputy Mayor Lloyd to direct him to be the sole point of contact with Sprung going forward. As I discuss

further in Part Two, Chapter 7, I do not accept that this discovery was the origin of the deputy mayor's direction.

On June 25, Dave McNalty, the Town's manager of fleet, facilities and purchasing, provided Sprung with information on the outdoor rink at Central Park and Centennial Pool, explaining that the pool's "infrastructure has already been, or is in the process of being upgraded." Mr. McNalty testified that he conveyed this information to Sprung at Mr. Houghton's instruction to assist Sprung in its work on the concept and budget estimate.

Hours after his telephone meeting with Sprung representatives on June 21, Mr. Houghton sent an invitation for a June 29, 2012, "Meeting with Sprung Buildings" to Mayor Cooper, Deputy Mayor Lloyd, and Mr. McNalty. On June 27, Deputy Mayor Lloyd asked Mr. Houghton to "delay the meeting for 2 weeks." The meeting was rescheduled for July 11.

Meeting Between Deputy Mayor and a Swim Team Parent

The Collingwood Clippers is a competitive swimming club. In 2012, the club was, unsurprisingly, an advocate for an expanded pool facility. During the previous two years, some parents had carried out their own research into the possibility of covering Centennial Pool with a Sprung structure. They shared what they had learned with Marta Proctor and Councillor Keith Hull. On July 3, 2012, Linda Simpson, a Clipper parent who had researched Sprung, emailed the mayor and deputy mayor to express her support for the "proposal to cover Centennial Pool." Ms. Simpson offered to provide research that the team had undertaken in 2010 on covering the pool with a Sprung structure. Deputy Mayor Lloyd responded that he was meeting with Sprung the next week to "price out the costs." He also asked to meet with Ms. Simpson to review the information she had gathered about the company.

Ms. Simpson and the deputy mayor arranged to meet on July 6 at the local flower shop Mr. Lloyd operated. In the email chain, Mayor Cooper suggested that the deputy mayor bring a member of staff to the meeting. Mr. Lloyd rejected the idea, writing that if Ms. Simpson's information proved "interesting," then he would involve staff.

After their meeting, Ms. Simpson emailed the deputy mayor with "the

specs you asked for, as put forth by Aquatic Sport Council Ontario for Regional Standards.” Ms. Simpson expressed her enthusiasm for working “collaboratively to create a long-term plan for Sports Tourism / Pool development in Collingwood and the South Georgian Bay region.”

Although the deputy mayor met with Ms. Simpson in early July 2012 to gather background information, there is no evidence that members of staff or Council had further meetings with the Clippers before August 27, 2012, when Council voted to proceed with covering Centennial Pool with a Sprung structure. As I discuss in Part Two, Chapter 15, after the Town signed the contract for the two Sprung facilities in August 2012, the Clippers requested that Council approve additional upgrades for the pool so that it met the requirements to hold competitive swim meets. Council agreed, which increased the scope of work and cost of the project.

Sprung’s Meeting with the Mayor and the Deputy Mayor

Mayor Cooper, Deputy Mayor Lloyd, CAO Houghton, and Fleet, Facilities and Purchasing Manager Dave McNalty met with Sprung representatives Tom Lloyd, Pat Mills, and David MacNeil on July 11, 2012. Marta Proctor was not included in the calendar invites for this meeting and testified that she did not attend.

Mr. Houghton testified that the meeting was organized because there had been “quite a few discussions back and forth with Council members” about fabric structures and that it made sense for Mayor Cooper to perform due diligence and learn more about Sprung. Mr. Houghton also noted that the Town wanted to learn more about Sprung’s technology and whether it was suitable for Collingwood’s purposes.

Tom Lloyd testified that he understood that Town staff, including Mr. Houghton and Mr. Seymour, initiated the meeting because they wanted the “[m]ayor to hear directly about what Sprung could do.”

Recollections of the meeting differed.

Tom Lloyd testified that the meeting focused on the Town’s need for a new arena. He did not recall a discussion about the pool. Mr. Lloyd also noted that he provided the Town with information about Sprung arenas

and advised that Sprung could offer a “turnkey facility,” meaning the Town would not be responsible for any aspect of the design and construction. The facility would be ready for use once construction was complete.

Tom Lloyd also recalled that, at this meeting, someone from the Town stated that the Town had already investigated a \$35 million multi-use facility and a less expensive pre-engineered steel facility. He recalled being told, although he could not recall who relayed the information, that the Town was not interested in a pre-engineered facility. As I discuss in Part Two, Chapter 7, pre-engineered steel was a popular and cost-effective construction method. Later in July 2012, staff asked an architectural firm to compare a fabric arena to a pre-engineered steel arena.

Sandra Cooper testified that the meeting was short and “introductory.” She stated that Sprung representatives provided general information about the company’s facilities while Town representatives discussed Collingwood’s need for an additional ice surface. Ms. Cooper did not recall discussions of a turnkey facility or comparing Sprung structures with other types of facilities. She also added that she did not receive an agenda for the meeting and did not recall anyone taking minutes.

Mr. Houghton recalled discussions of Sprung’s history, its insulation technology, and the fact that the company was in the process of creating rough budgets for potential Collingwood facilities.

At the Inquiry hearings, two Town staff members expressed concerns about whether this meeting was appropriate. Dave McNalty testified that it was “probably not” appropriate for Mayor Cooper to attend the meeting because there was a risk that having her meet a supplier at this point could cause her to lose her objectivity in an eventual procurement process. Mr. McNalty’s concerns did not extend to Town staff because he felt staff members were appropriately undertaking an “investigative process” during which they were acquiring information about whether a Sprung facility was worth pursuing.

Marta Proctor, who did not attend the meeting, had general concerns about Town representatives meeting with Sprung at this point. She felt that any meeting with a potential contractor that was not part of a formal bid process or otherwise formally directed by Council was not “in accordance with good municipal business practice.”

Although Mr. McNalty and Ms. Proctor had slightly different concerns about the July 11 meeting, they both testified that the work environment at the Town left them with a sense of having no avenues through which they could raise their feelings. Mr. McNalty stated that he felt it “wasn’t [my] place” to raise concerns with either CAO Houghton, Mayor Cooper, or Deputy Mayor Lloyd owing to “[t]heir relative position in the Town management and hierarchy.”

Ms. Proctor testified that, when she learned about the meeting after the fact, she raised her concerns about how the Town was pursuing options for recreational facilities with the Executive Management Committee. She said, however, that:

[T]here was resistance from the Executive Management Committee to say to members of Council that their behaviour is inappropriate and we need to do our business differently, because our former CAO tried to do that, and there was fear in the organization that there would be repercussions, and that is not how we do things in Collingwood, is what I was told.

Mr. Houghton and Ms. Cooper disagreed with Mr. McNalty’s and Ms. Proctor’s view that the meeting was inappropriate from a procurement perspective. Ms. Cooper took the position that the interaction with Sprung was only “a meet and greet” and that no commitments were made regarding a potential contract or any follow-up meetings.

Mr. Houghton testified that the meeting was appropriate because the Town was simply investigating a potential option for a recreational facility. He did not believe that meeting with Sprung at this time threatened to undermine a potential procurement process because Council had not yet given any direction on which facilities to pursue. He was not concerned that meeting with Sprung at this point risked creating a public perception that Sprung was being given a head start on a proposal to construct facilities for the Town.

Delivery of Preliminary Budgets

Council met on July 16, 2012. Before the meeting, Sprung's David MacNeil sent Collingwood's Deputy Mayor Lloyd, Mayor Cooper, Dave McNalty, and Ed Houghton a link to budgets for Sprung covers for both the outdoor pool and arena and a "New Sprung Performance Arena." As I discussed above, Mr. Houghton testified that he and the deputy mayor had requested estimates from Sprung during their June 21 phone conversation.

The budgets were addressed to "Rick Lloyd Deputy Mayor Town of Collingwood," and each bore the warning: "***THIS IS BUDGETARY PRICING ONLY, THIS PRICING CAN CHANGE WITH THE FINAL DESIGN*.**" Sprung provided the following estimates, along with a list of "included accessories":

1. a cover for the existing Centennial Pool with an estimated construction time of "about 30 days from start to finish turnkey" and an estimated cost of \$2,385,904 plus HST;
2. a cover for the existing outdoor arena with an estimated construction time of "4-5 months turnkey" and an estimated cost of \$3,775,000 plus HST; and
3. a "New Stand Alone Insulated Sprung Performance Arena" with listed accessories with an estimated construction time of "5-6 months turnkey" and an estimated cost of \$4,925,000 plus HST.

The budgets also stated that the pricing was "provided by Sprung and our alliance partner."

In the weeks following the delivery of these budgets, the Town, Sprung, and its alliance partner BLT engaged in detailed discussions regarding the procurement of recreational facilities. While these discussions were taking place, Mr. Bonwick and his company, Green Leaf, established a business relationship with BLT and began lobbying members of Council to authorize the sole-source procurement of Sprung aquatic and arena facilities.

Discussion of Recreational Facilities by Council, July 16, 2012

After the June 11 strategic planning workshop, Town staff prepared a document presenting Council with a choice of two paths for new recreational facilities: continue with the Steering Committee's multi-use facility proposal or select from a list of alternative options, which included "fabric buildings." The Council discussed the document at its July 16 meeting. Armed with the information Sprung Instant Structures Ltd. had provided the Town, Deputy Mayor Rick Lloyd put forward a motion for staff to investigate constructing a single-pad arena and enclose the outdoor pool with a fabric cover. A majority of Council agreed. They directed staff to report back in six weeks – by August 27, 2012 – with detailed estimates and timelines for building both facilities.

The August 27, 2012, deadline provided staff with six weeks to prepare the staff report. Marta Proctor, director of parks, recreation and culture, who was scheduled to be on vacation for part of the six weeks before the delivery of the report, expressed concern about the deadline during the Council meeting, but acting CAO Ed Houghton did not request that Council give staff more time. Instead, he said the Executive Management Committee (EMC) would take responsibility for the report, testifying at the hearings that he was "trying to answer the needs, wants, and desires of Council" as best he could.

Strategic Planning Workshop Results

Town of Collingwood department heads met on June 12, the day after Council's strategic planning workshop. At the department heads' meeting, Mr. Houghton directed staff to draft "fact sheets" to support the resolutions

requested by Council at the workshop. Staff prepared a document titled “Summary of Resolutions.” Unlike a staff report, this document did not provide a staff recommendation on which direction Council should pursue. Staff had already recommended pursuing the Central Park Steering Committee’s recommendations, and Council had provided directions to do so. Instead, the Summary of Resolutions outlined two recreational facility “directions” for Council to choose from: “Direction A” pursued the Central Park Steering Committee’s recommendations already passed by Council; and “Direction B” abandoned those recommendations to pursue one or more of 10 new options. These included the ones Council discussed at the strategic planning workshop, as well as fabric buildings, which Council had not discussed at the workshop.

Direction A – Pursuing the Committee’s Recommendations

Concerning Direction A, the Summary of Resolutions stated that Council had endorsed the Steering Committee’s recommended multi-use facility in principle, noting that rescinding those resolutions would require a two-thirds Council vote. It outlined Council’s related resolutions, including earlier directions to staff to develop, within six months, a funding strategy, establish a Phase 2 Steering Committee, and develop actions and timelines for all the other Central Park Steering Committee recommendations.

The summary included staff’s opinion that working with the YMCA was an efficient way to provide recreational resources and that the partnership had community support. It reiterated staff’s recommendations that Council determine funding options and create a Phase 2 Steering Committee, highlighting that “[t]he benefits of involving a skilled volunteer steering committee include transparency and accountability.” It also addressed “phasing” the redevelopment, explaining: “To accurately determine the most viable options and associated costs, building construction and site design drawings would need to be completed.” The Summary of Resolutions stated that these would cost approximately \$550,000 and warned that Council should expect significant remobilization / construction costs not accounted for in the estimates if phasing was pursued.

Direction B – Abandoning the Recommendations

In contrast, limited information was presented for the options listed under Direction B. The Summary of Resolutions did not include a detailed analysis of any of the new options, nor did it include information about the anticipated costs associated with any of them. Instead, it cautioned: “Adding new or different components would require additional architectural / engineering work at the various sites to determine what is possible to construct, where, and the implications to existing infrastructure.”

Marta Proctor testified that, in her experience, “any capital project that we would undertake should have appropriate drawings, costing, and an operating business plan associated with it.” Ms. Proctor further testified that the majority of that work would require “external expertise,” explaining: “There could be some work on the business plan that Staff could have assisted with, but ... certainly not if they were doing it for multiple options ... our resources were already stretched with what we were currently trying to do, never mind we didn’t have a whole capital planning team to do this type of work.”

With respect to the Town’s aquatic needs, Direction B included options to build upon the existing YMCA facility or enclose the outdoor pool with a fabric building. Dave McNalty, Collingwood’s manager of fleet, facilities, and purchasing, testified that he was unaware of any investigation into whether the pool could be covered with a fabric structure.

None of the witnesses who appeared at the hearings recalled who added the option of enclosing the pool with a fabric building to Direction B. Clerk Sara Almas assumed it was as a result of the deputy mayor’s June 14 email requesting that staff obtain prices for Sprung structures (see Part Two, Chapter 4). Mr. McNalty believed they were included because Sprung had already met with the Town, and Deputy Mayor Lloyd, Mayor Sandra Cooper, and Mr. Houghton had expressed interest in pursuing Sprung.

The Summary of Resolutions identified several “challenges” in enclosing the outdoor pool, including “Requires further investigation to determine feasibility” and “Current facility is old and requires upgrading to meet contemporary standards.” As explained in Part Two, Chapter 15, the realities of converting the Town’s outdoor pool to a fabric covered aquatic facility that met competitive swim meet standards revealed themselves after Council voted to proceed with Sprung.

Direction B also included four options for additional ice rink facilities, including constructing a single- or double-pad arena, covering the outdoor rink with a roof, and enclosing the outdoor rink with a fabric building. Challenges listed for enclosing the outdoor rink with a fabric building included:

- “Requires investigation to determine feasibility”;
- “Need to invest significant money in Eddie Bush arena”;
- “No efficiencies in separate ice pads”; and
- “Other infrastructure may be impacted i.e. lawn bowling and ball diamond(s) would likely need to be relocated.”

The Summary of Resolutions concluded: “Should any of these new recommendations be approved additional public / stakeholder engagement may be required[,] as well as the development and costing of conceptual drawings and a 5 year business plan.” Ms. Proctor would go on to reiterate the need for investigation into the costs associated with the Direction B options when the Summary of Resolutions was presented to Council on July 16.

Preparations for the Meeting

Ameresco Asks to Present to Council

As explained in Part Two, Chapter 2, Ameresco Canada Inc.– in partnership with Greenland International Consulting – had met with Town staff in April 2012 to express interest in assisting the Town with the construction of a multi-use recreational facility. On May 22, 2012, Councillor Kevin Lloyd met with Mark Palmer of Greenland. The following day, Mr. Palmer emailed Councillor Lloyd:

I have marked down June 2nd as the workshop date for the ongoing MURF [multi-use recreational facility] process. I think it's open to the public?...

I will let the rest of the Ameresco team to [*sic*] remain patient while the MURF process starts up again on June 2nd. We are looking forward to the RFQ phase very soon or invitation to be added to a future consent

agenda so that we can make a public deputation at Council about our DBF (Design-Build-Finance) team and via an open / transparent process.

Mr. Palmer attached to his email his speaking notes from Ameresco and Greenland's meeting with the Town on April 17, designs for a proposed recreational facility in Central Park, and a draft request for qualification (RFQ) document. The RFQ solicited a private firm to engage in a public-private partnership with the Town for the development of a multi-use recreational facility in Central Park.

One month later, on June 20, Anthony DaSilva, vice-president and chief operating officer of Ameresco, sent a letter to the mayor's executive assistant, stating that Ameresco wanted to participate in the June 25 Council meeting. Mr. DaSilva asked that his letter be included in the meeting agenda and that Ameresco be allowed to make a deputation concerning its proposal to assist Council in investigating new recreational facilities. Mayor Cooper forwarded Ameresco's letter to Ed Houghton on June 20, who responded: "I'm not sure their letter is very wise. Injecting themselves so forcefully is not always appreciated." Mayor Cooper replied, "I totally agree."

Central Park Steering Committee's Deputation

Meanwhile, Central Park Steering Committee co-chairs Claire Tucker-Reid and Brian Saunderson began planning a deputation to Council to "reiterate the rationale for the [Steering Committee's] recommendations and debunk some of the perceptions that were flying around at the strategic planning session." They consulted with Ms. Proctor, who informed them about the draft resolutions. On July 5, Ms. Proctor told Ms. Tucker-Reid that she and Mr. Saunderson had been approved to make a deputation at the July 16 Council meeting.

Summary of Resolutions Shared with Councillors West and Hull

On July 11, Ms. Proctor sent a draft of the Summary of Resolutions to Ed Houghton, the Executive Management Committee, and Councillors Dale West and Keith Hull. Councillors Hull and West were Council

representatives to the Parks, Recreation and Culture Advisory Committee (PRCAC). Ms. Proctor indicated that she was sending the document to Councillors West and Hull “in case they have any input before this package is finalized.” Both Councillors provided feedback and Councillor West suggested what he felt staff’s ultimate recommendation to Council should be on July 16.

Email Exchange Between the Mayor and Deputy Mayor

One hour before the Council meeting, Mayor Cooper sent Deputy Mayor Rick Lloyd an email with the subject “2/3.” In the correspondence, the mayor asked: “Do we have two thirds to scrap central Park ...” Deputy Mayor Lloyd responded, “If you want it scraped [sic] then I think we can make that happen, let me know.” Ms. Cooper said in her testimony that she sent this email to Deputy Mayor Lloyd because she believed he generally had a good sense of how Councillors might be prepared to vote on a given motion. She also stated that the deputy mayor was able to persuade other Councillors.

The Council Meeting, July 16

PRCAC and Central Park Steering Committee Deputations

The July 16 Council meeting began with deputations by Parks, Recreation and Culture Advisory Committee chair Penny Skelton, and Central Park Steering Committee co-chairs Claire Tucker-Reid and Brian Saunderson. They emphasized the need for proper planning, due diligence, and community input into Council’s consideration of recreational facility options. They urged Council to examine the operating costs associated with the various options. Council did not ask Ms. Skelton, Mr. Saunderson, or Ms. Tucker-Reid any questions at the meeting.

Ameresco Not to Provide a Deputation

During the Council meeting, Councillor Ian Chadwick raised Ameresco’s June 20 letter requesting a deputation to Council and said that he “would

have liked to have heard what they had to say.” Mayor Cooper stated it was her understanding that the clerk’s office had invited Ameresco to make a deputation and then asked CAO Houghton for further explanation. In response, Mr. Houghton explained to Council that he and Mayor Cooper did not believe it would be appropriate for Ameresco to provide a deputation at the meeting. Ameresco did not make a deputation at the meeting.

Summary of Resolutions Presented

The majority of the Council session was spent discussing the Summary of Resolutions, presented by Mr. Houghton and Ms. Proctor, and Council’s preferred approach to the construction of new recreational facilities. Mr. Houghton began by providing an overview of the strategic planning workshop that had taken place on June 11. The CAO stated that the goal for the July 16 meeting was to put forward information that would allow Council to “provide staff with clear direction that will allow us to continue to move forward in a positive and productive manner.” Ms. Proctor outlined Direction A and Direction B to Council. Town Clerk Almas then explained that a two-thirds majority Council vote was required to rescind its earlier resolutions relating to the Steering Committee’s recommendations.

Mayor Cooper opened the floor for questions and comments. Councillor Hull expressed his support for the multi-use facility proposed by the Steering Committee. He stated that the “\$34 million bill” would not be funded entirely by the Town’s taxpayers and advocated for a committee to identify funding opportunities. He also noted that, if Council was to consider alternative facilities, the same due diligence should be carried out on these facilities as that employed by the Steering Committee. Councillor Joe Garhouse also supported continuing with the Steering Committee’s proposal.

Deputy Mayor Rick Lloyd agreed that the Town was in dire need of new recreational facilities but stated that the cost of the Steering Committee’s facility was too high. He asserted that the Town’s residents needed a new ice pad and indoor pool and made the following proposal:

I actually would encourage and would like to request council support to have staff prepare a report for our next council meeting that looks at a

structure over top for Centennial Pool, which has been looked at, that would allow bleachers and so on. A structure that's approximately 100 by 143 feet in size.

I know some discussions of this kind of facility is less than \$3 million. And it would be something that could be done immediately to meet these needs. But it wouldn't hamper us with our future concerns.

And as well, I would like the staff to give us – to include in the report a new ice pad, also at Central Park. And I would like to see us move forward as quickly as possible with the funding, again looking at the needs of today.

I think when I've listened to the committee and seen some of the recommendations it's come loud and clear to me that we need to move forward as quickly as possible. And I have, through some discussions looked at different companies that give us alternatives. Very viable alternatives for now. Not Band-Aid alternatives. Something that [has] a life expectancy of 60 years or more. Something that can be done immediately. Something that perhaps as soon as the pool closes in September could be fully functional, operational within six to eight weeks after. So that the people do get today what they have been wanting for a long time.

That can work, hopefully, something with the Y or through you, Marta, whoever may give us an operating proposal through partnerships or through us alone.

The structure could either be an architectural membrane, or fabric building, that can be repurposed in the future. Repurposed as such that if we found that there is a demand, as we said, in 2035 or 2030 that we could have a large multiuse facility that we have the funding for. That this facility or this building could be repurposed.

Deputy Mayor Lloyd stated later in the meeting that he was aware of an arena facility that would cost “in the neighbourhood of \$5 million for a complete facility that's turnkey.” The dimensions of the pool Mr. Lloyd referred

* The term “turnkey” refers to a structure that is ready for immediate use upon completion of the construction.

to were the same as those described in the budget that Sprung had sent to the deputy mayor earlier that day (See Part Two, Chapter 4). Similarly, the pricing for the pool cover and the arena referred to by the deputy mayor were rounded versions of the prices in the Sprung budgets.

Councillors Ian Chadwick, Dale West, and Mike Edwards supported Deputy Mayor Lloyd's proposition to meet the Town's short-term needs for an indoor pool and new arena. These councillors also expressed support for the formation of a committee to examine the creation of a larger phased recreational facility in the future. Councillor West suggested that implementing Deputy Mayor Lloyd's proposal should include consulting with Ameresco to determine what type of facilities the company could offer.

Councillor Sandy Cunningham argued that the proposed Steering Committee facility was too expensive and noted that the Town sorely needed a new pool and ice surface. He agreed with Deputy Mayor Lloyd's proposal and noted:

I'm familiar with this company that Mr. Lloyd is talking about. I have seen their structures. I have been to Calgary. They have them there and Calgary is a city of hundreds of thousands of people ... we can meet our needs very quickly with the type of units that Mr. Lloyd is talking about. And we could do it practically immediately.

Councillor Kevin Lloyd also spoke in support of the deputy mayor's proposal. He requested that alternative options for both a pool and an ice surface be costed and presented to Council, to eventually phase the new facilities into a cohesive community centre.

Various councillors and staff also mentioned the possibility of using the revenues from the Collus share sale to fund new recreational facilities. In defending the notion that the Town's taxpayers would not have to bear the entire cost of the Steering Committee's facility, Councillor Hull mentioned that the Collus proceeds might be available to defray the costs of the facility. In the discussion about funding for recreational facilities, CAO Houghton also stated:

I just wanted to mention through to you to council that at our meeting on June the 11th, we did talk about financial numbers. The treasurer mentioned that internally there is potentially \$13.5 million. Now I reluctantly say this because at the June 11th [meeting] we did receive negative comments back about even mentioning it without having the opportunity to go to the public and making sure that this is the direction they would like to go. But there is the opportunity with the Collus partnership, there was \$8 million. There was also through debentures and development charges, so Ms. Leonard [Marjory Leonard, Town treasurer] noted all of that and broke that down and then what she did is she looked at what \$10 million in debentures would cost over a 25-year period of time. So we did bring that up at the last meeting.

Toward the end of the Council discussion period, Ms. Proctor issued a note of caution:

[I]f we are going to move forward with this project or any adjusted project, especially from understanding the feasibility and the implications of it, we need to be clear what the concept is, what it's going to cost, and what implications it has to site development and to the infrastructure that exists there.

Deputy Mayor's Motion Approved

As Council finished its discussion of recreational facilities, Mayor Cooper announced that Deputy Mayor Lloyd was putting forward the following motion:

Be it resolved, that Council direct staff to pursue the following recommended options and develop a project timeline and detailed estimates and bring report back to Council no later than August 27, 2012.

... Construct a single pad arena that could be phased into a double pad, as well enclose the outdoor pool with a fabric building.

Council voted in favour of the motion eight to one, with Councillor Gardhouse opposing.

Deputy Mayor Rick Lloyd testified that, before he put the motion forward and voted for it, the only pool enclosure he had looked into was Sprung's fabric structure. He said, "I never discussed covering the pool with any other company, no business, no building, no nothing." Mr. Lloyd also stated that his investigations into Sprung's fabric structures before the Council meeting were limited to promotional materials from the company and his discussions with Collingwood Clippers parent Linda Simpson.* He also testified that he did not consult other communities that had covered their pools with Sprung structures before the Council meeting on July 16. When asked why he did not attempt to verify the Sprung promotional information independently, Mr. Lloyd responded:

Because I felt that that was the correct direction we needed to go. The price was right. The product was good. If I had to do it all over again, I'd do it exactly the same thing.

Similarly, Mayor Cooper testified that, before the July 16 meeting, the only information she had about fabric buildings was Sprung promotional materials that Deputy Mayor Lloyd had provided and information from her July 11 meeting with Sprung representatives. She could not recall whether any other kinds of pool structures had been considered before the Council meeting. When asked whether anything specific about fabric structures led her to believe they were the best option to cover Centennial Pool, Ms. Cooper responded, "not at the time." Mr. McNalty, Ms. Proctor, and Ms. Almas agreed that staff did not research other options available for covering the outdoor pool before the July 16 Council meeting.

Consequently, by the July 16 Council meeting, Deputy Mayor Lloyd and Mayor Cooper – and to a lesser extent the rest of Council – were in possession of asymmetrical information regarding the alternative options listed in Direction B of the Summary of Resolutions. By the time a vote was called on the deputy mayor's motion, all the Town's councillors had received

* Ms. Simpson's discussions with Deputy Mayor Lloyd are detailed in Part Two, Chapter 4.

information about Sprung structures in the deputy mayor's June 14 email. In addition, the mayor and deputy mayor had met with and received promotional information from Sprung at various junctures. As for the other options under consideration, their knowledge was restricted to the information in the Summary of Resolutions itself.

Deputy Mayor's Wish to Work with Staff

As Deputy Mayor Lloyd was outlining his recreational facility recommendations, he made the following statement:

As Chair of Finance, I really would like to work with Staff and our CAO to come up with an alternative ... to look at covering our Centennial Pool and a new ice pad at Central Park.

As I explain in Part Two, Chapter 10, the deputy mayor reviewed a draft staff report, suggesting changes to make Sprung's fabric structures more attractive to Council. Both Deputy Mayor Rick Lloyd and acting CAO Ed Houghton testified that, at the July 16 Council meeting, no one objected to the deputy mayor's involvement in the staff's work investigating recreational facilities. Both men stated that they interpreted this lack of objection as Council's approval of the deputy mayor's involvement. Mr. Houghton did not agree with the statement put to him by Ms. Cooper's counsel that the deputy mayor's involvement in the staff report should have been subject to a formal Council motion.

As I explain in more detail in Part Two, Chapter 10, it was not appropriate for Deputy Mayor Lloyd to involve himself in the staff report. It is the staff's responsibility to investigate policy options and provide Council with objective recommendations free of partisan influence. Councillors should not interfere with the staff's work in a manner that compromises or politicizes staff's recommendations. The Council Code of Ethics, in force at the time, stated that councillors should "[r]efrain from using their position to improperly influence members of Staff in their duties or functions."

In his closing submissions, Mr. Houghton stated that he interpreted

Deputy Mayor Lloyd's statement at the July 16 meeting and the absence of objection from Council as a direction from Council that Mr. Houghton work with Deputy Mayor Lloyd in completing the staff report. As Ms. Cooper's counsel implied, Council's silence does not mean that Council endorsed the deputy mayor's involvement in the preparation of the report. Council passed no formal motion permitting Deputy Mayor Lloyd to participate in controlling the style and content of the staff report requested by Council. As the Town's executive director of public works and engineering, Mr. Houghton would have attended many Council meetings and understood exactly what constituted a proper direction from Council.

Acting CAO Houghton Takes Control of Staff Report

Before Council voted on Deputy Mayor Rick Lloyd's motion, he emailed Mr. Houghton: "The motion I have here is for staff report to be done no later than aug27. I would like it for July 30th but that might be too agressive [*sic*]." Mr. Houghton replied, "make it no later than August 27th."

Both Mr. Houghton and Mr. Lloyd confirmed at the hearings that Mr. Houghton spoke with the deputy mayor before the motion was placed before Council for a vote, and said that Mr. Houghton meant to indicate that the deadline should be after August 27, not before. Mr. Lloyd testified, "Well, I had already put this through and pushed it. I was aggressively pushing to get this thing done." The motion directing staff to report on options for covering the pool and constructing an arena was put forward and passed with a deadline of August 27.

Ms. Leonard, Mr. McNalty, and Ms. Almas all testified that they believed that Council's deadline did not provide staff with adequate time to complete the work required for the report. Ms. Almas stated that other staff members also had concerns about the short deadline.

Staff's worry was understandable. The Summary of Resolutions stated that new or different components "would require additional architectural / engineering work at the various sites to determine what is possible to construct, where, and the implications to existing infrastructure." It is difficult to see how that work could be completed for two structures in six weeks. In addition, Ms. Proctor was scheduled to be on vacation for almost half of that

time, including three of the final seven days before the August 27 Council meeting. Ms. Proctor expressed these concerns at the meeting:

As much as we would be very happy to explore these options, I am concerned a little about the timeline and the obligations we have as Staff with the events and summer schedules. I think that to make a good decision we need to have all the information and unless we have somebody externally, which really is a feasibility study in costing to help us determine the site – site implications because we can come back with some estimates of the buildings – okay. I'm not sure if they have operational costs in there and everything.

I guess if somebody's got all that information to present us, that's great.

After Ms. Proctor expressed her thoughts at the Council meeting, Mr. Houghton stated:

I think that what we'll do is Staff will caucus, we'll have a discussion about it, I think what we'll do is we need to be able to prop up and support Marta in a whole bunch of different directions and ways. Recognizing, I think, she has some personal time that she needs. I think that there'll be an opportunity for the executive management team to again discuss that ... And if there's somebody that we can bring in to assist us, we'll certainly do that.

Mr. Houghton testified at the Inquiry that that he and the Executive Management Committee (EMC) assumed responsibility for the staff report:

[A]t this point in time, it was not parks, recreation, and culture that were taking the lead on [the staff report] after July 16th ... I accept that they could have easily been involved, but it wasn't a parks, recreation, and culture project at this point in time. It was parks, recreation, and culture facilities, but because of Marta needing time, the EMC was taking it over.

Mr. McNalty and Ms. Proctor both testified that they did not think it was

appropriate to question the deadline. Mr. McNalty said: “it wasn’t my place to change the date or to request that the date would be changed.” Ms. Proctor similarly stated in her evidence that “It was not my position to question” Mr. Houghton’s decision that he and the EMC would assume control over the staff report writing process and ensure Council’s deadline was met.

It is noteworthy that Mayor Cooper testified that she did not know why August 27 was selected as the deadline and that the deadline could have been extended if staff required additional time.

When asked why he did not advise Council at the meeting that staff would need more time to complete its investigations of the selected options for the multimillion-dollar project, Mr. Houghton initially suggested that Council was so excited about the motion that he was unable to stop its progress. He then stated that the same question “could be put to Ms. Proctor,” before concluding:

I don’t know why I didn’t do it. I’m trying – I’m saying I’m trying to answer the needs, wants, and desires of Council and doing my best that I can. That’s what I was doing.

If Council’s deadline impeded staff’s ability to investigate the new options and provide well-informed recommendations, then Mr. Houghton should have raised this problem with Council. As acting CAO, Mr. Houghton’s role was not to follow Council’s directions without question. When Mr. Houghton decided to accept responsibility for the report on behalf of the EMC instead of reinforcing Ms. Proctor’s expressed concerns about the deadline Council proposed, he placed staff in an unacceptable position.

As I explain later in this Report, the limited time allotted to complete the staff report undermined Council’s ability to make a fully informed decision on the purchase and construction of new recreational facilities. In owning the staff report, Mr. Houghton also owned this result.

Staff’s Understanding of Council’s Motion

After the July 16 meeting, Mr. McNalty understood that staff would continue to investigate the options selected by Council and report back with a timeline

and estimates. He believed staff was planning to provide cost comparisons for different types of arenas to Council. For the pool, staff would provide information on the components to be included in a fabric-covered aquatics facility. Ms. Proctor, Ms. Almas, and Ms. Leonard had similar understandings of the information staff had been asked to collect.

Ms. Proctor also understood that, after reviewing the options presented by staff, Council would select its preferred facilities and ask for a more in-depth assessment of them. Ms. Leonard anticipated that Council would use the information provided to form the basis of a request for proposal (RFP) to identify a supplier for new recreational facilities. Ms. Almas expected Council to review the options provided by staff and decide between pursuing the original multi-use facility proposed by the Steering Committee and undertaking an RFP to pursue suppliers for new facilities.

On July 16, the Town's treasurer and its clerk did not anticipate a recommendation that Council approve the purchase and construction of a pool cover and new arena from a specific supplier without the benefit of a competitive procurement process. In just six short weeks, however, this is exactly what would take place.

“Good Old Boys Prevail”

Hours after the Council meeting, Councillor Dale West emailed Deputy Mayor Rick Lloyd stating, “we are closer than we have ever been.” Later in the email thread, Councillor West proposed that both Sprung and Ameresco representatives provide deputations to Council after which staff would follow up on their proposals. Deputy Mayor Lloyd agreed.

That night, Deputy Mayor Lloyd emailed Councillor Sandy Cunningham, stating, “Well done my frirnd! [*sic*].” Councillor Cunningham responded, “The good old boys prevail as always. Don't you love it.”

Paul Bonwick's Introductions to Sprung and BLT

After acting Chief Administrative Officer (CAO) Ed Houghton asked Sprung Structures for preliminary pricing for a pool and an arena in June 2012, Tom Lloyd of Sprung reconnected with an old Collingwood contact, Abby Stec.

Mr. Lloyd met Ms. Stec in 2009. At that time, Ms. Stec worked as a development officer for the Pretty River Academy, a private school in Collingwood. She was researching options for covering the school's outdoor soccer field and, as part of that process, spoke with Tom Lloyd and David MacNeil about Sprung. Sprung was one of three fabric builder suppliers that Ms. Stec investigated.

Ms. Stec and Mr. Lloyd continued to discuss a potential sports facility at the Pretty River Academy until October 2011. At that time, Ms. Stec left the school to work with Paul Bonwick at his company, Compenso Communications Inc.

When Tom Lloyd contacted Ms. Stec in 2012, she was working for Green Leaf Distribution Inc., a company Mr. Bonwick created to market solar-powered attic vents. Ms. Stec introduced Tom Lloyd to Paul Bonwick. The two men began discussing how Mr. Bonwick could help Sprung in Collingwood. Mr. Lloyd was interested in involving Mr. Bonwick, in part because Deputy Mayor Rick Lloyd had recommended Mr. Bonwick's services to him.

Tom Lloyd's and Paul Bonwick's discussions culminated in a meeting on July 26, 2012, with BLT Construction Services Inc., the company that constructed Sprung structures in Ontario. At the meeting, Mr. Bonwick offered to promote Sprung structures to councillors and community leaders. In return, BLT agreed that, if it secured a contract with the Town, it would pay Mr. Bonwick's company Green Leaf a percentage of the overall contract as a success fee. Approximately one month later, after Council

decided to purchase and construct two Sprung facilities, BLT paid Green Leaf \$756,740.42 (including HST).

Abby Stec's Work for Paul Bonwick

Abby Stec testified that she first encountered Paul Bonwick sometime after 1991, when he was a member of Parliament. In 2011, Mr. Bonwick became involved in discussions about a Pretty River Academy project to implement an environmental education program that might involve, among other things, installing solar energy panels at the school. Ed Houghton was also involved in those discussions, as were others, including Councillor Kevin Lloyd.

Ms. Stec arranged to meet with Sprung's Tom Lloyd in June 2011 to find out if the school could install solar panels on a Sprung structure. Ms. Stec informed Mr. Bonwick and Mr. Houghton about the meeting by email. Neither Mr. Bonwick nor Mr. Houghton could recall discussing the matter with Ms. Stec. Tom Lloyd testified that he did not know who Ed Houghton or Paul Bonwick were at this time.

Compenso Communications

Through her discussions with Mr. Bonwick in 2011 at the Pretty River Academy, Ms. Stec learned that Compenso Communications Inc. was a political lobbyist and communications company owned by Mr. Bonwick. She left the school in October 2011 to join Compenso as a consultant focusing on the solar attic vent business (see Part One, Chapter 5). Her title at Compenso was "senior associate." By June 2012, she had the title president and CEO at another of Mr. Bonwick's companies – Green Leaf Distribution Inc.

Green Leaf Distribution

In early 2012, Mr. Bonwick was using the "Green Leaf" business name in conjunction with his work on the solar attic vent project. In May 2012, Mr. Bonwick became the sole shareholder of a corporation that would go on to formally become Green Leaf Distribution Inc. Ms. Stec also began working

under the Green Leaf banner, identifying herself as Green Leaf’s managing director in May 2012.

Mr. Bonwick testified that Green Leaf distributed environmental products, with an initial focus on solar attic vents and other solar energy initiatives. Ms. Stec testified that Mr. Bonwick intended to use Green Leaf to distribute his own solar attic vents after he parted ways with International Solar Solutions Inc.

Mr. Houghton, Collus Power Corporation (and, subsequently, Collus PowerStream Corp.), and Deputy Mayor Lloyd assisted Green Leaf’s solar attic vent business from time to time.

In the summer of 2012, Green Leaf conducted a door-to-door sales program with Collus’s assistance. Collus allowed Green Leaf’s salespeople to use the Collus logo. Collus also included advertisements for Green Leaf vents in its customer mailings.

In April 2012, Mr. Bonwick sent Mr. Houghton memos that projected Green Leaf’s profit from the door-to-door sales would be \$13,600.

On June 6, 2012 Deputy Mayor Lloyd asked the Collingwood Downtown Business Improvement Area to include Green Leaf in its farmers’ market, describing it as a “Collus / Town / PowerStream initiative,” forwarding his request and the response he received to Mr. Bonwick.

Green Leaf was involved in other environmental initiatives. Ms. Stec said she used it as a vehicle to promote her work in environmentally sustainable construction as a “LEED-accredited professional.” LEED (leadership in energy and environmental design) is an independent rating system that certifies buildings as designed and built to specific environmental criteria. There are four levels of LEED certification: certified, silver, gold, and platinum. Green Leaf also manufactured a compost deodorizer, which it marketed to Simcoe County.

Ms. Stec purchased a 20 percent interest in Green Leaf on June 19, 2012. She testified that her “decision was predicated on – on both Mr. Bonwick and possibly Mr. Houghton becoming a partner after he retired.” She knew Mr. Bonwick very much wanted Mr. Houghton to join the company. However, Ms. Stec said, Mr. Bonwick made it clear that Mr. Houghton could not

* Ms. Stec testified that, as such a professional, she was qualified to administer the documents required to apply for a LEED designation.

do so until he retired “because it would have been a conflict with his role at Collus.”

Ms. Stec became Green Leaf’s president and CEO in June 2012. Mr. Bonwick gave her these titles without any advance discussion or notice. He simply advised her of the fact while they were completing a partnership agreement. These new titles did not bring any changes to Ms. Stec’s day-to-day involvement in the company – her role and compensation remained the same. She testified that she considered the titles as “more of a placeholder than a title.”

Despite assigning these titles to Ms. Stec, Mr. Bonwick also held himself out as Green Leaf’s president. For example, on August 12, 2012, Mr. Bonwick signed Green Leaf’s corporate documents as “president.” Ms. Stec explained at the hearings that Mr. Bonwick did not actively participate in Green Leaf’s business, and she stated that “he was more of an advisor.” As I discuss in more detail below, while that may have been true for some aspects of Green Leaf’s business, Mr. Bonwick continued to use the company when it was to his advantage to do so.

Introduction to Tom Lloyd and Sprung

Tom Lloyd, Sprung Structures’ regional business development manager responsible for Ontario, contacted Ms. Stec in June 2012. Ms. Stec testified that she met with Mr. Lloyd and told him about Green Leaf’s business. Mr. Lloyd, she said, indicated that Green Leaf would be a great manufacturer’s representative for Sprung.* During that discussion, Mr. Lloyd explained the commission that Sprung paid to its manufacturer’s representatives. He advised Ms. Stec that there would be no commission available for the Collingwood projects because another manufacturer’s representative, Pat Mills, was already set to receive it. He also explained that Sprung paid commission only on the Sprung portion of the project – it did not pay a commission related to the construction of the structures.

Ms. Stec testified that she took Tom Lloyd to meet Mr. Bonwick that

* Tom Lloyd testified that manufacturer’s representatives were Sprung’s commissioned salespeople.

same day. She recalled Mr. Bonwick explaining Compensos's business to Mr. Lloyd. Ms. Stec discussed the manufacturer's representative opportunity with Mr. Bonwick. She told the Inquiry that Mr. Bonwick thought it was a good idea, and that they discussed the possibility of using Sprung structures for the Town's pool and arena. She explained to him that there would be no commission from Sprung for recreational facility projects with the Town.

Tom Lloyd recalled talking with Ms. Stec about having her and Mr. Bonwick assist with the Collingwood recreational facilities and become involved on a "broader scope outside of Collingwood." Mr. Lloyd testified that he had lunch with Ms. Stec on June 29, met with her and Mr. Bonwick on July 11, and spoke with Mr. Bonwick "two (2) to three (3)" times thereafter. Although Mr. Lloyd could not be definitive about the timing of his conversations with Mr. Bonwick, he stated that they discussed "why Sprung and Green Leaf could be a great partnership going forward for referring business back and forth." He said it was "becoming very obvious" that, if Collingwood chose to proceed with Sprung recreational facilities, it would do so through BLT Construction Services Inc., the company that built most of the Sprung structures in Ontario.

BLT Construction Services Inc. is a construction company. As I discuss below, the firm had a mutual referral arrangement with Sprung that involved Sprung referring Ontario customers to BLT to construct the fabric buildings.

Mr. Lloyd said in his evidence: "[W]e both decided it'd be much better to form a – call it a three (3) way alliance, BLT, Sprung, Green Leaf." Mr. Lloyd testified that Mr. Bonwick explained that he could "help Collingwood make a decision," and that he could also help Sprung penetrate the "many, many" different communities that Sprung may not have access to.

Mr. Lloyd did not understand at that time what Mr. Bonwick was proposing to do, but he saw Mr. Bonwick as a welcome member of the team because members of the community had highly recommended him. When pressed to identify who spoke highly of Mr. Bonwick, Tom Lloyd identified Deputy Mayor Rick Lloyd, Councillor Kevin Lloyd, and acting CAO Ed Houghton. He specifically recalled the deputy mayor recommending Mr. Bonwick before their meeting. He could not recall when he spoke with Kevin Lloyd or Mr. Houghton.

Mr. Bonwick testified that Ms. Stec introduced him to Tom Lloyd. At

that meeting, he recalled, Mr. Lloyd explained Sprung's products and business, and advised that he wanted Sprung to become more active in Ontario. Mr. Bonwick and Mr. Lloyd agreed to follow up "in the near future." Mr. Bonwick could not recall if, at this time, Ms. Stec was a manufacturer's representative for Sprung or was considering becoming one. He acknowledged in his evidence that, "in my discussion with Mr. Lloyd, it's entirely possible that we may have – or he may have introduced the idea of becoming much more engaged – in us becoming much more engaged in the Collingwood initiative."

Discussions with Sprung

After their introductory meeting, Mr. Bonwick and Mr. Lloyd discussed Mr. Bonwick's potential involvement in the Collingwood recreational facility projects.

Mr. Lloyd, who testified that he had a "very brief" discussion with Mr. Bonwick regarding a potential engagement with Sprung, stated that he explained that Sprung manufacturer's representative Pat Mills had already registered the Collingwood projects and was not willing to split his commission with Mr. Bonwick. Mr. Lloyd also testified that Mr. Bonwick "recognized quickly that the Sprung is a component of a much larger project, and it was probably a good idea to go directly with BLT."

Mr. Bonwick did not recall having any discussions with Mr. Lloyd about dividing the Sprung commission on the Town's recreational facilities with anyone.

Discussions Among Deputy Mayor Lloyd, Ms. Stec, and Mr. Bonwick

About Green Leaf

Deputy Mayor Rick Lloyd met with Ms. Stec and Mr. Bonwick on June 20. The purpose of the meeting was to discuss a compost-deodorizing product that Green Leaf manufactured.

Mr. Lloyd recalled meeting with Mr. Bonwick and Ms. Stec to discuss Green Leaf's request to present its compost deodorizer to Simcoe County. He maintained that he did not know Mr. Bonwick had a financial interest in Green Leaf and said he believed that Mr. Bonwick was "just helping Abby." He also testified that he did not ask if Mr. Bonwick had a financial interest in Green Leaf. Mr. Lloyd stated that he did not learn Mr. Bonwick was associated with Green Leaf until the CBC published investigative documents from the Ontario Provincial Police in June 2018.*

Although the meeting occurred during a period when, according to Rick Lloyd's testimony, he "spoke to everybody that would listen" about Sprung, Mr. Lloyd did not recall discussing the topic at this meeting, noting that if it was raised, "it would have just been off the cuff."

About Sprung

Ms. Stec also recalled attending a brief meeting with Mr. Bonwick and Deputy Mayor Lloyd to discuss Sprung "very shortly" after her meeting with Tom Lloyd. She testified that the deputy mayor "got very excited about the prospect and – and wanted to definitely pursue something in that regard." Neither Rick Lloyd nor Paul Bonwick recalled this meeting.

Rick Lloyd also denied discussing Sprung with Mr. Bonwick during the summer of 2012, although he was "sure" that he spoke with Mr. Bonwick about Mayor Cooper's thoughts on how to proceed with the recreational facilities. When pressed on this evidence, Mr. Lloyd responded: "There's no reason why I wouldn't, but there's specifically when you pick out an individual, I don't know that I spoke to him any more than I spoke to anybody on the street that would listen to me. I spoke to everybody."

Whether anyone at this meeting raised the possibility of Sprung hiring Mr. Bonwick, I am satisfied that Deputy Mayor Lloyd discussed Sprung with

* On June 19, 2018, CBC News published Ontario Provincial Police investigative documents relating to Council's decision to purchase and construct the Sprung facilities. The documents included an "Information to Obtain a Production Order" sworn by Detective Constable Marc Lapointe on July 23, 2014. The covering page to the OPP investigative documents stated: *** This document contains allegations that have not been tested in court. ***

Mr. Bonwick shortly after learning about the company at a June conference in Saskatoon (see Part Two, Chapter 4). By his admission, the deputy mayor was talking with everybody. There was no reason not to include his friend Mr. Bonwick in these discussions, a person with whom Deputy Mayor Lloyd regularly spoke about Town business.

Deputy Mayor Lloyd's Recommendation to Sprung

Sprung's Tom Lloyd testified that Deputy Mayor Rick Lloyd recommended Mr. Bonwick to him sometime between July 11 and 26, informing him that Mr. Bonwick was "just as passionate as he was" about new recreational facilities for the Town. According to Tom Lloyd, the deputy mayor said it would be great to involve Mr. Bonwick in the process. Tom Lloyd testified that the deputy mayor told him: "Mr. Bonwick could put the ball in the end zone ... Touchdown."

Mr. Bonwick stated in his evidence that he was not aware that Rick Lloyd had recommended his services to Sprung.

Rick Lloyd did not recall telling Tom Lloyd that it would be great to get Mr. Bonwick involved in the recreational facility process. He also did not recall informing anyone that Mr. Bonwick could be helpful on the Collingwood projects before Council made its decision on August 27, 2012. In response to questions about whether he recommended Mr. Bonwick to Sprung, Rick Lloyd testified: "I can assure you one thing. Positively, I would not have said anything about a touchdown. That's not something I would say." He agreed, however, that he could have told Tom Lloyd that Mr. Bonwick was knowledgeable and intelligent, knew a lot of people, and could be helpful.

I find that Deputy Mayor Rick Lloyd recommended Paul Bonwick to Tom Lloyd before July 26, 2012.

The deputy mayor's recommendation carried weight with Sprung. Tom Lloyd testified that Mr. Bonwick was "a welcome member to the team" based on recommendations from the deputy mayor and others. He introduced Mr. Bonwick to another member of the team: BLT Construction Services Inc.

Relationship Between BLT and Sprung

Although Sprung marketed, engineered, and manufactured the materials for its fabric structures, it did not erect the structures or construct any other components that might be included with the structure (for instance, bleachers, change rooms, or ice pads). Sprung referred customers in Ontario to the construction company BLT for construction of its structures.

Dave Barrow, BLT's executive vice-president, testified that, before 2012, BLT had constructed several Sprung structures and the two companies had a "handshake agreement" whereby Sprung would refer its customers to BLT as a builder. BLT, in turn, recommended Sprung to potential clients who might be interested in either fabric or pre-engineered steel buildings.

Mr. Barrow testified that most of the Sprung-BLT projects were "turnkey," meaning that BLT "put the shovel into the ground and we give you it at the end of product to use." He also testified that BLT's role in a turnkey project would be "the full design and build of the structures." Sprung's role, he indicated, would be "the structure itself and the engineering of the structure itself."

Ron Martin, Collingwood's deputy chief building official, explained the design-build concept as,

an owner ... [b]asically says to a company or a firm that we would like to build this and that firm takes almost what I describe as a project manager they become that person they take it from A to Z ... The idea of that is for an owner or client that they are going to take care of all – all of the tendering and the processing and hiring of the consultant.

Dave McNalty, the Town's manager of fleet, facilities and purchasing, indicated that, with a design-build concept, the consulting and engineering work is "baked" into the price you are being offered.

On February 28, 2012, Sprung and BLT formalized their handshake agreement by entering into a "strategic alliance agreement." According to that agreement, Sprung would refer all clients "seeking a turn key approach" exclusively to BLT. BLT would then enter into a contract directly with the customer for the construction of the Sprung structure.

Tom Lloyd testified that, under this arrangement, BLT typically purchased the fabric structure directly from Sprung. BLT would then include the cost of the structure in the flat fee it charged the clients. BLT charged a markup on all the materials and services it provided. The strategic alliance agreement did not limit what BLT could charge for a Sprung structure. BLT vice-president Dave Barrow testified that BLT typically charged a markup of between 15 and 18 percent.

Tom Lloyd testified that, while Sprung always referred customers to BLT, Sprung did not require its customers to use BLT. If the customer used another builder, or constructed the building itself, the customer could buy the fabric structure directly from Sprung without a markup. Mr. Barrow testified that it was uncommon for customers to buy directly from Sprung, but that, if a direct purchase was made, BLT would consult on the construction for a fee. Mr. Lloyd told the Inquiry that BLT had constructed approximately 80 percent of the Sprung structures in Ontario.

Tom Lloyd testified that by 2012, Sprung structures had been used for three arenas and “three to five pools,” although he could recall only the location of two of the pools. BLT, however, had never built a Sprung arena or pool.

Mr. Bonwick's Introduction to BLT

Mr. Barrow testified that BLT did not actively market Sprung structures and usually became involved in a potential project after Sprung made initial contact with a prospective client.

For Collingwood, Mr. Barrow testified that, in mid to late July 2012, David MacNeil from Sprung first told him about a potential construction project to cover the Town's outdoor pool and either cover the outdoor arena or build a new arena. Shortly after that conversation, Tom Lloyd introduced Mr. Barrow to Abby Stec and Paul Bonwick by email, writing:

Hi Dave,

We are working with Abby Stec and her partner Paul Bonwick on the Collingwood projects. They would like to meet at your office on Thursday

July 26th at 2:00 pm. Please confirm that works with you and/or Mark. Prior to Thursday they would like to have a conference call. Can you please let me know if you are available tomorrow?*

At the time he received this email, Mr. Barrow had never heard about Ms. Stec or Mr. Bonwick.

Mr. Bonwick testified that Tom Lloyd had suggested the meeting as a potential way for Mr. Bonwick to become involved in Sprung's efforts to secure a contract with the Town of Collingwood. He said he was interested in meeting with BLT because, after researching Sprung, he saw an opportunity for Sprung in Collingwood. He also saw an opportunity to create what he described as a "province-wide business model," whereby Green Leaf and BLT would jointly approach other municipalities with proposals to build recreational facilities with Sprung structures. Ms. Stec testified that Collingwood would serve as a "pilot" for this model.

Mr. Bonwick's and Ms. Stec's Meeting with BLT

Mr. Bonwick and Ms. Stec met with Mr. Barrow and Mark Watts, BLT's president, on July 26. Mr. Barrow, Mr. Bonwick, and Ms. Stec testified that they believed Tom Lloyd attended the meeting, although Mr. Lloyd told the Inquiry that he was "75–90 percent sure" he was not present.

On the day of the meeting, Mr. Houghton and Mr. Bonwick spoke on the phone six times. Neither of them recalled the content of those discussions, but both denied they talked about Mr. Bonwick's meeting with BLT.

Mr. Barrow, Ms. Stec, and Mr. Bonwick testified about the content of the July 26 meeting. They recalled that, during the meeting, Mr. Bonwick introduced himself and discussed Collingwood's history with recreational facilities. Mr. Bonwick then advised BLT that, if the company wanted to secure a contract with the Town, it would need to convince the Town that Sprung was an easy, affordable, quick, and environmentally friendly solution to the Town's needs. Mr. Bonwick said that Green Leaf could assist BLT in these efforts.

* The Inquiry was not able to confirm that a conference call took place.

Mr. Bonwick and Ms. Stec testified that, during Mr. Bonwick's presentation, he stated that BLT might have the opportunity to obtain a contract for the arena and pool through sole sourcing, as opposed to a competitive tender process. Ms. Stec further testified that, before the meeting, Mr. Bonwick had indicated to her that the recreational facilities could be "sole sourced." Sole sourcing occurred when the Town entered into a contract without going through a competitive tender. The idea that sole sourcing was possible took Ms. Stec by surprise because she thought a municipality would be required to tender such a significant project. When Mr. Bonwick cross-examined Ms. Stec on her testimony, she agreed with his suggestion that, while sole sourcing was discussed, Mr. Bonwick never guaranteed the project would be sole sourced.

In their evidence, Ms. Stec and Mr. Barrow both agreed with Mr. Bonwick's suggestion that he also presented his proposal for Green Leaf and BLT to work together to market Sprung structures to other municipalities in the province.

Ms. Stec testified that she spoke at the meeting about Green Leaf being an environmental company and the potential for her to assist BLT in obtaining LEED certification for its buildings. At the time, Ms. Stec believed Sprung structures already had a LEED silver rating. As I discuss in Part Two, Chapter 11, this was not the case.

Mr. Barrow testified that he left the meeting believing there was a "handshake agreement" that BLT would pay Green Leaf a fee to lobby Collingwood's Council to build Sprung structures. He explained that the actual amount of the fee was not discussed, although he understood it would be a percentage of the overall value of any contract BLT secured. Mr. Barrow also testified that, at some point, Tom Lloyd told Mr. Barrow that he thought it would be a good idea for BLT to hire Mr. Bonwick because he (Mr. Bonwick) "could get us inside of doors we just couldn't get inside of."

In his evidence, Mr. Bonwick rejected the notion that he agreed to "lobby" Council in exchange for a success fee.* Rather, he testified that he would act as a "lead on the ground" to speak positively to Council and community leaders about Sprung structures. He also said he would deal with "significant issues that might come up." When he was cross-examined by counsel for the

* For this Report, a "success fee" is a payment made when a defined result is achieved.

Town of Collingwood, Mr. Bonwick described his role as follows: “I would be able to engage at opportunities that were available and promote the idea that Collingwood Council had an option in front of them to embrace that would have been a third of the price or less that would allow them to deliver.”

With respect to the fee, Mr. Bonwick confirmed that no specific fee was set, although he indicated to BLT that, if the Town did proceed with a request for proposal, the process could be extended and as a result, he thought, the fee should be in the same range as commissions paid to real estate agents.

Ms. Stec testified that, at the end of the meeting, Mr. Bonwick told BLT that she would be the contact person going forward. Mr. Bonwick confirmed that Ms. Stec’s role was to be the “day-to-day administrative contact.” This direction was one of the early indications that Mr. Bonwick intended to use Ms. Stec and the Green Leaf company to conceal his work for BLT.

Non-disclosure of Mr. Bonwick’s Relationship to the Mayor

Tom Lloyd testified that, before introducing BLT to Mr. Bonwick, he learned Mr. Bonwick was the brother of Collingwood’s mayor. He explained that the sibling relationship was not a concern for Sprung because, by this point, the Town was likely to contract with BLT and “the decision would now go over to BLT.” Mr. Lloyd testified that, later on, he saw Mr. Bonwick’s and Ms. Cooper’s relationship as “more of a coincidence” that did not give him any conflict of interest concerns.

Mr. Bonwick, however, did not disclose to BLT at the July 26 meeting that his sister was the mayor. Mr. Barrow testified that he learned this fact later on, but could not recall if it was before or after BLT and the Town signed the construction contract for the Sprung arena and pool at the end of August 2012. He testified that the information that Mayor Cooper and Mr. Bonwick were siblings did not cause him concern, “but it was definitely surprising.”

Mr. Bonwick testified that he did not disclose that the mayor was his sister because he wanted to be hired on his own merit and not based on his family connections.

I do not accept this evidence.

Rather, I am satisfied that Mr. Bonwick did not disclose the relationship because he wanted to avoid discussions like those he previously had with PowerStream about whether he should disclose his retainer to his sister or the Town of Collingwood.

Mr. Bonwick told the Inquiry that he did not treat BLT like PowerStream for three reasons. First, he did not have as much of a public profile while working for BLT. I discuss this point further in Part Two, Chapter 9, but Mr. Bonwick testified that, when he spoke to councillors and others in favour of Sprung, he deliberately did not disclose that he would be paid by BLT if it secured a contract. Second, he testified that his experience with PowerStream taught him there was no conflict under the *Municipal Conflict of Interest Act*, so there was no concern about his involvement. Finally, Mr. Bonwick explained that BLT was a private entity, whereas PowerStream was quasi-public.

I also do not accept any of these justifications.

In hindsight, Mr. Bonwick expressed a measure of reservation about his decision. In his closing submissions, he agreed that he should have handled disclosure “in a much more robust manner,” similar to the Collus share transaction. To the extent that Mr. Bonwick’s comment in his closing indicates that disclosure of his relationship to the mayor would have permitted his client, BLT Construction Inc., to address how it wanted to handle the issue, I agree with it.

WGD Architects and Arena Options

After the July 16, 2012, Council meeting, Director of Parks, Recreation and Culture Marta Proctor and Manager of Fleet, Facilities and Purchasing Dave McNalty arranged for the Town to retain the architectural firm WGD Architects Inc. to analyze two options for a single-pad arena: a fabric membrane structure, and a pre-engineered steel building. Richard Dabrus, principal in charge of WGD, testified that pre-engineered steel buildings became popular beginning in the 1980s as a cost-effective alternative to other building types. WGD was not asked to consider the pool.

WGD's work was constrained. Mr. McNalty told WGD not to contact Sprung Instant Structures directly. The direction came from Deputy Mayor Rick Lloyd, who instructed acting Chief Administrative Officer (CAO) Ed Houghton to act as the Town's sole contact with Sprung. The deputy mayor's direction prevented Town staff from providing Council with an objective assessment of the arena options. WGD's work was also limited by the short timeline required to meet the August 27 staff report delivery date that Mr. Houghton accepted at the July 16 Council meeting (see Part Two, Chapter 5).

On August 17, WGD delivered its report to the Town. The company estimated that a fabric arena would cost approximately \$500,000 less than one of pre-engineered steel, but stated that the latter would be better insulated. Mr. Houghton did not present WGD's conclusions to Council at the August 27 Council meeting. Instead, he questioned WGD's role throughout the process.

Retaining WGD to Assess Options

At the department heads' meeting the day following Council's July 16 meeting, Ms. Proctor suggested that the Town engage the architectural firm WGD Architects Inc. She wanted WGD to assist in preparing estimates for a single ice pad and enclosure for the Centennial Pool. Council had requested the estimates to be completed by August 27. As I discuss below, WGD was ultimately not asked to look at the pool.

Mr. McNalty testified that both he and Ms. Proctor believed it was logical to hire WGD because the firm had already prepared the estimates for the Central Park Steering Committee's proposal (see Part Two, Chapter 2). As well, WGD had architectural, engineering, and design resources that the Town did not have in house. As I explain in Part Two, Chapter 2, WGD provided the committee with preliminary design options and cost estimates for a multi-use facility. WGD was selected for this project following a competitive RFP. It was also the architect for the Town's library, which had been built in 2010 and had obtained a LEED gold rating.*

Mr. Houghton did not attend the July 17 department heads' meeting. He testified that he did not know staff had retained WGD, though he was aware that Councillor Joe Gardhouse had suggested Council hire a consultant to assist with the staff report.

Over the next month, Mr. Houghton asked staff on three occasions what WGD was doing for the staff report. Mr. Houghton told the Inquiry that his confusion stemmed from the fact that he did not attend this department heads' meeting. Although Mr. Houghton initially may have been uncertain about WGD's role, staff responded to each of his queries, explaining WGD's role. I do not accept that Mr. Houghton repeatedly questioned WGD's involvement in the staff report because he did not understand its role. Rather, Mr. Houghton sought to limit the impact of WGD's work on the staff report. He was successful.

On July 18, Ms. Proctor spoke with Richard Dabrus, principal in charge

* LEED (leadership in energy and environmental design) is an independent rating system that certifies buildings as designed and built to specific environmental criteria. There are four levels of LEED certification: certified, silver, gold, and platinum.

of WGD, about the new project. Mr. Dabrus testified that the conversation was “a little bit panicked” and it was clear this was an urgent matter for the Town. Mr. Dabrus recalled that in this conversation, Ms. Proctor asked WGD to examine different locations for the arena within Central Park, rather than the location WGD had identified when it completed its feasibility study for the Central Park Steering Committee. Mr. Dabrus told the Inquiry that a new location within Central Park “did not make a lot of sense, but we weren’t really in a position to question it.” He explained that changing the location meant moving away from the opportunity to build a multi-use facility.

After his conversation, Mr. Dabrus emailed Ms. Proctor to inform her that he would be on vacation but that Brian Gregersen, another architect at WGD, was available to assist. At the hearings, Mr. Dabrus testified that he and Mr. Gregersen served as the firm’s liaisons with the Town of Collingwood. WGD also used an independent consultant, Tom Ingersoll, to prepare cost estimates.

Scope of Work and Terms of Reference

On July 19, Mr. McNalty sent Ms. Proctor draft terms of reference for WGD’s work. He sent an updated version to Brian Gregersen at WGD the next day. Mr. McNalty testified that the purpose of the document was to direct WGD on the types of arenas the Town wanted the firm to assess. The document identified three options for WGD to consider “as a minimum”:

- “Proposed Central Park Redevelopment Project Components (as presented)”
- “Initial Phase of Single Pad Arena, necessary park improvements with future option to combine into overall redevelopment concept”
- “Upgrade of the Eddie Bush Memorial Arena beyond ten (10) years”

The single-pad arena option was described as “new year round Ice Arena in Central Park that may be phased into the broader concept” that could be a “Fabric Membrane (Sprung, or equivalent)” or “Other affordable structures.” The document asked WGD to “identify displaced amenities and costs

associated with redevelopment” and stated that “Park and Site development shall be on an as needed basis in conjunction with the various phases.”

The cost listed for the “Proposed Central Park Development Project Components” was listed as \$35 million. No costs were included for the other two options.

The terms of reference stated that the feasibility of these options “must be presented to Council on August 27, 2012” and that the “Town is requesting a draft report no later than August 15, 2012.”

The terms of reference also directed WGD to assess upgrading the Eddie Bush Memorial Arena to expand its lifespan beyond 10 years. As part of this work, the Town asked WGD to assist with an application for a grant from the Community Infrastructure Improvement Fund.

Explicit Mention of Sprung

Mr. McNalty testified that he prepared WGD’s terms of reference with Ms. Proctor. He explained that WGD was asked to compare the above options “at a minimum” because he and Ms. Proctor did not want to preclude any other options, although none were ultimately identified. He also stated that he did not expect WGD to do any further work on the multi-use facility option beyond what the firm had already done for the Steering Committee. He said this option “became less important” after Council voted on July 16 to direct staff to investigate covering the outdoor pool since, if that option was pursued, a pool would not be needed at Central Park. Mr. Dabrus also understood that the Town was not asking WGD to revisit the work it had already done on a multi-use facility.

Mr. McNalty further testified that Sprung was mentioned explicitly in the terms of reference because, at the time, it was the only company he knew of that offered a fabric structure which was insulated and could be used for recreational facilities.

Before being introduced to Sprung in June 2012, Mr. McNalty was familiar with what he called “agricultural-style” fabric buildings, which were primarily used for farm purposes. Although not insulated, these buildings could be modified to include insulation. In or around 2009 or 2010, Mr. McNalty had investigated whether an “agricultural-style” fabric building

could be used to cover the outdoor ice rink at Central Park. He concluded that it did not meet building code requirements, including the need to have a sprinkler system.

Mr. McNalty stated in his evidence that Sprung buildings, in contrast to agricultural-style buildings, had a “robust design” that was suitable for sports facilities and satisfied building code requirements. His understanding of Sprung structures was based on his meetings with Sprung and the information the company had provided. Mr. McNalty testified that, at those meetings, he asked Sprung a series of questions to ensure its buildings would satisfy the building code. Although he could not recall the specific questions, he stated that, as a result of his inquiries, he concluded that Sprung structures did not have the same deficiencies as agricultural-style buildings.

Mr. McNalty stated that he did not believe other companies could offer a similar product because he did not find any such companies when he conducted internet searches. When the Town engaged WGD, he testified, he explained the difference between an agricultural-style fabric building and a Sprung and that the Town was interested in a Sprung-style fabric structure. He did not recall having further discussions with WGD about whether it was aware of any companies that provided a comparable product, but he “would have welcomed that if they had suggested it.”

Mr. Dabrus testified that it was not normal practice for a client to ask WGD to look at a specific supplier, in this case Sprung. He explained that there is a “commonly held belief” that public sector clients should focus on performance standards, not a particular product. As an example, he said that if the client wants the flooring in the dressing rooms to be safe for skates, that should be specified; but the client should not specify a particular manufacturer.

Mr. Dabrus also testified that the Town did not provide WGD with any specific performance standards or design components. Nevertheless, WGD was able to prepare estimates because the firm had “done a lot of arenas, so we just naturally know what’s ... going in them and where things need to go.” Mr. McNalty testified that the only information WGD received regarding the design of the arena was contained in the terms of reference.

At the hearings, Mr. Dabrus described the Town’s terms of reference as a “moving target” and testified that it “took a great deal of discussion

to work out what was really being asked.” WGD ultimately analyzed two potential arena construction types: fabric (such as a Sprung structure), and pre-engineered steel. He further testified that WGD analyzed pre-engineered steel buildings because the terms of reference directed the company to consider “other affordable structures.” Mr. Dabrus stated that pre-engineered steel buildings became popular in the 1980s because they were cost-effective as compared with other building types.

WGD was not asked to examine covering the outdoor pool with a fabric building. Mr. McNalty testified that, since Council asked staff to look only into fabric structures for the pool, in his mind the only work involved was meeting with Sprung, determining the components of the pool, and then developing detailed timelines and estimates. Mr. McNalty explained that he believed it was not necessary for staff to investigate other fabric-structure manufacturers because, based on his internet research, Sprung was the sole company that could build fabric recreational facilities without modifications.

Restrictions Imposed by the Timeline

Mr. Dabrus testified that the August 15 deadline was “an extremely short fuse” that limited WGD’s work for the Town. For example, the Town requested WGD to complete energy modelling, an analysis that would have helped the Town understand the expected energy use of each type of arena. Mr. Dabrus told the Inquiry that a month was not sufficient for completing that task. He also testified that, as a result of the timeline, WGD could not engage in the usual “iterative process” with the Town, where two parties would go back and forth over WGD’s work and make any modifications requested by the Town.

Deputy Mayor’s Direction That Ed Houghton Be Sprung’s Sole Contact

On July 24, Treasurer Marjory Leonard sent acting CAO Ed Houghton an update on Dave McNalty’s work with WGD. In her email, she noted that she asked Mr. McNalty to have WGD price a “bricks and mortar building” and a

“pre-fabricated steel structure” for the arena, as well as estimate the operating costs. She indicated that WGD would “[l]eave the Sprung building pricing for now” until the Executive Management Committee and Mr. McNalty met with Sprung. Ms. Leonard added that once WGD provided pricing for the building and operating costs, “somebody (Ed, Dave, Dave and the Mgmt Team) will contact Sprung to get pricing to ensure that we are comparing apples to apples.” Ms. Leonard further wrote that work on enclosing the outdoor pool could potentially involve David Wood from Envision-Tatham, a landscape architecture firm.

Mr. Houghton replied to Ms. Leonard’s email:

I think there may be two things:

The first is we need to have the operational information for the bricks and mortar building and the structural steel building (actually I’m not sure where this building fits into the equation but I may have missed it). Secondly I think that the DM was pretty clear that he didn’t want David Wood working on anything at this time.

Ms. Leonard replied that Ed was right and “it was a mistake to include Dave Wood.”

Larry Irwin, a member of the Executive Management Committee, also replied to Mr. Houghton:

For what is worth ... I also got the impression that the DM (and likely others on Council) were really looking for us to utilize the information we already have from previous studies and reports. Including the new sprung building info in conjunction with our in house staff (GIS / Planning / Parks & Rec. and Engineering) to come up with a very good thumbnail concept and costing for Aug 27th report to Council.

At that point if it is truly accepted by Council then we will need to have formal design building work undertaken.

Mr. Houghton responded: “I think you are right. [Councillor] Joe [Gardhouse] did mention getting some help which Marjory is doing by using the architects to help site the ice pads.”

Mr. McNalty replied in the email chain that WGD was looking at pre-engineered steel buildings in response to the request in the terms of reference that WGD look at a “other affordable structures.” He noted that this was in contrast to the “bricks and mortar approach,” which he said was essentially the first phase of the Steering Committee’s proposal for a multi-use facility. Mr. McNalty also wrote:

Presumably, I’m still okay to carry on the discussion with Sprung on covering Centennial Pool, and I will discuss the rest of the Heritage Park things, to identify any concerns, with Brian / JP.

Regarding the pre-engineered steel building, Mr. Houghton replied: “What do you mean our terms of reference?” Mr. McNalty responded that the terms of reference was “the four page document that you received yesterday and the table within was to guide WGD’s work and our thoughts along the way.” Although the Executive Management Committee was copied on all the above exchanges, Mr. Houghton sent a final response solely to Mr. McNalty: “The last point I should make is that I will be the contact person with Sprung. The Deputy Mayor made that perfectly clear with me on the week-end.” Mr. McNalty acknowledged the direction, responding: “Okay. Got it.”

Mr. McNalty testified that he understood the direction, but that it was unusual for the CAO to be the only contact with a supplier, explaining that it was usually more efficient for those communications to run through lower-level staff.

Mr. McNalty implemented Mr. Houghton’s directions immediately, advising WGD the next day that “Sprung is not to be contacted at this time.” This instruction interfered with WGD’s ability to conduct a comprehensive comparison of the arena options, as I discuss further.

Mr. Houghton testified that Deputy Mayor Lloyd first directed him to act as the Town’s sole contact with Sprung after they had a conference call with Sprung on June 21.

As I explain in Part Two, Chapter 4, Mr. Houghton said that he and the deputy mayor learned on this call that the Town’s manager of recreational facilities had met with Sprung two days earlier. According to Mr. Houghton, Deputy Mayor Lloyd told him at that time that “the information should

flow through” him [Mr. Houghton]. Mr. Houghton told the Inquiry that the deputy mayor raised the matter again the weekend before his July 25 email to Mr. McNalty.

Mr. Lloyd testified that he did not know other staff had been in contact with Sprung in June 2012. He agreed with suggestions from Mr. Houghton’s counsel that he directed Mr. Houghton’s office to be Sprung’s point of contact. When asked why he issued that direction, Mr. Lloyd testified that he “felt it was imperative that the CAO’s office was a point of – point of contact for this project” and explained that “it didn’t mean that other people couldn’t be in touch with Sprung” but that “everything would go through the ... CAO’s office.”

Mr. Houghton said in his evidence that he pushed back on the deputy mayor’s direction, asking if someone else could serve as the contact person, but Deputy Mayor Lloyd insisted it be the CAO. By contrast, Rick Lloyd told the Inquiry that Mr. Houghton was “very much in ... support” of his direction.

I do not accept Mr. Houghton’s evidence that the deputy mayor first instructed him to act as Sprung’s sole Town contact in June, and then again a month later. The evidence demonstrates that Mr. Houghton followed the deputy mayor’s instructions on receiving them. Further, the deputy mayor would not have waited a month to reiterate his instructions to Mr. Houghton. If he believed his directions were not being followed, he would have done something about it immediately.

Nor do I accept Mr. Houghton’s evidence that he sought the deputy mayor’s permission to delegate the role to another member of staff. Mr. Houghton delegated other work relating to recreational facilities throughout the summer without asking the deputy mayor permission.

Mr. Houghton sought to justify his compliance with the deputy mayor’s direction, explaining: “I’m not trying to buck the system. I’m not trying to do anything. I’m trying to fulfill what I’m – the obligations that they’ve asked me to do.”

I do not accept this explanation. Mr. Houghton was an experienced executive who had worked with Town Council for years. He was more than capable of resisting the deputy mayor’s request. Mr. Lloyd himself testified that this was the case, explaining that “Mr. Houghton is a very bright individual, he would have said, no, I don’t think so and it would have been different.”

Even if Mr. Houghton's explanation were true, it would not assist him. As acting chief administrative officer, he was obligated to follow the directions of Council, not the instructions of a single Council member behind closed doors. It was his job to ensure that staff provided the best information to Council and to prevent political interference with staff's work in achieving that objective.

Both Mr. Houghton and Deputy Mayor Lloyd testified that Mr. McNalty misunderstood Mr. Houghton's email. Mr. Houghton explained:

[I]t was not the draconian way of not having anybody speak to Sprung at all. That was never the intent. I would take responsibility. Because David is a guy that takes every one word that you say accurately, I should have said, as I just said, we just need to have – make sure that we facilitate it so if anybody needs anything, it can go through my office and, you know, meetings are set up through that way so that we have control over it.

David's a great guy. I should have been more careful with my wording.

I do not accept that this was a case of being misunderstood. I am satisfied that Mr. Houghton's email to Mr. McNalty accurately described the deputy mayor's direction that Mr. Houghton, the CAO, be Sprung's sole Town contact.

The deputy mayor's direction had at least two damaging effects.

First, it interfered with WGD's ability to provide staff with an accurate comparison of the arena options. Both Mr. McNalty and WGD's Mr. Dabrus testified that WGD's work was impeded by its inability to communicate directly with Sprung.

Second, it created a barrier between staff and Sprung and BLT Construction Services, the company that constructed Sprung structures in Ontario, which impeded staff's ability to investigate Sprung and BLT and verify the information they would ultimately present to Council. To the extent staff wished to obtain information from Sprung or BLT, they needed to go through Mr. Houghton. Mr. Houghton, in turn, was inclined to present Sprung and BLT in a positive light, as will be demonstrated by the changes he oversaw to the staff report.

When the deputy mayor directed Mr. Houghton to be the sole contact

with Sprung, he knew CAO Houghton would present the information he received from Sprung (and, by extension BLT) favourably (see Part Two, Chapter 10). This position was something the deputy mayor described in an email as the “Ed Houghton positive spin,” and I am satisfied that this is the reason the deputy mayor wanted Mr. Houghton to be the sole contact point with Sprung.

Confusion Over WGD’s Role

In the same email chain in which he directed that he be the sole contact with Sprung, Mr. Houghton also questioned the need for WGD’s work, as I discussed above.

Mr. Houghton explained in his testimony that he was asking questions about WGD’s role because he had “been left out of the loop” about the company and it was not clear to him what WGD was doing. This was the first of three instances in which Mr. Houghton questioned the need for WGD’s work.

On August 7, Mr. Houghton raised questions about WGD’s role for a second time. He emailed Dave McNalty about the Central Park staff report, advising that it “must be prepared for the 21st so that it can go to Department Heads.” Mr. McNalty responded that “we have asked WGD to have all information for Central Park back to us by Aug 15. We will have to make sure we have all Sprung information by then as well.” Mr. Houghton replied to Mr. McNalty, “Remind me what WGD is doing again? It seems we may not need them.” Mr. McNalty responded, explaining:

Bricks and mortar arena in Central Park saving two ball diamonds with operating costs – future option to twin. Plus upgrades to Eddie Bush for infrastructure funding application but also to have for information in the report should any arena in Central Park move forward.

Mr. Houghton testified and argued in his closing submission that his confusion stemmed from the fact that he did not attend the July 17 department heads’ meeting at which Ms. Proctor suggested retaining WGD and then was not included on staff’s communications with WGD. Mr. Houghton said this was “not wrong ... but the whole thing was confusing to me.”

Mr. Houghton testified that he did not take any steps to address his confusion, noting: “If I had more hours in the day, I might have tried to do that.”

I do not accept that Mr. Houghton repeatedly questioned WGD’s work out of confusion. Mr. Houghton sought to control the process and was concerned that WGD’s work might interfere with proceeding with Sprung.

The third time Mr. Houghton raised issues regarding WGD’s report was after WGD delivered its final report on August 17, which I discuss below. After Ms. Proctor forwarded the report to Mr. Houghton and the EMC, he wrote: “Is this for Central Park? I was under the impression we told Dave they were to work on Eddie Bush only?”

Ms. Proctor replied: “I wasn’t aware of that and from my discussions with Dave, I don’t think he was either.”

Ms. Leonard also responded:

Ed, my recollection was that in order to compare the costs of a bricks & mortar building and the prefabricated steel structure with Sprung we were using WGD for those estimates. They had the original costings for the brick building and we needed the prefab costings as well.

The next day, Mr. Houghton forwarded the email chain to Mr. McNalty, writing: “I think you and I need to have a discussion and get moving in the same direction.”

Mr. McNalty responded:

I agree that we should discuss it. I’m not sure how you want to present this, and there is already a draft report from Marjory.

No one said that we still didn’t want the costs of a bricks, mortar and steel arena ...

Mr. McNalty testified that he did not know why Mr. Houghton still appeared to be uncertain about what WGD was doing, saying: “[F]rom my perspective, I thought he had been informed.” He did not recall anyone informing Mr. Houghton that WGD was looking only at the Eddie Bush Arena.

Mr. Houghton testified that he was mistaken to believe that WGD was

examining only the upgrades to the Eddie Bush Memorial Arena. He explained that this was his misunderstanding and Mr. McNalty corrected him.

Ms. Proctor testified that her initial hope was that WGD would do a broader feasibility study into options for the arena. She said, however, that “when we tried to outline criteria and what you would normally analyse in a feasibility study, that was being shut down” by Mr. Houghton in direct communication with Mr. McNalty. Mr. McNalty testified that he did not recall Mr. Houghton providing instructions to restrict WGD’s work and said he did not know why Ms. Proctor had that view.

Pressuring WGD for the Report

On August 15, at 4:03 p.m., Marta Proctor emailed Brian Gregersen, Richard Dabrus, and Dave McNalty, writing:

I was speaking with Dave McNalty this afternoon and understand that the information we expected today may be delayed. As originally discussed, we are on a very critical timeline and we need to compile an internal report in at least draft format by the end of the day Monday, with final information completed by end of the day Wednesday.

Can you please advise ASAP what is possible to expedite the information that we require? As stated previously, today was a critical deadline for us and we require your immediate feedback on this matter.

Brian Gregersen at WGD responded that drawings were complete but the building cost estimates and operational cost estimates were delayed, to which Ms. Proctor wrote that WGD “may as well suspend any further work” and requested a call to discuss. Mr. Dabrus replied the following morning and advised that “[W]e will get something to you this morning, we are having trouble with operating costs as the information is so preliminary, but will try.” Ms. Proctor and Mr. Dabrus scheduled a call about the project for that afternoon.

Mr. Dabrus testified that, at this point in time, WGD had prepared a draft

report but was waiting for its independent consultant, Tom Ingersoll, to provide the cost estimates. He noted that “there was a tone through the entire exercise that was very impatient on the Town’s part.”

Mr. Dabrus testified that the “operating costs” in his email referred to the energy modelling that WGD intended to do to estimate the energy efficiency of a pre-engineered steel building as compared with a Sprung structure. Mr. Dabrus testified that WGD did not complete energy modelling because the information required, including the number of windows, the amount of solid wall, and the size and nature of the ice production plant, was not available.

Draft Report

WGD sent the Town an initial draft report on August 16. The draft report discussed the amount of insulation in a pre-engineered steel building and a fabric membrane. A building’s insulation is measured by “R” value. A building with a higher R value is better insulated. WGD wrote:

The normal insulation values for a Pre Engineered sandwich panel structure is R-19 for roofs and R-12 for walls. Membrane structures by their nature have no inherent thermal resistant R value.

Mr. McNalty testified that, when he read this portion of the draft report, he felt “a bit of frustration” because WGD was describing an agricultural-style building (which did not have insulation) as opposed to a Sprung structure (which Sprung said had an R value of R-30). At 9 a.m. on August 17, Mr. McNalty sent WGD a Sprung slide show to clarify that Sprung structures were insulated. In the covering email, Mr. McNalty wrote:

Attached is a brochure on Insulated Fabric Membrane arenas. In terms of thermal performance, their claim is R-30. The aluminum extrusions are placed in the range of 10 – 12 feet apart and between each is outside membrane – 9" insulation – inside membrane. There is no thermal break in the aluminum extrusions, but they are spaced quite far apart.

Remember, you are not to contact the manufacturer in conjunction with this project at this time.

Mr. McNalty said in his evidence that he did not recall why he reminded WGD at this point not to contact Sprung. He agreed that WGD not knowing about the insulative properties of Sprung structures was an example of how Deputy Mayor Lloyd's direction that Mr. Houghton serve as the only contact with Sprung made matters more difficult, and added: "[P]erhaps it seemed unnecessarily so, but that's what it was."

Mr. Dabrus reviewed the materials provided by Mr. McNalty and revised the report. At 1:30 p.m., Mr. Dabrus emailed Mr. McNalty and Ms. Proctor the revisions he made based on the information Mr. McNalty had provided, adding that a full revised report would follow once he had received the cost estimates. Mr. Dabrus's revisions stated that, although membrane structures by their nature had no R value, they could achieve R-30 with certain modifications. The revision also noted that pre-engineered steel buildings could also achieve R-30 by increasing the standard amount of insulation. Mr. McNalty testified that WGD's revision addressed his concern regarding insulation.

WGD was not asked for an opinion on what R value of insulation would be advisable. Mr. McNalty testified that the Town did not ask WGD to estimate the cost of adding additional insulation to make a pre-engineered steel arena R-30.

At the hearings, Mr. Dabrus explained that a pre-engineered building could be as high as R-40, but noted that adding insulation to any type of arena does necessarily lead to a better result. He said: "There's a certain point where ... there's diminishing returns. So we wouldn't have necessarily said that R-30 is going to really – we wouldn't necessarily recommend R-30."

Cost Estimates

At 3:19 p.m. on August 17, WGD received preliminary budgets for the pre-engineered steel and fabric membrane arenas from Mr. Ingersoll, who was preparing the cost estimates. In the covering email, which Mr. Dabrus forwarded to Ms. Proctor and Mr. McNalty, Mr. Ingersoll wrote:

The fabric building is considerably less than a pre-engineered building to purchase and install. That said, some of the drawbacks to a fabric structure would be life cycle costs, maintenance costs, possible cooling requirements for use during the summer months and fire protection. The foundations would be slightly less as well. Based on my review, I feel the overall savings to use a fabric structure would be in the \$450,000 to \$550,000 range.

Mr. Ingersoll estimated that a pre-engineered steel building would cost \$7,632,124.29 and a fabric building would cost \$7,132,124.29. In addition to these amounts, he estimated it would cost \$1,164,281 to develop the site around the arena, which was referred to at the hearings as the “site servicing costs.” Site servicing included sidewalks, parking lots, fencing, and gates. Mr. Dabrus testified that the site-servicing costs would be the same for either type of arena.

Mr. Dabrus stated that he did not believe a pre-engineered building would cost more than a fabric building, but WGD used Mr. Ingersoll’s numbers because he was the costing expert. At the hearings, Mr. Dabrus testified that he has since spoken with suppliers for pre-engineered buildings who say they have outbid Sprung. There was no other evidence before the Inquiry to show that a pre-engineered building could cost less than a Sprung, but that is a question which would have been answered if the recreational facilities had been procured through a competitive tender process.

WGD arrived at these estimates based on the information in the terms of reference document. Mr. McNalty testified that the Town did not provide any further information about the design components the company wanted included. As I discuss in Part Two, Chapter 8, BLT had two meetings with the Town to discuss in detail what to include in the arena in preparing its estimates.

Final Report

On August 17, at 4:23 p.m., WGD sent Ms. Proctor the final version of the WGD report, which included Mr. Ingersoll’s estimate that the difference between

a pre-engineered steel building and a fabric building was approximately \$500,000. The WGD report also provided three options for the location of the new arena.

Comparisons Between Fabric and Pre-engineered Steel

The WGD report compared certain components of pre-engineered steel buildings and fabric membrane buildings. Its conclusions included the following:

- The performance of a pre-engineered steel building with an equivalent amount of insulation to that of a fabric structure would be expected to be superior.
- The warranty for a pre-engineered building's steel panel walls ranged from 20 to 40 years, and the warranty for the roof was 20 years. In comparison, WGD estimated, the membrane that acted as both the wall and the roof of a fabric building would require replacement in "the range of 20 years," which was consistent with the warranties for such buildings.
- There was no difference in mechanical or electrical systems between a pre-engineered structure and an architectural membrane structure.
- The project development timelines would be similar. "As for the erection time of a super structure," the report stated, "it is expected that there would be no difference, leaving only a small advantage to a Membrane Structure in the enclosure of a superstructure."

Concerning the first point, Mr. Dabrus testified that the insulation in a fabric structure is not continuous but is broken by the structure's aluminum supports, which can lead to heat escaping the building in the winter, or entering the building in the summer.

Green Initiatives

In its report, WGD identified a series of green initiatives that the Town could incorporate into the arena to assist it in achieving a LEED silver rating, including use of efficient refrigeration equipment for the ice surface and

heat recovery systems. Where a green initiative would involve additional cost, WGD included an estimate in the report. If the Town incorporated all the green initiatives, the estimated total would be \$1,150,000.

Mr. McNalty testified that WGD identified the green initiatives at the Town's request. He said that, at an early meeting with Sprung, the company told the Town that its structures met the requirements to be certified as LEED silver. As a result, Mr. McNalty wanted WGD to identify what a pre-engineered steel building would need to include in order to reach LEED silver certification. Mr. McNalty testified that he understood the Town would have to incorporate all the green initiatives in the WGD report for a pre-engineered steel building to achieve LEED silver.

Mr. McNalty did not ask WGD about whether Sprung buildings qualified for LEED silver certification. Mr. Dabrus told the Inquiry that he did not believe Sprung buildings inherently qualified for LEED silver status. He explained that LEED is a points system, and a fabric membrane alone would not attain sufficient points to obtain silver status. Rather, both a pre-engineered steel building and a fabric membrane building would need to include green initiatives to achieve LEED silver.

Reaction

Dave McNalty testified that, after WGD addressed the insulation issue, he did not think anything in WGD's report was wrong or inaccurate.

Ms. Proctor testified that she could not recall staff or the Executive Management Committee expressing concerns with WGD's report. She also could not recall staff asking WGD any questions about its report, aside from Mr. McNalty's correspondence with WGD about insulation.

Mr. Houghton testified that, when he reviewed the report, it was "evident" that WGD had not done any review of Sprung fabric buildings but was instead considering "just a fabric building" that Mr. McNalty had called "either commercial or industrial agricultural something." Mr. Houghton stated that he raised his concerns with Mr. McNalty, who he said shared his frustration. Mr. Houghton did not recall precisely when the conversation occurred but said it was before the staff report relating to the structures was finalized. Mr. Houghton also testified that he discussed his concerns that

WGD had “missed the mark” with Treasurer Leonard on August 24, before the finalization of the staff report. Mr. Houghton indicated that he did not discuss the report with Ms. Proctor, saying she was “hardly around.”

Mr. Houghton gave his evidence after Mr. McNalty and Ms. Leonard had testified. Mr. Houghton’s counsel did not ask them if they recalled any such conversations with Mr. Houghton about the WGD report. In her testimony, Ms. Leonard said she may have reviewed the report but generally relied on Mr. McNalty and Mr. Houghton to review and provide the relevant engineering information. She also did not recall any discussions about errors in the report.

I do not accept that Mr. Houghton had concerns about WGD not considering Sprung-type structures or that he discussed any concerns with Mr. McNalty or Ms. Leonard before the staff report was finalized. No other Inquiry witnesses raised any concern that, after WGD addressed the insulation issue, WGD had failed to consider the correct type of fabric building. In any event, Mr. Houghton testified that he did not take any steps to address his concerns or speak with WGD to confirm that the company had considered a Sprung style of fabric building. When asked why he did not take steps to ensure that the Town’s paid consultants completed its work as the Town had requested, Mr. Houghton testified:

Am I the only one that makes decisions in the Town of Collingwood? I believe that this report was not my report. I believe that this report was either Marta’s report and that – that that – that should have been the person that was taking this to it.

At this point in time, Marta was away again. I spoke to Dave McNalty. It didn’t appear like it was going to change what he was doing. I don’t think that – that it’s – it’s my job to do everything.

BLT, Green Leaf, and the Town

Acting CAO Ed Houghton introduced Town staff to BLT Construction Services Inc. shortly after Council directed staff to develop project timelines and estimates for constructing both a single-pad arena and a fabric building over the outdoor pool. Town staff assembled a list of design components at BLT's request. Rather than presenting the Town's design details directly to BLT, Mr. Houghton arranged for Green Leaf Distribution Inc. to provide them. Paul Bonwick was the majority owner of Green Leaf. The company continued to act as an intermediary between Mr. Houghton and BLT thereafter.

Staff Introduced to BLT

As I discussed in Part Two, Chapter 6, on July 26, 2012, representatives from Green Leaf and BLT met and agreed that Mr. Bonwick would promote Sprung structures in Collingwood in exchange for a success fee to be agreed upon later. On the same day, acting CAO Ed Houghton invited specific Town staff and Sprung's Tom Lloyd to a meeting on July 27. This meeting would prove to be Town staff's first encounter with BLT.

The July 27 meeting took place at the Collus PowerStream offices. Mr. Houghton, Marjory Leonard, treasurer, Dave McNalty, manager of fleet, facilities and purchasing, and Dennis Seymour, manager, recreation facilities and arena supervisor, attended the meeting on behalf of the Town, with Tom Lloyd and Dave MacNeil representing Sprung. Dave Barrow and Mark Watts attended on behalf of BLT. Mr. Houghton testified that Deputy Mayor Rick Lloyd attended the meeting. However, when Mr. Lloyd gave his evidence, he

could not recall whether he was aware of the meeting. He was not a recipient of the calendar invitation to the meeting sent out by Mr. Houghton the day before. Neither Mr. Barrow nor Ms. Leonard recollected the deputy mayor attending the meeting.

I am satisfied by the evidence, in particular the absence of a calendar invitation, that Deputy Mayor Lloyd did not attend this meeting.

BLT and the Construction of Sprung Structures

Tom Lloyd testified that, at the meeting, he introduced BLT Construction Services Inc. as Sprung's "recommended alliance partner" that could build the Sprung structures "full turnkey." Mr. Barrow testified that he explained, although BLT and Sprung did not have significant experience with pools or arenas, BLT "could build anything inside of a Sprung" as long as appropriate professionals were involved. Mr. Barrow stated that he did not discuss BLT's relationship with Green Leaf because no one asked.

Mr. Houghton and Ms. Leonard testified that they left the meeting believing that, if the Town wanted to proceed with Sprung, BLT had to build the structures. Tom Lloyd testified, however, that before the meeting, he told Mr. Houghton that the Town could hire a contractor other than BLT. In that case, BLT could still oversee the construction in a "project manager" role.

Mr. Barrow testified that the possibility the Town might not use BLT was raised at the July 27 meeting. He recalled explaining that, if BLT was hired as the general contractor to build the structures, it could provide the Town with a guaranteed budget in advance. In contrast, if it served as a project manager, BLT could not confirm costs until the contractor was hired. Mr. Barrow stated that Mr. Houghton indicated that the Town would prefer BLT to be the general contractor, not a project manager.

Dave McNalty recalled that BLT was introduced as Sprung's preferred builder but that the Town was not required to use the firm.

I am satisfied that Tom Lloyd told Mr. Houghton in advance of the July 27 meeting that the Town was not required to use BLT. Tom Lloyd was the regional sales manager for Sprung Instant Structures and I am satisfied that he would have told a prospective purchaser all the ways the purchaser could acquire a Sprung structure. Mr. Barrow was a partner in and vice-president

of BLT when he attended the July 27 meeting, and I am satisfied he would have explained the different ways in which the Town could contract with his company. I reject Mr. Houghton's evidence that he left the July 27 meeting thinking that he had to hire BLT Construction Services to construct the Sprung coverings.

Tom Lloyd testified that, at a meeting on August 3, which I discuss below, he advised Mr. Houghton that, as a cost-saving measure, the Town could buy a Sprung structure without going through BLT. Mr. Houghton, however, declined to do so. I accept Mr. Lloyd's evidence in this regard. It was consistent with his role that he would present the most price competitive way for the Town to purchase a Sprung structure.

The Sprung Shield

An added security feature called the "Sprung Shield" was discussed at the July 27 meeting. The shield was an eight-foot aluminium barrier that was built into the walls of the fabric membrane, protecting the structure from vandalism and damage. The shield cost \$180,000. Mr. McNalty and Ms. Leonard testified that they expected the Town would purchase the Sprung Shield. They learned that the shield was not included only after the Town signed its contract with BLT and, in the case of Ms. Leonard, after the structures had been built.

Mr. Houghton and Mr. Barrow, in contrast, testified that the shield was discussed at the July 27 meeting and that the Town decided against it because of its high cost and the low risk of vandalism in the locations. I do not accept that a decision about the Sprung Shield was made at this meeting. As I explain in Chapter 15, when a Town staff member asked about "when and why the shield was deleted" in July 2013, Mr. Barrow initially said it was discussed at a meeting with Mr. Houghton, Ms. Leonard, and Larry Irwin "before the building was erected," but did not provide a precise date.* Mr. Barrow amended his response after Mr. Houghton told him there were more people at the meeting.

* Mr. Irwin was a member of the Executive Management Committee and director of operations and IT services for Collus Power.

I am satisfied that Mr. Barrow did not have a clear recollection of when the Town decided not to include the Sprung Shield. I am satisfied that neither Mr. McNalty nor Ms. Leonard was involved in the decision. The fact that two senior staff mistakenly believed the Town had purchased the Sprung Shield can be traced to the communication headache created by the deputy mayor's insistence that Ed Houghton was the only person who could contact Sprung.

The decision whether to purchase the Sprung Shield was never placed before Council. In his closing submissions, Mr. Houghton argued that the decision did not need to be put to Council because the deputy mayor attended the July 27 meeting. Deputy Mayor Lloyd testified that, although he recalled discussing the shield at some point, he did not recall being involved in the final decision. The deputy mayor did agree that this decision should have been made by Council.

At the end of the July 27 meeting, Mr. Barrow advised that, to create a firm budget, BLT would need a list of all the components the Town wanted included in the arena. The Town committed to preparing a list.

Facility Components and Pricing

While Town staff were soliciting general estimates from WGD Architects for pre-engineered steel and fabric arenas, acting CAO Houghton was leading advanced discussions with Sprung and BLT on pricing and components for the construction of a fabric arena and pool. Treasurer Leonard did not understand why the Town was soliciting detailed information from a specific supplier when WGD was already providing estimates for a fabric arena. Ms. Leonard also stated that the Town did not have a meeting with WGD similar to the one it had with Sprung and BLT.

Ms. Leonard was right to be confused. Council never directed staff to obtain a quote from a specific supplier. Rather it directed staff to develop timelines and estimates, which was the work WGD was already doing, albeit with respect only to an arena. Meetings to discuss design details with a specific supplier were premature. As Richard Dabrus of WGD testified, the Town should have been focused on developing the specifications it wanted in an arena and pool generally, and not what one supplier could provide. From there, the Town could put those specifications out to tender. Meeting

to discuss specific quotes with a specific supplier, in contrast, impaired the Town's ability to have a competitive procurement, as it gave BLT a clear advantage over any other bidders. It was effectively an early bid. Any subsequent request for proposal (RFP) that involved a bid from BLT would be unfair to other bidders.

Green Leaf's Involvement

Mr. Bonwick's Firm, Green Leaf, Working for BLT

At a meeting on August 1, Paul Bonwick told acting CAO Ed Houghton that he was working for BLT. Mr. Houghton testified that "Mr. Bonwick advised me that he, through Ms. [Abby] Stec, [president, Green Leaf,] had created a relationship with Sprung and then, ultimately, BLT and that they're going to be working with BLT and that Ms. Stec was going to be ... the local facilitator for BLT." Mr. Houghton told the Inquiry they did not discuss how BLT would pay Mr. Bonwick, or any conflict of interest created by Mr. Bonwick's relationship with Sprung or BLT. He added that he did not know why BLT decided to involve Mr. Bonwick so late in the process.

Later in his evidence, Mr. Houghton said that he could not recall if they discussed which of Mr. Bonwick's companies would be doing the work. I do not accept this evidence. I am satisfied that Mr. Bonwick told Mr. Houghton that he was working through Green Leaf for BLT.

Mr. Houghton did not advise anyone at the Town that Mr. Bonwick was working with BLT through Green Leaf or any other company. He told the Inquiry that he did not disclose Mr. Bonwick's work for BLT to the Town because he was busy, "no one seemed to care" when Mr. Bonwick's work for PowerStream was disclosed to the Town, and he understood there was no conflict for the mayor if Mr. Bonwick worked on Town business. He also said Mr. Bonwick did not ask him to keep his work for Green Leaf a secret. As I discuss further in Part Two Chapter 13, Mr. Houghton should have disclosed his knowledge of Mr. Bonwick's work to Council and staff.

Ms. Stec reported on Mr. Bonwick's August 1 meeting with Mr. Houghton to Sprung's Tom Lloyd and Dave MacNeil and BLT's Mark Watts and Dave Barrow by email:

Paul met with Ed Houghton today to continue discussions regarding the Collingwood project. Ed will be in touch with you in the next day or so to set up a follow up meeting to continue the process. We are drawing up an agreement between Green Leaf Distribution and BLT and will forward it to you for your review when it has been completed.

Ms. Stec testified that Mr. Bonwick dictated this email. She explained that she knew little about the conversation between the two men: “I was generally just asked to send out whatever emails were necessary.” She said “the process” referred to in her email was the Collingwood pool and arena. Mr. Barrow testified that the meeting with the CAO was the sort of work he expected to pay Mr. Bonwick to do.

Staff Work Provided to BLT Through Green Leaf

Ed Houghton, the Executive Management Committee (EMC), Dave McNalty, and Dennis Seymour met to discuss “design components” for the arena and pool at a meeting on July 31. Mr. McNalty sent Mr. Houghton, the EMC, and Mr. Seymour lists of arena and pool design components for their comments on August 2. Treasurer Leonard understood that the lists would be used to prepare the cost estimates Council had asked staff to provide, and later be used in an RFP to be prepared after the August 27 Council meeting. She could not recall if the information was to be provided to Sprung or WGD.

Mr. McNalty testified that the staff documents were “to begin to develop common ground between what Sprung would propose and the information that WGD was developing.” He could not recall, however, what Town staff did to ensure that WGD obtained the information. As I explain in Part Two, Chapter 7, WGD was not provided with this detailed information before it submitted its report to the Town.

Later that same day, Abby Stec sent Sprung and BLT a memo on Green Leaf letterhead that contained a list of arena and pool design components nearly identical to what Mr. McNalty had circulated internally at the Town. Ms. Stec believed that she received the information from Mr. Houghton, although she was not certain. She said Mr. Bonwick asked her to put it on Green Leaf letterhead and send it to BLT and Sprung.

Mr. Houghton testified that Deputy Mayor Rick Lloyd delivered a hard copy of staff's design component lists to Ms. Stec so she could provide them to BLT. He said that Ms. Stec acted as an intermediary between him and BLT. He wasn't aware of any other work she was doing for BLT. Mr. Barrow testified that Green Leaf provided this information to BLT so BLT could prepare budgets for the two projects. Ms. Stec did not know why the Town could not provide this information directly to BLT or Sprung. Leaving aside the question of whether this information should have been provided at all, I am satisfied that there was no good reason why Town staff could not have provided this information to BLT. Town staff prepared the information; Ms. Stec did not add any additional value to the communication of this information.

I am satisfied that Mr. Houghton arranged for Ms. Stec to provide the design component information to BLT to bolster Green Leaf's and Mr. Bonwick's profile with the construction company.

Mr. Houghton and BLT's Role

The Town met with Sprung again on August 3 to discuss the design components it had prepared, further impairing its ability to run a competitive procurement. Tom Lloyd testified that, at the meeting, he advised Mr. Houghton that the Town could purchase the fabric building envelopes directly from Sprung to avoid paying BLT's markup on the fabric structure. He said that Mr. Houghton, however, "wanted a full design build contract only with BLT."

Mr. Houghton testified that Tom Lloyd told him that "you can go direct and purchase it direct, but there are risks with doing that" and that doing so would probably cost more money. Mr. Houghton said that he was confused by the conversation because "we didn't differentiate between Sprung BLT." He always thought that the construction had to be done by BLT, because "it had to be a partner that was familiar with the type – how to erect the buildings." He explained that his biggest fear was that the project would cost more than originally projected.

Mr. Houghton contacted Mr. Bonwick to have him explain the situation. Mr. Bonwick did not recall the details of his conversation with Mr. Houghton, other than Mr. Houghton was confused by the prospect of a direct purchase from Sprung, which was "completely contrary to what [he, Ms. Stec,

BLT, and Sprung] had been discussing as a team.” Mr. Bonwick speculated that his disclosure of his relationship with BLT may have contributed to Mr. Houghton’s confusion, because he “would have” told Mr. Houghton that “what BLT / Sprung is trying to achieve here is a turnkey, the simplest, most understandable, most manageable approach to achieving what the Town of Collingwood wanted.” Mr. Bonwick could not recall what, if any, steps he took to address Mr. Houghton’s confusion.

Tom Lloyd testified that Mr. Bonwick contacted him after the meeting and he clarified what he had said to Mr. Houghton. At that time, Mr. Bonwick indicated that the Town’s preference was to “go with a contract directly to BLT.”

Mr. Bonwick emailed BLT’s Dave Barrow and Mark Watts, Sprung’s Tom Lloyd and Dave MacNeil, and Ms. Stec after speaking with Mr. Houghton:

We need to organize a call to once again discuss our collective strategy. Ed was very confused regarding part of the discussion with Tom this morning. If there has been a change in approach I think we all need to understand it and then determine how we participate going forward.

Mr. Barrow testified that he spoke with Tom Lloyd after receiving this email, reminding him that Sprung and BLT already had an agreement to work collectively and “that it all would all be going through BLT,” meaning that Collingwood was supposed to be buying the buildings from Sprung through BLT. He also participated in a conference call with Ms. Stec, Mr. Bonwick, and his BLT partner Mark Watts in which they discussed the need to speak to Tom Lloyd to ensure that everyone was on the same page and that Sprung, BLT, and Green Leaf were moving forward together.

Mr. Houghton testified that he did not investigate BLT beyond speaking with Sprung and Mr. Bonwick before deciding that the Town should contract with BLT to build the structures. He did not ask if BLT had previously constructed a pool building, and he was not aware that it had never constructed an arena. He did not ask Sprung or BLT about the nature of the partnership between them, nor did he view the BLT website before August 27. Mr. Houghton also testified that he did not take any steps to investigate Sprung other than speaking with representatives from the company, reviewing the Sprung

website, and looking at other information under a Google search for Sprung. He said he did not contact any of the references listed on Sprung's websites.

In explaining why he was comfortable proceeding with BLT and Sprung, Mr. Houghton testified:

I guess I took it on faith in a sense that Sprung, which was a Canadian company, one that appeared to – when I googled their company, they had a lot of pride in what they were doing.

I don't think that they would have aligned or associated themselves with a company that was not reputable in any way, shape, or form.

Contact Between Messrs. Bonwick and Houghton

On August 6, Mr. Bonwick emailed Mr. Houghton, asking if he had time to speak the following day. Mr. Houghton replied: "Yes Bubba. Tuesday morning may be tough. What is the topic?" Mr. Bonwick responded: "Golf Tournament, BLT, new Board, Mt. View." The two agreed to meet at 8:30 the next morning. Mr. Houghton explained that the "Golf Tournament" referred to the mayor's golf tournament, a charity tournament which "many of us were always trying to make ... bigger and better" and was also "going to be the launching point for Collus PowerStream." "Mt. View" related to the Town purchasing a local hotel. Mr. Bonwick worked for the owner and "had helped in a couple ways." Mr. Houghton believed "new Board" referred to the new Collus PowerStream board. Mr. Houghton did not recall the specifics of their conversation, including what they discussed about BLT. The email, nevertheless, offers a glimpse of the nature of their dealings during the summer of 2012.

Phone records obtained by the Inquiry show that, throughout the summer, Mr. Bonwick and Mr. Houghton spoke frequently, often multiple times per day. At the hearings, Mr. Houghton suggested that Mr. Bonwick's role as a consultant to PowerStream led to their frequent contact, as Mr. Bonwick was the "liaison" between Collus Power and PowerStream. He testified that, among other things, the two men discussed the launch of Collus PowerStream at the mayor's golf tournament, the company's new logo and branding, the Ontario Energy Board approval process, and future consolidation.

Mr. Houghton also testified that Mr. Bonwick was assisting with certain Town matters, including the Mt. View hotel and securing municipal services for a property on Raglan Street. The two men also had personal conversations, including about their snowmobile club.

I do not accept the suggestion that the two men's frequent communications in August 2012 did not involve regular discussions of BLT. By then, BLT had agreed to pay Mr. Bonwick (through Green Leaf) to promote the Sprung structures to the Town in exchange for a success fee (see Part Two, Chapter 9). This success fee ultimately amounted to \$756,740.42, including HST, and it offends common sense to suggest that Mr. Bonwick would pass on any opportunity to discuss this procurement with Mr. Houghton, his friend and the Town's acting CAO. As will be seen, Mr. Bonwick and Mr. Houghton spoke on the phone before key events leading to the Town's decision to proceed with a Sprung arena and pool.

Mr. Houghton was also in contact with Ms. Stec regularly. Between August 1 and August 27, they spoke on the phone at least 15 times. Mr. Houghton admitted that these calls were primarily about the "Sprung deal."

Meeting with Department Heads, August 7

On August 7, acting CAO Houghton chaired a meeting of Collingwood's department heads at which he presented information, provided to him by Sprung, about Sprung structures' support columns and beams. He also discussed the environmental efficiency of Sprung structures and durability of their fabric exterior. Regarding the potential LEED status of Sprung structures,* the minutes record:

Sprung buildings can attain equivalent to LEEDS "Silver Standard" certification, but will not be certified as the process and attributed costs cannot be justified.

Marjory Leonard recalled attending the meeting. She testified that Mr. Houghton did not provide the Town's department heads with similarly

* I discuss this issue further in Part Two, Chapter 11.

detailed information about other recreational facility construction types being examined by staff. For arena facilities, for instance, she stated Mr. Houghton provided staff with more information on Sprung structures than pre-engineered steel structures. As for fabric-covered pool structures, she testified that Mr. Houghton did not give the Town's department heads information about any suppliers other than Sprung. By this point, Treasurer Leonard was of the view that staff's investigative process was "heavily weighted towards Sprung."

Ms. Leonard testified that she did not raise these concerns with either Mr. Houghton or Mr. McNalty, whom she considered "in charge of the process," because she believed they would not be taken seriously. She also stated that, even if Mr. McNalty agreed with her concerns, he would have been overruled by Mr. Houghton.

The minutes of the August 7 meeting also stated: "Marta will join the [EMC] at their Wednesday meeting to be brought up to date on developments with respect to both Central Park and Centennial Pool." On August 8, Mr. Houghton sent the EMC and Marta Proctor an email with the subject line "Executive Management Meeting." The email listed topics for discussion, among them "Central Park – including the Sprung buildings on an ice pad and the centennial pool." Ms. Proctor recalled attending a meeting with the EMC at which she was brought up to speed but could not recall the contents of the discussion.

As staff worked to meet the August 27 staff report deadline, Mr. Houghton continued to meet and communicate with BLT to discuss potential recreational facility components. Mr. Bonwick and Ms. Stec sometimes served as liaisons between Mr. Houghton and BLT during these discussions. No other recreational facility suppliers were provided with this level of access to the Town's CAO during this time.

BLT Prepares Budgets for Collingwood's Recreational Facilities

In the month following their meeting on July 26, 2012, BLT Construction Services Inc. and Green Leaf Distribution Inc. negotiated an intermediary agreement while BLT worked to assemble budgets for the construction of Sprung arena and pool facilities in the Town of Collingwood. Part of BLT's budgeting process involved finalizing Green Leaf's fee.

The intermediary agreement obscured Green Leaf's relationship with BLT and inaccurately described the work Green Leaf would be doing. Moreover, the compensation provisions and the way BLT built Green Leaf's success fee into its budget concealed Green Leaf's fee from the Town.

Abby Stec sent much of Green Leaf's correspondence regarding the agreements and its fees to BLT under her name. The content of this correspondence, however, was dictated by Green Leaf's majority owner, Paul Bonwick.

The Non-disclosure Agreement Between BLT and Green Leaf

Green Leaf and BLT first met on July 26, 2012 (see Part Two, Chapter 6). Four days after this meeting, Mr. Bonwick directed Ms. Stec to send a non-disclosure agreement to Dave Barrow and Mark Watts, the executive vice-president and president, respectively, of BLT. In her cover email, Ms. Stec wrote:

It was a pleasure speaking with you on Friday. As promised, I have attached a standard Non Disclosure Agreement for the relationship between Green Leaf Distribution and BLT. We will send an agreement

out to you by Wednesday of this week. I look forward to working with you both on this project and future endeavours.

The draft non-disclosure agreement did not prohibit disclosure of the working relationship between BLT and Green Leaf.

Ms. Stec testified that the agreement prevented both Green Leaf and BLT from disclosing their business relationship to any third party. When Mr. Bonwick cross-examined Ms. Stec on this point at the hearings, he suggested that her understanding of the agreement was inaccurate because her work for Green Leaf involved “engagement with the municipality, and they were aware of the fact that Green Leaf was working with BLT.” Ms. Stec did not agree with Mr. Bonwick’s suggestion.

Mr. Bonwick testified that he generally entered into non-disclosure agreements with his clients at the time it became clear they would be working together. He argued that the non-disclosure agreement prevented Green Leaf from disclosing information about BLT’s business to third parties. It did not, however, prevent BLT from disclosing information about Green Leaf.

Mr. Barrow told the Inquiry he believed the non-disclosure agreement prevented BLT from discussing Sprung structures directly with representatives of the Town of Collingwood and required BLT to communicate with the Town through Green Leaf. I note, however, that Mr. Barrow communicated directly with Ed Houghton, the acting chief administrative officer (CAO), about the budgets BLT was to provide to the Town on August 22.

While Ms. Stec engaged with Mr. Houghton during her work with Green Leaf, nobody else on staff knew that Green Leaf was involved in Collingwood’s search for new recreational facilities.

The Intermediary Agreement

Mr. Bonwick and BLT negotiated the intermediary agreement regarding Green Leaf’s services throughout August 2012. Mr. Bonwick conducted the majority of the negotiations through Ms. Stec, further obscuring his involvement in the recreational projects. Green Leaf and BLT signed the agreement

on August 27 – the same day that Council voted to sole source and construct a Sprung arena and pool.

Mr. Bonwick Negotiates with BLT

On August 1, Ms. Stec advised BLT: “We are drawing up an agreement between Green Leaf Distribution and BLT and will forward it to you for your review when it has been completed.” She sent the agreement, which Mr. Bonwick instructed his lawyer to draft, to BLT on August 13.* On August 17, Mr. Watts responded to Ms. Stec, Mr. Bonwick, and Mr. Barrow with some revisions he proposed to the language of the contract regarding Green Leaf’s compensation.

The revisions included a reference to an “agreed fixed fee from BLT.” In the hearings, neither Mr. Bonwick nor Mr. Barrow could explain the reference to a fixed fee in this email, but the provision survived several rounds of revisions and remained in the final contract. Mr. Watts’s proposed revisions also required BLT to pay Green Leaf “within two business days of BLT receiving its first draw or deposit from the third party” unless Green Leaf’s fee was greater than 30 percent of the deposit.

These payment provisions were immediately unacceptable to Mr. Bonwick, who testified that Green Leaf should be paid its success fee as soon as BLT achieved “success” by signing a contract with the Town. He said he considered Mr. Watts’s proposed amendment an attempt to install a payment plan, which would expose Green Leaf to the risk of not receiving its full compensation.

Mr. Bonwick dictated his response to BLT’s revisions to Ms. Stec, who, at his instruction, sent a revised contract to BLT on August 19. This version of the contract required BLT to pay Green Leaf “upon signing of the contract between BLT and the third party and BLT receiving their first draw from the third party.” Mr. Bonwick also dictated the covering email Ms. Stec sent. It stated, “Paul has had preliminary discussions with Ed regarding the first draw and it will be substantial enough to cover both the compensation and your initial operation costs.”

* This draft was not produced to the Inquiry.

Ms. Stec testified that, in their discussions, Mr. Bonwick and Mr. Houghton had agreed that “the first draw would ... be substantial enough that the Green Leaf compensation could come out of it.” Although Mr. Bonwick could not recall any specific conversations with Mr. Houghton regarding the Town’s first payment to BLT, he acknowledged that he likely had such a discussion with Mr. Houghton. He testified that he would not have mentioned Green Leaf’s fee at this point, but he likely informed Mr. Houghton that the Town’s contract with BLT would require a sizable upfront payment on signing. Mr. Houghton also could not recall having this conversation with Mr. Bonwick, though he acknowledged that Mr. Bonwick might have told him that, if the Town signed a contract with BLT, a large deposit would be required.

The fact that Mr. Houghton and Mr. Bonwick were discussing a potential contract between the Town and BLT as early as August 19 suggests that a competitive procurement process did not factor into Mr. Houghton’s plans.

Mr. Bonwick continued to push for immediate payment once BLT received its first payment from the Town. On August 24, he emailed Ms. Stec about the timing of BLT’s payment to Green Leaf:

Hi Abby: I believe we have been acting in good faith up to this point and will continue to do so however if they are receiving a 25 or 30% deposit we will require our payment at the same time. Two days is not relevant in banking terms.

Ms. Stec forwarded this email to BLT that day at Mr. Bonwick’s direction. Mr. Bonwick testified that at the time Ms. Stec sent this email to BLT, he understood that BLT would be asking the Town to pay between 25 percent and 30 percent of the cost of the recreational facilities upfront as a deposit. He contemplated that BLT would be using funds it received from the Town to pay Green Leaf, as he explained at the hearings:

[I]t was my understanding that BLT was paying the Green Leaf fee as part of their compensation. I did not expect them to take money from another project to pay us or personal funds to pay us. I was certainly aware of the fact that the funds that would be disbursed to Green Leaf would be as a result of their overall contract.

Without getting into the semantics of it, simply my understanding was, part of that contract would be they would be paying us out of their proceeds in terms of profitability.

Mr. Bonwick directed Ms. Stec to forward his email to Mr. Barrow that day. In her correspondence with Mr. Barrow, she wrote, “I have forwarded Paul’s response which we feel is reasonable. Please let me know if we can sign as is.”

Ms. Stec could not recall what about Mr. Bonwick’s message she felt was reasonable. As I discuss below, Ms. Stec told the Inquiry that Mr. Bonwick’s use of Green Leaf was not consistent with Green Leaf’s business. She ultimately refused a share of Green Leaf’s profits from the deal.

Mr. Barrow responded to Ms. Stec’s email stating, “I am waiting reply from Mark but we dont [*sic*] want to be in the position that the city takes 3 weeks for the deposit and were [*sic*] obligated to pay you immediately. I have worked for the city and usually it’s a process.” Ms. Stec testified she was not involved in discussions about the timing of BLT’s payment to Green Leaf and did not recall how Green Leaf and BLT resolved the issue.

Misleading Provisions Regarding the Scope of Work

The scope of work that Green Leaf committed to provide to BLT under the intermediary agreement was inconsistent with Green Leaf’s line of business. The description was also inaccurate and misleading: it included work that Green Leaf did not provide to BLT and omitted Mr. Bonwick’s work advocating for BLT with the Town’s decision makers.

As I discuss in more detail in Part Two, Chapter 12, Mr. Bonwick testified that it was his responsibility to “create the environment where [Council] would go in the direction they did” – in other words, the decision to sole source the Sprung arena and pool. Mr. Bonwick pursued this responsibility by promoting Sprung structures to Council members and other community leaders, although he did not tell them about his relationship with BLT.

Ms. Stec testified she understood that Mr. Bonwick “would be leveraging his relationships in the community to help ... meet the goal of ... sole sourcing the project.”

Similarly, in its closing submissions, BLT described the services Green Leaf provided:

Abby Stec would act as the communication liaison between BLT and the representative of the Town, its CAO. Paul Bonwick would be engaged in lobbying efforts to persuade members of Council, and others, that a Sprung-by-BLT was the right solution to meet the Town's needs.

The intermediary agreement did not refer to lobbying. Instead, it described Green Leaf's services under five points:

- a. Providing to BLT the name and contact information (phone, fax, email addresses) of one or more third parties that Green Leaf believes would benefit from the services and materials that BLT has to offer
- b. The third party(ies) that Green leaf will furnish to BLT will be third parties which to Green Leaf's knowledge and belief have not had a prior business relationship or ongoing business relationship or ongoing business discussions with respect to the business deal that Green Leaf proposes
- c. Through Green Leaf's third party prospect research and inventory of leads, Green Leaf will also provide to BLT a brief description of the needs of the third party and how BLT should be able to meet those needs with the materials and services BLT provides
- d. If BLT is interested in doing work for the third party, Green Leaf will assist in putting the third party and BLT together to discuss the suitability of the matching
- e. if the third party and BLT are interested in proceeding with a formal contract whereby BLT will be providing materials and or services to the third party, Green Leaf will assist BLT in formulating the applicable contract(s)

Ms. Stec did not know if Mr. Bonwick provided any of the listed services.

The agreement also contained a number of "whereas" clauses that described Green Leaf's business activities, including:

Green Leaf is in the business among other things of acting as an intermediary in bringing companies like BLT into contact with third parties in situations where the needs of these third parties may be met by the products and services that BLT has to offer.

Ms. Stec testified that this clause did not accurately describe Green Leaf's line of business at the time the agreement was signed. When cross-examined by counsel for the Town of Collingwood, she agreed that the Town had begun discussing recreational facilities with Sprung long before Green Leaf became involved. Ms. Stec also agreed that these discussions were likely to lead to BLT's involvement in the project because Sprung already had a referral arrangement with BLT. She further agreed that the actual services Green Leaf provided to BLT involved Mr. Bonwick working to secure a sole-source procurement for the Sprung structures.

The intermediary agreement did not accurately portray the services that Mr. Bonwick provided to BLT. Anyone reviewing that agreement would not know that Mr. Bonwick was leveraging his community relationships in order to secure BLT a sole-source contract with the Town.

No Disclosure of Payment to Green Leaf

The compensation clauses in the intermediary agreement operated to conceal Green Leaf's fee in three ways.

First, the intermediary agreement required that BLT pay Green Leaf directly, prohibiting BLT from paying Green Leaf "by way of direct or re-directed deposit or advance by the third party." According to Mr. Bonwick, the purpose of this provision was to ensure that Green Leaf's work for BLT did not increase the Town's costs.

I do not accept this evidence. Nothing about the language of this provision, or any other provision in the intermediary agreement, prevented BLT from passing Green Leaf's fee to the Town in a manner that increased the total the Town had to pay. The provision did, however, prevent BLT from arranging for the Town to pay Green Leaf directly, which would have alerted the Town to Green Leaf's fee. Mr. Barrow and Ms. Stec testified that they did not know why the provision was included in the agreement.

Second, the intermediary agreement did not specify Green Leaf's fee, providing instead that "BLT shall pay compensation to Green Leaf in an amount that Green Leaf in its discretion determines appropriate above and beyond the agreement fixed fee from BLT." As I discuss below, Green Leaf and BLT agreed to Green Leaf's fee before the agreement was executed, so there is no obvious reason why the fee could not have been stipulated in the contract between the two companies. However, because the fee was not stipulated in the agreement, anyone reading it would not learn what BLT paid Green Leaf.

Third, the intermediary agreement went further to hide Green Leaf's compensation. It required BLT to treat the details of the compensation it paid to Green Leaf "as strictly confidential, whether or not a contract is ultimately entered into between BLT and a third party introduced by Green Leaf."

Mr. Barrow testified he did not recall that BLT was required to keep Green Leaf's compensation confidential. He had no idea why the clause was included in the agreement.

Mr. Bonwick testified that clauses of this nature were "standard operating procedure." He argued that, as a private citizen, he believed he was entitled to keep the details of his business transactions confidential. When asked whether he was concerned that the clause would obstruct the Town from obtaining complete information on all BLT's subcontractors and consultants, he responded that, in his experience, customers were generally not entitled to such information. Mr. Bonwick was also asked whether he was concerned that disclosure by BLT of Green Leaf's fee might create the perception that he influenced Council's decision regarding the recreational facility. He responded:

The reality is there are those within the community that, if I'm engaged in any manner – certainly, during this period of time, if I was engaged in any manner, there was a perceived conflict of interest.

Mr. Bonwick was correct in his assessment that the public had concerns about conflicts of interest in instances where he was working for clients looking to do business with the Town.

Signing the Agreement

Green Leaf and BLT signed the contract, titled “Intermediary Agreement,” on August 27. Mr. Watts signed on behalf of BLT, and Ms. Stec signed as president of Green Leaf. Mr. Bonwick had assigned Ms. Stec the title of Green Leaf president without notice in June 2012 (see Part Two, Chapter 6). Despite her new title, Ms. Stec did not negotiate the intermediary agreement on behalf of Green Leaf. Her role in the BLT transaction was essentially administrative.

Ms. Stec testified that Mr. Bonwick informed her that, while his relationship with the mayor did not create a conflict of interest, he wanted her (Ms. Stec) to sign because he “didn’t want any perceived conflict to even enter the realm of ... the project.” She further testified that Mr. Bonwick never explained to her how undertaking the project with Green Leaf reduced the risk of a perceived conflict, but she understood it had to do with the fact that she – not Mr. Bonwick – was the “face” of Green Leaf and undertook most of the company’s day-to-day activities.

In addition, Ms. Stec testified she was uncomfortable signing the agreement as Green Leaf’s president. In her view, Green Leaf was “an environmental ... distribution company that had nothing to do with communications or lobbying.” The intermediary contract, she said, “did not reflect the day-to-day actions and ... mandate of Green Leaf.” Ms. Stec believed that the Collingwood recreational project should have been undertaken by Compenso Communications Inc., Mr. Bonwick’s lobbying company. She stated at several points in her testimony that she wished she had made her concerns clearer to Mr. Bonwick, but that she lacked the “voice” to do so.

Mr. Bonwick testified he did not recall discussing a perceived conflict of interest with Ms. Stec. He took the position he would have had no reason to discuss conflicts of interest with her because he had confirmed over the course of his retainer with PowerStream that his work on matters related to the Town did not place his sister, Mayor Sandra Cooper, in a conflict of interest. He did agree, however, that he likely told Ms. Stec that he “was going to remain in a less profiled position than she would be in terms of her engagement” with the recreational facility initiative.

Further, Mr. Bonwick did not recall Ms. Stec ever raising concerns with him about the appropriateness of using Green Leaf, as opposed to Compenso,

for the BLT work. For four reasons, he disagreed with her assessment that it was inappropriate for Green Leaf to be a party to the agreement. First, he noted that by the time the contract was signed, Green Leaf, BLT, and Sprung had discussed an “alliance” through which they would market Sprung products throughout Ontario. He also stated that Sprung, BLT, and Green Leaf had a shared commitment to environmentalism. Further, he took the position that Green Leaf was a new company that had not yet settled on a line of business and was free to pursue any direction it saw fit.

Finally, in his closing submissions, Mr. Bonwick suggested he had to work through Green Leaf because “[i]t was clearly stated from the outset by Mr. Tom Lloyd, Regional Sales Manager, Sprung that the introduction to a potential long term relationship was specific to Greenleaf [*sic*] with no mention of the communications company I operated.” He also relied on evidence from his cross-examination of Mr. Barrow, in which Mr. Barrow agreed with Mr. Bonwick’s suggestions that Compenso was not introduced to BLT as a potential partner, and that it was “always the intention that Green Leaf would work with BLT and Sprung to carry this model across the province.”

I do not accept these propositions for two reasons. First, Mr. Bonwick’s insistence that he be paid promptly after the Town paid BLT belies the evidence of both Mr. Bonwick and Mr. Barrow that they intended to work together on other projects for other municipalities. The negotiations about payments focused on how they would be made for the Collingwood projects, and not for any future projects. Ms. Stec testified that she understood the intermediary agreement applied only to Green Leaf’s and BLT’s work on the Collingwood recreational facilities and that discussions of an alliance between the companies at the time of the agreement “were very loose, there was nothing definitive about that.”

Second, Mr. Bonwick was clearly in control of his relationship with BLT. It was open to him to conduct his business with BLT through his communications company, Compenso, which witnesses testified was a well-known entity in Collingwood. He chose instead to use Green Leaf, a company with which he was not publicly associated, to avoid any public connection between himself and BLT’s deal with the Town.

BLT's Budgets and Green Leaf's Fee

While BLT and Green Leaf negotiated their commercial relationship, BLT created budgets for a Sprung arena and a Sprung building to cover the outdoor pool. BLT incorporated Green Leaf's fee into the budgets by increasing the costs associated with each budget line item, not by incorporating the fee separately among the "other costs associated with the construction." The budget explicitly identified these "other costs" as individual line items. In this way, the budgets concealed the fee BLT paid to Green Leaf.

Green Leaf's Review of BLT's Budgets

On August 20, Ms. Stec emailed Mr. Barrow asking if he had finalized the pricing "for the two facilities." She followed up the next day because, as she testified, Mr. Bonwick had expressed a sense of urgency to finalize the pricing for the facilities. Ms. Stec did not know why he was in a hurry to find out the budget cost for covering the outdoor rink and swimming pool, nor did she understand what Green Leaf would do with the budgets when Mr. Barrow sent them.

Mr. Barrow emailed Ms. Stec and Mr. Bonwick construction budgets for a new Sprung arena and a Sprung fabric cover for Centennial Pool on August 21, stating: "Here are the numbers for both locations arena and pool. Let me know what you wish to adjust too [*sic*] and I will re-submit to send to Ed." The attached budgets totalled \$3,467,731.50 for the pool cover and \$7,157,191.00 for the arena.

In his testimony, Mr. Barrow explained that when BLT priced a project, it usually determined the cost of completing the project and then added profit markups of 15–18 percent to the budget's line items. He testified that this range was a standard markup in the construction industry. He stated that, for the Collingwood pool and arena budgets, he added a markup of only 8–9 percent because he expected the final markup to be in the range of 15 percent once Green Leaf's success fee was applied.

Mr. Barrow gave inconsistent evidence about his knowledge of Green Leaf's fee at this time. He initially testified he did not ask Green Leaf about

its fee because he had been told the company would specify its fee later. He explained he anticipated that Green Leaf would charge BLT a fee of around 7 percent, an estimate based on a typical real estate commission. Later in his evidence, under cross-examination, Mr. Barrow agreed with Mr. Bonwick's suggestion that he knew at this time that BLT had agreed to pay Green Leaf a 6.5 percent commission.

I reject Mr. Barrow's evidence that he knew Green Leaf's fee when he prepared the August 21 budgets because, at the time he provided the draft budgets to Mr. Bonwick and Ms. Stec on August 21, he asked Green Leaf to tell him its fee.

Green Leaf's Response to BLT's Budgets

Mr. Bonwick emailed Mr. Barrow, Ms. Stec, and Mr. Watts at 11:17 a.m. on August 21, requesting a telephone call later that day. He added:

The situation is very fluid at this time and requires our attention and input by end of day if we are to achieve a favorable outcome Monday. There is a considerable movement wanting a deferral providing an opportunity for a third party to make a recommendation, ie ... architect.

Ms. Stec, Mr. Barrow, and Mr. Bonwick stated that the "movement" referred to in the email was to supporters of the Steering Committee's multi-use recreational facility. Neither Mr. Barrow nor Ms. Stec recalled a phone call following this email.

Thirty minutes after Mr. Bonwick sent this email, Mr. Houghton sent Mr. Bonwick the preliminary budgets that Sprung had provided to Deputy Mayor Rick Lloyd and Mr. Houghton on July 16. Sprung's preliminary budgets for a new arena and covering the outdoor pool totalled \$7,310,904 plus HST.

Mr. Bonwick testified that he could not recall why Mr. Houghton sent him these budgets. Mr. Houghton told the Inquiry he forwarded them to Mr. Bonwick because a BLT representative had asked for them. Mr. Houghton further explained:

When I handed them over I said, you know, these are the estimates. And ... we're hoping that the pricing that we get back from Sprung BLT is close to these kinds of estimates without, you know, a huge departure for good reason.

However, when Mr. Houghton emailed the July 16 Sprung budgets to Mr. Bonwick, he attached them without comment.

Mr. Bonwick forwarded the budgets to Mr. Barrow at 1:10 p.m. the same day, stating:

Please review the original numbers that were sent to the Town. Unless there is some significant explanation (three million dollars higher than original) they will undoubtedly take the view that we are trying to gouge as a result potential sole source. This is a deal breaker in the current format!

I look forward to chatting at 3pm.

At the hearings, Mr. Bonwick testified that when he sent the email, his primary concern was that Town representatives would be upset to learn that the prices proposed by BLT were higher than Sprung's July estimates:

I had been trying to consistently reinforce the idea that Council embrace one solution and move forward with one solution in order to deliver the recreational amenities. If there's a chance of that happening based on, to some degree, my efforts, changing a price ... without a reasonable explanation would compromise that or has the potential, at least, to compromise that.

Mr. Barrow testified that Mr. Bonwick was worried that the Town would believe it was being overcharged because the Town was not initiating a competitive procurement process. At that time, he thought the Town was considering only Sprung structures and a multi-use recreational facility.

At 2:53 p.m. that day, Mr. Barrow responded to Mr. Bonwick's email, listing a number of items from BLT's cost estimates that were not included in Sprung's July 16 estimates. Many of these items related to the installation

of a second floor in the facility. As I discuss in Part Two, Chapter 11, WGD had not been asked to cost a second-floor mezzanine for the arena in the estimates it prepared for the Town in August 2012. Staff made last-minute adjustments to WGD's estimates to account, among other things, for a second-floor mezzanine.

Green Leaf's Success Fee Included in the Budgets

Mr. Houghton emailed the Executive Management Committee at 4:41 p.m. on August 21, advising that he had just spoken with "Sprung BLT" and had asked them to provide "a total turn key price for both buildings and the non-building items. I have no clue what the price is because I didn't want them to tell me until it is in the form we want." Mr. Houghton also noted that he asked them to prepare a presentation for the August 27 Council meeting. I discuss this presentation in Part Two, Chapter 12.

Ms. Stec emailed Mr. Barrow at 4:58 p.m. on August 21, writing:

Thanks for taking the time to participate in both calls today and getting the numbers back to us. Once you have put the numbers in the format that Ed suggested, please put 6½ percent across the board on all the number [sic] reflecting the Green Leaf compensation. At that point the numbers can be sent to Ed. If you are ok with the BLT / Green Leaf agreement[,] please sign it and send it back to us at your earliest convenience.

Mr. Bonwick dictated key portions of this email, particularly the 6.5 percent markup and the phrase "across the board." Ms. Stec testified that Mr. Bonwick had discussed the commission with her around this time, and that she was "a little taken aback because ... the number was so large." She said that Mr. Bonwick explained that the number was high because the project could take years to come to fruition and there was a risk it would not materialize, with the outcome that they might not get paid at all. On cross-examination, Ms. Stec agreed that the fee was for Mr. Bonwick bringing a sole-source contract to BLT.

In his closing submissions, Mr. Bonwick argued that Green Leaf's fee was based on Council's past hesitance to build new recreational facilities,

the possibility that Council's decision on the Sprung facilities might take a long time, and the fact that success for Sprung / BLT in Collingwood would be the start of a province-wide business model that included Green Leaf.

Mr. Barrow testified that BLT added 6.5 percent across the board in accordance with Ms. Stec's email.* Green Leaf's resulting success fee totalled \$756,740.42, including HST.

Both Mr. Bonwick and Mr. Barrow testified that Green Leaf's fee was paid out of BLT's profits from the Collingwood arena and pool, despite the fact that they did not discuss what Green Leaf's fee would be before BLT applied its markup to the project budgets or how BLT calculated its markup. Further, Mr. Bonwick testified that he did not review BLT's budgets before they were provided to Mr. Houghton, nor did he have any discussions with BLT about how the totals were generated or whether BLT had applied any markups to that pricing. Mr. Bonwick claimed he told BLT that Green Leaf's fee "would not be borne by the municipality." As well, he relied on certain provisions in the Green Leaf / BLT contract to support his position that Green Leaf's work for BLT did not increase the Town's costs for the two construction projects.

I do not accept this evidence for three reasons.

First, the contract did not provide that Green Leaf's fee would not increase the Town's costs. As discussed above, the contract provided that BLT would pay Green Leaf as soon as it received the first payment from the Town, and that BLT would pay Green Leaf directly. Although these provisions ensured that the Town wouldn't see BLT's payment to Green Leaf, they did not ensure that Green Leaf's fee would in no way increase the Town's costs. Further, the only contemporaneous evidence the Inquiry received about the negotiation of the payment provisions of the BLT / Green Leaf agreement were the emails in which Mr. Bonwick insisted that BLT pay Green Leaf's fee in full once BLT received the Town's first payment. The lack of contemporaneous evidence of any discussions between Green Leaf and BLT about the impact of Green Leaf's fee on the Town's costs undermines the notion that such discussions took place.

* BLT also made other adjustments to the budgets.

Second, BLT's budgets were estimates. Because BLT did not know its actual costs, it could not know its actual profit margin, and therefore could not reduce that profit margin to pay Mr. Bonwick.

Finally, if BLT was willing to lower its profit margin to pay Green Leaf in order to secure the Town's business, it may have been willing to offer a lower price if it had to tender a bid or a proposal through a competitive procurement process or if it had to negotiate with the Town to lower the cost of the projects in order to secure those contracts. In other words, if BLT was willing to accept a 6.5 percent discount in its profits to pay Green Leaf, then the Town may have paid 6.5 percent more than it could have.

The structure of Green Leaf's fee, combined with the evidence before the Inquiry, means it is not reasonable to rule out the possibility that the Town paid more for the Sprung facilities than it would have but for Mr. Bonwick's involvement.

The BLT Budgets Go to the Town

The next morning, Ms. Stec emailed Mr. Barrow, writing: "As per my voice mail please get the numbers to Ed ASAP." Mr. Barrow sent Mr. Houghton the budgets for the pool and the arena at 1:39 that afternoon. In response, Mr. Houghton asked Mr. Barrow to give him totals, "(e) pool, mezzanine for pool; ice pad, accessories, and then the overall total." Mr. Barrow sent Mr. Houghton "final Numbers for both arena and pool buildings," asking him to "[p]lease review and let me know." The revised budgets totalled \$11,630,416.94 (\$7,896,303.82 for the arena and \$3,734,113.12 for the pool). These budgets included Green Leaf's 6.5 percent fee. Mr. Houghton forwarded these budgets to Town Treasurer Marjory Leonard, who in turn forwarded them to Dave McNalty, the Town's manager of fleet, facility and purchasing.

The Staff Report

From August 17 to 23, 2012, the staff report drafting process took place on two parallel tracks. Town Treasurer Marjory Leonard created the first draft of the report, adding pertinent information as she received it from Ed Houghton, the acting chief administrative officer (CAO), and Dave McNalty, the manager, fleet, facilities and purchasing. Meanwhile, Mr. McNalty also made changes to drafts of this report in consultation with Mr. Houghton. Mr. Houghton passed drafts of the report to Deputy Mayor Rick Lloyd. At this early stage, neither Sara Almas, the Town clerk, nor Marta Proctor, the director of parks, recreation and culture, were involved in the drafting of the staff report.

Ms. Leonard delivered her last draft to the Executive Management Committee (EMC) and Mr. McNalty on the afternoon of August 23. Mr. McNalty then made significant alterations to the report that same night. Mr. Houghton revised Mr. McNalty's new draft on the morning of August 24 and finalized the report in the early afternoon following a meeting with Mr. McNalty and the EMC. Although Mr. McNalty held the pen for some significant revisions, he and Ms. Almas agreed that Mr. Houghton took control of the staff report toward the end of the drafting process. Mr. Houghton made the final edit and had the final sign-off on the report.

Under Mr. Houghton's direction, the thrust of the report changed significantly. Initially the report was a summary of information that could form the basis of a request for proposal (RFP) for each of the two projects – the arena and the pool – along with rough cost estimates provided by the Town's consulting architect, WGD Architects Inc. By the end, the report recommended sole sourcing a design-build contract for Sprung pool and arena facilities, supporting that recommendation with a skewed and inaccurate

presentation of both BLT's project budgets and the costs of other recreational facility options. The report also did not identify that the Town would contract with BLT Construction Services Inc., as opposed to Sprung, for construction of the facilities.

Responsibility for Drafting the Report

It is clear that staff were scrambling to complete the research and write the staff report in time for the August 27 Council meeting. Ms. Proctor stated at the hearings: "There was [*sic*] so many hands in the pot and things changing that didn't follow proper protocol or procedure." She further testified that, while she believed it was her responsibility to "frame and ensure that [the] report provided all the necessary information," she had indicated to staff her concerns about Council's tight timeline in light of her upcoming planned vacation, scheduled from July 23 to August 7 and from August 22 to August 24. As I discuss in Part Two, Chapter 5, Mr. Houghton had agreed to Council's deadline and said that, despite Ms. Proctor's concerns, the EMC and Mr. McNalty would complete the report. Nevertheless, Ms. Proctor testified that she worked hard with Mr. McNalty to set the foundation for WGD to provide the information for the report. She learned, however, that Mr. Houghton was also directing Mr. McNalty and that Mr. Houghton would be the sole contact with Sprung.

Ms. Leonard said she became involved in the staff report at Mr. Houghton's direction and that the report was overseen by Mr. Houghton. She explained she wrote drafts, sent them to the EMC for comment, and implemented changes. She drafted the text while Mr. McNalty gathered numbers and other component information; Dennis Seymour and Darrin Potts, employees in the Parks, Recreation and Culture Department, researched operating costs; and Mr. Houghton obtained information from Sprung. Ms. Leonard said she had never before drafted a staff report relating to construction. She did not understand why she was assigned to the report, other than the fact that Ms. Proctor was on vacation. Ms. Leonard testified that, while she could "wordsmith" the information other staff provided, she did not have the experience to conduct research or provide background information.

In his testimony, Mr. McNalty said he was not assigned to work with WGD or to work on drafts of the staff report. He thought his continued involvement was assumed because he had provided some assistance to the Central Park Steering Committee and attended early meetings with Sprung. As he put it in his evidence, “[N]obody assigned me to be involved. I just stayed involved.”

Ms. Almas testified that Mr. Houghton, Ms. Leonard, and Mr. McNalty were primarily responsible for preparing the August 27 staff report. She said she understood that Ms. Leonard and Mr. McNalty were acting under Mr. Houghton’s direction. Ms. Almas thought that Ms. Proctor was frustrated with Council’s decision to disregard the work of the Central Park Steering Committee and with Mr. Houghton’s control of the staff report’s recommendations because “they were her responsibility and not Mr. Houghton’s expertise.” As she explained:

Ed took complete control, and ... I think that was extremely hard for her, because again she was the one with the expertise and she’s kind of blindly providing as much information as she can on costing, needs, operational costs, staffing, so there was a frustration.

Mr. McNalty testified that Ms. Proctor would normally have been in charge of the report. However, given her limited availability at the time, he believed that “other staff kind of picked it up and carried on with it.”

In his evidence, Mr. Houghton said the EMC took over the staff report from Parks, Recreation and Culture staff after the July 16 Council meeting and that the EMC members together decided on the direction of the staff report. He testified that he became involved only at the “very end.”

I am satisfied that Mr. Houghton provided direction on the staff report well before the end of the process, even if he did not make any edits himself until the final drafts. This close supervision is reflected in his questioning of WGD’s involvement in staff’s work (see Part Two, Chapter 7), his meetings and discussions with BLT and Green Leaf Distribution Inc. (see Part Two, Chapter 8), and his discussions with Deputy Mayor Rick Lloyd (see below). As Ms. Proctor testified: “[T]he clearest source of information that was coming down on this topic was through the Deputy Mayor. He was the champion behind this and was giving direction to the CAO.”

Mr. Houghton should have pushed back against Council's tight deadline to allow staff sufficient time to complete their research (see Part Two, Chapter 5). Instead, he took control of the staff report and steered it toward sole sourcing the Sprung recreational facilities.

Staff Research

Staff testified that their research into fabric buildings and Sprung primarily consisted of internet research. Some assumed other staff had undertaken more comprehensive research. No witness provided a complete explanation of the contents or the source of the information staff collected.

Mr. Houghton, the Town's sole contact with Sprung from July 25 onward, testified that he made no enquiries into the nature of the partnership between Sprung and BLT, explaining that he did not differentiate between the two companies. He stated that he did not review BLT's website, ask if BLT had ever built a pool or an arena, or otherwise investigate BLT. He said the only steps he took to investigate Sprung were speaking with Sprung representatives and reviewing the Sprung website. Mr. Houghton noted he did not contact any references for Sprung, nor was he aware of staff contacting any of Sprung's references. In explaining why he was comfortable proceeding with BLT and Sprung, he testified:

I guess I took it on faith in a sense that Sprung, which was a Canadian company, one that appeared to – when I googled their company, they had a lot of pride in what they were doing.

I don't think that they would have aligned or associated themselves with a company that was not reputable in any way, shape, or form.

Mr. McNalty testified he relied on research he had previously conducted into covering the outdoor rink with an "agricultural-style building," which he described as "a steel structural frame, so like a truss system with a membrane on the outside of the trusses." He also stated he conducted "maybe half a day" of internet research focused on "whether there was anybody else that was marketing a membrane style structure or a fabric structure that was

specifically intended to cover sports facilities.” He could not recall if he asked Sprung if they had any competitors, and he did not know whether any other staff members were investigating that issue either. Mr. McNalty did not recall speaking with staff at other municipalities that had recently built arenas or pools to discuss their experiences. Though he testified he understood there were “perhaps” three or four Sprung arenas in Canada and another “half dozen or so in the U.S., maybe,” he did not speak to any of those users. No draft of the staff report suggested that anyone from the Town sought that information.

Ms. Almas testified she looked at Sprung’s websites early in the process and felt the structures were unique. She said she thought Ms. Leonard was doing formal research into competitors. She also knew that Mr. Houghton and Mr. McNalty did research, but she was not sure what they did beyond internet research.

Ms. Leonard testified she conducted a few hours of online research. She said all the information on fabric structures that ended up in the staff report came from Sprung. Similarly, Ms. Proctor testified she believed the only research staff did on enclosing the outdoor pool “was on the Sprung structure through Sprung.”

Abby Stec, the president of Green Leaf,* testified that, between July 30 and August 27, she worked with Mr. Houghton on his presentation to Council and provided him with research she had previously done comparing fabric structures from Sprung, Yeadon Fabric Structures Ltd, and the Farley Group while she worked at the Pretty River Academy.†

Mr. McNalty noted that, as acting CAO, Mr. Houghton could recommend to Council that staff undertake further investigation into construction options for a pool and an arena. When asked whether he thought such a recommendation would have been beneficial, Mr. McNalty stated, “Further investigation would certainly have been beneficial, but the time frame for the report was set.”

* As I describe in Part Two, Chapter 6, Paul Bonwick was Green Leaf’s majority owner.

† The Pretty River Academy is a private school in Collingwood.

Stakeholder Consultation

Ms. Leonard and Ms. Proctor testified that staff did not consult with stakeholders during the drafting of the staff report. Ms. Proctor said she raised concerns that the pool and arena projects which Council directed staff to consider had not been taken to the community.

As I discuss in Part Two, Chapter 15, the plan to cover the existing pool did not fulfill the needs of the Collingwood Clippers competitive swimming club. Information about the community's aquatic facility requirements was available to Council, as illustrated by an August 27, 2012, email exchange between Councillor Dale West and a member of the public, who wrote that the staff report

does not deal with the issue of the tank, deck, filtration and existing in-ground infrastructure, not to mention whether it matches the criteria needed by this town for an indoor pool. The Centennial pool is a 5 lane concrete [*sic*] tank and deck which does not satisfy provincial and national competition standards. It can never be a sanctioned [*sic*] competitive pool.

Sandra Cooper testified, as mayor at the time, she sought to ensure that the public was aware of Council's decision: she "wanted the opportunity for the public – anyone from the public, if they so wish, to give their input, that they had that ability." She stated that the public was given that opportunity before August 27, explaining:

There is an opportunity for deputations to Council, a request of ... deputations. It would – it was – and it still is today, I believe, on the Town's website that you can submit a form – filled [*sic*] out a form and submit to the clerk's department in requesting a deputation, and then they can come forward.

Ms. Cooper also specifically referenced the June 11 workshop and the July 16 Council meeting as opportunities for public input. Although both events

were public, and a resident could have requested to speak at the July 16 meeting, neither meeting was intended to solicit information and feedback from the public. Finally, Ms. Cooper explained that by “being in the community ... in the grocery store, I’m always engaged ... in opinions shared.”

Overview of the Initial Drafting Process

The staff report was drafted in less than a week. Ms. Leonard and Mr. McNalty produced multiple drafts, sometimes simultaneously, while they each had separate discussions with Mr. Houghton. Moreover, through Mr. Houghton’s oversight of the drafting process, staff were exposed to influence from Deputy Mayor Rick Lloyd. The parallel drafts and tight timeline led to last-minute changes. In this chapter, I provide an overview of the drafting process and, in the next chapter, I discuss the changes made between drafts in more detail.

Ms. Leonard’s First Draft

On August 17, Marta Proctor, Sara Almas, Marjory Leonard, and Dave McNalty arranged to meet to discuss recommendations for the Central Park staff report. Ms. Leonard testified she did not recall what happened at this meeting. She said that, by this point, Mr. Houghton had already directed her to write the first draft the staff report. Mr. Houghton did not recall assigning this task to Ms. Leonard, suggesting that she took it upon herself to draft the report.

The next day, Ms. Leonard sent her first draft of the staff report to the EMC, Mr. McNalty, Ms. Proctor, and Mr. Houghton.

After reviewing Ms. Leonard’s August 18 draft, Mr. Houghton emailed Mr. McNalty: “I think you and I need to have a discussion and get moving in the same direction.” Mr. McNalty responded that he agreed, asked Mr. Houghton if a cost comparison between the arena options was still advisable, and told Mr. Houghton to call him the next day.

Mr. Lloyd's Reaction to the First Draft

On August 19, Mr. Houghton sent Ms. Leonard's August 18 draft to Rick Lloyd, with the message: "Take a look at this. I've not read it yet but will but I'm gonna ask Marjory to flip it to you as well." Mr. Lloyd responded with proposed revisions, which I discuss below.

Ms. Almas, Ms. Proctor, and Mr. McNalty all testified they were not aware that Mr. Houghton shared a copy of the staff report with Mr. Lloyd.

Ms. Leonard testified that, when Mr. Houghton asked her to send her draft to the deputy mayor, she initially "put up some resistance" and said the draft "wasn't fully flushed out." Later, however, she relented and told Mr. Houghton she would send it to Mr. Lloyd after she had "polished" it. When asked at the hearings why she initially resisted sending the report to Mr. Lloyd, Ms. Leonard responded:

It's not a normal procedure to ... share the draft with a member of Council ... or, for that matter, to ... share a staff report with a member of Council without all Council getting it ... It gave one Council member an advantage over ... the others. And there could have been potential for that Council member to interfere with any type of – or to taint, actually, I guess, the process of an RFP in ... some way ... or shape or form.

Ms. Leonard testified she expressed these concerns to Mr. Houghton, who responded by repeating his direction to send her draft to the deputy mayor.

As I discuss below, Mr. Lloyd provided suggestions that, when implemented, changed the tone and content of the staff report.

Mr. McNalty's Revisions to the First Draft

Mr. McNalty revised Ms. Leonard's first draft and, on the evening on August 19, sent it to Mr. Houghton. He also attached his first draft of a spreadsheet comparing the costs of various recreational facility options. I discuss Mr. McNalty's chart in greater detail in the next chapter.

In his covering email, Mr. McNalty asked Mr. Houghton to "[l]ook in the body of the report and please let me know if this direction is what you intend before I get further along." He also told Mr. Houghton, "I have not

distributed this elsewhere at this point pending your approval and suggestions.” Ms. Leonard testified she was not aware that Mr. McNalty was communicating privately with Mr. Houghton about revisions to her first draft of the staff report and did not know about the specific modifications that were occurring. Later, when she learned of the modifications, she became concerned that, because she was one of the authors of the report, Council would ascribe the changes in part to her, even though she had not made them.

Ms. Leonard sent her second draft of the staff report to Rick Lloyd on August 20, stating, “I did some polishing on the report but I still don’t have any numbers. Let me know what you think!” This draft did not incorporate any of the content or cost estimates from Mr. McNalty’s first draft.

Mr. Lloyd and the Houghton / McNalty Revisions

The direction of the staff report changed after Mr. Houghton invited Deputy Mayor Lloyd to provide feedback. Ms. Leonard’s initial August 18 draft contained sections describing “pros and cons” for the proposed pool and arena structures. The only listed advantage for a fabric-covered pool was “turnkey operation.” Disadvantages for the pool included: “We could find no other pools of this construction in Ontario” and “We do not have experience operating a year-round pool of this nature.”

After Mr. Houghton sent him a copy of Ms. Leonard’s initial draft, Mr. Lloyd responded with proposed revisions. Among them he stated: “I also see some other areas that need reworded [*sic*]. le ‘no other pools in Ontario of this construction’ I would rather indicate that there are many pools in north [*sic*] America with this construction.”

Later that day, Mr. McNalty revised Ms. Leonard’s initial draft of the staff report. His draft added the following sentence under the “pros” section for a fabric pool: “There are several successful swimming pool applications utilizing this type of construction identified across North America.” The new passage bears a striking resemblance to Mr. Lloyd’s suggested revision. Mr. McNalty testified he was not aware of the deputy mayor’s email to Mr. Houghton, and he had no recollection of being asked to add the sentence to the report by either Mr. Lloyd or Mr. Houghton. He acknowledged, however, that the sentence may have been added at their request.

The following day, August 20, Ms. Leonard completed a second draft of the staff report. This draft stated, “We could find no other pools of this construction in Ontario. There are, however, many in the U.S., and other areas of the world.” Ms. Leonard testified that, aside from sending Mr. Lloyd a version of the staff report by email, she had no interactions with him regarding the contents of the staff report. She further stated that the revisions noted above were likely dictated to her by Mr. McNalty or Mr. Houghton.

In suggesting revisions to Ms. Leonard’s first draft of the staff report, Mr. Lloyd also told Mr. Houghton: “I find there is a little negative spin on some of her report. I don’t think it is intentionally done that way but it needs the Ed Houghton positive spin in a redraft.”

Immediately following Mr. Lloyd’s email response to Mr. Houghton, the draft reports created by Mr. McNalty and Ms. Leonard were marked by a notable change in tone with regard to the description of fabric membrane structures. Mr. McNalty’s draft added a description of the strength of the construction materials used in the fabric structures and the effectiveness of their insulation. This passage survived through the drafting process and appeared in the final version of the report. Meanwhile, Ms. Leonard’s draft added the following statement:

[T]here are many advantages to becoming an early adopter or trend-setter for new concepts and technologies. The relationship with customer and vendor is synergistic. The customer is exposed to the problems, risks and annoyances of “being first” and is usually rewarded with especially attentive vendor assistance or support, preferential pricing, and favourable terms and conditions. The vendor benefits from receiving revenues, the customers’ endorsement and assistance in further developing the product or its marketing program.

Mr. Lloyd also advised Mr. Houghton that the report “must be careful not to give too much information.” As I discuss later in the Report, details regarding the components and pricing of the recreational facilities were removed from the final draft of the staff report that was submitted to Council for its evaluation (see Part Two, Chapter 11).

Although neither Mr. McNalty nor Ms. Leonard specifically recalled

having direct contact with Mr. Lloyd regarding the staff report, it is evident from the contents of the report drafts that the deputy mayor's revisions were implemented. Mr. Lloyd's revisions served to paint Sprung in a more positive light, making the notion of building Sprung recreational facilities more palatable.

Mr. Lloyd's interference contributed to the skewing of the staff report away from an impartial assessment of the recreational facilities that best fit the Town's needs. The staff report presented to Council was more consistent with the deputy mayor's wish that Council authorize the purchase of Sprung facilities. Mr. Lloyd should not have involved himself in the drafting of the staff report and, as the Town's most senior staff member, Mr. Houghton should not have enabled his interference. Mr. Houghton's closing submissions provided two explanations for the reason he forwarded the draft staff report to Mr. Lloyd. First, he noted that, at the July 16 Council meeting, "Mr. Lloyd went on the record and indicated that he wanted to be involved and there was no objection to his proposed involvement." Second, Mr. Houghton submitted that he sent Mr. Lloyd a copy of the report because the deputy mayor was the chair of the Finance Committee.

These explanations do not justify Mr. Houghton's decision to involve Mr. Lloyd in staff's reporting and recommendations to Council. As I discuss in Part Two, Chapter 5, the lack of Council objection to Mr. Lloyd's suggestion that he "work with Staff and our CAO ... to look at covering our Centennial Pool and a new ice pad at Central Park" did not constitute Council approval of his involvement in the staff's work to evaluate Council's selected options. Similarly, his role as chair of the Finance Committee did not entitle him to interfere with staff's efforts to provide objective information and recommendations to Council.

Mr. Lloyd testified he "wasn't trying to change the intent of the ... staff report." He said he did not believe that his involvement in the report writing process "influenced Council's decision one iota" and added: "I can assure you that Marjory Leonard would not have made any changes to the staff report if she didn't think it was appropriate." I do not accept these arguments. The very fact that Mr. Lloyd proposed revisions to the staff report demonstrates an intent to change its contents. The implementation of these revisions affected the tone and content of the staff report and, consequently,

influenced how Council arrived at a decision with regard to the new recreational facilities. Finally, I do not accept Mr. Lloyd's attempt to justify his interference by relying on Ms. Leonard. It was Mr. Lloyd's responsibility to avoid interfering with the staff report.

Mr. Lloyd also argued in his closing submissions that his involvement in the staff report was justified because it was "common practice for staff to communicate with and engage the council member(s) who made requests or motions to ensure that their efforts met the council member's intentions." I do not accept this argument. It is never appropriate for a specific councillor to seek to influence how staff presents its research and recommendations to Council.

Ms. Leonard's Further Revisions

On August 21, Ms. Leonard sent her third draft of the report to Mr. McNalty. This draft combined the revisions from Ms. Leonard's second draft with those in Mr. McNalty's first draft and included some new passages. One hour later, Ms. Leonard sent a substantially similar fourth draft of the report to Mr. Houghton, which he forwarded to Deputy Mayor Lloyd approximately 10 minutes later with no comment.

As I discuss in Part Two, Chapter 9, Dave Barrow, the executive vice-president of BLT Construction Services, sent Mr. Houghton budgets for a Sprung arena and pool cover on August 22. After receiving BLT's budgets, Mr. McNalty updated his spreadsheet comparing the costs of the recreational facility options and forwarded it to Ms. Leonard on August 23. Shortly after receiving it, Ms. Leonard sent her fifth draft of the report to the EMC, Mr. McNalty, and Mr. Houghton with this question: "Can we perhaps discuss this one shortly after lunch? I am just about written out!" Ms. Leonard testified that no meetings regarding the staff report took place on the afternoon of August 23.

Mr. Houghton and the BLT Estimates

While senior staff at the Town expected the recreational facilities to go through an RFP process, Mr. Houghton continued to pursue BLT to provide final estimates for a Sprung arena and pool (see Part Two, Chapter 9). This behaviour was inconsistent with a competitive procurement process.

Ms. Leonard testified that it was inappropriate for Mr. Houghton to be soliciting pricing from a vendor so close to the completion of the staff report. She said the appropriate time to solicit estimates from potential RFP suppliers was during a “market research” phase that ended long before the completion of the staff report. Ms. Leonard stated she did not raise these concerns with other staff members at the time because the staff report deadline was imminent and the Sprung prices were the only information available. She said she made no request for an extension to the deadline because she didn’t “believe it would have done any good.” Mr. Houghton, she explained, was preoccupied with meeting Council’s deadline and was pressuring Ms. Leonard to complete the report.

Earlier, Ms. Leonard testified she would likely have sought more time to complete the report if she had not been concerned “in the back of her mind” that she could lose her job. She explained that, after Kim Wingrove’s employment as chief administrative officer was terminated the previous April, several staff members feared for their job security if they pushed back against Council’s directions.

Though he did not recall having concerns at the time, Mr. McNalty agreed that it would have been preferable for Town staff to receive the BLT costing information “much sooner” when staff were investigating potential suppliers. He testified that, once Town staff begin formulating an RFP process, a “blackout period” commences during which no information should flow between the Town and potential bidders. The purpose of this period is to protect against a perception that the Town is providing an unfair advantage to a specific bidder. Mr. McNalty believed that the timing of BLT delivering their budgets risked creating a perception of unfairness.

Ms. Almas did not share Mr. McNalty’s and Ms. Leonard’s concerns because she was under the impression that Sprung’s structures were a “one

of a kind” product and this allowed staff to seek an estimate for that product.

As I note in Part Two, Chapter 8, Ms. Leonard was right to be concerned about the path the Town was pursuing with BLT. It was not appropriate for Mr. Houghton to be seeking quotes from a specific supplier at this time if the Town wanted to pursue a competitive procurement process. Asking BLT to effectively “bid” at this point impaired the Town’s ability to run a competitive process effectively. As I discuss below, although the draft staff report at this time contemplated an RFP, the Town’s discussions with BLT signalled a sole-source procurement.

When Ms. Leonard delivered her fifth and last draft of the staff report to Mr. Houghton, Mr. McNalty, and the other members of the EMC on the afternoon of August 23, it continued to contemplate a competitive procurement process. By the following morning, the staff report’s approach to procurement had dramatically and unexpectedly changed.

Competitive Tender Process Anticipated

Ms. Leonard, Ms. Proctor, Ms. Almas, and Mr. McNalty testified that, during the initial phases of the staff report drafting process, they expected that the Town would select a recreational facility supplier by way of a competitive procurement process. This expectation was reflected in the drafts of the report up to and including Ms. Leonard’s August 23 draft, all of which included language contemplating that the Town would issue RFPs for the pool and the arena if Council chose to proceed.

As I discuss in this chapter, various alterations were made in the text during the initial drafting phase of the report. These changes shifted the report from an objective discussion of the available options to a document advocating for the construction of Sprung facilities using a design-build contract. This shift in tone was consistent with Deputy Mayor Lloyd’s directions to Mr. Houghton. Ms. Leonard testified that she included an RFP process in the first draft after discovering two other fabric structure companies through internet research.

Ms. Proctor testified she understood at the beginning of the drafting process that there would be a competitive tender to identify a builder for the

structures. However, she did not recall any discussions about procurement at that time.

In his testimony, Mr. McNalty said he did not recollect any procurement process discussions at the time of his first draft. Still, he assumed that, after Council decided which construction type it preferred for recreational facilities, there would be an RFP process to locate specific suppliers. When asked on what he based this assumption, he responded that an RFP was “a reflection of the typical process.”

While certain staff expected the recreation facilities to be procured by RFP – and for good reason – by the time the staff report was being finalized, the Town’s ability to implement a competitive process had been impaired. Mr. Houghton had already given BLT a significant advantage by meeting with them, consulting with them on design components, and asking them to submit a detailed proposal for the arena and the pool (see Part Two, Chapter 8).

A Last-Minute Change in Direction to Sole-Source Procurement

At 5:59 p.m. on August 23, Mr. McNalty sent an email to Mr. Houghton and the EMC stating he was “[w]orking on another draft. Same information but a different approach to the report.” Ms. Almas replied, asking if she should work on “a couple of ‘recommendation’ scenarios,” but Mr. McNalty told her to wait. Within six hours, he completed a new draft of the staff report that differed in many crucial respects from all the previous drafts.

At 11:44 that same night, Mr. McNalty sent the revised draft of the staff report to Mr. Houghton and the EMC. I discuss the significant changes in the report in the next chapter, but most critically, the new draft no longer contemplated a competitive procurement. Instead, it suggested that the Sprung facilities be procured by way of sole source.

Mr. McNalty testified that his “new approach” consisted of reorganizing information, though he also added that the substantive changes were likely the result of directions he received. Before revising the report, Mr. McNalty spoke with Mr. Houghton around 6 p.m. He recalled they discussed taking a new approach to the report, but he could not remember the specifics of the conversation.

Mr. Houghton testified that, by the time they spoke at 6 p.m., Mr. McNalty had already “rebundled” the information in the report. He further testified that he and Mr. McNalty discussed a number of elements in the new draft, such as removing operating costs and detailed cost comparisons between pre-engineered steel and fabric arenas, and adding information regarding a possible second floor to a new arena (see Part Two, Chapter 11).

Shortly after their call, Mr. McNalty sent Mr. Houghton an email asking: “Is your thinking that the procurement is done? Or that we still need to go through the process of an RFP or something?”

Both Mr. McNalty and Mr. Houghton testified that they did not discuss procurement during their phone call. Mr. McNalty stated that, after the call, he began reviewing the staff report and realized that the procurement process was “an unanswered question.” That gap prompted him to send Mr. Houghton the email asking about procurement. He did not recall receiving a direct response. Mr. Houghton confirmed he did not reply to Mr. McNalty and, instead, phoned Ms. Leonard around 8 p.m.

Phone records indicate that Mr. Houghton and Ms. Leonard had a telephone call that lasted six minutes and 35 seconds shortly after 8 p.m. that evening. Within a half hour of this call, Ms. Leonard sent the following email to Mr. McNalty, Mr. Houghton, and the other members of the EMC:

Dave, I think we have done our due diligence for procurement purposes already.

We supplied our wish list to BLT / Sprung and they were aware that they were competing against two other forms of construction. Nobody possesses the Tedlar technology; nobody else can prove that they have done this type of construction without collapse; nobody else can provide the LEED components in their basic construction.

Mr. McNalty testified that he removed the references to a competitive procurement in the draft report after receiving Ms. Leonard’s email. Ms. Leonard and Mr. Houghton had conflicting recollections about what led to this email.

Ms. Leonard testified that, during the phone call, Mr. Houghton described the steps he and Mr. McNalty had taken to determine whether

“due diligence had been completed.” She said she did not understand him to be asking her for advice, explaining that she believed Mr. Houghton “was convincing me that the procurement process that they were undertaking had been done in ... a correct manner.” She was not aware of anyone on staff verifying any of the information set out in her email, although she herself had done some online research.

In addition, Ms. Leonard recalled that Mr. Houghton convinced her to draft an email describing the approach to procurement they had discussed and to send the email to Mr. McNalty. She testified she did not understand why Mr. Houghton was asking her to send the email. It seemed to her that Mr. Houghton was expressing his and Mr. McNalty’s opinion on procurement to her without informing the rest of the staff, and then asking her to send an email that would indicate the opinion came from her. She stated that Mr. Houghton did not explain to her why it was necessary for her to send the email, but she did not ask him why he could not be the one to relay the information.

Mr. Houghton, in contrast, testified that, after he received Mr. McNalty’s email asking about procurement, he called Ms. Leonard to ask her opinion on procurement processes. He stated he did not dictate his position on procurement to her. Rather, Ms. Leonard advised him that, in her view, all necessary due diligence regarding recreational structures had been completed. He said she offered to send an email expressing her opinion to the EMC.

I accept Ms. Leonard’s evidence. All five of her previous drafts of the staff report had assumed that an RFP would follow, including the draft Ms. Leonard prepared at noon on August 23. There is no evidence that she received any new information in the eight hours between completing her fifth draft of the report and her phone call with Mr. Houghton. There was no apparent reason for Ms. Leonard to depart from her previous approach to the staff report – one that involved a competitive procurement process.

I am satisfied that Mr. Houghton instructed Ms. Leonard to send the email. Mr. Houghton wanted the Town to sole source the two Sprung facilities. He also knew that Deputy Mayor Lloyd preferred this option. He told Ms. Leonard to send the email so it would not appear that he gave the direction. Mr. Houghton knew that sole sourcing a project such as this one did

not conform with typical Town procurement processes, and he wanted to avoid responsibility for the decision.

I am also satisfied that, to the extent the draft Mr. McNalty produced that evening contained substantive changes, these changes were made at the direction of Mr. Houghton (see Part Two, Chapter 11).

EMC Discussion of the Sole-Source Decision, August 24

Clerk and Treasurer Shocked by Change in Direction

During the afternoon of August 23, Ms. Leonard sent an invitation to Mr. Houghton, Mr. McNalty, and the other members of the EMC to meet and discuss the staff report at 8:30 am on August 24. She testified she called the meeting because the staff report had not been discussed that day, and she felt it needed to be finalized.

At 7:34 am on August 24, Mr. Houghton sent a revised version of the staff report to Mr. McNalty and the EMC. He did not make any changes to the sections relating to the type of procurement. The report still recommended a sole source.

Ms. Leonard and Ms. Almas testified that they first discovered that the staff report no longer recommended a competitive procurement process when they reviewed the revised report before the meeting that morning.

Ms. Almas testified she was “shocked” when she reviewed the staff report and discovered that all references to a competitive procurement process had been removed. She said she discussed the changes with Ms. Leonard in advance of the meeting and recalled Ms. Leonard telling her that “she received a call from Ed Houghton the night before, advising that he would like to ... go forward as a sole source procurement.”

Ms. Leonard testified that, after emailing Mr. McNalty about procurement in the evening of August 23, she did not do any further work on the report. When she arrived at work the next morning, Ms. Almas told her that the report had been changed. She then reviewed the version Mr. Houghton had circulated. With regard to the new and changed approach to procurement, Ms. Leonard stated:

I was ... stunned. Regardless of what wording or what had gone into it ... the portions about an RFP had ... been removed and it had become sole sourced ... [T]hat's really what shocked me. Not only sole sourced, but ... the pool was a fabric building for certain, but then the arena was now totally a fabric building as opposed to having Council decide what they wanted in terms of pre-engineered or bricks and mortar or a fabric structure there, as well.

The Meeting

Mr. Houghton, Mr. McNalty, and the EMC met at 8:30 am on August 24 to discuss the staff report. Mr. Houghton testified that the purpose of the meeting was to “gather the troops, make sure that the report is – is full.” He recalled discussions that the report did not yet include finalized recommendations nor did it contain a section on procurement. He stated that Ms. Almas offered to draft the recommendations, and Ms. Leonard volunteered to draft the procurement section. Mr. Houghton also testified that he agreed to make the final edit of the report and that Mr. McNalty explained how he arrived at the costs for the structures discussed in the report. Mr. Houghton told the Inquiry that, by the end of the meeting, “[c]onsensus was arrived at” regarding the contents of the report.

The other attendees had different recollections.

Ms. Leonard testified that Mr. Houghton used the meeting to explain that a sole-source procurement process was appropriate because the proposed recreational facilities were affordable and could fulfill the Town's need for an arena and an aquatics facility. She believed that an RFP process was still possible and would have not had involved a significant delay. However, she did not recall anyone at the meeting raising concerns about the use of a sole-source process. She testified that, by the end of the meeting, Mr. Houghton had persuaded her that it was appropriate to move forward with the revisions that had been made to the staff report.

Ms. Almas also recalled Mr. Houghton explaining at the meeting why the staff report had been changed to recommend a sole-source procurement. She stated that Mr. Houghton was “very charismatic and very influential, and basically was stating strongly the reasons why it was justified that we

went down this route.” Like Ms. Leonard, she said that, after listening to the information presented by Mr. Houghton, she was comfortable proceeding with the new version of the staff report. She added that she did not want to be the only attendee at the meeting to object to the staff report:

Ed was pretty powerful and pretty persuasive. And I ... trusted Ed at that time and I felt that it was ... good information and there was no reason for me to be at the last minute the person of the ... group to object to the decision.

Mr. McNalty recalled that the attendees engaged in a general discussion of the changes to the staff report, including the removal of references to an RFP. When asked what he understood to be the rationale for these changes, he replied, “I’m not sure if I understood what the rationale was, other than the direction that I had received the night before through the Treasurer’s email.”

In addition, Mr. McNalty testified that “there was no reason why” staff could not have chosen “specifications” for a design-build arena and pool, and then used an RFP process to determine whether to build fabric membrane or pre-engineered steel facilities. He acknowledged that, “from the point of view of having more fulsome information, [an RFP] would have been good to have.” Mr. McNalty also testified that, by the end of the meeting, there was consensus among the EMC with regard to the contents of the report.

Sole Sourcing Impaired the Town

Recommending a sole source was a radical departure from the Town’s bylaws, norms, and practices. As a starting point, the Sprung arena and pool did not meet the requirements for sole sourcing under the Town of Collingwood purchasing bylaw, which permitted sole sourcing where “there is only one known source for the Good or Services.” Sprung and BLT, however, were not the only known source of recreational facilities. For example, as confirmed by the WGD report, a pre-engineered steel supplier was capable of building an arena.

At the hearings, it was suggested that sole sourcing was appropriate because Sprung was the only supplier of insulated membranes that could

be used for recreational facilities. There are several problems with this suggestion.

First, as I discuss in Part Two, Chapter 14, Tom Lloyd, an Ontario regional sales manager at Sprung, was aware of a number of other companies that offer insulation with their fabric structures. Moreover, one of the purposes of a competitive procurement is to allow the market to inform the Town whether there are other suppliers.

Second, the Town's needs were not limited to fabric recreational facilities. Collingwood was searching for affordable recreational structures, and other builders may have been able to construct an arena that met the Town's needs at a lower price. Proceeding with a sole source deprived the Town of acquiring information concerning what the market had to offer. As Richard Dabrus, the principal in charge at WGD Architects, stated, a pre-engineered steel manufacturer may have comparatively bid, or even outbid, BLT and Sprung. Tom Lloyd testified that Sprung had participated in several competitive procurements before 2012 and was rarely successful. In short, the staff report's recommendations – directed by Mr. Houghton – to pursue a sole-source procurement of a Sprung insulated architectural membrane facility for a year-round single-pad ice arena at Central Park and a Sprung insulated architectural membrane structure over the existing Centennial Pool were essentially recommendations that the Town forgo the opportunity to obtain other viable competitive proposals.

On a separate note, the personal reactions of Ms. Almas, Ms. Leonard, and Mr. McNalty, expressed during the hearings, demonstrate that they knew a sole source was likely not appropriate in the circumstance. As described throughout this Report, some staff believed they were not in a position to challenge Mr. Houghton. Others had genuine concerns for their jobs if they resisted the views of Deputy Mayor Rick Lloyd which were being implemented by Mr. Houghton.

Ms. Leonard's Procurement Draft

Ms. Leonard testified that, at the morning meeting, she was asked to draft a section for the staff report dealing with procurement. At 10:46 a.m. that day, she sent Mr. McNalty, Mr. Houghton, and the EMC an email containing the following paragraphs:

In terms of our procurement process, staff have exercised due diligence in the research of potential forms of construction and feel that there would be no additional advantage to be gained from a further tender process for the following reasons:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew that they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structure when producing estimates.

Cost effectiveness and benefit to the Town: through the investigative process, it has been determined that the Architectural Membrane structure would provide the most cost effective and all inclusive solution to our needs.

Sole Source: again, through our research, it has been determined that there is only one supplier that can meet the specifications staff developed for the facilities.

If one of the more traditional forms of construction had been determined to provide the most cost effective solution there would have been a further need to issue an RFP for construction since there are many companies capable of providing this service.

Ms. Almas's Recommendations Draft

Not long after Ms. Leonard sent her draft procurement section, Ms. Almas sent draft recommendations to Mr. Houghton, the EMC, Mr. McNalty, and Deputy Mayor Lloyd, asking for comments. The recommendations read:

THAT Council receive staff report EMC 2012-01,

AND FURTHER THAT Council direct staff to proceed with the construction of a Sprung insulated architectural membrane facility for a year-round single pad ice arena at central park, maintaining 2 ball diamonds, the outdoor ice rink, lawn bowling facility, and additional green space – while maintaining the option to twin the arena at a future date;

AND FURTHER THAT Council direct staff to proceed with installing a Sprung insulated architectural membrane structure over the existing Centennial Pool, and removing the existing building to provide a year-round pool to meet the community's aquatic and competitive swimming needs.

Ms. Almas testified it was inappropriate for her to send the draft recommendations to Mr. Lloyd at this juncture, but she was otherwise content with the contents of the recommendations.

Mr. McNalty Revises Procurement Section and Recommendations

At 11:46 am, Mr. McNalty sent revisions to Ms. Leonard's draft procurement section to Mr. Houghton and the EMC. He made minor changes and added the following sentence to the beginning of the first paragraph:

The procurement process recommended for the supply and construction of the Outdoor Pool enclosure and the Single Ice Pad at Central Park is a direct purchase of the facilities from the supplier.

Mr. McNalty also inserted another sentence at the end of the last paragraph:

There is only one manufacturer of Architectural Membrane structures that has a proven track record of success and that distributes this technology.

Fifteen minutes later, Mr. McNalty sent Mr. Houghton, Deputy Mayor Lloyd, and the EMC his revisions to Ms. Almas's recommendations. He removed the word "Sprung" from the recommendations and made other minor changes. Mr. Houghton testified he did not realize at the time that Mr. McNalty had removed references to Sprung. He stated that the change was likely made because, at the meeting earlier that morning, they had discussed "that was kind of what ... the thing was called, insulated architectural membrane."

As 12:07 p.m., Ms. Almas replied to Mr. McNalty, Mr. Houghton, Deputy Mayor Lloyd, and the rest of the EMC expressing her approval of

Mr. McNalty's revisions to her recommendations. She also copied Mayor Sandra Cooper on the email.

Mr. Houghton's Contact with Paul Bonwick

In less than 24 hours, the staff report changed from contemplating a competitive tender to recommending a sole-source procurement. During that period, Mr. Houghton had three telephone conversations with Mr. Bonwick.

The first two calls took place at 4:30 p.m. and 5:30 p.m. on August 23, totalling about 35 minutes. They occurred shortly before Mr. Houghton and Mr. McNalty discussed Mr. McNalty's "new approach" to the staff report. Mr. Houghton testified he did not recall what he and Mr. Bonwick discussed, though the calls could have been about "a multitude of other things," including PowerStream and the mayor's golf tournament.

Mr. Houghton and Mr. Bonwick spoke again on the morning of August 24 for eight minutes at 8 a.m., right before Mr. Houghton's meeting with the EMC in which sole sourcing was discussed. Mr. Houghton did not recall the content of this call either. At 8:18 that same morning, Ms. Stec emailed both Sprung and BLT, stating that Mr. Houghton would be attending meetings to share information regarding Sprung. She assured them she had "armed him with the power point."

Mr. Bonwick testified that he never discussed sole sourcing with Mr. Houghton.

I do not accept Mr. Bonwick's evidence. As I find in Part Two, Chapter 6, Mr. Bonwick discussed the potential for the Town to sole source the Sprung facilities through BLT at the July 26 meeting between BLT and Green Leaf. As I describe in Part Two, Chapter 8, the Town's potential procurement of BLT's services was a regular topic of conversation between Mr. Bonwick and Mr. Houghton in August 2012.

On August 23 and 24, Mr. Bonwick would have been aware that staff was finalizing the staff report about the recreational facilities. He knew that these facilities were scheduled to be discussed at the Council meeting on August 27.

In the circumstances, it defies common sense to think that Mr. Bonwick would not inquire about the status of the Town's deliberations on

procurement and advocate for a sole-source procurement when he talked to Mr. Houghton. A sole-source procurement benefited Mr. Bonwick's client, BLT, and, by extension, himself. With a sole source, Mr. Bonwick would not face the risk of losing his success fee because another bidder outbid BLT.

Final Version of the Staff Report

On August 24 at 12:05 p.m., without waiting to receive Ms. Almas's thoughts on Mr. McNalty's revisions, Mr. Houghton circulated a new draft of the staff report to the EMC and Mr. McNalty, asking them to "Please take a look and adapt if needed." This version would end up being the final draft of the report.

Flawed Staff Report

The staff report was finalized at 12:05 on the afternoon of August 24, 2012. The product of Mr. Houghton’s direction and oversight, the report considered an “architectural membrane building”^{*} to cover the pool, and purported to compare two arena options – architectural membrane and pre-engineered steel – along with a discussion about renovations to the Eddie Bush Memorial Arena. The process described in Part Two, Chapter 10, produced a report that described and portrayed Sprung Instant Structures Ltd. as the obvious, most cost-effective choice for Council, and one that carried little risk or uncertainty. Misstatements, inaccuracies, and omissions in both the construction estimates presented and the discussion of the construction options led to this inaccurate representation. In this chapter, I describe some of the more serious flaws, starting with the construction factors discussed in the staff report and then followed by an analysis of the calculation of the cost estimates for the Sprung and pre-engineered steel arena.

Construction Factors

The staff report misrepresented the site-servicing estimates and costs required to achieve buildings that would qualify for LEED certification. It also misapplied contingencies, skewing the information provided in favour of Sprung.

^{*} Earlier drafts of the staff report referred to this option first as a “Fabric Building,” then an “Insulated Fabric Membrane.”

Inconsistent Site-Servicing Estimates

The staff report stated that, for both the arena and the pool, the purchase would be limited to the fabric structures and the interior components, allowing the Town to complete site servicing independently and at a “significant cost savings.” The report also stated that the estimated site-servicing costs were \$500,000 for the arena and \$200,000 for the pool.

There are three problems with the manner in which the report presented the site-servicing costs.

First, \$500,000 and \$200,000 were not objective estimates of the anticipated site-servicing costs. The Town’s manager of fleet, facilities and purchasing, Dave McNalty, handled the cost calculations for the staff report and testified that the final site-servicing estimates, which he described as “aggressive targets,” were set “in conversation with the CAO and perhaps others.” By way of comparison, Mr. McNalty’s first estimate of the site servicing was \$1 million for the arena and \$400,000 for the pool, and WGD estimated site servicing for the arena to be \$1,164,281, regardless of building type.

I accept Mr. McNalty’s evidence that the \$500,000 and \$200,000 site work estimates were aggressive targets set with Mr. Houghton’s approval, not objective cost estimates. The aggressive nature of the estimates was not explained in the staff report. At the very least, the report should have advised that WGD had estimated the arena site-servicing cost as \$1,164,281 and that staff believed the work could be completed for as little as \$500,000.

Second, the staff report suggested that, when it came to the arena, the option of having the Town undertake site servicing (thereby reducing the costs) was available only if the Town chose the fabric arena:

The costs of Central Park development will be minimized for the construction of an initial arena with either approach, however, the Insulated Architectural Membrane arena procurement allows the Town to facilitate park development for site servicing, parking improvements and landscaping to proceed in a phased approach. An allowance of \$500,000 should be considered in this evaluation.

This statement was false and misleading. Further compounding the lack of clarity on the site-servicing costs, other parts of the report suggested

that the \$500,000 site-servicing estimate would apply to both fabric and pre-engineered steel.* This however, gave rise to the third problem: the report failed to explain that site-servicing costs had been included in the estimate for a pre-engineered steel arena, but no site-servicing costs had been included in the fabric building estimate. I discuss this matter in more detail below.

At the hearings, Mr. McNalty confirmed that, with pre-engineered steel, the Town could also have undertaken site servicing “for that same aggressive target.” WGD’s Richard Dabrus, whose sensible evidence in this regard I accept, testified that, as a general matter, site-servicing costs would be the same for pre-engineered steel and fabric buildings, noting “the cost of asphalt is the same” regardless of whether the project was a design-build or traditional construction.

The report as a result inflated the cost difference between the pre-engineered steel and Sprung arenas. First the report presented the cost estimates as comparable when they were not because only the pre-engineered steel estimate included site-servicing costs. Second the report added \$500,000 in site-servicing costs to both estimates when the pre-engineered steel estimate already incorporated \$1,164,281 for site servicing. I discuss below other ways the cost difference between the arena options was inflated in favour of Sprung and BLT Construction Services Inc.

Inconsistent Contingencies

The staff report also provided misleading information about the need for contingencies between the pre-engineered steel and fabric arenas. The report stated that a “significant advantage” of the fabric structures was that their cost would not be subject to additional engineering costs and contingencies (additional amounts added to the estimate to account for unknown or unexpected costs) because “the complete design and engineering works are included in the cost of the enclosure and improvements are fully quantified at the time of order.”

* For instance, the summary of arena costs stated that the \$500,000 site-servicing allowance was the “same for all options.”

In contrast, the estimate for the pre-engineered steel arena included two 10 percent contingencies: one for design and construction changes; and one for design fees, permits, and “miscellaneous” items that Mr. McNalty believed WGD had not included in its estimate. I discuss this estimate further below.

Mr. McNalty testified that he was directed to remove contingencies he had included in his early draft comparison spreadsheets for the Sprung arena and pool, explaining “there was no desire to have a contingency shown.” He could not recall who told him to remove the contingencies for the Sprung arena and pool from the estimates provided to Council. He testified that he thought contingencies should be included for the Sprung structures to provide “the whole picture of the ... potential investment” and to account “for the unforeseen.”

Mr. McNalty specifically noted that the costs for a fabric cover over Centennial Pool should have included a contingency to account for increased uncertainties that came with erecting a structure on a site that had already been used for a number of years. He also agreed that removing the contingency from the Sprung arena and not the pre-engineered steel estimate took “some of the objectivity out of the comparison.”

Marjory Leonard, who was the Town’s treasurer, did not recall any discussion about removing the contingency from the estimated costs. She said she believed the fabric structures did not require a contingency, but could not recall the source of this belief.

Ed Houghton, the Town’s acting chief administrative officer (CAO) at the time of the events, testified that he did not discuss contingencies with Mr. McNalty before Mr. McNalty removed them from his comparison spreadsheet late on August 23. He believed, though, contingencies were discussed with the Executive Management Committee and Mr. McNalty on the morning of August 24 (see Part Two, Chapter 10). Mr. Houghton said in his evidence that “there is no need for design contingency because the design contingency is included in the BLT budget,” continuing:

What we were trying to do again, I was – “we,” “I” – we were trying to be receptive to what we were hearing that they wanted something of ... like, that would be inexpensive, and we were trying to make sure that the

numbers that we had come in were going to be the numbers that were going to come in and not – not add a contingency, so people actually have a little bit of leeway to be able to add additional items to the – to the project.

Mr. Houghton testified that, while he was aware that change orders could increase the cost of the facilities, he did not expect any change orders in August 2012 because he did not expect the Town would change the scope of work after the contract was signed.

I do not accept this evidence. Mr. Houghton was the Town's executive director of engineering and public works and was experienced in construction. He would have known that change orders (and resulting increased project costs) are expected for any construction project. As reflected in his testimony quoted above, Mr. Houghton was well aware that Council wanted an inexpensive option and, for that reason, he removed the contingency from the option he wanted Council to select.

As I discuss in Part Two, Chapter 15, \$1,516,383 (including HST) in additional charges were incurred because of change orders after the contract was signed. It was misleading for the staff report to say fabric structures required no contingency. Moreover, for the arena, excluding a contingency unfairly inflated the price difference between the Sprung arena and a pre-engineered steel arena, as I discuss below.

Misstated LEED Status

The staff report also misstated the LEED status of the fabric structures and, in doing so, mischaracterized – in favour of Sprung – how they compared to pre-engineered steel.*

Each of the arenas proposed would qualify for a LEED Silver accreditation. In order to receive the accreditation there would be additional commissioning costs for either building system. A significant difference

* LEED (leadership in energy and environmental design), an independent rating system is discussed in Part Two, Chapter 6.

in the two construction types is that the Insulated Architectural Membrane structure has the LEED requirements built into its basic design, whereas the traditionally industrial Pre-Engineered Steel building must be modified to meet the requirements leading to additional engineering costs and custom components.

Mr. McNalty introduced the notion that the fabric arena had the LEED requirements built into its design, whereas a pre-engineered steel arena required modification, in his first draft of the staff report on August 19. Ms. Leonard added language indicating that commissioning costs would be required for either type of structure to obtain LEED certification. This language persisted through subsequent drafts and remained in the final report.

The staff report's suggestion that the Sprung structures would automatically qualify for LEED silver status was incorrect and misleading.

Tom Lloyd of Sprung, Dave Barrow of BLT, Ron Martin, the Town's deputy chief building official, Ed Houghton, and Green Leaf's president, Abby Stec, all testified that LEED certification considered many elements of the construction process and that, while using a Sprung structure could assist in achieving LEED certification, it did not guarantee it. Richard Dabrus of WGD also shared this belief:

[T]he membrane structure is just an enclosure. There ... are many other elements that go into LEED certification, everything from having bus stops close by to ... low flush toilets. And it's a complete package, complete arena. And again, the structure and closure are just components of the overall picture.

Mr. McNalty, in contrast, testified that he understood Sprung structures were automatically LEED certifiable upon construction. He explained that someone from Sprung had advised the Town at an early meeting that Sprung buildings had the LEED silver requirements built into their basic design, such that if the Town applied for LEED silver certification, the building would receive it.

I accept the evidence of Tom Lloyd, Dave Barrow, Ron Martin, Richard

Dabrus, and Abby Stec. Sprung structures were not automatically eligible for LEED certification upon construction. I also accept that Mr. McNalty misunderstood the LEED status of Sprung structures.

Mr. Houghton took a similar position in his closing submissions. He stated that Sprung structures were clearly not automatically LEED certifiable, and argued that “it cannot be said that the Staff report suggested that to construct the project with a Sprung structure would automatically achieve a [LEED] silver standing.” He noted the staff report’s statement that commissioning costs were required for the structures to receive accreditation and contended that this statement was proof that the report did not claim that Sprung structures were inherently certifiable.

I do not accept Mr. Houghton’s argument that the staff report accurately portrayed the LEED status of the fabric membrane buildings. The report asserted that a fabric membrane arena “would qualify” for LEED accreditation and had the requirements for such accreditation “built into its basic design.” This left the impression that no additional components would need to be added to the structures in order to make them LEED certifiable.

The report’s statement regarding commissioning costs was simply a reference to the costs involved in having the structure formally certified as a LEED building. The statement does not take away from the assertion that the Sprung structures would achieve certification if the Town decided to incur the commissioning costs.

I am satisfied that a plain reading of the staff report leaves the impression that the Sprung structures were inherently eligible for LEED certification upon construction. As discussed above, this was not the case.

The staff report’s inaccurate depiction of the LEED eligibility of fabric structures prevented Council from making an informed decision on the construction of recreational facilities in three ways.

First, in claiming that a fabric structure would be eligible for LEED certification upon construction, the report erroneously portrayed a Sprung arena as a more attractive option than a pre-engineered steel arena because the staff report suggested the pre-engineered steel arena would require additional modifications to achieve LEED certification. The truth was that both structures required substantial additional work to attempt to achieve eligibility for LEED silver certification.

Second, the staff report suggested that Council was receiving something that it was not. Mr. Barrow testified that the budget he prepared for the arena was not for a LEED silver–equivalent building. The staff report left the opposite impression, as illustrated by Councillor Kevin Lloyd’s email to a Collingwood citizen explaining that “[w]hat staff and council are proposing to move ahead on are state of the art, permanent facilities that are Silver Leeds certified and affordable.”

Finally, as I discuss in detail below, the estimated cost of the pre-engineered structure was increased to include optional items that may have assisted in achieving LEED certification for the arena. The BLT budgets were not similarly increased, and the result was another inaccurate cost comparison that favoured the Sprung arena.

Overinflation of Differences in Arena Costs

The staff report overestimated the cost of the pre-engineered steel arena by more than \$3.5 million. The price for the pre-engineered steel building was artificially inflated by adjustments that Mr. McNalty made at Mr. Houghton’s direction to WGD’s estimate. The discussion of the options in the staff report exacerbated the issue, incorrectly presenting the pre-engineered steel arena as requiring additional costs. I explain these adjustments and their presentation below.

Evolution of Cost Comparison Chart

Mr. McNalty testified that he prepared a spreadsheet to compare the costs of the construction options for the arena. Mr. McNalty used WGD’s estimate as a starting point for the pre-engineered steel arena. He also used BLT budgets for the fabric building arena and pool as a source of information for calculating his increases to the WGD estimate. He adjusted the WGD estimate throughout the last two weeks of August.

Mr. McNalty testified that, although the WGD report had already estimated the cost difference between a pre-engineered steel and fabric membrane arena (\$500,000), he believed adjustments to WGD’s estimate for the

pre-engineered steel arena were required to provide an “apples to apples” comparison and because WGD’s estimate assumed a traditional construction method, while the Sprung arena would be a design-build project.

The adjustments increased the estimated price difference between the fabric and pre-engineered steel arenas from \$500,000 (WGD’s estimate) to more than \$3 million. WGD was not provided the opportunity to review and comment on the adjustments made to its estimates or to comment on efforts to create an “apples to apples” comparison. Mr. McNalty testified that “there wasn’t time at that point ... in my perspective” to consult with WGD on those changes. These adjustments are detailed in the following sections.

Design-Build Construction Model

Mr. McNalty testified that, with a design-build arena, certain design and engineering costs would “inherently be less expensive than doing it in ... the traditional contract method.” WGD was not asked to consider whether its estimates would change if a design-build construction model was used. WGD’s Mr. Dabrus, whose evidence in this respect I accept, testified that he expected the overall costs would be the same regardless of construction model. He explained that the difference between construction models is who bears the risk of actual construction costs exceeding the estimates. In a design-build, the design-builder assumes that risk, whereas the client bears the risk in a traditional construction model. Mr. Dabrus continued that a design-build could cost less if the design-builder decided to take on more risk and reduce its costs as part of a competitive tender.

BLT’s budgets were not the product of a competitive tender. As I discuss in Chapter 13, Mr. Houghton did not make any efforts to negotiate with BLT.

Certification and Recommended Upgrades

Mr. McNalty increased WGD’s estimate by \$1.15 million to include the cost of all the “green initiatives” WGD had identified.*

* Where WGD had provided an estimated range for a “green initiative,” Mr. McNalty used the highest estimated cost. He could not recall why.

Mr. McNalty claimed he included these costs to provide an “apples to apples” comparison of the pre-engineered steel arena to the fabric arena. His efforts had the opposite effect – he added costs to the pre-engineered steel arena for components that were not included in the fabric arena budget. As I discussed above, Mr. McNalty mistakenly believed the Sprung arena was inherently eligible for LEED certification. It was not. Further, Mr. Barrow confirmed that most of WGD’s “green initiatives” were not included in the BLT budget. As a result, Mr. McNalty’s adjustments to WGD’s pre-engineered steel estimate artificially inflated that cost by \$1.15 million.

The discussion in the staff report further exacerbated the misrepresentation of the cost of the pre-engineered steel arena. The report inaccurately stated that the pre-engineered steel arena alone would require “additional engineering and custom components” to achieve LEED silver status, leaving the false impression that the pre-engineered steel arena would cost \$11.1–\$12.3 million plus additional unspecified costs for “engineering and custom components.”

Second-Floor Mezzanine and Elevator

WGD’s pre-engineered steel estimate did not include a second-floor mezzanine because WGD was not asked to consider that design element. BLT, in contrast, included a second-floor mezzanine in its budget because that design element was included on the list that staff provided through Green Leaf on August 3.

Mr. McNalty increased WGD’s pre-engineered steel arena estimate by \$995,037.02 to account for a second-floor mezzanine. Once again, Mr. McNalty explained that he made this adjustment in an effort to provide an “apples to apples” comparison to Council. Once again, the alterations made to WGD’s calculations likely exaggerated the price difference between the arena options in favour of Sprung.

Mr. McNalty testified that he arrived at the \$995,037.02 figure by extrapolating from the WGD estimate and the BLT budget. Though he did not have prior experience pricing a second-floor mezzanine for an arena or similar building, he felt he understood what was required. Mr. McNalty testified that there was not enough time to consult WGD on the adjustments

before the staff report had to be finalized. Mr. Dabrus, in his testimony, provided some comments on Mr. McNalty's work, suggesting at one point that the adjustment was "excessive." Ultimately, he stated that he was not in a position to estimate the cost of a second-floor mezzanine. No witness at the Inquiry testified that Mr. McNalty's estimate was objectively accurate.

Regardless of the accuracy of Mr. McNalty's second-floor mezzanine cost estimate, the staff report artificially inflated the cost of the pre-engineered steel arena by approximately \$1 million by stating that a second-floor mezzanine was included in the fabric building costs "whereas a similar addition to the Pre-Engineered Steel arena would add up to \$1,000,000 investment." The staff report did not advise that this cost was already accounted for in the pre-engineered steel arena estimate of \$12.3 million, leading the reader to believe that an additional \$1 million should be added to that estimate to account for the second-floor mezzanine. Mr. Houghton and Mr. McNalty agreed in their testimony that including this statement in the staff report was an error.

The staff report further exaggerated the difference in price between the fabric and pre-engineered steel arenas by failing to account for the required elevator to the second floor in the fabric arena, despite the fact that the report identified it as a basic design component. Although Mr. McNalty took this \$83,602.50 cost from BLT's budget and included it in his \$995,037.02 increase to WGD's pre-engineered steel estimate, the cost for the elevator was not included in the price presented for the fabric arena. The effect of this error was to further increase the price difference between the two options by \$83,602.50.

Site Servicing

WGD estimated that site servicing associated with constructing an arena would cost \$1,164,281. Mr. McNalty added that cost to his estimate for the pre-engineered steel arena, but made no such adjustment to the Sprung price presented in the staff report. Mr. McNalty testified that the BLT budget would have included some site-servicing components. Any site-servicing components in BLT's budgets, however, could not have been comparable to WGD's estimate for site servicing, as BLT was not asked to provide a budget

that included comprehensive site servicing at the pool and arena. As I discuss above, the staff report proposed that the Town take responsibility for site servicing at both sites.

As I explained above, site-servicing costs would be the same for a pre-engineered steel and a fabric arena. The staff report, however, erroneously included \$1,164,281 for site servicing in the cost of pre-engineered steel, while the Sprung budget did not include any material site-servicing costs.

The discussion in the staff report about site-servicing costs for the arena further exaggerated and misrepresented these costs for the pre-engineered steel arena. The report did not identify that the pre-engineered steel estimate included site-servicing costs. Instead, it stated that arena site servicing would cost \$500,000, effectively adding another half-million dollars to the \$1,164,281 in site-servicing costs already included in the pre-engineered steel estimate.

Design and Construction Contingencies

WGD's pre-engineered steel arena estimate included a 5 percent design contingency and a 5 percent construction contingency. In preparing his analysis, Mr. McNalty first removed both contingencies. By taking this step, he testified, he was left with the "hard costs" of construction. From here, Mr. McNalty added additional hard costs (the recommended upgrades, the second-floor mezzanine, and the site-servicing costs, all discussed above) and then recalculated the contingency based on the total increased hard costs.

In the early iterations of his cost comparison spreadsheet, Mr. McNalty included different contingencies for the Sprung pool building and the arena options. In his final adjustments, however, he increased the fees for design, permits, and miscellaneous contingencies for pre-engineered steel from WGD's 5 percent to 10 percent. Mr. McNalty did not recall why this increase was made or who made the decision behind it. Although Mr. McNalty's contingencies differed from those WGD used, Mr. Dabrus did not take issue with them, and he testified that WGD's contingencies may have been low. However, the Sprung contingencies were removed completely from the final staff report.

As I explained above, both pre-engineered steel and the Sprung arenas required contingencies. The fact that the Sprung arena estimate did not

include a contingency further inflated the price difference between the two building types. Moreover, the staff report did not explain that the \$12.3 million estimate for the pre-engineered steel arena included contingencies, leaving it unclear whether that estimate needed to be further increased for contingencies.

Cumulative Effect of Adjustments

I accept Mr. McNalty's evidence that the information in the final staff report was the result of directions he received and that he was not permitted to include certain information despite his desire to do so. Although Mr. McNalty could not remember who gave him all the directions, I am satisfied after considering all the evidence that the directions came from Mr. Houghton. The adjustments and the related discussion in the staff report artificially inflated the cost difference between the fabric and pre-engineered steel arenas by at least \$3.39 million through the unnecessary addition of the following costs:

- \$1.15 million for the "green initiatives";
- \$1 million for the statement that the pre-engineered steel estimate did not include a second-floor mezzanine, when it did;
- \$83,602.50 for the elevator that was included in the second-floor mezzanine costs for pre-engineered steel but not in the costs for the Sprung arena; and
- \$1,164,281 for site servicing, which the report did not state was already included in the pre-engineered estimate and, instead, suggested additional costs for site works would be incurred.

In addition to these amounts, the price difference was also inflated by the failure to account for contingencies in the Sprung estimates and the statement that the pre-engineered steel facility would incur additional costs to achieve LEED silver certification.

This gross overinflation of the price difference was particularly unfortunate because Mr. McNalty's comparison analysis, and its treatment in the staff report, was unnecessary. WGD had already analyzed the arena

construction options and concluded the price difference was about only \$500,000. I am satisfied that this was a reasonable estimate and the one that should have been presented to Council, along with an explanation that the inclusion of a second-floor mezzanine may affect the estimates.

To the extent staff wanted an “apples to apples” comparison of WGD’s pre-engineered steel estimate with the actual arena budget provided by BLT, this was a task best left to WGD. Mr. McNalty agreed such a comparison would have “been a benefit” to the Town, but there was not enough time:

[W]e had pushed WGD to get their numbers to us on the expectation that we would have the Sprung numbers at the same time, and then there was a delay in getting the Sprung numbers. So other than that timing issue, we could have gone back to WGD and asked them for further numbers.

WGD’s Report

As described above, WGD’s original estimate (\$7,632,124.29) for a pre-engineered steel arena was not included in the final staff report. The report provided only the adjusted pre-engineered steel arena estimate of \$11.1–\$12.3 million. Although WGD’s original estimates were not included in the staff report, the section of the report that discussed new arena options nonetheless included the following statement:

The estimated cost for the supply and construction of the basic Insulated Architectural Membrane arena is \$7,392,000 as compared to \$11,100,000 – \$12,300,000 (*estimates provided by WGD*) for the Pre Engineered Steel arena built using conventional construction methodology. [Emphasis added.]

Mr. Houghton added the statement “estimates provided by WGD” to the final report during his final edits on the afternoon of August 24. When Mr. Dabrus was shown the estimates for a pre-engineered steel arena that the staff report attributed to WGD, he stated: “I’m not quite sure where the numbers come from.” He further testified that nobody ever indicated to him

that Council would be told WGD's estimates for a pre-engineered steel arena were between \$11.1 and \$12.3million.

Mr. Houghton testified that he added the statement that the estimates were provided by WGD because,

I was – again, my impression at the time ... not having full understanding of what WGD was doing, but I thought that's ... where these numbers were coming from. Whether – again, David added the numbers that were, you know ... to get it to that LEED silver, but I ... put that in there.

Elsewhere in his testimony, Mr. Houghton stated that, at the time the staff report was finalized, he believed the report's \$11.1–\$12.3 million estimate for a pre-engineered steel arena was provided by WGD. He then told the Inquiry:

[I]t was my understanding that those numbers were from WGD. If ... staff had not – didn't have that understanding, I sent it to everybody and said please adapt as needed or required. It was my understanding that that's ... what it was. And ... I did that, forwarded it to the people who were also involved; nobody made the change.

Mr. Houghton reiterated in his closing submission that he believed the pre-engineered steel arena estimates in the report were, in fact, sourced from WGD.

I do not accept Mr. Houghton's evidence.

Mr. Houghton testified several times during the Inquiry that he was aware Mr. McNalty had made adjustments to WGD's estimates. Furthermore, Mr. Houghton confirmed during his evidence that he reviewed WGD's report when he received it on August 17. Mr. Houghton therefore would have seen WGD's estimate for a pre-engineered steel structure and would have known it was much lower than the estimate found in the staff report.

Given the above, I am satisfied Mr. Houghton added language to the staff report indicating that the report's estimates for a pre-engineered steel arena were created solely by WGD despite knowing the estimates had been adjusted by Mr. McNalty. The addition of this language further misled Council members, who would have mistakenly understood from reading

the report that the estimates were solely the work of an independent, third-party architectural consultant.

Members of Council should have been provided with WGD's report to better equip them to understand the structures being considered and the staff report's cost comparison.

Description of Staff's Research

As I discuss in the previous chapter, the procurement process recommended by the staff report was changed from a competitive procurement to a sole-source procurement under Ed Houghton's direction less than 12 hours before the report was finalized. The staff report left the false impression that extensive research and due diligence underpinned the recommendation that the best and most cost-effective option was for the Town to sole source the fabric structures. Specifically, the report stated:

Staff have exercised due diligence in the research of potential forms of construction and feel that there would be no additional advantage to be gained from a further tender process for the following reasons:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structures when producing estimates.

Cost effectiveness and benefits to the Town: through the investigative process, it has been determined that the Architectural Membrane structure would provide the most cost effective and all inclusive solution for the Town's needs.

Sole Source: through Staff research, it has been determined that there is only one supplier that can meet the specifications Staff developed for the facilities.

If one of the more traditional forms of construction had been determined to provide the most cost effective solution there would have been a further need to issue an RFP for construction since there

are many companies capable of providing this service. There is only one manufacturer of Architectural Membrane structures that has a proven track record of success and that distributes this technology.

Ms. Leonard testified that she consulted the Town's purchasing by-law when drafting this section of the staff report and that it reflected the discussions of the Executive Management Committee and Mr. McNalty on the morning of August 24.

There are several problems with this passage in the report.

First, the staff report did not accurately describe the research underpinning the recommendation that Council take the unusual step of sole sourcing this multimillion-dollar procurement. As detailed in Part Two, Chapter 10, staff mistakenly believed that comprehensive research had been conducted. Although WGD provided staff with information comparing pre-engineered steel arenas with fabric arenas, WGD's conclusions were not shared with Council. Moreover, WGD was not asked about key assumptions underlying the recommendation: advantages and disadvantages of a design-build process, the ability of Sprung structures to be LEED certified, and whether contingencies were appropriate for Sprung structures.

Second, the passage wrongly implied that sole sourcing was permissible because staff's "investigative process" had determined that the Sprung structures would "provide the most cost effective and all inclusive solution for the Town's needs," and that there would be "no additional advantage to be gained from a further tender process." Finding the "most cost effective and all inclusive solution" is the purpose of competitive procurement. Competitive procurement surveys the market in a fair, objective, and transparent manner to achieve the best result for the best price.

Third, in stating that Sprung was the "only supplier that can meet the specifications Staff developed for the facilities," the report misrepresented the Town's needs when it came to recreational facilities. Ms. Leonard confirmed that the "specifications staff developed for the facilities" were "[i]nsulated architectural membrane structure[s] ... and pretty much those alone." Ms. Leonard, whose testimony in this regard I accept, stated that Mr. Houghton was responsible for developing these specifications.

Mr. McNalty agreed in his testimony that "there was no reason why" staff

could not have chosen “specifications” that allowed for any design-build recreational facilities and then used an RFP process to determine whether to build fabric membrane or pre-engineered steel facilities. He acknowledged that, “from the point of view of having more fulsome information, [an RFP] would have been good to have.”

I am satisfied that a pre-engineered steel building could have met the Town’s need for an arena. It is also possible, as Mr. Dabrus of WGD indicated, that a pre-engineered steel arena might have been a cheaper alternative had there been a competitive RFP procurement process.

Fourth, this passage suggested staff had conducted research to conclude that no other supplier could provide an insulated architectural membrane. Elsewhere, the report also stated that, with regard to the pool, “We are only aware of one (1) supplier of the type of Insulated Fabric Membrane structure that would allow for satisfactory year round swimming pool use.”

As I discuss further in Part Two, Chapter 14, Tom Lloyd of Sprung testified that, at this time, his firm maintained a spreadsheet of competitors that also sold fabric structures. The spreadsheet identified several companies that offered insulated fabric membranes. The spreadsheet recognized that at least one competitor, Norseman Structures, offered structures with R-30 insulation and had also built recreational facilities.*

At the hearings, Tom Lloyd testified that a key difference between Sprung and its competitors was that Sprung manufactured its structures with insulation built in, whereas the competitors added insulation after the fact – sometimes by a third party. With respect to Norseman, Mr. Lloyd initially testified that he understood the company “wasn’t even selling in this part of the world,” but then acknowledged that Sprung’s spreadsheet stated that Norseman did distribute in Ontario. Whether there were viable alternatives to Sprung is a question that would have best been answered through a competitive procurement.

In this respect, Ms. Leonard’s initial draft of the report stated something different about competitors when it came to the pool, namely: “Council should be aware that there are a limited number of suppliers for this type

* As noted in Part Two, Chapter 7, a building’s insulation is measured by “R” value. A building with a higher R value is better insulated.

of constructed building.” In a later draft, Ms. Leonard edited the passage to read: “Council should be aware that there are a limited number of suppliers for this type of constructed building that would allow for year round use.” The final staff report did not make any reference to other suppliers.

Ms. Leonard testified that the purpose of the original wording of this passage was to inform Council that there would not be many bidders in a potential RFP for a fabric membrane pool cover. The revision changed the sentence from a caution to Council about the number of local fabric structure suppliers to an inaccurate statement that could be used to justify a sole-source procurement.

Finally, the above passage inaccurately stated that an “[e]lement of competition was included in the gathering of estimates,” which I discuss further in the next section of this chapter.

WGD as a Competitor

The staff report contained a “Discussion” section, which listed purported reasons why Council could procure recreational facilities directly from Sprung without undergoing a competitive procurement process. One of the stated reasons was:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew that they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structure when producing estimates.

This section was directly reproduced from the “procurement section” email Ms. Leonard sent to Mr. McNalty, Mr. Houghton, and the Executive Management Committee at 10:46 a.m. on August 24. However, this statement was inaccurate. Neither Sprung, BLT, nor WGD believed it was taking part in a competitive estimate-gathering process.

Richard Dabrus of WGD testified that his company’s mandate in its work for Collingwood was to impartially advise the Town on how certain

construction types might fit its interests, not to compete with other suppliers for a construction contract.

BLT's Mr. Barrow testified that his firm understood it was competing for the Town's business against the multi-use facility described in the Steering Committee's report.^{*} He was not aware of BLT competing with any other construction types. Although Mr. Barrow may have believed BLT was competing against a multi-use facility, this is not the type of competition described in the staff report. Moreover, the Steering Committee's estimate was created in a non-competitive context, was known to the public before the Town was introduced to BLT, and was publicly criticized by Council.

I am satisfied that BLT did not believe it was in any form of meaningful competition. When asked to explain the extent of the competition between BLT and the multi-use facility described in the Steering Committee's report, Mr. Barrow stated:

I don't know if I knew an understanding [*sic*] of how [the competition] was unfolding other than we were needed to give a price so that it would be comparable to whatever the [multi-use facility] building price was.

Similarly, Mr. Houghton testified that he did not recall informing BLT that it was competing against any construction types aside from the Steering Committee's multi-use facility. Mr. Houghton testified, however, that he told Sprung representatives at either the July 27 or August 3 meeting that the Town was gathering estimates for other construction types (see Part Two, Chapter 8). I do not accept this evidence. No other witnesses recalled this topic being raised at the meetings. Tom Lloyd of Sprung said the matter was raised at the July 11 meeting with the mayor and deputy mayor. At that time, however, WGD had not yet been asked to create estimates.

In any event, even if Mr. Houghton had advised Tom Lloyd at some point that the Town was looking at pre-engineered steel as well, this knowledge would not have made BLT's estimates the product of a competitive environment for two reasons. First, Mr. Lloyd and Sprung did not create budgets. Mr. Barrow at BLT did, and he did not understand there to be meaningful

* The Steering Committee's report is discussed further in Part Two, Chapter 2.

competition. Second, Mr. Lloyd testified that, when he learned the Town was also examining a pre-engineered steel facility, he learned as well that the Town was not interested in pre-engineered steel, a message that undercut any sense of competition.

Informing a potential supplier that the Town is looking at options is not a substitute for competitive procurement.

Ms. Leonard testified that it was inaccurate to describe WGD as being in competition with Sprung. She stated that WGD was not participating in any sort of competition but was rather researching “pros and cons” of different building types. Overall, she felt that staff’s estimate-gathering process leading up to the completion of the staff report had been “market research, getting some numbers to put into a report that should have had Council make a final decision ... ‘competition’ is not the right word.”

Mr. McNalty and Sara Almas, the Town clerk, both agreed that it was incorrect to state that BLT and WGD were in competition, since they were in different lines of business: Sprung was a contractor, while WGD was consulting on various architectural structures.

When asked why she used the term “competition,” Ms. Leonard stated:

This is again one of those things that I was directed to do at the [EMC meeting on the morning of August 24]. I had to come up with something to put in there, and those were the points to touch on that Ed had touched on when he was talking to us ... in his rationale, and I also believe in the phone call that I had the night before.

Ms. Leonard noted that she did not raise concerns with the Executive Management Committee over the accuracy of the wording because she felt that doing so ultimately would not make a difference in the final version of the report.

Mr. Houghton also understood that it was not accurate to describe WGD, Sprung, and BLT as participating in a competitive estimate-gathering process. In an email to Mr. Dabrus after Council approved the construction of the Sprung structures, Mr. Houghton told Mr. Dabrus:

I believe the word competition meant that we were looking at different types of structures and your firm was aware that we were getting prices on other types of structures and your firm provided us the estimated numbers on the steel fabricated building. It did not mean however that you were in a competitive bidding process because we well know that you were providing budget numbers or estimates as our Central Park Project architect and not firm numbers as we may have gotten from a construction contractor.”

Mr. Houghton reiterated this point in his testimony and closing submissions, while attributing the error to a combination of Mr. McNalty and Ms. Leonard. He testified that the report’s description of WGD as being in competition with Sprung and BLT was “unfortunate text” before stating that the section of the report was drafted by Ms. Leonard and edited by Mr. McNalty. Mr. Houghton repeated in his closing submissions that the statement was inappropriate before saying that, “[r]egrettably, the inappropriateness of Ms. Leonard’s statement was not addressed by the remainder of the EMC or Staff members prior to the publication of the Final Staff Report.”

I agree with the assessment of Ms. Leonard, Ms. Almas, Mr. McNalty, and Mr. Houghton. Sprung and BLT were not in competition with WGD. Sprung and BLT were trying to sell the Town a product, while WGD was providing an assessment of the comparative costs and structural advantages and disadvantages of two styles of recreational facilities. These mandates are not the same and not indicative of a competition between the two companies.

I also accept Ms. Leonard’s evidence that Mr. Houghton directed her to use this inaccurate language.

In suggesting that there had been an element of competition in obtaining estimates, the staff report provided false comfort that, while there would be no competitive procurement, the Town was still receiving competitive prices. In reality, the Town solicited prices from a single supplier – BLT – through a process that was entirely devoid of competition or negotiation. As I explain in Part Two, Chapter 13, Mr. Houghton did not negotiate with BLT concerning its cost estimate.

Misrepresentation of Department Heads' Review

The final staff report stated:

This report was reviewed by the Executive Management Committee, Director of Parks, Recreation and Culture and the Manager of Fleet, Facilities and Purchasing August 21 and circulated to Department Heads for comment August 23. Comments received were reviewed and incorporated prior to having the report proceed to Council.

This statement was inaccurate. Both Mr. Houghton and Ms. Almas agreed that the report was not circulated to the Town's department heads on August 23 because the report was finalized only at noon on August 24.

The inclusion of this passage in the final report left Council with the false impression that the report's contents and recommendations – in particular the recommendation to sole source – had been reviewed by the Town's department heads and they had not objected to the report's recommendation.

Inaccurate Information About Funding

The staff report contained a section titled "Effect on Town Finances," which listed the total costs of the two Sprung facilities and described available options to fund them:

The Total Cost of the Two Buildings is \$10,617,000
Accessory Costs \$ 316,000
Site Servicing Costs for Both Buildings \$ 700,000
Total Cost (less taxes) \$11,633,000

The Town has the following funds available:

Reserve \$1,500,000
County – portion of Poplar Sideroad construction 2010 \$1,300,000
Collus PowerStream Partnership (to be confirmed by public) \$8,000,000

Potential [Development Charge] – Heritage Park – parking/landscaping
(22%) \$88,000
Potential [Development Charge] – Central Park – arena enclosure (18%)
\$821,488
Total Available (potentially) \$11,709,488.

The “Effect on Town Finances” section of the report was left blank in every draft until Ms. Leonard’s August 23 draft (see Part Two, Chapter 10). The initial draft of the section included the above list of available funds but did not yet include the total costs of the structures recommended by staff. The section also included information on the costs of debentures that could be used to fund the purchase of recreational facilities. The section remained the same until Mr. Houghton sent the final draft of the report to Mr. McNalty and the Executive Management Committee on the afternoon of August 24. The August 24 version added the total costs for the Sprung structures and removed the information regarding debentures.

This final version of the “Effect on Town Finances” section was inaccurate.

The total costs to construct new recreational facilities did not include the costs of renovating the Eddie Bush Memorial Arena, which had been assessed earlier in the report and was projected to cost between \$2.124 and \$3.124 million, depending on whether the Town could secure funding for the work. The failure to include this information provided the false impression that the projected cost of the work recommended by staff was lower than the amount of funds available to the Town to finance the work. Ms. Leonard testified that she did not know why information regarding the Eddie Bush Arena was not included in this section of the report.

Pool Information Removed or Omitted

The staff report’s assessment of a fabric membrane pool cover changed in several ways between Ms. Leonard’s initial draft and the final draft. Over the course of several revisions to the draft, statements regarding risks associated with covering the pool were either removed or omitted.

Pool Cover Description Changes

Over the course of the drafting process, information that cast a fabric membrane pool cover in a negative light was removed from the staff report.

Ms. Leonard's initial draft listed certain disadvantages related to a fabric membrane pool cover, including: "We could find no other pools of this construction in Ontario," and "We do not have experience operating a year round pool of this nature." The last draft of the staff report that Ms. Leonard authored also stated, regarding a fabric pool cover: "There may be some planning issues that will need to be resolved." All these statements were removed from the report during Mr. McNalty's revisions on the night of August 23.

In her August 21 draft, Ms. Leonard also added a description of the benefits and risks that the Town would assume if it became an early adopter of fabric membrane technology. That draft stated:

[T]here are many advantages to becoming an early adopter or trend-setter for new concepts and technologies. The relationship with customer and vendor is synergistic. The customer is exposed to the problems, risks and annoyances of "being first" and is usually rewarded with especially attentive vendor assistance or support, preferential pricing, and favourable terms and conditions. The vendor benefits from receiving revenues, the customers' endorsement and assistance in further developing the product or its marketing program.

That text was also removed from the staff report during Mr. McNalty's revisions on the night of August 23. Mr. McNalty added a new passage to the arena section that praised the benefits of the Town being seen as an adopter of new technology, but it did not mention any of the corresponding drawbacks:

The technology utilized in this building system is innovative and presents well for energy efficiency and the environment. The arena will not only satisfy the immediate ice needs of the community but will also further enhance the Town's image as a leader in the adoption of new technologies.

Ms. Leonard testified that it would have been important for Council to have received the information in the original passage because “we had no experience with that type of technology ... And usually, with any new building there’s always a few quirks that come along.” She stated that she was not involved in the discussions that resulted in the deletion of information from the report. Ms. Leonard also noted that, in hindsight, she should have raised concerns regarding the removal of the information, but she was “stunned” by the high volume of changes that had been made to the staff report.

The removal of this information gave Council an incomplete picture about proceeding with fabric structures. It suggested that the decision to use an unusual building material was without risks. It was not. An objective and impartial staff report produced by a transparent process would have contained Ms. Leonard’s cautions.

Pool Condition

The final staff report attached an appendix that included information about recent upgrades to the outdoor pool’s piping and chemical addition systems. It also stated that the pool was “currently scheduled for an upgrade of the recirculation and filtration system in the fall of 2012.” The report did not provide other important information about the condition of the outdoor pool.

Volunteers built the outdoor pool in 1967. Mr. McNalty testified that staff did not assess the feasibility of covering the outdoor pool with a Sprung-style building before the July 16, 2012, Council meeting. He noted that upgrading the pool was “an ongoing project,” referencing work on “the piping, the pump, the filtration and so on” that had been done a year or two earlier and explaining that “those changes were being made in order to bring the pool up to current health standards.” When asked if he expected more investigation before Council decided to cover the pool, Mr. McNalty responded that, though simply covering the pool “without changing the intent of the pool” may not have required “a whole lot more investigation,” the scope of the changes to the project introduced after the contract was signed “certainly warranted a more detailed investigation.” As Mr. McNalty explained: “At the end of the day, the only thing they really salvaged was the concrete tub.”

Other Information Removed from Drafts

Other information was removed from early drafts of the staff reports that should have been included in the final version. This was consistent with Deputy Mayor Lloyd's instruction that "we must be careful not to give too much information." The omissions I discuss below deprived Council of the opportunity to make an informed decision to invest several million dollars in two recreational facilities of atypical design.

Detailed Estimates

Earlier versions of the staff report contained detailed financial information to help explain the report's cost estimates. This information was removed by the time the staff report was finalized.

Mr. McNalty's first revisions to Ms. Leonard's draft included cost estimates for a fabric membrane pool cover, a fabric membrane arena, and a pre-engineered steel arena as well as detailed tables explaining the constituent elements of the estimates.*

Detailed information on the cost estimates was included in subsequent drafts of the report up to and including Ms. Leonard's draft completed on the afternoon of August 23.†

Mr. McNalty's revisions to the staff report on the night of August 23 removed much of the detailed information. All tables outlining the constituent parts of the estimates were eliminated. The total costs for the structures as well as site-servicing costs were retained but embedded within longer paragraphs describing the traits of the structures. Information on permit costs, contingencies, and Mr. McNalty's recommended upgrades to the pre-engineered steel arena were removed entirely. Mr. Houghton's revisions to the staff report on the morning of August 24 added new stand-alone

* The information in these tables included site-servicing costs, contingencies, and Mr. McNalty's recommended upgrades to bring the pre-engineered steel arena in line with LEED silver standards.

† Over the course of this period, Mr. McNalty's estimate for a pre-engineered steel arena mezzanine was also added to the staff report.

sections describing the costs of the fabric membrane pool and arena and the corresponding site-servicing costs. The costs for a pre-engineered steel arena and associated site costs remained embedded within longer paragraphs. The final version of the report maintained this format and continued to omit the detailed financial information that had been included in earlier drafts.

Mr. McNalty testified that the decision to remove the detailed financial information took place over the course of correspondence on the evening of August 23. He could not recall who made the decision to remove the detailed estimates from the report but stated that the decision was not his. He further stated that, if given the choice, he would have kept the detailed figures in the staff report “[b]ecause they help to fulfill the whole picture of the ... potential investment.”

There was no reason to remove the detailed financial information from the report. I agree with Mr. McNalty that it provided Council with a fuller picture of the significant investment being proposed. Among other things, the detailed information would have revealed the assumptions underlying the cost estimates, which could have led to further discussion or questions, including about Mr. McNalty’s adjustment to the cost of the pre-engineered steel arena or the removal of contingencies.

Estimates of Operating Costs

The final staff report omitted important information about the operating costs for the proposed arena and pool. Marta Proctor, who at the time of the events was director of parks, recreation and culture, testified that, from the outset, she believed the staff report should include information about operating costs, as “any capital project that we would undertake should have appropriate drawings, costing and an operating business plan associated with it.” Similarly, Ms. Leonard testified that she assumed operating cost information would be available.

The early drafts of the report included placeholders for information on operating costs. Ms. Leonard’s August 23 draft included the following information about the estimated pool operating costs:

Council is aware that operating a year round pool facility will increase operational costs. Estimates have been derived based on the average five year historical net departmental results from the Centennial Pool operation. During the period 2007 to 2011, the total net departmental cost to ... run the pool was \$337,600 or, on average, \$67,520 per three month season. Extrapolating this average to a twelve month period would result in additional annual operating costs of approximately \$270,000.

That draft also explained the anticipated increase in operating costs for the proposed new arena:

Operating costs estimates received from PRC [Parks, Recreation and Culture Department] look at the current situation with the EBMA [Eddie Bush Memorial Arena], outdoor rink and Curling Club. The Curling Club has been included in the analysis because of the interconnectedness of the ice plant with the outdoor rink and staffing levels available for all of the facilities. Currently, the 2012 net departmental budgets for the three facilities shows [*sic*] a requirement for \$315,493 from tax revenues to sustain operations. The estimated increase in operational costs for operating four facilities is \$92,300 or a total of \$407,775 required from taxes to sustain the operations.

This information was removed from Mr. McNalty's August 23 draft.

Mr. McNalty stated at the hearings that he was directed to remove operating costs from his August 23 draft. He said he did not recall who gave the direction or why it was made.

The final report did not address operating costs at all.

Mr. Houghton testified that he did not think it was important for members of Council to have the operating cost information to inform their consideration of the recreational facilities over the weekend in advance of the Council meeting. When asked about the decision to remove the operating costs information from the staff report, Mr. Houghton responded:

I think we had a conversation about the operating costs, and I think that we had kind of, amongst the group, decided that the operating costs will be the operating costs, and Council had pretty much said that there is an urgent need for ice and water, and whatever the operating costs, they were willing to – to pay.

I think ... in the presentation though, Marjory gave an explanation of the operating costs. So we felt that in the report, it probably wasn't the location to do it. It would be better in the presentation.

As I discuss in more detail in Part Two, Chapter 12, the operating cost estimates included in the slide presentation were ballpark figures.

Conclusion

The staff report was deeply flawed. It did not permit Council to make an informed decision about a multimillion-dollar procurement for two recreational facilities, an issue of intense public interest. Rather than fairly present the options before Council, the staff report recommended a sole-source procurement based on misrepresentations, misstatements, mischaracterizations, omissions, and other inaccuracies. Several factors contributed to this result.

First, the short turnaround time for the report gave staff insufficient time to investigate both the pool and the arena. As I have discussed, staff were not comfortable raising their concerns about the deadline, nor did they believe that speaking up would make a difference. The August 27, 2012, deadline, among other things, prevented staff from properly researching Sprung and competitive structures further, or having WGD complete energy modelling and a further cost comparison based on the same information provided to BLT. The short timeline also created an environment where several critical decisions were made at the eleventh hour, including the decision to sole source. The decisions, as a result, were rushed, unconsidered, and vulnerable to improper influence or motives.

Second, Deputy Mayor Lloyd had inappropriate influence on the report's drafting. The deputy mayor was an advocate for Sprung before the July 16 Council meeting. He continued to advocate for Sprung when he

reviewed drafts of the staff report and discussed recreational facilities with Mr. Houghton. It is not surprising that the final report presented Sprung as an obvious choice, so much so that a competitive procurement was unnecessary. The deputy mayor's influence is palpable throughout. The staff report is an illustration of why individual members of a town's council should not be involved in staff's work.

Finally, while staff were not blind to the above concerns, they did not believe they could intervene.

Mr. McNalty testified that he did not believe it was his place to question the directions of the CAO or the Executive Management Committee.

Ms. Almas and Ms. Leonard testified that they did not raise concerns or object because they believed doing so would be simultaneously futile and place their employment at risk.

These circumstances created an environment where staff did not want to question Mr. Houghton's approach, and Mr. Houghton took their silence as consent.

The Town's interest in receiving non-partisan, objective, independent advice before a multimillion-dollar procurement was utterly ignored by this dynamic.

The Lead-up to the August 27, 2012, Council Meeting and Vote

As the August 27, 2012, Council meeting approached, Paul Bonwick, acting Chief Administrative Officer Ed Houghton, and Deputy Mayor Rick Lloyd discussed how to promote sole sourcing and Sprung Instant Structures Ltd. to Council. Mr. Bonwick lobbied members of Council, including his sister, Mayor Sandra Cooper, without revealing he had been retained by BLT Construction Services Inc., Sprung's usual building construction partner in Ontario, or that his company Green Leaf Distribution Inc. would earn a success fee if Council voted for Sprung.

Meanwhile, a community group formed to oppose Council's departure from the recommendations of the Central Park Steering Committee. A representative from the group spoke at the August 27 Council meeting, questioning several aspects of the recommendations set out in the staff report. After that presentation, Tom Lloyd, a regional sales manager at Sprung, spoke about his company's structures in glowing terms. Finally, Mr. Houghton and Town Treasurer Marjory Leonard presented the staff report and the recommendation that Council sole source Sprung arena and pool facilities.

At the end of the meeting, Council voted to follow the staff report recommendation. In doing so, many Council members expressed their trust that staff had done due diligence in making that recommendation.

Friends of Central Park

While staff prepared the staff report, a community group that identified itself as "Friends of Central Park" formed to oppose Council's departure from the recommendation made earlier that year by the Central Park

Steering Committee to explore a multi-use facility (see Part Two, Chapter 2). On August 10, Paul Cadieux, a Collingwood resident, sent an email to an undisclosed list of recipients, including Marta Proctor, the Town's director of parks, recreation and culture, with the subject line "Friends of Central Park Collingwood – Do It Once and Do It Right!" The email stated that the message had been sent to those who provided input on the Collingwood Central Park Project and to those identified as key stakeholders in the community. It identified the Friends of Central Park as a group of residents who wanted Council to build a community recreation centre in one location and to wait until funding was in place to do so.

Mr. Bonwick's Promotion of Sprung

Mr. Bonwick testified that, in the lead-up to the August 27 Council meeting, he promoted the Sprung structures in conversations with Council members and other community leaders, as had been agreed at the July 26 meeting between BLT and Green Leaf (see Part Two, Chapters 6 and 8). He stated that the conversations had two components. First, he would "highlight the competence" of Sprung structures to meet the community's needs and to "get people nodding their head saying, hey, this ... seems like a great solution." Second, he explained that, if the individual appeared receptive, he would talk about expediting the process and "how ... you move this thing forward in a manner that actually allows [Council] to deliver." More succinctly, he said: "I think, in short, if I was to capture it in a sentence, it was, in part, my responsibility to create the environment where [Council] would go in the direction they did." In other words, the decision to sole source the Sprung arena and pool.

In further testimony, Mr. Bonwick stated he likely would not have raised sole sourcing directly in his conversations; rather, he had "general conversations with various individuals in different environments related to how ... Collingwood Council might embrace a solution that would allow a timely delivery of something that they had been engaged in for some time." He continued that there were opportunities on social occasions to have discussions "with various members of Council." Some of the conversations occurred the

week before August 27, when Council was in Ottawa for the annual conference of the Association of Municipalities of Ontario.

When he spoke to councillors, Mr. Bonwick testified that he made the deliberate choice not to disclose that he was working for BLT, the company that would likely build the Sprung structures. He explained that, for every project he took on at the municipal level, he had to decide whether to have a “public role” or work “more behind the scenes”:

My company, or my companies, are engaged for the purpose of trying to advance a particular initiative that somebody in the private sector wants. Sometimes that involves a municipal government. You want to look at what is the best role you can play to serve your client's needs.

In this particular instance, it was my decision that the best role was for me to work, not in a public and profile manner, but rather work strategically to support and message what I thought was important for them.

Mr. Bonwick was lobbying when he promoted Sprung to members of Council. There is nothing inherently improper about lobbying. It can be beneficial to municipal governments. However, it must be transparent. The members of Council who Mr. Bonwick lobbied did not have the benefit of understanding what he – the mayor's brother and close advisor – stood to gain if the Town voted to proceed with Sprung. They were entitled to know that Mr. Bonwick was acting as a lobbyist so they could take this fact into account when evaluating what he said. Dealing with a municipality involves dealing with the public, and that requires transparency, among other things.

In his closing submissions, Mr. Bonwick acknowledged he should have been more transparent: “[D]uring that time there was no effort or instruction provided on my part to conceal this disclosure. That said, I should have handled it in a much more robust manner similar to my involvement with the Collus share transaction.” However, as I describe in Part One, Inside the Collus Share Sale, I do not agree with Mr. Bonwick's characterization of the disclosure he made in respect to the Collus Power share sale transaction (see Part One, Chapter 4).

Mr. Bonwick's Discussions with Mayor Cooper

On August 23, 2012, Mr. Bonwick emailed Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton a copy of a *Toronto Life* article from June 2011 about a hockey arena in Etobicoke. The article, headlined “Apparently the Mastercard Centre for Hockey Excellence is a financial sinkhole,” reported that the municipality had provided \$35.5 million in capital guarantees for a private four-pad ice hockey arena and that the investors could not make the related loan payments. In his covering email, Mr. Bonwick wrote: “[T]his may be a useful article to read for members of Council and Staff. It would be very useful to have [Ms. Leonard] send it out as an example of how an expensive private partnership can go wrong!” Mr. Bonwick also commented, “Classic example of what happens when you over build.”

Although there is no evidence that Ms. Cooper followed Mr. Bonwick’s direction to circulate the article, she did mention it during the August 27 Council meeting:

We look at Etobicoke; they have the former Lions Arena or the Mastercard Centre, a \$43 million facility. They can't meet their loan payments according to Toronto Life magazine just recently came out. I don't want to put us as taxpayers in that type of a situation.

At the hearings, both Mr. Bonwick and Ms. Cooper testified that Mr. Bonwick did not inform Ms. Cooper that he was working for BLT. Ms. Cooper stated that, except for the Etobicoke arena article, she did not discuss recreational facilities with Mr. Bonwick before the August 27 meeting. She said her brother’s email was unsolicited, and she did not discuss the matter further with Mr. Bonwick. In contrast, Mr. Bonwick testified he did discuss Sprung with his sister before August 27.

I am satisfied Mr. Bonwick did not expressly disclose to Ms. Cooper that he was working with BLT. This omission was consistent with his approach to other members of Council. I am also satisfied that Mr. Bonwick did speak with Ms. Cooper about the recreational facilities and, in doing so, advocated that she support proceeding with two Sprung structures.

As I discuss throughout this Report, Mr. Bonwick was one of his sister's closest advisors, a fact that was "common knowledge," according to Rick Lloyd. Mr. Bonwick would not forgo any opportunity to promote Sprung to a key decision maker in the Town, especially his sister, the mayor. Mr. Bonwick's email about the Etobicoke arena shows that he had no hesitation in arming his sister with information he believed would assist his client. The fact that Ms. Cooper raised the Etobicoke arena at the meeting shows that Mr. Bonwick was effective in his efforts.

In addition, the day after the August 27 Council meeting, Ms. Cooper sent Mr. Bonwick a draft press release about the new recreation facilities. She testified she sent the draft to him because the Town did not have a communications officer, and communications was her brother's "forte." I am satisfied that Ms. Cooper shared the press release with Mr. Bonwick because he had already been advising her about the recreational facilities and she relied on his assistance and input.

Mr. Bonwick testified it was his general practice not to disclose his business dealings with the Town to his sister. He explained he had taken this approach with a "number [of] initiatives in Simcoe County" and that PowerStream was, in fact, the exception. He also testified he did not disclose his Town-related dealings to his sister because he did not want to create a situation where Ms. Cooper "feels she somehow got [*sic*] to take into consideration my involvement when she's dealing with the matter." He explained that, once he learned through the PowerStream experience that a sibling relationship did not amount to a conflict under the *Municipal Conflict of Interest Act*, he decided it would be better not to disclose his involvement with BLT to Mayor Cooper. He claimed he made this decision so his sister would have "the ability thereby to independently, without consideration in any manner of speaking for my involvement – to make decisions she feels are best."

I do not agree with Mr. Bonwick's reasoning. It overlooks the critical fact that the apparent conflict persisted regardless of whether he disclosed his BLT retainer to his sister. Not disclosing his role deprived Mayor Cooper of the opportunity to assess for herself how it affected her ability to participate in a vote involving Sprung facilities or BLT.

At the same time, Ms. Cooper did not have the option to turn a blind eye to her brother's activities. If she knew that her brother and close advisor

was involved in Town business, she had a responsibility to understand, at the very least, what matters he was involved with, such that she could assess whether his involvement might give rise to a conflict for her. Although I accept that Mr. Bonwick did not disclose his work with BLT to the mayor, Ms. Cooper enabled this non-disclosure by agreeing not to ask questions about Mr. Bonwick's work on Town-related projects.

I am satisfied that Mr. Bonwick opted not to disclose his relationship with BLT to his sister or to others on Council because he believed he would be more effective if Council did not know he was lobbying them. I do not accept that Mr. Bonwick was seeking to protect his sister from undue influence. On the contrary, he did influence his sister in his pursuit of Green Leaf's success fee.

Strategizing in Advance of the Council Meeting

In the days before the August 27, 2012, Council meeting, acting Chief Administrative Officer (CAO) Ed Houghton and Deputy Mayor Rick Lloyd also took steps to encourage Council to vote in favour of purchasing Sprung structures. They consulted with their friend Paul Bonwick in their efforts.

"Our Plans for Monday Night"

On the evening of August 22, Mr. Bonwick, Mr. Houghton, and Mr. Lloyd spoke on two 20-minute conference calls. At 9:29 p.m., after the calls had ended, Mr. Lloyd emailed Mr. Bonwick:

I must say that I was rather surprised to hear from your Cousin Wasaga Mayor Cal Patterson that he had a meeting last week with Sprung. Cal told us this when he overheard you speaking about our plans for Monday night and the proposed Sprung building. I must say that I was disappointed that you had not informed me about this presentation because if Cal wasn't supportive he could have caused us a great deal of embarrassment especially when he grew up in Collingwood and as County Warden.

Mr. Lloyd and Mr. Bonwick gave different accounts about the origins of this email.

According to Mr. Lloyd, he spoke with Cal Patterson, the mayor of nearby Wasaga Beach, at a County Council meeting on August 22, before he emailed Mr. Bonwick. As reflected in the emails, Mr. Patterson was the cousin of Mr. Bonwick and Mayor Cooper. Mr. Lloyd testified that Mr. Patterson told him that Mr. Bonwick had made a presentation to Wasaga Beach council about Sprung structures. In his testimony, Mr. Lloyd said that this news upset him because there was already public opposition to the Sprung structures in Collingwood and, he continued, “I didn’t need all of a sudden more people coming in from left field against what we’re trying to do.” He recounted how, when he questioned Mr. Bonwick about the Wasaga presentation, Mr. Bonwick replied, “No big deal,” and “sluffed it off as ... nothing. And I wasn’t very pleased about it.” Mr. Lloyd could not recall when the conversation occurred, but said it was sometime after he sent the email.

Mr. Bonwick, in contrast, testified that Mr. Lloyd emailed him about Wasaga Beach after the two men discussed the matter on the conference call with Mr. Houghton. He said that, during the call, Mr. Lloyd was “very animated” about his conversation with Mr. Patterson and was concerned that presentations in Wasaga could delay what was happening in Collingwood. In response, Mr. Bonwick testified: “I said, listen ... [Y]ou’re kind of all over the map. Put it in an email, and ... I’ll deal with it.”

Mr. Bonwick continued that, after he received Mr. Lloyd’s email, he realized that Mr. Lloyd was confused because he had never made a presentation to Wasaga Beach. Rather, Mr. Bonwick learned later, it was Pat Mills, a Sprung manufacturer’s representative, who had spoken to the municipality. Nevertheless, Mr. Bonwick testified that he might have discussed Sprung with Mr. Patterson at his house at some point after Mr. Mills made his presentation.

Mr. Houghton also testified that Wasaga Beach was the focus of the 40-minute conference call on August 22, the same day that BLT delivered its budgets to Mr. Houghton. He added that he was “a hundred percent sure” that the three men did not discuss the pool and arena budgets that BLT had delivered that day. Mr. Bonwick also stated that he and Mr. Houghton did not discuss the budgets. Mr. Houghton explained he was “disjointed from

the conversation because it really didn't mean much to me." All he recalled was that "Rick [Lloyd] was amped up about for whatever reason. And I just didn't understand it, so I didn't get involved." Instead, Mr. Houghton testified, he continued to work on his computer while Mr. Bonwick and Mr. Lloyd spoke. He added that, at the end of the conversation, Mr. Bonwick directed Mr. Lloyd to "put it in writing and I'll deal with it."

When asked about the conference call, Mr. Lloyd testified he did not recall speaking with Mr. Bonwick and Mr. Houghton that evening.

I make the following findings on this evidence. First, I do not accept that the conference call focused solely on Mr. Lloyd's conversation with the mayor of Wasaga Beach. I find that this topic may have been part of the discussion. I am satisfied, however, that the focus of the teleconference was BLT's budgets, which had been delivered that day, and the August 27 Council meeting, which was five days away.

As I note elsewhere, Mr. Bonwick's company was set to earn a substantial success fee if Collingwood purchased two Sprung structures from BLT (see Part Two, Chapter 9). There is no reason he would not solicit the views of the deputy mayor and the acting CAO on the budgets his clients had just submitted. They included a 6.5 percent success fee that would ultimately result in a payment of \$756,740.42 (including HST). There is also no reason he would not take the opportunity to discuss the strategy for the upcoming Council meeting, or, as Mr. Lloyd described it in his email, "our plans for Monday night."

Second, I do not accept that Mr. Houghton was a passive participant in the conversation. Throughout his testimony, Mr. Houghton emphasized that he was very busy during this period, working "seven days a week, twenty hours a day." If that was the case, he would not have had time for a 40-minute teleconference on a topic that did not hold his interest. Rather, I am satisfied that Mr. Houghton was content to discuss BLT's budgets and the upcoming Council meeting with his two friends.

In this respect, I am satisfied that Mr. Lloyd was concerned that concurrent Sprung promotional efforts in Wasaga Beach could bring unwanted attention to consideration by the staff and Town Council of new Sprung structures for Collingwood. I also accept that Mr. Bonwick asked Mr. Lloyd to send his concern in writing so he could raise it with Sprung and BLT.

Mr. Bonwick, as would be expected, acted promptly whenever someone from the Town was concerned about or needed something from his clients.

In this case, 17 minutes after Mr. Lloyd emailed him about Wasaga Beach, Mr. Bonwick forwarded the email to Dave Barrow and Mark Watts, the executive vice-president and president, respectively, at BLT; Tom Lloyd and Dave MacNeil, the regional sales manager and sales manager, respectively, at Sprung; and Abby Stec, whom he had recently appointed as president of Green Leaf:

Can someone help me respond to this e-mail I received from the Deputy Mayor of Collingwood?

I would suggest, if it's true, that there are discussions taking place with Wasaga Beach officials at this critical juncture in time we all look uncoordinated at best and incompetent at worst. The Mayor of Wasaga Beach (also County Warden) is a cousin of the Mayor of Collingwood and best friends with Councillor Edwards. Imagine if Mayor Patterson wasn't impressed or felt Collingwood should put the brakes on and look at combing [*sic*] their efforts with Wasaga! Anyone [*sic*] of these or other scenarios could have a detrimental effect at this stage of the process.*

Mr. Barrow responded to Mr. Bonwick's email and advised that Green Leaf, BLT, and Sprung had already discussed Sprung's presentation to Wasaga and agreed that Sprung would "[s]top talks with any regions until the deal is sealed." He added: "Tom you need to get your boys and let them all know no conversations or deals until we sign this deal." The next day, Mr. Bonwick replied and confirmed he had "excused himself" before the matter had been discussed at a meeting and that "Abby informed me that everyone was caught off guard and that it appears to be just a regular sales call."

As a final matter, I am satisfied that Mr. Lloyd asked Mr. Bonwick to address Sprung's activities in Wasaga Beach because he knew that Mr. Bonwick was assisting BLT with its efforts in Collingwood. I do not accept Mr. Lloyd's evidence that he did not know that Mr. Bonwick was assisting

* The email chain included Rick Lloyd, Paul Bonwick, Tom Lloyd, Mark Watts, David MacNeil, Dave Barrow, and Abby Stec.

Sprung and BLT on Collingwood matters. His evidence on this matter does not make sense. In cross-examination, Mr. Lloyd confirmed that, as a result of his conversation with Mr. Patterson, he learned that Mr. Bonwick was assisting Sprung with its efforts in Wasaga Beach. He continued, though, that he never asked Mr. Bonwick whether he was also helping the efforts in Collingwood, which were set to go before Council the next week. “Why would I?” he testified. When asked why he would email Mr. Bonwick about “our plans for Monday night” if he did not know that Mr. Bonwick was also involved with Sprung and Collingwood, he responded, “I have no idea.”

In his evidence, Mr. Bonwick admitted he was confused by his friend’s testimony. He testified that, while he could not recall formally declaring to Mr. Lloyd that he was working with BLT, he assumed Mr. Lloyd knew about it. He said there would be no other reason for Mr. Lloyd to ask him to assist with the Wasaga Beach matter.

I agree with Mr. Bonwick. Mr. Lloyd understood that Mr. Bonwick was dealing with Sprung, and he knew that Mr. Bonwick would direct them to stop speaking with Wasaga Beach until the Collingwood deal was done. As things turned out, that is exactly what Mr. Bonwick did immediately following the phone call.

Planning How Best to Present Sprung to Council

Beyond the August 22 teleconference, I am satisfied that Mr. Houghton, Mr. Bonwick, and Deputy Mayor Rick Lloyd continued to discuss how best to present Sprung to Council in the days leading up to the Council meeting on August 27.

On August 26, the three men had another teleconference, which lasted approximately 30 minutes. Mr. Houghton testified that the call was about his quitting as acting CAO so he could focus on Collus PowerStream. He said that, at this point, he was “exhausted” from being “pushed and pulled in a whole bunch of different directions” and at his “wits end.” He “needed someone to listen,” so he decided to speak with Mr. Lloyd, because he believed his earlier attempts to raise concerns at the Town about his heavy workload had been ignored, and also with Mr. Bonwick, because he was an advisor to Mayor Cooper.

After the call, Mr. Lloyd sent Mr. Houghton the following email:

Hey keep up the good work! ! ! I believe that Tomorrow we will have the results we hope for! Its [*sic*] all coming together because of you and your leadership! This has been the best few months of council that I have ever been involved with and its [*sic*] all because of you and your team approach!

The deputy mayor also forwarded this email to Mr. Bonwick along with the message, “Keep his spirits up!”

Mr. Lloyd testified he sent these emails because he believed Mr. Houghton was “depressed and ... down”: pressures from groups opposed to the construction of the Sprung facilities had got to him. He asked Mr. Bonwick to assist because, he said, “We’re all friends, we all know one another and I wasn’t just going to ask the Joe public out in the street to do it, I figured that Paul could do it.”

Mr. Houghton’s and Mr. Lloyd’s evidence illustrates how close the three men were at this point. Although I accept that, on this call, Mr. Houghton may have complained about the stress of handling his many positions, I note that, according to Mr. Lloyd, Mr. Houghton’s stress related to the Sprung structures. In response, Mr. Lloyd sought to boost Mr. Houghton’s spirits and enlisted Mr. Bonwick to assist.

In any event, I do not accept that this 30-minute teleconference focused solely on Mr. Houghton’s apparent career stress. I am satisfied that the men discussed the August 27 Council meeting, for the reasons I discuss above.

Distribution of Sprung Materials

On the morning of August 24, Ms. Stec asked Tom Lloyd and Dave Barrow to send her copies of “the Sprung / BLT power point” in a format that was easy to print. Later that day, Mr. Houghton asked Town Clerk Sara Almas to hand deliver “Sprung packages” to all members of Council except Deputy Mayor Lloyd. Ms. Almas testified that the packages contained Sprung promotional materials.

The materials were not included in the agenda for the August 27 Council meeting. Ms. Almas testified she did not know why the materials were provided to Council separately and not included in the agenda. She noted that it was rare for Council to be provided with promotional materials from potential suppliers but stated that they were distributed in this case because staff was recommending a sole-source procurement.

Mr. Houghton's decision to provide Council with additional Sprung marketing material exacerbated the asymmetry of information Council received about Sprung structures. In the staff report, Council did not receive any meaningful information about WGD's third-party assessment of the differences between fabric buildings and pre-engineered steel. Now Council was receiving marketing information that had been created to sell Sprung structures, not to provide an objective assessment of their features.

Securing Mayor Cooper's Support

On August 26, Councillor Kevin Lloyd emailed Council and Mr. Houghton to explain why he opposed a multi-use recreation facility. Mayor Cooper responded, "Thank you for your explanation of logic. I look forward to our council meeting tomorrow since our conference participation."

Mr. Houghton forwarded Mayor Cooper's email to Deputy Mayor Rick Lloyd, stating, "Not sure what she means but I think we need to speak to Sandra today to ensure she is on board. In spite of what Paul says. Let me know when you are back."

In his testimony, Mr. Houghton stated that he and Deputy Mayor Lloyd never spoke with Ms. Cooper, as contemplated in the email. He also said he could not recall whether the words "in spite of what Paul says" was a reference to conversations that Mr. Bonwick had with Ms. Cooper in which she expressed support for the Sprung facilities or a reference to conversations he himself had with Mr. Bonwick in which his friend commented on the "general excitement" within the Town for Sprung structures.

When asked about this email, Mr. Lloyd testified he had discussions with Mr. Bonwick around this time about the mayor's thoughts on how to proceed with recreational facilities, though he could not recall the details.

I am satisfied the email meant what it said: Mr. Bonwick advised

Mr. Houghton and Deputy Mayor Lloyd that he had spoken to his sister and she supported proceeding with Sprung.

Deputy Mayor Lloyd Advocates for Sprung

On August 25 and 26, Deputy Mayor Lloyd exchanged emails with Councilor Dale West, a Council representative on the Parks and Recreation Advisory Committee (see Part Two, Chapter 1) who had attended the Town's meeting with Ameresco Canada Inc. and Greenland International Consulting Ltd. on April 17, 2012. Both companies had met with the Town to discuss their joint proposal to build a multi-use recreational facility and, on August 22, they were approved to send a delegation to the August 27 meeting.

In one email, Mr. Lloyd told Mr. West: "I Need [*sic*] you to show leadership with the sprung [*sic*] proposal!" He continued that the Ameresco presentation was "only a delegation" and that Council would not "make any motions or recommend anything but only ask questions! Process!" In contrast, he said the "motion being made [t]o go with Sprung is as a result of the staff report!"

The next day, Mr. Lloyd and Mr. West discussed the possibility of seeking private funding for recreational facilities – an idea that Ameresco would propose in its presentation on August 27. Mr. Lloyd replied that he did not see fundraising as a viable option:

Fundraising feasibility or more consultants or private partnership RFQ of RFP is merely stall tactics and if this project isn't approved to proceed on Monday then just kiss it goodbye because I will do everything I can the [to] derail it in the future as I will not have this as an election issue ... This passes tomorrow night the kids will be swimming in January and minor hockey will be skating in a new state of the art rink in May.

Dale this is exactly what you have Campaigned [*sic*] on and exactly what you have been preaching for ten plus years and now you have it at your finger tips so take a leading role tomorrow night and don't allow the bullshit to prevail as it has on this issue for years. [L]et [Ameresco] present and let them go away so we can get this done NOW!

When asked at the hearings why he felt so strongly that a final decision regarding recreational facilities needed to be made at the August 27 Council meeting, Mr. Lloyd stated:

I felt that it had to happen. Again, I micro-manage, I push to get stuff done. This thing has been spinning around ... for years and years and years. We had money from the Federal Government, the Provincial Government we sent back at one point in time because we didn't have funds to match it.

... It was time to get on with it ... other councillors, they had the same feeling.

There was so much noise going on from [supporters of the Steering Committee's multi-use facility] ... that, you know, if this wasn't going to go through now, then let's just forget it ... if we didn't get on with it now, before it got too late in ... this term, nothing would happen.

Later, Mr. Lloyd testified he believed that if the facilities were not completed before the next election, the matter would become an election issue, which would then stall construction indefinitely.

In this vein, both Mr. Lloyd and Ms. Cooper testified in response to questions from Mr. Bonwick that, if the recreational facilities had gone to a competitive tender, the corresponding delay would have meant that they would not have been finalized before the next election. They were concerned that, if a new Council was opposed to the recreational facilities, it (the new Council) could impede their completion.

I do not accept the suggestion that a competitive procurement would have necessarily prevented Council from completing construction before the end of its term. The Collus PowerStream sale showed that bidders can deliver comprehensive responses to an RFP within six weeks. BLT, in fact, prepared what was effectively a bid within three-and-a-half weeks of its first meeting with the Town on July 27.

Further Strategizing on the Day of the Council Meeting

On August 27, Mr. Houghton spoke with Mr. Bonwick by phone eight times before the Council meeting. He also had three calls with Ms. Stec. Mr. Houghton did not recall the specifics of the discussions but testified that some of the calls would have been to ensure that preparations for the Council meeting were complete. Mr. Houghton also recalled one discussion with Ms. Stec in which he asked her to make sure he received Sprung's presentation ahead of the Council meeting so it could be loaded onto the computer in the Council chamber.

I am satisfied that, when Mr. Bonwick discussed Sprung with Mr. Houghton, it was to advance both his own and BLT's interest in Council voting in favour of building a Sprung pool and arena. These discussions continued right up until the Council meeting itself.

Other Preparations for the August 27 Meeting

Councillor Chadwick's Enquiry Regarding Debentures

On August 23, Councillor Ian Chadwick emailed Ms. Leonard, the Town treasurer, asking for the following information:

- How using debentures to fund the purchase of the steering committee's multi-use facility would affect taxes.
- The extent to which taxes would need to be raised in order for the multi-use facility to be funded entirely by taxes.
- How much money the Town had available in reserves or other funds to put toward the construction of Sprung facilities, and what portion of the Sprung facilities would need to be funded by taxes and debentures.

Ms. Leonard responded to these questions the following day. With regards to the money the Town had available to fund the Sprung facilities, she stated:

At this point Ian I believe we have \$1.5m in reserve; \$1.3m coming from the County for the purchase of Poplar; \$88,000 in [development charges]

for Heritage Park landscaping; \$821,488 in [development charges] for Central Park and of course the \$8m from COLLUS. I am totally aware that Council has promised a public meeting prior to spending these funds.

An \$8m debenture would cost \$557,053 annually or \$42.86 (2.31%) increase for the average homeowner.

Aside from the information on the Town's reserves, development charges, and the Collus funds, none of the information provided by Ms. Leonard to Mr. Chadwick was included in the final staff report.

Call Between Mr. Houghton and Ms. Proctor

Marta Proctor, who had been out of the office on a previously scheduled vacation, emailed Mr. Houghton and the Executive Management Committee (EMC) on August 25, asking if one of them had time to review the staff report. "I've reviewed the information," she wrote, "and was hoping to clarify some of the numbers so I'm prepared to respond to any questions." Mr. Houghton invited her to call him the following day.

In her testimony, Ms. Proctor said she was concerned because the staff report did not have "the breadth or scope of the information" she thought the staff would be presenting to Council. She said that, on the call, she tried to explain her concern. She told Mr. Houghton she refused to sign off as agreeing with the contents of the report but would agree to sign off as having read it.

In further testimony, Ms. Proctor described Mr. Houghton's conduct on their telephone call as "extremely aggressive." She said he asked her why she was "being resistant" and why she was "not a team player." Moreover, "There was yelling, which I'm not used to from a person in his position." She said the conversation ended abruptly. Ms. Proctor testified that this conversation and the approach to the staff report led her to "do a lot of soul searching about what type of environment [she wanted] to be a part of." She said she worried for her job, as did others, and questioned whether it was worth remaining at the Town.

Mr. Houghton characterized his recollection as "diametrically different than Ms. Proctor's." He agreed he told Ms. Proctor that "she might not have

been a team player” but asserted that happened much later, after Council voted to proceed with the Sprung structures. On this call, Mr. Houghton said they “basically talked about where [the staff report] was going, what was happening, you know, would who be presenting [*sic*], that kind of stuff, and that she would be prepared to answer any questions if they were asked.”

Ms. Stec’s Search for Operating Cost Information

On multiple occasions before the August 27 meeting, Ms. Stec tried to obtain information about the operating costs of a Sprung building as compared to other construction types. On August 24, she emailed Sprung’s Tom Lloyd and Dave MacNeil, and BLT’s Dave Barrow:

Ed is going into several meetings today to share information regarding Sprung. I have armed him with the power point ... and hard copies of the power point, pool and arena projects. The only missing component is the cost comparison between traditional buildings, arenas and pool. If you could source out any numbers from existing projects for me this morning, it would be fabulous. When I did work with the school with both Yeardon and the Farley group, they has [*sic*] proformas for a diversity of their projects. Does Sprung have anything like that?

Tom Lloyd testified that the presentation Ms. Stec referenced in her email was the slide presentation he planned to use at the August 27 meeting. He said he provided the presentation to her because the EMC and Town Council “wanted a briefing, a preview of it, before we came up for the council meeting.” As noted above, Mr. Houghton spoke with Ms. Stec on the phone three times on August 27. He testified that, although he did not have a specific recollection, he believed one of the conversations with her was to ensure that he received Sprung’s presentation ahead of time so it could be loaded into the computer in the Council chambers.

With respect to cost comparisons, Tom Lloyd replied to Ms. Stec: “Attached is what we have. Dave Barrow, can you give Abby anything further?” The Inquiry did not receive the attachment to Mr. Lloyd’s email. Mr. Barrow responded: “I don’t have comparisons I believe you Tom had

this data.” Ms. Stec replied to Mr. Barrow: “Thanks Dave. I thought it would come from Sprung but don’t seem to be getting it from Tom??”

Ms. Stec tried to obtain operating cost information again on the morning of the August 27 meeting. She testified that Mr. Houghton asked her for information that compared the operational costs of Sprung structures to brick and mortar structures for use in his presentation to Council. She understood the request came as a result of community members who had been expressing concerns that the operating costs of the Sprung structures would be higher than those of a brick and mortar structure.

At 11:09 a.m., Ms. Stec sent an email to Tom Lloyd asking, “Any luck with the spreadsheet?” Mr. Lloyd responded, “Unfortunately, they have taken it off their website.” Ms. Stec replied:

OK thanks. Do you have contact information for them or other facilities that we could get operational costing on? Ed is still very much looking for some operational numbers.

Ms. Stec testified that the spreadsheet she requested from Mr. Lloyd was one she had previously seen on Sprung’s website. It compared operating costs of fabric structures with brick and mortar structures.

In his testimony, Tom Lloyd said he provided Ms. Stec with “quite a bit of operational data,” but that none of it included operating costs of Sprung pools or arenas. He noted that most of Sprung’s clients who had built pools or arenas had tied these facilities into other buildings, making it difficult to determine standalone operating costs for a Sprung pool or arena.

Mr. Houghton also asked Ms. Leonard for assistance with operating costs the day of the Council meeting. At 8:31 a.m., he forwarded Ms. Leonard a passage from a blog written by journalist Ian Adams and asked whether Ms. Leonard could calculate estimated operating losses for the Sprung structures. The blog stated:

The current operating losses for the municipal pool are \$30,000 for a facility that operates three months of the year. Operating 12 months, what will be the operating costs then [?] ...

If the question can't be answered, then council must defer the discussion until it can be answered ...

That would be the fiscally-responsible thing to do.

Ms. Leonard responded less than an hour later attaching a spreadsheet detailing the Centennial Pool operating costs and stating:

I estimate the operating loss would increase \$333,600 (\$275,000 more than we currently experience).

Marta and I did discuss this last Monday and we both felt that the loss would increase by around the \$270k mark without any real analysis. Staffing is the key.

In her testimony, Ms. Leonard stated that, at this point, staff working under Ms. Proctor had already provided her with operating cost information. She stated that the operating costs estimate she provided to Mr. Houghton was a “ballpark figure”:

We didn't know how much the increase in the chemicals would be for an indoor pool and those ... types of things. Staffing – we knew that there would be a requirement for more staffing but that the staffing would be offset to a large extent with increased revenues from the fact that it was now a twelve month pool ... as opposed to a three month pool that didn't operate on the rainy days or the bad days.

The process that began with Mr. Houghton seeking operating costs from Sprung through Ms. Stec and ended with Ms. Leonard providing a ballpark figure is emblematic of how the report drafting process that Mr. Houghton oversaw, including the short deadline, deprived Council of information that may have informed its decision on recreational facilities. Understandably, Council, staff, and the public wanted to know how much it would cost to operate a new arena and year-round pool, and how a Sprung building's energy use compared to other forms of construction. WGD advised that it did not have the time or the information to complete energy modelling. This gap led Mr. Houghton on a last-minute search for other sources of operating

cost information. In the process, Mr. Houghton learned that Sprung and BLT did not have that sort of information readily available.

Mr. Houghton's Slide Presentation

At 2:08 p.m. on August 27, Mr. Houghton sent a slide presentation titled “Central Park Staff Report.pptx” to members of the EMC and Ms. Proctor, asking them to review it in terms of inaccuracies. He asked Ms. Leonard specifically to look at the financial portion, “since you will be giving this part.”

Ms. Proctor responded with cosmetic changes and a suggestion that the number of additional staff be increased to two full-time persons, as opposed to one. The final version of the presentation stated that “an additional 1-1.5 full time equivalent employees” would be required. Ms. Leonard testified she likely reviewed the financial elements of the report and made any changes she felt were necessary.

BLT's and Green Leaf's Consulting Agreement

On the morning of August 27, Ms. Stec emailed Tom Lloyd, David MacNeil, Dave Barrow, Mark Watts, and Mr. Bonwick to arrange a meeting at the Green Leaf office at 4 p.m. “to coordinate final thoughts on the presentation for this evening.” Mr. Lloyd replied that he and the other Sprung representatives would be there.

When they met, Ms. Stec and Mr. Watts also signed their Intermediary Agreement before the August 27 meeting (see Part Two, Chapter 9). In other words, Green Leaf and BLT waited until confirmation that staff was recommending a sole-source procurement before formalizing their agreement.

The August 27 Council Meeting

Council met on the evening of August 27. After several presentations from Mr. Houghton, Ms. Leonard, and others, Council voted in favour of

constructing a Sprung arena and pool by a vote of 8–1 and 7–2, respectively. Before voting, several councillors remarked that, after years of inaction, it was time for Council to decide on recreational facilities – and that they believed the staff, having done their due diligence, had presented the best option.

The Council meeting was recorded on video. The Inquiry prepared a transcript of the video, which I reference throughout this section.

Ameresco's Presentation

Frank Miceli of Ameresco and Mark Palmer of Greenland made the first presentation. These companies had met with the Town earlier in the year on April 17 to discuss their joint proposal to build a multi-use recreational facility (see Part Two, Chapter 2). At the August 27 meeting, Mr. Miceli and Mr. Palmer proposed that the Town build a \$27 million multi-use facility using a “design-build-finance model,” which would involve Ameresco and Greenland assisting the Town in borrowing \$20 million for construction. As part of the presentation, Mr. Miceli offered to provide a request for qualifications document to Council and indicated that Ameresco / Greenland were “ready to respond to a Request for Qualification to ensure that the public process remains open and transparent.” In response, some councillors asked a few questions, but nobody made a motion in relation to their presentation.

Friends of Central Park's Presentation

After Ameresco, Paul Cadieux made a presentation to Council on behalf of the Friends of Central Park. He explained that the group “was formed as a reaction to an overwhelming number of residents who quite frankly are outraged by the lack of process and transparency with respect to Council on this matter.”

Mr. Cadieux raised several concerns about the staff report and the recommendation to proceed with the two Sprung structures. Among other issues, he questioned the lack of community and stakeholder engagement, why options for the pool other than fabric structures had not been investigated, whether a 45-year-old pool could operate in the winter, whether staff

had visited any other Sprung structures, and the late delivery of the staff report. “Nobody,” he stated, “has seen the staff report until Friday afternoon. And by Monday evening, we’re ready to vote on \$15 million.”

In his conclusion, Mr. Cadieux asked Council to defer a final decision and, instead, follow the process proposed by the Central Park Steering Committee. He implored Council to adopt a transparent process:

Establish an open and transparent process for soliciting feedback. I have to say this process has been anything but open and transparent. We’ve heard only what the newspaper has told us, and only what helps to support each other’s case. That’s not open. That’s not transparent.

Mr. Cadieux’s presentation ran from approximately 6:20 p.m. to 6:34 p.m. At 6:33 p.m., Deputy Mayor Lloyd emailed Mr. Houghton and said, “Ignore his bullshit.” Mr. Houghton replied, “I want to kick the crap out of him.” Mr. Lloyd responded, “You will with your presentation,” and then, “Kick his ass with the presentation.”

Sprung’s Presentation

When called upon to present, Mr. Houghton advised Council that Tom Lloyd from Sprung would present first. Although Mr. Houghton initially asked Sprung and BLT to present on August 21, neither Tom Lloyd nor Sprung was listed on the Council meeting agenda. Ms. Almas testified that Sprung was not included on the agenda because its presentation was scheduled as part of the staff’s presentation of the staff report. She testified that although it was rare for outside companies to participate in staff report presentations, she was not concerned about Sprung’s participation because staff was recommending that Council purchase Sprung structures.

Tom Lloyd presented a Sprung marketing pitch, as might be expected. He discussed Sprung’s history as a supplier of military buildings which had expanded to other uses, such as churches, casinos, and, more recently, recreational facilities. He noted, among other things, that Sprung had an “unlimited amount of endorsements and recommendations,” that the

company used “aluminum because it is the strongest material in the world,” and that even “Her Majesty the Queen cut the ribbon” at a Sprung airport she used regularly.

With regard to recreational facilities, Mr. Lloyd advised that Sprung had built a hockey arena outside Calgary and covered an outdoor pool in Kearns, Utah. He provided no other specific examples. At the end of the presentation, Councillor Keith Hull asked Mr. Lloyd if Sprung had ever enclosed a pool as old as the one at Heritage Park. Mr. Lloyd responded no – and added that Sprung had never covered a pool “as far North as this.”

No Mention of BLT

The August 27 staff report, which was overseen by Mr. Houghton, did not mention BLT or that the Town would be purchasing the structures from BLT, not Sprung. BLT was also not mentioned at the Council meeting.

In the course of his presentation, Tom Lloyd stated:

Our licence partnering company we work with here in southern Ontario does a lot of sports and entertainment work, and it's been recently named the Partner of the Year by the Maple Leaf Sports and Entertainment Group. Those of you who go downtown may know of a bar called the Real Sports, right beside the Air Canada Centre, which was recently named by ESPN as North America's greatest sports bar.

At the hearings, Mr. Houghton testified he could not say for certain whether Mr. Lloyd was referring to BLT in this description. Deputy Mayor Rick Lloyd testified that although he knew about BLT shortly after the Council meeting, he did not know if Council members were told about BLT before they voted.

I am satisfied that Council was not advised that the Town would be contracting with BLT, not Sprung. Given the scope of the commitment, the staff report should have identified the company that was actually going to build its new recreational facilities.

Mr. Houghton's and Ms. Leonard's Presentation

After Tom Lloyd's presentation, Mr. Houghton and Ms. Leonard each gave sections of the staff report, assisted by the slide show. During his remarks, Mr. Houghton spoke about the steps that led from the recommendations of the Central Park Steering Committee to the staff report:

We did look at a whole bunch of different options. We looked at several different options. We looked at a number of different fabric buildings, we looked at bricks-and-mortar buildings and we looked at steel fabrications buildings. We talked to our consultant, our architectural consultants. We got prices on those kinds of things.

Ms. Leonard testified that she did not know what Mr. Houghton was referring to when he stated that staff had looked at different fabric buildings.

Mr. Houghton mischaracterized the involvement in the staff report of staff members such as Ms. Almas and Ms. Proctor:

We were working as a team ... That was my intent. I should have said this is very much a team effort. Poor Marta, the day after our July 16th said "I'm going to be on holidays. What am I going to do?" So we supported Marta, and she's been part of feeding in the information. Marjory's been very much involved, our treasurer. Ms. Almas has been very much involved. Larry Irwin's been very much involved. Dave [McNalty]'s been very much involved. And it has been very much a team effort to put this together, as well as the consultants getting the information. So I should have mentioned that at the beginning. I apologize for that.

Finally, on the recommendation to sole source, Ms. Leonard stated:

Our Procurement Policy ... does recognize that there are times when single or sole source purchasing may be the recommended method for procurement. We do believe that due diligence was maintained throughout the process. During our research of the varying forms of construction[,] each of the comparators knew we were looking at costs

for pre-engineered steel building and fabric or architectural membrane construction since we already did have the costs for bricks and mortar estimated in the Steering Committee's report. So in that vein it did interject an element of competition into that process.

Through the research and investigation phase it was determined that the architectural membrane building would provide the most cost-effective and beneficial solution for the taxpayers, both capital and operational wise.

Again, through our research it was determined that there was only one supplier of this leading-edge technology that had proven track record, that would provide what we needed at this time.

I note that, at the meeting, Ms. Leonard toned down the language regarding competition and did not expressly state that WGD and BLT were in competition. The presentation, nevertheless, repeated the inaccurate information in the staff report that a sole source was permissible.

Council Votes

Each member of Council spoke after Mr. Houghton's and Ms. Leonard's presentation. Mayor Sandra Cooper, Deputy Mayor Rick Lloyd, and Councillors Ian Chadwick, Sandy Cunningham, Kevin Lloyd, Dale West, and Mike Edwards all favoured proceeding with the staff recommendation, each commenting that, after previous councils' inaction, it was time for this Council to move forward with recreational facilities.

Councillor Joe Gardhouse spoke in favour of the arena, but he asked for the decision on the pool to be deferred for 90 days so that a pool consultant could complete a business plan and structural report. As he put it: "I think that is worth a second look and there is no rush in that."

Councillor Keith Hull spoke at length in opposition to the staff recommendation, echoing many of the points raised by Mr. Cadieux. He regretted that Council had not given broader parameters to the Central Park Steering Committee to look at options beyond Central Park. He also regretted Council's July 16 direction (which he supported), noting: "[I]t is a case of you get what you ask for." He continued:

I apologize – that, if you feel that you didn't have the time, if you felt that you pushed back and we didn't listen, then I wasn't listening or I didn't hear that and I apologize for that. Because certainly, when I read the report that's been presented tonight, and the time in which it's been prepared, I am concerned that we've rushed to a conclusion and there are numerous questions still to be answered.

Councillor Hull also noted that “we as a Council have never determined what we as a Council feel comfortable in terms of spending, whether its 2 million, 5 million, 10 million. I mean, we haven't even established that parameter yet.”

After each councillor spoke, Council voted to construct a Sprung arena by a vote of 8 to 1, with Councillor Hull voting “nay.” For the pool, Councillor Gardhouse tabled a motion, seconded by Councillor Edwards, that Council defer the motion to cover the outdoor pool with a Sprung structure “until a professional reviews the plan and structural audit.” That motion was defeated 8–1, with only Councillor Gardhouse voting in favour. Ultimately, Council decided to proceed with the pool by a vote of 7–2, with Councillors Hull and Gardhouse voting nay. No councillors declared a conflict of interest.

In his closing submission, Mr. Bonwick argued that the councillors are “independent thinkers” with access to a “multitude of information sources in order to make a final decision on any given issue.” He continued that “if the majority of council does not feel they have enough information, they have the authority to delay any decision before them.” Mr. Houghton made similar arguments in his testimony and closing submissions, suggesting that if Council members had concerns about the staff report or the presentation, they would have raised it. The thrust of these submissions is that Council independently expressed its will when it voted and, in doing so, absolved any errors or flaws in the information staff presented.

I reject this argument. Councils are entitled to rely on staff reports to provide fair, objective, and complete information. While Council retains the power to question the assumptions, process, or recommendations of a staff report, it can do so in a meaningful way only if the staff report is transparent.

In this respect, at the August 27 meeting, several councillors stated in

their remarks that they were relying on staff's due diligence. For example, in Councillor Edwards' words:

I'd first like to say that I have faith in the staff report. I don't think we ask our staff to do something and report something unless they've done their due diligence. And if so, they shouldn't be here.

And so I appreciate the report and the information that's come forward. I've had sufficient time to digest it, and I think I've had sufficient time over the years to determine what the needs of the community are. They've been reported many times.

Mayor Cooper, Deputy Mayor Lloyd, and Councillors Cunningham, Kevin Lloyd, and Chadwick all referenced staff's due diligence as a reason for voting in favour of the Sprung structures.

At the hearings, Ms. Cooper testified that she relied on the staff report and presentation when voting to proceed with Sprung. Deputy Mayor Lloyd also testified that, in making his decision, he relied on the cost information, representations about LEED, and the advantages of turnkey construction.

Conclusion

The efforts of Mr. Houghton, Mr. Bonwick, and Deputy Mayor Lloyd to promote Sprung to Council succeeded. Council voted to build two Sprung structures relying on a flawed staff report. As I discuss in Part Two, Chapter 13, after the meeting, Mr. Houghton quickly arranged for the execution of the contract and for the Town to pay BLT a substantial deposit. In turn, BLT used this deposit to pay \$756,740.42 (including HST) to Mr. Bonwick through his company Green Leaf.

Town and BLT Contract – and the Payments That Followed

Within just 72 hours of Council's decision to approve the purchase and construction of two Sprung structures, the Town signed a construction contract with BLT Construction Services Inc. and paid BLT a deposit of more than \$3 million. The quick turnaround time was the result of acting Chief Administrative Officer (CAO) Ed Houghton's efforts to fast track the execution of the Town's agreement with BLT, a goal he prioritized over protecting the Town's interests. BLT and Green Leaf Distribution Inc. benefited from the hasty contract signing. BLT, which was able to secure payment of 25 percent of the contract price on signing, immediately used part of this amount to pay Green Leaf's fee of \$756,740.42 (including HST).

Contract Prepared

Immediately after Council approved the purchase and construction of two Sprung facilities, Mr. Houghton began working with Green Leaf and BLT to finalize the details of a construction contract.

Initial Discussion of Payment Schedule

On August 28, 2012, at 9:52 a.m., Abby Stec of Green Leaf emailed Dave Barrow and Mark Watts of BLT, stating that she and Mr. Houghton had discussed a construction agreement between BLT and the Town. Ms. Stec stated:

Ed has indicated the following tentative schedule would be appropriate moving forward:

He has asked for BLT to provide an agreement to Town [sic] by Thursday or Friday of this week. I believe that they want to include all of the extras that were broken out separately in the budget. I will confirm this later today.

They would like to have the agreement signed and have a 25% draw for you upon signing.

Tentative schedule to follow:

- 2nd draw, 25% at completion of site work
- 3rd draw, 25% prior to erecting
- 4th draw, 15% at substantial completion
- 10% hold back

If you are both available anytime between 1 and 4 pm today Paul and I would like to get your thoughts on the schedule and finalize the scope of work. Please let me know and I will send out the call numbers.

Ms. Stec testified that Mr. Bonwick provided the information in the email and that she sent the email at Mr. Bonwick's direction. She believed Mr. Houghton proposed the payment schedule described in the email but stated that her only basis for that belief was the email itself. She did not have any independent recollection of discussions between Mr. Houghton and Green Leaf regarding the payment schedule.

Mr. Houghton recalled discussing a potential payment schedule with Ms. Stec. He noted that he told Ms. Stec the payment schedule sounded "reasonable" to him, but that he would need to have the contract reviewed to make sure "everything's appropriate." He stated that if, upon review, the schedule "didn't make sense," he would speak to BLT about changing it. As I discuss in this chapter, Mr. Houghton made no attempts to negotiate the payment schedule.

Mr. Bonwick testified that he did not recall having any discussions with BLT about a potential payment schedule after the August 27 Council meeting. He did, however, recall having discussions about the payment schedule before the Council meeting. He testified that, although he could not remember specific details, he likely spoke to Mr. Houghton around August 19.

He informed him that BLT would require a sizable upfront payment in a potential contract with the Town. As I discuss in Part Two, Chapter 9, on August 19, Ms. Stec emailed BLT representatives stating, among other things, that “Paul has had preliminary discussions with Ed regarding the first draw and it will be substantial enough to cover both the compensation and your initial operation costs.”

Mr. Bonwick also recalled discussions with Ms. Stec and Mr. Barrow on August 24, during which it was confirmed that BLT would request a “substantive deposit” in its contract with the Town.

I am satisfied that, prior to the August 27 Council meeting, Mr. Houghton knew as a result of his discussions with Mr. Bonwick that BLT would be requesting a significant deposit. This information was relevant to Council’s decision to purchase the Sprung structures and, as such, should have been conveyed to Council during the meeting.

Mr. Houghton’s and Ms. Stec’s Contract Discussions

Ms. Stec testified that she also spoke with Mr. Houghton about the contract the Town would sign with BLT. She recalled indicating that a standard-form construction contract, called a CCDC contract,* would “likely be applicable.” On the afternoon of August 28, Ms. Stec emailed BLT about her conversation, writing:

I just spoke with ED [sic] and he is content with a standard CCDC contract and regular holdback provisions. In terms of scope of work, please include all extras including a propane zamboni. He also asked me to calculate the dollar total for the first draw at 25% so the cheque will be ready for you upon signing.

As discussed, please send the agreement on Thursday [August 30] to facilitate any changes that need to be made. We can then schedule a meeting in Collingwood to finalize the drawings and discuss timelines.

* Canadian Construction Documents Committee contract – a standard-form construction contract used for design-build projects.

Ms. Stec testified that “regular holdback provisions” represented 10 percent of the total amount of the contract. Mr. Houghton confirmed that Ms. Stec suggested a CCDC contract and he agreed it was acceptable but noted it would have to be reviewed by the Town solicitor.

Finalization of Budgets

At 3:05 on the afternoon of August 29, Mr. Barrow emailed Ms. Stec asking for a copy of Mr. Houghton’s slide presentation from the August 27 Council meeting. Mr. Barrow stated that he needed the presentation “to make sure we have all items listed which he included at the meeting.”

Five hours later, Mr. Barrow sent Ms. Stec two budgets for a Sprung pool cover and two for a Sprung arena. For each structure, one budget showed the price for every line item that was included in the total cost, while the other budget listed line items without prices and provided only total costs. In his covering email, Mr. Barrow stated:

Please see the following pricing. I have attached both with line items and without. I think for certain people it should only be the total number rather than the questions on why is this that much and so on. It may be better if we just give total to the contract with lined list. Thoughts?

Mr. Barrow testified that he suggested using versions of the budgets without line items because,

What I found in any budget I did with anybody is if you give them a line by-line item, they always seem to look at numbers and say why this is so high, but never the numbers and say why is this so low, so that was my suggestion on – that was just a suggestion.

Mr. Houghton did not recall having any discussions about which of the two budget versions would be used in the final contract between the Town and BLT, though he noted that including the versions without line item prices in the contract, “wouldn’t have been very helpful.” As will be seen below, only the budgets without the line item prices were appended to the contract.

The budgets Mr. Barrow sent stated that the total cost for the Sprung pool, including all options and taxes, was \$3,688,606.93, while the total for the arena, including all options and taxes, was \$8,710,294.04. The Town paid the first 25 percent deposit owed under the contract based on these amounts.

The pool budget Mr. Barrow prepared after consulting staff's slides from the August 27 meeting was approximately \$38,000 higher than the total provided in the staff report and approved by Council. The evidence suggested that the increase was due to the inclusion of items in the budget that were identified as "extras" in the staff report. The inclusion of these costs, however, also resulted in pricing for the facilities that differed from those presented in the staff report.

Mr. Bonwick's Success Fee

Disclosure

With final budgets, Green Leaf could calculate its 6.5 percent success fee. Thirty minutes after Mr. Barrow sent BLT's final budgets to Ms. Stec on August 29, Mr. Bonwick sent an email to Mr. Houghton, stating: "Gross is 675,000.00 approx ... maybe a bit more." Fourteen minutes later, at 8:48 p.m., Mr. Houghton forwarded that email to his wife, Shirley.

Mr. Houghton and Mr. Bonwick testified that discussions the two were having about Mr. Bonwick's role with BLT prompted Mr. Bonwick's email. Mr. Houghton stated that Town staff had been receiving emails questioning Council's decision to build the Sprung structures and that these emails caused him to contact Mr. Bonwick and ask him about the nature of his work for BLT. Mr. Bonwick also recalled Mr. Houghton asking him about his work for BLT. He testified that their conversation centred around rumours which had been circulating that Mr. Bonwick worked on the Sprung project in some capacity and had been compensated.

Mr. Houghton testified that, after Mr. Bonwick detailed his work for BLT, Mr. Bonwick explained that Green Leaf's compensation would be similar to that of a real estate agent and confirmed the fee would come out of BLT's profits. Mr. Houghton and Mr. Bonwick each stated in testimony that Mr. Bonwick twice offered to disclose the amount of the fee to

Mr. Houghton but Mr. Houghton declined to hear it, saying it was not his business.

I reject Mr. Houghton's rationale for refusing to find out about Green Leaf's fee. Mr. Houghton was the Town's CAO, so the fee BLT intended to pay Mr. Bonwick's company for successfully lobbying the Town was his business. Declining the information did not absolve him of his duties to the Town. Intentionally turning a blind eye to this information was not an acceptable response.

According to Mr. Houghton, after this conversation, he received the above-mentioned email from Mr. Bonwick stating the amount of Green Leaf's commission. Mr. Houghton testified that he received the email on his Blackberry as he was leaving the Collus PowerStream office and did not read it right away because his poor eyesight made it difficult for him to read emails on his phone. As a result, he forwarded the email to his wife's address so he could read it on a computer in his home office. When asked why reading the email on his home computer necessitated forwarding the email to his wife, Mr. Houghton stated:

Typically when I would do it, I would – I would send it to Shirley's because her ... computer was up and running. I carry my computer all the time, I could turn it on and do those things, but I typically would ... do that because it was – it was usually on. It was always on. That's what I did.

Mr. Houghton stated that, once he arrived home, he read the email in full. His reaction to the amount of Green Leaf's fee was, "[t]hat's a big number."

When Mr. Bonwick was asked why he disclosed the fee to Mr. Houghton, Mr. Bonwick noted that the email "followed up on a conversation that had taken place earlier. I trusted Mr. Houghton.* I considered him a friend." Mr. Bonwick later stated: "I wasn't interested in hiding the fee ... I just sent him a follow up to the conversation ... Nothing more than that." Mr. Bonwick testified that he did not instruct Mr. Houghton to keep the amount of Green Leaf's fee confidential and stated that he did not disclose the fee to anybody else on Town Council or staff.

* As I discuss in Part Two, Chapter 9, Green Leaf's agreement with BLT required BLT to keep Green Leaf's fee confidential.

Mr. Houghton did not disclose Green Leaf’s fee to anybody on either Council or staff. He testified that he did not divulge it because he assumed others knew of Mr. Bonwick’s work for BLT, and Mr. Bonwick had assured him that Green Leaf’s commission was not “coming directly out of Collingwood’s pockets.” When asked whether, as CAO, he felt it was important to share the information he received from Mr. Bonwick with Council, Mr. Houghton responded:

[I]t’d already been confirmed that this was coming out of the profits of BLT / Sprung ... I thought there were others that knew, I didn’t think it was for me to tell anybody. If it’s – there’s no obligation for others, then why is the obligation there for me, and if there was no concern less than a year earlier, that Mr. Bonwick was working and – and getting paid to do things, why is it this now something different?

[...]

If – if this – if you are working with BLT, then it really has nothing to do with me. I don’t know how much we spent for concrete or for electrical or those things.

[...]

I didn’t do it for any other reason that [sic] it didn’t appear that there was an issue or an obligation or a conflict, because they had already just done that less than a year previously.

I do not accept any of Mr. Houghton’s evidence concerning his discussions and failure to disclose Green Leaf’s fee for several reasons.

First, despite Mr. Houghton’s evidence, Mr. Bonwick’s involvement in the Sprung project was “an issue.” Both Mr. Houghton and Mr. Bonwick testified that Mr. Bonwick’s email was an extension of a conversation Mr. Houghton initiated because rumours had begun circulating regarding Mr. Bonwick’s involvement in the Sprung project and whether he was compensated. If Mr. Houghton had information that would shed light on those rumours, it was incumbent on him to share it with Council and staff.

Second, there is no indication that anybody else knew the amount of Green Leaf’s commission. Although Deputy Mayor Rick Lloyd was aware of Mr. Bonwick’s work for Green Leaf and BLT, he testified that he did not find out the amount of Green Leaf’s fee until 2018.

Third, the notion that Green Leaf's fee came out of BLT's profit does not justify withholding information regarding Mr. Bonwick's involvement in the Sprung project from Council and Town staff. As I indicated in Part Two, Chapter 9, it is not reasonable to rule out the possibility that the Town paid more for the Sprung facilities than it would have but for Mr. Bonwick's involvement. Regardless of the source of Green Leaf's commission, however, the fact remains that Mr. Bonwick earned a substantial sum for work related to a Town procurement that involved Mr. Bonwick lobbying Town representatives. This was important information for Council and staff to consider before finalizing the Town's contract with BLT. As I discuss below, Mr. Houghton failed to negotiate the Town's construction contract with BLT and agreed to certain terms that left the Town exposed to risk. The disclosure of Green Leaf's fee may have drawn more attention to the unfavourable payment terms to which Mr. Houghton committed the Town.* I also note that Mr. Houghton testified he took no steps to confirm with BLT that Green Leaf's commission was coming solely out of BLT's profits. Mr. Houghton thus chose not to disclose Green Leaf's fee to Council or staff based solely on the assurances of the person receiving the commission that the commission was not being paid at the Town's expense.

Fourth, the fact that no concerns were raised at the June 29, 2011, meeting at which Mr. Bonwick disclosed his work for PowerStream to certain councillors and staff members does not excuse Mr. Houghton's failure to disclose Green Leaf's fee. As I discuss in Part One of this Report, the disclosure that took place at the June 29 meeting was piecemeal and insufficient. Further, Mr. Bonwick's work for Green Leaf involved different responsibilities and the compensation was more than twice what he received for his work for PowerStream. As such, Mr. Houghton should have provided Council and senior staff at the Town with the opportunity to assess the issues raised by Green Leaf's work for BLT.

Finally, I do not accept Mr. Houghton's evidence regarding Green Leaf's compensation that "I didn't think it was for me to tell anybody. If it's – there's

* As I discuss in Part Two, Chapter 9, Green Leaf's intermediary agreement with BLT required BLT to pay Green Leaf's fee in full as soon as BLT's contract with the Town was signed. As I discuss below, the contract required the Town to pay 25 percent of the contract price upon signing, before any work was completed.

no obligation for others, then why is the obligation there for me”; and “it really has nothing to do with me. I don’t know how much we spent for concrete or for electrical or those things.” Green Leaf’s commission did not have “nothing to do” with Mr. Houghton. As CAO, Mr. Houghton was the head of Town staff and, as such, he had an obligation to ensure Council and staff had all information relevant to the decision concerning Sprung facilities.

Green Leaf’s commission was not akin to one for concrete or electrical work. As I discuss below, those items, too, should have been the subject of Mr. Houghton’s scrutiny and negotiation with BLT. However, costs for concrete and electrical work are expected in the construction of recreational facilities. Members of Council and staff (apart from the deputy mayor), in contrast, had no reason to expect that a company owned by the brother of the mayor stood to earn approximately \$675,000 for lobbying Council’s approval of the Sprung facilities.

That Council and staff were blindsided is evident from Council and staff members’ testimony about their reaction when they learned Mr. Bonwick had benefited from Council’s decision to purchase and construct the Sprung facilities.

Sandra Cooper testified that “it would have been beneficial” for her to have been informed of Mr. Bonwick’s commission and stated that, if Mr. Houghton knew of Mr. Bonwick’s involvement in the Sprung initiative, she would have expected him to notify her. She further stated that, if she had known about Mr. Bonwick’s commission, she would have consulted with the Town clerk and possibly the Town solicitor to assess whether any further steps should be taken.

Deputy Mayor Lloyd testified that, when he first discovered the amount of Green Leaf’s commission, his response was “wow,” and he wondered what work Green Leaf had done to earn such a substantial fee. Mr. Lloyd agreed it was “unusual” for the mayor’s brother to earn an undisclosed \$1 million on Town business (the Collus share sale and the recreational facilities).

Sara Almas, the Town clerk, testified that her discovery that Mr. Bonwick benefited from the Sprung initiative provided more clarity on why there was so much pressure to complete the staff report and made her reconsider the due diligence that staff had carried out regarding recreational facilities.

Finally, Marjory Leonard testified that, when she discovered the amount

of Green Leaf's commission, she was, "very surprised ... gobsmacked, actually, if you want to know the truth. It was ... I'm astounded, sickened." During her cross-examination, the treasurer was asked by Mr. Bonwick why she took such exception to a commission that had been agreed to between two private companies and that did not cause additional cost to the Town, Ms. Leonard replied:

I would take exception to it because there was no room then for the Town to have negotiated further down or further with BLT in any way, shape, or form, and it's also my understanding that that negotiation never did take place, but there could have been an opportunity to negotiate prices with BLT.

Had Council and staff been informed that Mr. Bonwick's company was set to earn a commission from the approval of the Sprung recreational facilities, they very well may have changed their respective approaches to researching, recommending, voting on, or negotiating the construction of those structures. Council may have felt compelled to use a competitive bidding process. Council and staff deserved the opportunity to determine how this information affected the discharge of their responsibilities and, as head of staff, Mr. Houghton owed them this opportunity. In failing to disclose this information, Mr. Houghton undermined the interests of the Town.

As evidenced in Ms. Almas's and Ms. Leonard's testimony above, the amount of Green Leaf's fee was substantial enough that it undermined staff's confidence in the recommendation to purchase and construct the Sprung structures. As I will explain in Part Two, Chapter 14, once questions about Mr. Bonwick's dealings with the Town arose, confidence in Council's decision was undermined further. Had Mr. Houghton disclosed Green Leaf's fee as soon as Mr. Bonwick revealed it to him, his decision to forgo all negotiations with BLT may have come to light. This knowledge would have permitted staff to at least consider negotiating with BLT about the contract price and payment schedule. Of course, it would also have provided Council and staff with the opportunity to revisit the recommendations in the staff report.

Effect on Public Confidence

Although disclosing the amount of Green Leaf’s commission may have helped lessen the impact of the fee on the public perception of the Council’s decision to sole source the Sprung recreational facilities, the fact remains that a lobbyist earning a success fee of any kind on a transaction will always risk undermining the integrity of the transaction.

Mr. Houghton testified that Mr. Bonwick’s lobbying work did not affect Council’s decision to engage in a sole-source procurement of the Sprung pool and arena:

I think, if Mr. Bonwick wasn’t involved, the same event would have happened. I ... can tell you with every fibre of my body that not one thing would have changed if Mr. Bonwick was not involved.

In contrast, when Mr. Bonwick was asked at the hearings whether he thought the amount of his company’s commission was a substantial amount of money for a month’s work, he testified no, explaining: “I think one has to reflect on the value that Green Leaf brings to the table and, more specifically, myself.” He continued:

I think one needs to reflect on the number of years, the amount of networking, the amount of effort and work goes on in terms of building relationships within regions throughout Simcoe County, the province, the Federal Government.

One tends to develop long-term relationships, they get involved in numerous initiatives throughout the community, throughout the province, throughout the country.

And a lot of that is not dealt through compensation but rather investment from myself or from companies that I would be associated with, and so it’s not simply a case of saying it’s – the finite term is three weeks of five weeks.

It’s a case of there’s been years go into develop something that actually can lend value to a client.

Mr. Bonwick did not agree with Mr. Houghton that the Sprung buildings

would have been built without Green Leaf's involvement, remarking that he would "like to justify [my] own existence and that of [my] company."

The fact that it was not apparent, even to Mr. Houghton what exactly Mr. Bonwick did to earn Green Leaf its success fee is indicative of how success fees can undermine public confidence once the public finds out about them. If it is not immediately apparent why such a large sum was paid to a lobbyist or lobbying company, suspicion will arise that something inappropriate has happened.

In his closing submissions, Mr. Bonwick acknowledged the capacity that lobbyist success fees have to undermine public confidence:

In further addressing fees for service as it relates to lobbying / agents, I would agree for the purpose of public perception that success fees, especially large fees undermine confidence in the procurement process, irrespective of the value the client associates with the recommendations or actions of their consultant (lobbyist / agent). There are several other options available as it relates to long term retainers that can still provide a level of compensation that both parties feel is reasonable based on the value of service or strategic advice.

I agree with Mr. Bonwick's assessment. As set out in my recommendations, lobbyist fees should be disclosed to ensure that no contingency fees or any type of payment, bonus, or commission connected with or tied to a successful outcome are paid to the lobbyist.

Plans for BLT Payment

The day after disclosing the amount of his commission to Mr. Houghton, Mr. Bonwick worked to ensure that BLT sent the Town payment information required to finalize the construction contract.

On August 30, at 8:56 a.m., Mr. Bonwick sent Mr. Barrow draft language for an email and asked him to,

Please edit, cut and paste the following. Send to Ed asap.

I would also ask that a billing schedule be included with an invoice for the first installment. They will try to have a cheque ready if they get it in the next little while.

The draft email composed by Mr. Bonwick thanked Mr. Houghton for staff's "professional, detailed and comprehensive approach" to the recreational facilities initiative. It indicated that BLT would "create flagship recreational buildings for Collingwood" that incorporated "the latest technologies." The email concluded:

[W]e have prepared our construction agreement along with the payment schedule for your authorization. Please let us know if it is convenient to meet at 12 pm today to complete this part of the process. Subject to authorizing these documents our team will begin work Tuesday.

Mr. Bonwick confirmed that the meeting proposed in the email was to finalize transaction documents between the Town and BLT.

About an hour later, Mr. Barrow sent Mr. Houghton the email drafted by Mr. Bonwick, attaching a payment schedule and invoices for the Town's first payment. The payment schedule read as follows:

Day of signing contract: 25% deposit
Draw # 1 completion of ground preparation: 25% draw
Draw # 2 Sprung structure arrival to site: 25% draw
Draw # 3 Substantial completion: 15%
Final payment 45 days after substantial completion

The invoices charged the Town \$2,177,573.51 for the Sprung arena and \$922,151.73 for the Sprung pool (taxes are included in these figures). These totals represented 25 percent of the costs for a Sprung arena and Sprung pool inclusive of all options included in the budget Mr. Barrow sent the day before to Ms. Stec.

Mr. Bonwick's email kicked off a process in which the Town signed the contract and cut the cheque to BLT by the end of the day, enabling BLT to immediately pay Mr. Bonwick's company in full.

No Negotiation

Mr. Houghton, the Town's sole contact with Sprung and BLT, did not attempt to negotiate with BLT, undermining the Town's interests in a number of ways. First, the Town likely paid more than it ought to have for the projects. Second, BLT was not required to post a performance bond, exposing the Town to the risk of contractor default. Finally, the Town agreed to a payment schedule that required it to make two large payments before BLT had performed any substantial construction work, further exposing the Town to the risk of default and lost costs. Although I cannot now say how much additional money these factors cost the Town, the information before the Inquiry strongly suggests that the financial consequences to the Town resulting from Mr. Houghton's decision to accept BLT's terms without negotiation were substantial. For example, the markup BLT applied to the Sprung structures was 30 percent.

Contract Price

Mr. Houghton did not attempt to negotiate the contract price with BLT. He testified that he didn't believe the Town was permitted to negotiate.

I do not accept Mr. Houghton's evidence for three reasons.

First, the basis for his belief defies logic – on his evidence, it was a conclusion he came to on his own, without consulting the applicable Town policies and by-laws or discussing the matter with experienced Town staff or members of Council. The Town's procurement policy, in fact, explicitly contemplated negotiation when staff recommended procuring goods or services from a single source.

Second, only eight months earlier, Mr. Houghton had been involved in negotiations with PowerStream to increase its strategic partnership bid. Mr. Houghton struggled to explain why he believed the Town could not negotiate with BLT when he had recently participated in a negotiation with PowerStream in the strategic partnership RFP. He testified that they were "two different scenarios"; stated that "we were talking to PowerStream through Mr. Muncaster"; and noted that, with PowerStream, the Town was

selling, as opposed to purchasing. He did not explain how any of these reasons translated into a prohibition on negotiating with BLT.

Third, as I discuss in more detail above, Mr. Houghton knew by August 29 that BLT was paying Mr. Bonwick's company approximately \$675,000 in relation to the arena and pool. This payment would have indicated to him that there may be room in BLT's budgets for negotiation.

In his testimony, Mr. Houghton argued that Treasurer Marjory Leonard, Dave McNalty (the Town's manager of fleet, facilities and purchasing), and Deputy Mayor Rick Lloyd should have told him that he was permitted to negotiate the contract. I reject this attempt to spread the blame. Mr. Houghton never asked any of them whether he could negotiate, a point that should have been obvious in any event.

Mr. McNalty said he had no knowledge of the steps the Town took to negotiate.

Ms. Leonard testified that she believed Mr. Houghton had negotiated with Sprung and BLT. She said she was "stunned" when she heard Mr. Barrow's evidence at the Inquiry that there were no negotiations, explaining she "would have expected that the department head or the person in charge would have negotiated the best possible price and best possible outcome for the Town, the taxpayers ... the community."

Although Deputy Mayor Lloyd first testified that he was not surprised to learn the Town did not attempt to negotiate with BLT, he ultimately acknowledged he assumed the price had been negotiated. Mayor Cooper also testified that she "would hope that – in good faith, that the Town would negotiate the ... best price for the Town."

When asked what steps he did take to protect the Town's interests, Mr. Houghton identified two factors. First, he believed Sprung and BLT quoted a fair price because the two companies wanted to use Collingwood "as a showcase" for their future clients. Second, he said that the July 16 Sprung budgets served as a check on BLT's price, explaining:

[W]e have the – the July 7–16th estimates that we took the opportunity once they asked for them, was that we took that opportunity to say, look at, they better be in kind of keeping with this because we have these numbers.

Although I agree that the showcase potential of the Collingwood projects and the July 16 budgets could have served as leverage for the Town in its dealings with BLT, Mr. Houghton failed to deploy that leverage when he chose to refrain from negotiating with the company. The notion that BLT would offer its best price without any pressure from the Town to do so defies logic and common sense. It is also inconsistent with Tom Lloyd's description of Mr. Barrow's approach to business. As Mr. Lloyd testified of Dave Barrow, "If I said it was free, he'd still try to negotiate with me ..."

Performance Bond

BLT did not post a performance bond for the pool and arena construction projects.

Town Deputy Building Official Ron Martin testified that a performance bond ensures the construction project is completed within the cost that has been agreed upon by the parties. He explained that a performance bond is typically put in place before, or in conjunction with, the signing of the contract. He further explained that it is similar to an insurance policy in that if something such as receivership or bankruptcy happens to the contractor partway through a project, the insurance company will step in and complete the project for the original contract price.

Mr. Martin said he had never been involved in a Town construction project the magnitude of the arena and pool without a performance bond, nor was he aware of a Town construction project of that magnitude that didn't include one. Mr. McNalty also testified that it would have been typical "to have some financial surety" to ensure the project could be completed "if the prime contractor failed to do so." He rejected the notion that no security was required where a design-build construction model was used.

When asked what steps he took to protect the Town against a breach of the contract by BLT, Mr. Houghton stated:

I think that we also looked at the fact that Sprung has been in business for 125 years. I don't think that they would allow for their partner to create a shabby, shoddy project ... I don't think they – they were – they'd been in business for a 125 years if they would allow that.

There was no need for Mr. Houghton to rely solely on Sprung's perceived longevity in the market as a guarantee that BLT, a different company, would fulfill its contractual obligations. As Mr. Barrow explained in his testimony, before a bonding company will issue a bond, it will conduct due diligence relating to the contractor's finances and assets to determine whether the contractor is capable of delivering on the contract it has been awarded.

Deputy Mayor Lloyd testified that, at the time the contract was signed, he was not aware there was no performance bond in place. When asked for his reaction to "learning today that there was no performance bond in place," Mr. Lloyd responded that the Town was very fortunate BLT "lived up to their expectations and beyond."

I agree with the deputy mayor that the Town was fortunate. Proceeding without a performance bond put the Town at risk. While it was open for the Town to assume that risk, the question was never placed before or considered by Council.

Mr. McNalty testified that the owner may also address the risk of contractor non-performance by arranging the payment schedule for financial security where the owner pays for the work that has already been performed, not in advance. As I discuss below, the payment schedule that Mr. Houghton agreed to on behalf of the Town offered no such protection.

Payment Schedule

The payment schedule provided for in the contract required the Town to make the following payments:

- Day of signing contract: 25% deposit
- Draw # 1 completion of ground preparation: 25% draw
- Draw# 2 Sprung structure arrival to site: 25% draw
- Draw# 3 Substantial completion: 15%
- Final payment 45 days after substantial completion: 10%

Mr. Martin testified that he was "a little surprised" when he saw the payment schedule, stating: "[W]hat surprised me the most when I saw this was that the contractor, builder, had 25 percent payment really with – I had

nothing. The Town had nothing other than a signed contract and they had 25 percent of ‘X’ million dollars.” He explained: “Worst case scenario: Somehow a large amount of money has been paid and should have – something happened and the contractor just [says], ‘bye, what would we – what would we do? What position would the Town be in?” Mr. Martin said he had never seen a payment schedule like that on any of the construction projects he had worked on. He believed the Town should have been better protected.

Mr. Barrow proposed the payment schedule. He testified that BLT preferred to use the Town’s money to pay the trades working on the arena and pool, explaining: “[W]e would rather have the Town pay for it upfront and not have to carry the cost of it.” He described the payment schedule as “a bit of an aggressive payment package” and acknowledged that clients frequently refused to accept similar payment packages, “but it’s worth trying.” Mr. Barrow did not recall any conversations with the Town about the payment schedule. He inserted the payment schedule into the contract, and no one from the Town tried to change it.

Mr. Houghton did not make any attempt to negotiate a different payment schedule. He testified that he consulted the deputy mayor about the payment schedule, explaining that Rick Lloyd was the “chair of finance” and he had “some pretty significant construction background.” Mr. Houghton also said he told the deputy mayor that BLT needed a substantial first deposit to be able to order “the ice plant and the Zamboni and the ... Sprung facilities, et cetera, et cetera, and that’s 25 percent”; and that the 25 percent draw would enable BLT to “get going on the actual design work, the ... the architectural work and the engineering and those kinds of things.” Mr. Houghton initially testified that he obtained this information from Ms. Stec, but he subsequently acknowledged she did not tell him that the first 25 percent draw was needed to cover the ice plant or the Zamboni, stating that those things “just made sense” to him. He also testified that he and the deputy mayor agreed the payment schedule was appropriate, explaining that “the 25 percent upfront made sense for that ... because they’re going to have to order some of the longer-term products, including the ... Sprung building.”

Rick Lloyd testified that he did not recall discussing the payment schedule, or even being aware of the payment schedule, before the contract was signed. When asked if he was surprised or disappointed that the Town did not seek to

negotiate the schedule, Mr. Lloyd insisted he did not know whether staff had asked for a different payment schedule – even after being advised that BLT’s Dave Barrow had testified that the Town did no such thing. Elsewhere in his testimony, Mr. Lloyd testified that he was not surprised that no one from the Town tried to negotiate a different payment schedule.

Mr. Houghton’s reasoning for accepting the payment schedule was faulty. Mr. Houghton never inquired about when BLT needed to pay the full purchase price of the Sprung structure or other larger components. Mr. Barrow and Tom Lloyd testified that BLT was required to pay only 50 percent of the cost on order, and then the remaining 50 percent on delivery. Based on Tom Lloyd’s evidence, BLT would have been required to pay Sprung approximately \$1.7 million plus HST around October 4, 2012. By that date, the Town had paid BLT \$3,099,725.24, and BLT had paid Green Leaf \$756,740.42 (including HST)

Mr. Houghton told the Inquiry that, when he discussed the payment schedule with the deputy mayor, he didn’t know BLT was required to pay only 50 percent of the cost of the Sprung buildings upon order. Mr. Houghton also sought to rely on Ms. Leonard’s review of the contract in defence of his decision to accept BLT’s proposed payment schedule simply. Ms. Leonard testified that she believed the 25 percent was “a little high,” but assumed BLT was required to purchase the structures from Sprung. She told the Inquiry that she was “a little taken aback” in terms of the balance of the payment schedule, explaining: “Normally, we would do it on a percentage of completion basis for that type of deal.”

Rick Lloyd testified that he was “depending on the lawyer and the Treasurer” to have raised any issues with the payment schedule. Ms. Leonard said she relied on the fact that the Town’s lawyers did not raise any concerns about the contract. Mr. Houghton also sought to rely on the purported legal review of the contract as cover. As I discuss below, only Mr. Houghton knew, however, that the contract had not been subjected to any meaningful legal review before he arranged for the Town to sign documents.

The payment schedule was so unfair to the Town that BLT ultimately agreed to amend it, months after the contract was signed.

On December 5, 2012, BLT invoiced the Town for the second quarter of the construction contract amount according to the payment schedule. The Town paid BLT later that month.

On January 24, 2013, Ron Martin emailed the Town's manager of engineering services, Brian MacDonald, indicating he and BLT project manager Paul Waddell had been "discussing the site work at the pool and arena and would appreciate your thoughts and comments on how to best complete the work." Mr. Martin further noted that "BLT has agreed to work with us to complete the work as efficiently as possible."

The next day, Mr. Barrow emailed Mr. Waddell asking him to forward a new billing schedule to the Town of Collingwood. Two minutes later, Mr. Waddell emailed a revised billing schedule to Mr. Martin, stating:

Further to our conversation regarding the current contract payment structure, I have reviewed it with Dave and Mark and we hereby suggest we amend the contract with you to reflect a billing that would divide the current remainder of the contact [sic] into 5 equal payments rather than maintain the current payment structure.

The current contract, while more favorable to BLT at this point in the billing cycle is not in keeping with the spirit of our relationship with the Town and slightly outside the boundaries of common sense and common practice [emphasis added].

Although this is a unique design build contract and was well intended at the time of writing I'm sure, we'd still prefer it to be fair in nature to both parties involved.

[...]

Please review and advise if you fell [sic] this is an acceptable proposal in the interim.

Mr. Martin forwarded the new schedule to Mr. Houghton and Ms. Leonard, asking for their thoughts. Mr. Martin also stated: "I am personally much more comfortable with the restructured payment schedule and believe that it more accurately represents actual work being completed each month."

Mr. Houghton and Ms. Leonard responded, indicating the new payment schedule was acceptable. Mr. Martin replied, stating he would "contact BLT and let them know that we agree and will proceed on this basis for the duration of the two projects."

Mr. Martin, Mr. Houghton, and Mr. Barrow all testified that the payment schedule was changed as a result of a proposal by Mr. Martin.

Mr. Martin testified that prior to this email exchange, he had asked Mr. Houghton and BLT about changing the payment schedule so that payments would be more closely tied to construction work completed. Mr. Martin believed BLT ultimately agreed to his revised schedule because it recognized that the initial schedule had been favourable to BLT and that Mr. Martin's proposed schedule "was a pretty standard process." Mr. Martin felt that a payment schedule under which payments reflected work completed was more fair to the Town than the schedule previously agreed to.

Mr. Barrow testified that BLT agreed to the change because, "[a]t that point, we were much more comfortable with ... the Town." He disagreed with Mr. Waddell's assessment in the email above that the initial payment schedule was more favourable to BLT, arguing that BLT needed payments upfront to pay for certain construction costs and that it would be preferable for BLT to pay for them with money received from the Town. Mr. Barrow also said that Mr. Waddell's statement in the email that the payment schedule was not common practice referred to the fact that it was relatively aggressive.

I am satisfied that Mr. Martin proposed the revised payment schedule to BLT in an attempt to rectify the Town's position after it had been left vulnerable by the initial payment schedule. As I discussed above, the initial schedule was proposed by BLT and accepted by Mr. Houghton without any attempt to negotiate.

Legal Advice

Mr. Houghton forwarded the draft contract to lawyer John Mascarini of Aird & Berlis at 10:26 a.m. on August 30, 2012 shortly after receiving it from Mr. Barrow. In his covering email, Mr. Houghton wrote:

Please find attached the agreement that we discussed this morning. I appreciate that you have agreed to take the time to review. In looking at the agreement, it appears to be a "standard" construction document.

Mr. Houghton did not ask for any specific advice or pose any questions in his covering email. He testified that he asked Mr. Mascarin to “review the agreement, see if it was appropriate.”

Immediately after sending the contract to Mr. Mascarin, Mr. Houghton emailed Ms. Leonard and Deputy Mayor Lloyd, advising: “I just got the agreement and the 25 percent up front draw amounts to \$3,099,725.24. The cheque will be made out to B.L.T. Construction Services Ltd.” Mr. Houghton noted that he had sent the contract to Mr. Mascarin for review, “but it is “off the shelf” Construction Agreement.”

Mr. Mascarin responded to Mr. Houghton less than three hours after receiving the 46-page contract. He began his email by advising he had “not reviewed any of the background to this proposed construction nor any of the Contract Documents referred to within the agreement.” He went on to explain that “the work is to be undertaken in accordance with all the various underlying contractual agreements and specifications which I assume have been fully canvassed and agreed to by the Town,” and concluded:

Assuming that the Mayor has been authorized by Council to execute the agreement (I note there is only space for one signature by the Town) the agreement is generally satisfactory and does not appear to have been modified by any [sic] substantive amendments or riders apart from the attachment of the budget and timeline schedules.

Mr. Houghton testified that he was not sure if he had understood Mr. Mascarin’s reference to “all the various underlying contractual agreements and specifications” that Mr. Mascarin assumed had been “fully canvassed and agreed to by the Town.” Mr. Houghton said he did not know what the “Contract Documents referred to within the agreement” were, explaining:

–[I]sn’t there additional things that need to be attached to the contract? Like, I sent him the contract. For him to say that he’s not reviewed the – nor any of the contract documents, isn’t that what I’m sending him as the – sort of the contract?

So I'm assuming what he's talking about is other things that might be standard within the same kind of – I don't know.

Despite his confusion about Mr. Mascarin's message, Mr. Houghton did not have any discussions with the lawyer after receiving his email. Mr. Houghton agreed with his counsel's suggestion that Mr. Mascarin "in essence" provided him with "a go-ahead to use [the contract]."

A plain reading of Mr. Mascarin's email shows that he did not provide Mr. Houghton with "a go-ahead." To the contrary, Mr. Mascarin clearly identified that he had not considered the following important factors: the context in which the contract was formed; the documents referred to in the contract; and whether the matters referred to had been previously explained and agreed to by the Town.

Mr. Houghton testified that he did not forward Mr. Mascarin's correspondence to anyone. He said that he discussed the correspondence with Deputy Mayor Lloyd and thought he read it aloud to Ms. Leonard, explaining: "I think I probably said, here's what John is saying, blah, blah, blah, in these different areas. I think I did that."

It does not appear Mr. Houghton advised the deputy mayor or the treasurer about the caveats Mr. Mascarin placed on his review of the contract. Ms. Leonard testified she understood Mr. Houghton sent the contract to Mr. Mascarin. She said she did not recall if Mr. Mascarin noted anything out of the ordinary. The deputy mayor agreed with a suggestion from Mr. Houghton's counsel that "it was obvious" Mr. Houghton had sent the contract, including the payment schedule, to Mr. Mascarin for review.

Signing of Contract

Treasurer Marjory Leonard and Mayor Sandra Cooper signed the construction contract on behalf of the Town on August 30, 2012.

Ms. Cooper testified that she did not review the contract before she signed it. She said Ms. Leonard and "the Town solicitor" had reviewed the contract, although she could not recall which of the Town's solicitors – John Mascarin or Leo Longo – had completed the review.

Ms. Leonard testified that, although she briefly looked over the contract before she signed it, no one explained to her what the contract provided for. She said she was not normally the person who signed the contracts. Ms. Almas gave evidence that Ms. Leonard signed the contract because Ms. Almas, who would normally have done so, was away from the office that day.

Deputy Mayor Lloyd agreed with suggestions from Mr. Houghton's counsel that he met with the mayor on August 30 to discuss the contract and its particulars, including the first draw. He testified that he could not recall the details of the meeting, whether Ms. Leonard attended the meeting, whether he signed the contract, or if he witnessed the contract being signed.

Mr. Houghton testified that Mayor Cooper had told him she met with the deputy mayor and Ms. Leonard to review the contract and payment schedule. Ms. Cooper testified prior to Mr. Houghton. Mr. Houghton's counsel did not raise this conversation with Ms. Cooper when questioning her.

I am satisfied that there was no meaningful review of the contract terms from the Town's perspective. I can understand why Ms. Cooper and Ms. Leonard relied on the fact that the Town solicitor had reviewed the contract without raising issues. Unfortunately, Mr. Houghton did not inform them that Mr. Mascarin's review was limited.

Within 72 hours of Council's decision to approve the Sprung recreational facilities, a 46-page construction contract for in excess of \$12 million between the Town and BLT was drafted and signed. Important elements of the contract that affected the Town's interests were drafted by BLT and went uncontested by Mr. Houghton.

The Inquiry did not hear a convincing reason for the speed at which the contract was drafted and executed. Mr. Houghton testified that he understood Council wanted to move quickly. I reject his evidence in this regard because it defies common sense.

Mr. Houghton denied that his decisions were motivated by a desire to ensure that his friend, Mr. Bonwick, received his payment and received as much as possible. Regardless of Mr. Houghton's intention, the way he behaved helped make it possible for Mr. Bonwick's company, Green Leaf, to receive \$756,740.42 from BLT within four days of Council's vote and before any steps were taken toward the construction of the recreational facilities.

Payments to BLT, to Green Leaf

A remarkable series of events took place on August 30. As I described above, the day began with Mr. Bonwick directing Mr. Barrow to send Mr. Houghton the contract and BLT's invoice for the first instalment, explaining that the Town "will try to have the cheque ready if they get it in the next little while." By the end of the day, Treasurer Leonard and Mayor Cooper had signed a contract with BLT on behalf of the Town and the Town issued its first payment to BLT in the amount of \$3,099,725.24.

At the hearings, Mr. Bonwick explained he was trying to facilitate a prompt payment for two reasons. First, in his experience, it is a "much firmer deal once you have a deposit." Second, he said, "I suspect, to some degree, I want them to take care of Green Leaf as – as expeditiously as possible." He confirmed that this comment meant he wanted BLT to get paid so Green Leaf could be paid.

Accordingly, while Mr. Houghton worked to have the contract signed on August 30, Mr. Bonwick took steps to ensure that BLT paid Green Leaf the success fee as soon as the Town paid BLT. At 8:31 a.m., Ms. Stec sent Mr. Bonwick Green Leaf's invoice to BLT for the \$756,740.42 (including HST) success fee. Mr. Bonwick forwarded the invoice to Mr. Barrow at BLT at 9:14 a.m., writing:

Please review Abby's invoicing for approval. I would suggest, subject to your approval that you have a cheque prepared and bring with you for payment. If Collingwood has your draw than [sic] you can provide Green Leaf the payment. If Town cheque is not ready, just keep Green Leaf cheque until you receive yours.

Please let me know if this is an [sic] reasonable approach.

Dave Barrow replied to Paul Bonwick's email at 9:41 that morning, writing: "No problem please allow a few banking days for ours to clear." Mr. Bonwick replied: "Please call my cell regarding that request." Mr. Bonwick did not recall speaking with Mr. Barrow, but confirmed that, at this time, his interest was to get Green Leaf's fee paid as soon as possible.

At 6:03 p.m. on August 30, Dave Barrow emailed Paul Bonwick: “Paul I need that info for transfer.” The next day, BLT wired Green Leaf the \$756,740.42 success fee (which included HST).

Green Leaf Invoices

Green Leaf prepared two invoices for BLT. Both were dated August 30, 2012, labelled “Invoice 100” and “Project 101,” and both referenced “the agreement between BLT Construction Services Inc. and Green Leaf Distribution Inc. dated August 27, 2012.” One invoice set out fees for services (\$199,226.76 for the pool, \$470,455.03 for the arena, and \$87,058.63 in HST) totalling \$756,740.42. The other invoice set out fees for service for “LEED™ Consulting, Project Management” totalling \$756,740.42 (including HST).

Mr. Bonwick testified that only one invoice was sent to BLT. He explained that Ms. Stec initially created an invoice that included LEED consulting and project management. Mr. Bonwick testified that, after reviewing the LEED invoice, he was “sort of concerned about suggesting that LEED’s consulting represented a significant portion of the invoice, rather make it more generic, which is historically how I handled my billings.” He asked Ms. Stec to create a new invoice, which was then sent to BLT.

Ms. Stec testified that she prepared two invoices because she was not sure “how Mr. Bonwick wanted it to read.” She did not recall why the one invoice referenced LEED consulting, but confirmed that Green Leaf had not done any LEED consulting work for BLT at this point in time. She did not recall whether one or both invoices were sent to BLT.

Mr. Barrow confirmed that Green Leaf sent only one invoice, which did not reference LEED consulting.

Distribution of Green Leaf Proceeds

Ms. Stec testified that, after Green Leaf received the payment, Mr. Bonwick offered her 20 percent of the proceeds, proportional to her ownership of the business.

Ms. Stec said she declined the money, testifying that the payment was for Mr. Bonwick’s work under the intermediary agreement, not for any LEED

consulting. She described the amount as a “performance fee” for “providing the sole source, which I didn’t feel that should have gone through Green Leaf.” Ms. Stec also testified that she was uncomfortable, in part, because she was “blown away” by how fast the deal happened.

At the hearings, when Mr. Bonwick was asked whether the payment was a substantial amount of money for a month’s work, he testified no, explaining: “I think one has to reflect on the value that Green Leaf brings to the table and, more specifically, myself” referencing his investment in his network of relationships, “throughout Simcoe County, the province, the Federal Government.”

Mr. Bonwick did not agree with Mr. Houghton that the Sprung buildings would not have been built without Green Leaf’s involvement, remarking that “he’d like to justify my own existence and that of my company.”

Use of Green Leaf Funds

When BLT paid the \$756,740.42 success fee on August 31, Green Leaf had \$5,672 in its bank account. Green Leaf’s financial records show that, between August 31 and December 31, 2012, Green Leaf used the funds from the Green Leaf account to pay:

- Compenso:† a total of \$281,486;
- Mr. Bonwick personally: a total of \$41,679;
- Ms. Stec’s consulting company: a total of \$27,505;
- an HST remittance: \$54,303; and
- a variety of payments, each of which was less than \$45,000.

At the beginning of 2013, Green Leaf had \$311,948 remaining in its account. Throughout the year, Green Leaf received a total of \$68,016 in additional deposits from a variety of sources, including a \$20,075 payment from BLT for a LEED consulting report for the Sprung arena and pool. In addition to those deposits, Green Leaf took out a \$250,000 GIC. However, all

* Mr. Bonwick’s communications company.

but \$10,000 was withdrawn from the GIC that year. Green Leaf also loaned Georgian Manor Resort \$140,000 and received \$140,000 in payments. Mr. Bonwick testified that Green Leaf loaned the money to help the business through a financing situation.

By the end of the year, Green Leaf had a negative balance of \$7,696. Green Leaf used the funds in its account in 2013 to pay

- Compenso: a total of \$64,046;
- Abby Stec and her consulting company: a total of \$93,829; and
- A variety of other payments, each of which was less than \$45,000.

Mr. Bonwick testified that \$40,000 of the amounts paid to Compenso was to repay a loan he claimed he had provided to the company, but he did not recall the purpose of the other payments. He said he believed Green Leaf paid Compenso \$6,102 a month either for consulting fees on another project or for rent and additional costs. He could not recall.

Green Leaf's financial records state that the amounts paid to Mr. Bonwick personally in 2012 were for a dividend (\$25,000), and the remainder for expense reimbursements (\$16,679).

Ms. Stec testified that the amounts paid to her consulting company were for her salary and expenses.

Conclusion

In the short period between Council's approval of the Sprung structures and the signing of the construction contract, Mr. Houghton made several key decisions and failed to negotiate elements of the contract. Mr. Houghton sent the contract to Town solicitor John Mascarin for review but, as Mr. Mascarin explained to Mr. Houghton, his review was limited. Mr. Houghton's choices were to the Town's detriment, as the Town signed a contract that hadn't been negotiated and with terms that failed to protect the Town's interests. Meanwhile, BLT and Green Leaf benefited from the speed with which the contract was drafted and signed, as BLT collected a substantial deposit and Green Leaf was paid its commission.

The Sprung / BLT Selection Process: Questions and Fallout

All was not quiet after the August 27, 2012, Council meeting. Within a week, Council and staff faced numerous questions about the decision to sole source two Sprung recreational facilities. The questions probed the flaws in the staff report and whether Paul Bonwick benefited from Council's decision. Responding to the questions taxed staff, particularly the clerk, Sara Almas. As part of the process, staff gathered information that was not provided to Council before voting, including a list of fabric building competitors that may have been eligible to participate in a competitive procurement. Acting Chief Administrative Officer (CAO) Ed Houghton also asked Dave McNalty, manager of fleet, facilities and purchasing, to prepare a memo criticizing the report of WGD Architects Inc.

The efforts to explain staff's sole source recommendation did not alleviate the perception of mischief. Mr. Houghton and Deputy Mayor Rick Lloyd denied Mr. Bonwick's involvement, despite knowing he worked for BLT Construction Services Inc. Mayor Sandra Cooper failed to make any inquiries into the rumours surrounding her brother, Mr. Bonwick. The questions persisted, in particular those relating to Mr. Bonwick, after the CBC reported in March 2013 that the Ontario Provincial Police (OPP) were investigating his role in other Town business.

In April 2013, Mr. Houghton stepped down as acting CAO.

Questions to Council and Staff

In the weeks following the August 27 Council meeting, stakeholders asked questions of Council and staff regarding the process that led to the approval

of the Sprung structures. Some sought clarity on staff's process by writing open letters and asking questions at Council meetings while others submitted formal document requests to staff. Many of these questions reflected the same concerns regarding the staff report that I discuss in Part Two, Chapter 11. In some instances, the answers provided to these questions were inaccurate or misleading.

As the Town's clerk, Ms. Almas was responsible for fielding and responding to information requests from residents. She testified that there was a high level of concern among Town residents regarding the decision and, as a result, she received a "pretty significant" number of information requests pertaining to the Sprung structures. She noted that responding to these requests was overwhelming at times. Ms. Almas withdrew from the Executive Management Committee (EMC) in May 2013, as I discuss below.

From the PRCAC

On August 28, 2012, Marta Proctor, director of parks, recreation and culture, sent an email to members of the Town's Parks, Recreation and Culture Advisory Committee (PRCAC), and Central Park Steering Committee advising them that Council had approved the Sprung facilities. One member of the PRCAC, Dr. Geoff Moran, responded to the email expressing his disappointment in Council's decision. He criticized the Town's failure to use a competitive procurement process, consult with the public, or commission engineering assessments before approving the Sprung facilities and expressed concerns over the durability of Centennial Pool.

Shortly thereafter, Dr. Moran sent Ms. Proctor a second email, asking several questions regarding recreational facilities, including:

What process lead [sic] council to this decision?

Why is there suddenly such a great urgency?

What is the cost of each facility? How does the town plan to finance these costs and what contingency is built in?

Have any studies been done on the outdoor pool as to the ability to enclose it and its general condition?

What will be the annual, ongoing costs of operating [the Sprung arena, the Sprung aquatics facility, and the Eddie Bush Arena]?

How did this Sprung company approach the town or the town find them?

Have other similar companies been asked to quote on these projects?

What is the longevity of these structures? Can you add on to these buildings in the future?

Dr. Moran asked reasonable questions. As I discuss in Part Two, Chapter 11, the answers to some of these questions were included in earlier drafts of the August 27 staff report and then removed before the report was finalized.

Ms. Proctor forwarded Dr. Moran's email to Mr. Houghton, asking for suggestions on how to respond. Mr. Houghton advised Ms. Proctor to hold off and stated that,

Council (at least some) are not happy that the Committee members continue to hammer them on a decision that has been made. These comments are very much reflecting on us and we need to try and manage this some way some how.

Ms. Proctor responded to Dr. Moran on September 5, asking him if he would like to meet with Mr. Houghton, Mayor Cooper, and herself. A meeting was set for September 11.

After the meeting, Mayor Cooper sent a summary to Council, indicating the meeting "was very positive as [Dr. Moran] was appreciative of information provided." She also noted that a PRCAC meeting had recently taken place and that she, Deputy Mayor Lloyd, Mr. Houghton, Ms. Leonard, and Ms. Proctor had attended. She described the meeting as "informative for those present. There was frank discussion with questions from their members which were answered honestly." Mr. Houghton kept Mr. Bonwick apprised of these developments, forwarding the mayor's update to Mr. Bonwick and writing, "ugh!" Mr. Bonwick responded, "remember ... lol."

From a Local Engineer

On August 29, 2012, Dan Barill, an engineer working in Collingwood, sent an email to Deputy Mayor Lloyd questioning the staff report's estimate for a pre-engineered steel facility. He stated: "In my opinion, Mr. Houghton's estimated construction cost for a single pad arena (\$11,100,000–\$12,300,000 + additional \$1,000,000 for a second-floor lounge area) is high." He added that his company had submitted a single-pad arena proposal to the Town of Listowel for \$9,998,000 and that the Town of Clinton had built a single-pad arena for \$8.5 million. Mr. Barill was correct. The pre-engineered steel arena estimate was high, inflated by at least \$3.9 million (see Part Two, Chapter 11).

The deputy mayor forwarded the email to Mr. Houghton, who responded: "The estimates came from the architects that the Steering Committee used but he misread the \$1M for the mezzanine. That was already in the cost." Soon after, the deputy mayor replied to Mr. Barill, stating: "[T]he estimate that you refer to came right out of the CENTRAL PARK STEERING COMMITTEE but I think you misread the \$1 million for the Mezzanine as that is already in the total cost."

The information Mr. Houghton provided to the deputy mayor in response to Mr. Barill's email was misleading in two respects. First, the staff report's estimates for a pre-engineered steel arena were not created by the architects used by the Steering Committee (WGD) or the Steering Committee itself. They were modified versions of WGD's budgets created by Mr. McNalty at Mr. Houghton's direction.

Second, Mr. Barill's perception that a pre-engineered steel arena mezzanine would cost an additional \$1 million was not a result of "misreading" the report. As I describe in Part Two, Chapter 11, the staff report stated that the mezzanine would cost an extra \$1 million and at no point indicated that this amount was included in the pre-engineered steel arena estimate. Mr. Houghton confirmed in his evidence that this portion of the report was an error.

From Ameresco

On August 30, Frank Miceli of Ameresco Canada Inc., sent a letter to Mayor Cooper, copying all Council members, regarding the August 27 Council meeting. In the letter, Mr. Miceli stated:

We were extremely surprised to see that ... [w]hat was previously described as a comprehensive solution with a community centred facility seemed to morph into a fragmented solution to get a roof over an existing swimming pool and an additional ice pad.

The process then seemed to go off onto another tangent whereby the only acceptable solution was to have a fabric covered structure over both the pool and the arena ...

If these divergences from the original plan were not enough, a formal procurement process seemed to be entirely abandoned in favour of a rapid award to a single supplier of a fabric covered structure.

Mr. Miceli concluded his letter by asking Mayor Cooper several questions, including:

If the scope of work changed from a multi use recreational facility to a single pad arena and a roof over an existing pool why was a Request for Proposals not prepared and issued to solicit these solutions from the marketplace?

When asked during the hearings why staff did not issue a request for proposal (RFP) once the Town shifted its focus from a multi-use facility to a single-pad arena and pool cover, Mr. Houghton answered that Council had expressed an urgent need for a new arena and aquatics facility.

As I discuss in Part Two, Chapter 10, Council had sufficient time to conduct a competitive procurement process for new facilities before the end of its term. Furthermore, the staff report that Mr. Houghton oversaw recommended sole sourcing the Sprung facilities on the basis that they were unique, not that there was an urgent need that justified foregoing a competitive procurement.

When asked whether, in hindsight, it would have been preferable to conduct an RFP before making a final decision regarding recreational facilities, Mr. Houghton stated: "I agree. I – I think there's a few things that I would, if I was looking back – what I would be making suggestions of how to move forward in a – in a new way in 2019."

Mr. Miceli's concerns are indicative of how the flaws in the process of

writing the staff report, described in Part Two, Chapter 11, undermined the public's confidence in Council's decision to approve the construction of the Sprung structures. The speed with which the decision was made and the absence of clarity on why a competitive procurement was abandoned left Mr. Miceli with the sense that staff's recommendation had been made in haste and without proper due diligence. Over the following months, these concerns would be expressed by other Town residents.

Mayor Cooper responded to Mr. Miceli's letter by email:

Hello, Mr. Miceli:

Thank you for your presentation.

The town has fulfilled all obligations.

From Councillor Hull

On September 10, 2012, Councillor Keith Hull submitted a list of 20 questions regarding the recreational facility procurement process to his fellow councillors. Mr. Houghton and the Executive Management Committee began drafting a memo responding to Councillor Hull's questions on September 13. Mr. Houghton oversaw the process. He revised the memo on September 14 and then again on September 17. The following are some notable answers.

In response to a question asking why a competitive procurement process had not been used to purchase the Sprung facilities, Mr. Houghton stated:

The technology being used for the new recreation facilities is the patented Sprung technology, which is unlike any other on the market to date. To the best of our knowledge through considerable review, Sprung is the only technology that has not experienced a collapse. The buildings are considered 60 year structures, with a 20 year guarantee on the membrane and 30 year guarantee on the structure itself. This far exceeds all other guarantees. In fact many standard roof types have less than a 20 year guarantee.

Sprung was advised that they were in a competitive process, competing against traditional methods and construction practices.

Further, they were advised that the traditional methods would be favoured.

As I discuss in Part Two, Chapter 11, Sprung Instant Structures Ltd. was not advised that it was participating in a meaningful competition with any other construction types. Further, Mr. McNalty, Ms. Almas, Ms. Leonard, and Mr. Houghton all provided evidence that it was inaccurate to describe Sprung as having participated in a competitive process.

There was no evidence that Sprung was told that the Town would favour traditional construction methods in its search for new recreational facilities. To the contrary, Sprung's Tom Lloyd testified that he had been told "many times" by Town representatives that a pre-engineered steel arena was not the Town's preferred option.

Councillor Hull also asked whether the decision to purchase the Sprung structures adhered to the Town's procurement policy. The memo did not directly answer the question, stating:

The Town's Procurement Policy is developed to ensure that all purchases are performed in a fair and financially responsible manner. There are times when certain technologies (such as pumps, chlorinators, etc.) are leading edge, one of a kind, or most appropriate for certain types of situations or applications. When purchasing such technologies, one must always practice good judgment and professionalism. This was demonstrated by the Treasurer, Marjory Leonard.

As I discuss in Part Two, Chapter 10, the decision to have the report recommend a sole-source procurement of the Sprung structures was made by Mr. Houghton, not Ms. Leonard.

Councillor Hull's final question was whether the staff report's recommendation was unanimous. The memo responded:

Input and consultation was received from Members of Council, Ed Houghton, Acting CAO; Sara Almas, Clerk; Marta Proctor, Director of Parks, Recreation and Culture; Larry Irwin, Director of Information Technology; Marjory Leonard, Treasurer; Dave McNalty, Manager of Fleet

Facilities and Purchasing; and Dennis Seymour, Manager of Recreation Facilities. Staff worked diligently to meet the requirements on the direction of Council and did so in a professional manner. At no time did any member say they were not in favour of any portion of the direction given, even when directly asked.

This response understated Mr. Houghton's role in overseeing the report's direction and overstated the influence of other staff members.

Treasurer Leonard responded to Mr. Houghton's draft of the memo, stating, "sounds good to me," while Mayor Cooper responded thanking Mr. Houghton and the EMC for their work on the memo.

The next day, Councillor Hull sent an email to Mr. Houghton and the EMC indicating the mayor had provided him with a copy of the memo and stating that "[t]he majority of my questions have been satisfactorily answered. Others we will simply have to agree to disagree and move forward."

Paul Cadieux's Document Request

On August 30, 2012, Friends of Central Park member Paul Cadieux sent Clerk Almas a letter on behalf of the group requesting documents related to the Sprung structures. Ms. Almas spent the next month working with other staff to gather the requested information.

As part of this process, Mr. McNalty prepared a spreadsheet showing how WGD's original \$7.6 million estimate for a pre-engineered steel arena was adjusted to \$12.3 million, the high end of the price range for a pre-engineered steel arena in the August 27 staff report. Mr. McNalty testified that, while he discussed some of his adjustments with the EMC during the drafting process, he prepared a new version of his spreadsheet specifically to respond to Mr. Cadieux's request.

Mr. McNalty's spreadsheet included a breakdown of how he prepared the estimate for the second-floor mezzanine, which involved taking items from both WGD's estimate and BLT's budget (see Part Two, Chapter 11). When Mr. McNalty sent the spreadsheet to Ms. Almas on September 13, he wrote that "we may or may not want to remove" the mezzanine breakdown. Mr. McNalty testified that he did not believe the breakdown contained

sensitive information; rather he was unsure if it was more information than required to answer Mr. Cadieux.

Ms. Almas forwarded Mr. McNalty's email to Mr. Houghton on September 20. Mr. Houghton replied: "I have no issue sending the first part and excluding the second part. I'm not sure exactly what that is but if Dave has mentioned possibly not sending maybe we should."

The version sent to Mr. Cadieux included a breakdown of the second-floor mezzanine estimate but removed the information about which items were taken from WGD's estimate and which items were taken from BLT's budget.

In preparing a response, Mr. Houghton also changed the explanation of why the green initiatives (which were listed as "recommended upgrades") had been added to WGD's estimate for pre-engineered steel in the staff report. Mr. McNalty originally wrote that recommended upgrades were "[a]s may be required for LEED Silver certification level." Mr. Houghton directed Mr. McNalty to change this to: "As may be required for LEED Silver certification level similar to Sprung Membrane Building." This statement was inaccurate. The Sprung structures were not eligible for LEED silver certification without additional features, work, and costs (see Part Two, Chapter 11).

In the process of responding to Mr. Cadieux, Mr. McNalty also created a chart comparing the costs of the Steering Committee's multi-use facility, a pre-engineered steel arena, and a fabric membrane arena. Mr. McNalty noted that the chart might respond to "the follow up request from Cadieux for the comparison template."

After receiving the chart, Mr. Houghton wrote: "I think what Cadieux is asking for is the matrix that looks at other fabric buildings in comparison to Sprung." Ms. Almas responded, asking: "Do we have a matrix that compared other fabric structures? Did you do this Marjory?" Mr. McNalty responded: "I never made anything for this comparison because I never found anything to compare to – even on the basis of R-Value alone."*

Ms. Almas sent Mr. Cadieux a formal response to his requests on September 22:

* As noted in Part Two, Chapter 7, a building's insulation is measured by "R" value. A building with a higher R value is better insulated.

I appreciate your patience – since we had numerous staff working together and with my unexpected time away from the office – I have now compiled the information requested.

I trust everything requested is attached, and a few extra items we had that may be beneficial in your review. The one item missing is the handwritten detailed matrix, as it is with Ed's files he kept for his discussions with various concerned stakeholders. I have contacted Ed (and copied him on the attached), and he has confirmed that he will provide once he is back in the office early next week. I am just awaiting confirmation on the release of the Sprung Contract – and will have that additional information to you this week.

The operating information and calculations for the year-round pool were based on industry standards and data that was provided by our Parks, Recreation and Culture Director.

The Inquiry did not receive a copy of the “handwritten matrix,” nor did it hear any evidence that Mr. Houghton provided this document to Mr. Cadieux or anyone else.

Ms. Almas recalled seeing the document but could not recall its contents and could not recall whether it was ultimately provided to Mr. Cadieux. She testified that Mr. Houghton or Mr. McNalty likely created the document. When asked about the handwritten matrix, Mr. Houghton stated:

I probably just had something that I had received along the way that had different fabric companies on it. And I – I probably had that in the – the office downstairs. I don't have a specific memory of it ...

Mr. Houghton also acknowledged that staff had not documented the results of its research into other fabric membrane suppliers until after the publication of the staff report:

I think that when we were doing our internet searches we were seeing that there was really only one (1) kind of fabric building that would – would be Sprung and there was other – many other commercial or agricultural type fabric buildings, and they – you know, you can see where they had

collapses and things. But I don't think we actually put it down in, you know, sort of a comprehensive package.

After receiving Ms. Almas's email, Mr. Cadieux thanked the clerk and asked when he would receive WGD's work in respect of the pool. Ms. Almas replied that WGD was not retained to review options for the pool because Council specifically directed staff to look at covering the outdoor pool with a fabric structure.

On September 24, Mr. Cadieux wrote to Ms. Almas:

I see that the construction contract that was signed by the Town is with BLT Construction Services Inc. While this is good to have, I was looking for the contract that was signed with Sprung. Can this be made available as well?

Mr. Houghton responded shortly afterward: "The agreement is with BLT who is the exclusive licensed installer of Sprung structures in Ontario and I believe eastern Canada." This response was inaccurate. As I have already discussed, BLT did not have the exclusive right to build Sprung structures in Ontario. Mr. Houghton was aware of this, as Tom Lloyd of Sprung had presented him with the option of having another company build the Sprung structures during a meeting on August 3.*

If the information that was provided to Mr. Cadieux had been made available to Council before August 27, Council would have had the opportunity to ask similar questions as Mr. Cadieux – for instance, why did WGD not look at the pool? Or, why is there another company listed on the contract? – before voting to proceed with two Sprung buildings.

The fact that Mr. Houghton directed the preparation of documents after members of the public began asking questions, and could not locate other important documents he said existed, risked creating the impression, whether true or not, that the rationale for recommending a sole-source procurement was tenuous, and needed to be bolstered after the fact.

* I discuss this meeting further in Part Two, Chapter 8.

Staff and Public Awareness of Competitors

Sprung's Competitors

On September 5, 2012, Abby Stec of Green Leaf Distribution Inc. sent an email to Tom Lloyd and David MacNeil of Sprung and Dave Barrow of BLT, stating:

There are several interest groups that are stirring the pot about the sole sourcing method we followed.

Can you please put some bullet points together that clearly indicate why Sprung is in a league of its own and that there is really no company to compare to it. It is very important that we put this to bed ASAP.

Mr. Barrow responded that he would send Ms. Stec “comparisons ... regarding other structures.” Later that day, Ms. Stec requested a conference call with David MacNeil, Tom Lloyd, Mark Watts (BLT’s president), Dave Barrow (BLT’s vice-president), and Paul Bonwick.

Mr. Houghton testified that Ms. Stec made this request on staff’s behalf. He stated that, although staff had done some internet research by this point on other fabric building suppliers, the results of this research had not been consolidated and documented. As a result, staff sought this information from Sprung.

On September 6, Tom Lloyd sent Mr. Houghton “a two page document which speaks to the local membrane competition.” The document listed “[t]he other major membrane players in Eastern Canada” (including MegaDome, Britespan Building Systems, and Calhoun Super Structure), described flaws in each of these company’s structures, and then described the advantages of Sprung structures.

Mr. Lloyd testified that he provided Mr. Houghton with this information because advocacy groups within the Town were questioning whether other local fabric structure suppliers were superior to Sprung. Mr. Lloyd also indicated in his email that he would “try to send a few other documents as well.”

On September 9, Ms. Stec sent Mr. Houghton promotional materials

for a Sprung fabric-covered pool in Kearns, Utah, as well as a document describing Sprung structures that had been erected in cold weather climates.

Three days later, Mr. Houghton emailed Tom Lloyd, stating: “The media is now saying there are other direct competitors. Please confirm this false [*sic*] ASAP.” Mr. Lloyd responded:

Not sure what the media is saying. Sprung is a patented technology and therefore NO other membrane competitor can come close to our product. They also can't come compete [*sic*] in the energy savings, environmental friendliness and LEED credits.

Mr. Houghton replied, thanking Mr. Lloyd and asking: “How many other membrane companies are there? Are there any that are insulated?” Mr. Lloyd replied:

[T]here are about 10 membrane manufacturers in Canada. Most are designed for farm buildings, household garages and small cold storage buildings. NONE insulate from the manufacturer. If they say they do it's an aftermarket addition that is installed by their resellers. None of their websites even mention insulation as an option.

During his testimony, Mr. Lloyd elaborated on this email. He stated that Sprung was the only fabric structure supplier that manufactured its fabric membrane with insulation built in. Other structures added insulation after the fact.

On September 17, Mr. Lloyd sent Mr. Houghton an email with the subject line, “Competition.” Although the document attached to the email was not provided to the Inquiry, the covering email indicates that the attachment contained a spreadsheet describing the traits of other fabric membrane structures. Mr. Lloyd wrote:

Here is a revised spread sheet. It's long so best to print on 11" x 17" paper. We have added the guarantee and membrane specs.

The competitors that sell membrane structures in Ontario are highlighted in red. To the best of our knowledge, and the folks we

hire for competitive info, none have an existing structure as wide as Collingwood requires.

Mr. Houghton responded, indicating he had some questions. In his reply, Mr. Lloyd wrote:

[There] is NO competitor to Sprung. Who else has proven existing insulated buildings? No one!! The town of Collingwood made a great decision and they will be proud and thankful of it for years to come!! 100 per percent CANADIAN!!

Resident Claims Competition

On September 21, Town resident Steve Berman published an open letter stating, among other things, that he had spoken with a company with an office in the county that offered a similar product and was not approached by the Town. His letter asked several questions and concluded: “We need to know why the town decided to sole source a contract worth millions of dollars of our money without our consultation.”

Mr. Houghton forwarded Mr. Berman’s letter to Mark Watts and Dave Barrow at BLT. Mr. Barrow, in turn, forwarded it to BLT project manager Paul Waddell and Tom Lloyd of Sprung. Mr. Waddell responded:

We had better cover ourselves very quickly and prepare to address the cost implications of abandoning ship.

We will obviously get Ed what he needs this weekend but ...

Read it over and over. As concrete as we can make our deal with the town, the reality is the town blew it in the eyes of the taxpayer. The second we release this contract the shit storm will become a hurricane.

The mayor had better meet with you and Ed at the same time. No way they can spin out of this.

During the hearings, Mr. Barrow could not recall the nature of the concerns Mr. Waddell expressed in his email. The email, however, speaks for itself.

Spreadsheet of Competitors

On September 24, Mark Watts sent Mr. Houghton a document entitled “Membrane Competition Spreadsheet”. The spreadsheet compared Sprung’s structures to those of seven other companies: Big Top, Calhoun Super Structures, Yeadon Air Supported Structures, MegaDome, Norseman (CMG Building Sales), Rubb, and Bright Span Structures. The spreadsheet compared each competitor’s experience constructing recreational facilities, insulation, construction materials used, delivery time, warranty periods, capacity to withstand wind, and whether independent engineers had reviewed the competitor’s structure.

Mr. Houghton testified that staff did not prepare anything akin to the membrane competition spreadsheet before the August 27 Council meeting. He further stated that the spreadsheet was created after the Council meeting but not by Town staff.

Tom Lloyd confirmed that Sprung prepared the spreadsheet. He recalled providing the spreadsheet to the Town before the August 27 Council meeting, however, he could not remember to whom he gave the spreadsheet. He acknowledged that several of Sprung’s competitors listed on the spreadsheet produced insulated fabric membrane structures. He agreed that Norseman, one of the competitors listed on the spreadsheet, built membrane structures in Ontario that could be used for recreational facilities and could attain the same level of insulation as a Sprung structure.

I am satisfied that Sprung did not provide the spreadsheet of competitors until after the August 27 Council meeting. None of Mr. Houghton, Ms. Almas, Mr. McNalty, or Ms. Leonard testified that they had access to such a spreadsheet when researching fabric membrane structures during the staff report drafting process. It was not in Sprung’s interest to identify its competitors to the Town. This highlights one of the benefits of competitive procurement: the market provides accurate information about available options.

The fact that Sprung could, on request, produce a spreadsheet identifying a series of potential competitors re-enforces that a sole source was inappropriate. Not only would a competitive procurement process attract bids from some of the competitors on the Sprung spreadsheet, it would also permit manufacturers of other types of buildings to bid on the arena and pool.

In this regard, Tom Lloyd testified that, before August 2012, Sprung had

participated in 40 to 50 competitive procurements. Mr. Lloyd explained that pre-engineered steel buildings were a “major competitor” in those procurements. He continued, noting that about three of the procurements were for arenas and one was for a pool and arena project in Nova Scotia.

Mr. Lloyd stated that all these procurements “went conventional,” meaning “there might have been some pre-engineered components to it, but it was mostly a bricks and mortar.” Mr. Lloyd testified that he did not know whether other fabric membrane manufacturers submitted proposals. In procurements for other facilities, Mr. Lloyd said, Sprung often bid against three other fabric building suppliers: Cover-All, Norseman, and MegaDome. He added that, if the decision was based primarily on price, “we would lose” because the competitors all offered a lower price.

Resident's Continued Questioning

Over the next few days, the Sprung membrane competition spreadsheet was forwarded to Mr. Berman. On September 28, Mr. Berman emailed Mr. Houghton, asking for contact information for representatives of Sprung and the seven other companies listed on the spreadsheet.

Mr. Houghton forwarded Mr. Berman’s email to Mayor Cooper and Deputy Mayor Lloyd, stating: “This is getting beyond ridiculous. When do we get to move on and not have to answer all of these questions? Every time we give them information, they use it against us and give me more work.” The questions that were causing Mr. Houghton concern, however, were rooted in the flawed staff report he oversaw that recommended bypassing a competitive procurement process in favour of Sprung. A request for proposal would have rendered many of Mr. Berman’s inquiries unnecessary.

Questions regarding staff’s research into Sprung’s competitors continued over the following months. Mr. Berman requested additional information regarding the Sprung transaction from Clerk Almas in November. In an email to Mr. Berman, Ms. Almas stated that “[Mr. Houghton] and Marjory [Leonard] have confirmed that the only information obtained by any of the other structure suppliers was strictly obtained from their websites.”

Ms. Almas noted that, as the staff report was being drafted, she understood that staff’s research had been broader than a review of suppliers’

websites. She recalled learning the true scope of staff's research around the time she was responding to Mr. Berman's questions and document requests. She testified that she was "disappointed that there wasn't more substantial due diligence undertaken." When asked why she was disappointed, Ms. Almas stated:

Just because this received – it was so controversial. Everything had happened. My workload increased. All this work was undertaken then to go back and then justify why that decision was made, when I thought that the information was already reviewed to justify the recommendation.

I understand Ms. Almas's disappointment.

Fallout

The damage done to the public trust by the staff report-writing process and the last-minute recommendations inserted in the report is apparent from the evidence I describe in this chapter.

After Council's vote, members of the public had questions about the propriety of a sole-source procurement and began advocating for transparency. The discovery that there were other suppliers justified their inquiries. Misleading information distributed under Mr. Houghton's supervision in response to their questions risked further fuelling public concern.

For example, Mr. Houghton testified that, when he distributed the membrane competition spreadsheet to members of the public, he did not indicate that the spreadsheet was the work of Sprung and BLT as opposed to Town staff. I accept that Mr. Houghton distributed the spreadsheet to the public without clarifying that Sprung was the source of that information.

When asked whether he informed the public that the spreadsheet was created after Council's decision and was thus not representative of the research staff had done prior to the August 27 Council meeting, Mr. Houghton disagreed with the premise of the question, stating:

It was a competitive spreadsheet that was indicative of the – the review that at least I had done for sure

[...]

[Y]ou said it's not indicative of the work staff had done. I don't – I don't agree with that ... it was indicative of what staff had determined in their review prior to August 27th.

If Mr. Houghton had indeed learned of Sprung's competitors before the August 27 Council meeting, he should have ensured that information was presented to Council. Instead, as I discuss in Part Two, Chapter 11, the staff report he oversaw advised Council that Sprung had no competitors. The late release of this information, after the Town had already contracted with BLT, undermined public confidence in Council's decision.

Denial of Mr. Bonwick's Involvement

As part of the backlash to the Sprung decision, certain residents in Collingwood began asking questions about Mr. Bonwick's involvement in the Sprung decision. Mr. Houghton and Deputy Mayor Lloyd denied Mr. Bonwick played a role, despite knowing otherwise. Mr. Houghton also prompted Tom Lloyd to deny that Mr. Bonwick had any relationship with Sprung.

Mayor Cooper, in contrast, elected not to ask her brother if the rumours were true, and instead allowed Councillor Ian Chadwick to assert they were not.

Mr. Houghton's Correspondence with Sprung

On September 7, Mr. Houghton emailed Tom Lloyd of Sprung, writing:

I have a sensitive and confidential question to ask you. Earlier today I heard a rumour that the Mayor's brother (Paul Bonwick) benefited from Council's decision to purchase from Sprung. Can you tell me if he has been paid by Sprung for his alleged involvement.

Mr. Lloyd responded that day, "There is absolutely no relationship

between Paul Bonwick and Sprung. There has being [*sic*] no payments of any type made to Paul Bonwick by Sprung.”

Ten days later, in response to an email from Collingwood resident Steve Berman, Mr. Lloyd advised: “Sprung has not or will not be paying any type of fee to insiders, or anyone in the Collingwood area.”

Mr. Houghton did not need to ask Mr. Lloyd about whether Mr. Bonwick benefited from Council’s decision to construct the Sprung facilities. Mr. Bonwick had already told him that his company, Green Leaf, had earned approximately \$675,000 from BLT as a result of the decision (as discussed in the previous chapter).

Mr. Houghton testified that he sent the September 7 question to Tom Lloyd because he heard that Mr. Bonwick “was also benefitting from Sprung” and he “wanted to make sure that it wasn’t a double-ender type thing.” When asked if it would have been a problem if Mr. Bonwick had been paid by Sprung, Mr. Houghton responded:

[I]f it was coming out of Sprung’s profit, not coming out of – out of Collingwood’s pockets, I’m not sure what the problem is, but I was hearing this and I needed to – needed to know or asked to know.

I do not accept Mr. Houghton’s explanation that he wanted to know if Sprung was also paying Mr. Bonwick.

If Mr. Houghton wanted to know this information, he would have asked Mr. Bonwick. The two men were in constant communication, and Mr. Bonwick had voluntarily disclosed not only the fact that he was working for BLT, but also the approximate amount he earned in doing so.

Further, up until he was cross-examined on this email exchange, Mr. Houghton had been quite adamant that he did not differentiate between Sprung and BLT. There was no reason why he would now be suddenly attuned to the fact they were different companies that may each be paying Mr. Bonwick separately.

I am satisfied that Mr. Houghton’s email was not a legitimate inquiry into whether Sprung paid Mr. Bonwick. Rather, Mr. Houghton emailed Tom Lloyd this question to have a paper trail of him investigating Mr. Bonwick’s involvement. Mr. Houghton understood that, by asking Mr. Lloyd the narrow

question of whether Sprung paid Mr. Bonwick, Mr. Lloyd could answer that Sprung did not, despite both men knowing BLT had paid Mr. Bonwick.

This approach is consistent with how Mr. Houghton handled other inquiries about Mr. Bonwick's involvement. As I discuss below, Mr. Houghton did not disclose to anyone at the Town that Mr. Bonwick worked for BLT. Instead, he withheld that information, which resulted in Town staff and members of Council unknowingly providing false and incomplete information to members of the public seeking information about Mr. Bonwick's involvement. The false and incomplete information left the impression Mr. Bonwick had not benefited from Council's decision to sole source the Sprung facilities.

At the hearings, Tom Lloyd defended his answer to Mr. Houghton's question as accurate, and said he didn't consider BLT's relationship with Mr. Bonwick when he answered Mr. Houghton's question. He testified that "something tells [me]" that Mr. Houghton called him before he sent Mr. Lloyd the email, but Mr. Lloyd could not "recall for sure." Mr. Houghton denied calling Tom Lloyd before sending his email query. He testified that he "never spoke to Mr. Lloyd about Mr. Bonwick working with BLT. I had nothing to do with any of that." Whether or not there was a call, I am satisfied that Mr. Lloyd provided an incomplete and inaccurate response to Mr. Houghton's email.

Deputy Mayor's Denial

On September 6, 2012, Councillor Dale West emailed the deputy mayor, writing: "Is there a connection with paul bonwick [*sic*] in this that I haven't heard about?"

The deputy mayor forwarded this email to Mr. Bonwick with the message "FYI." Mr. Bonwick responded: "Lol ... not that I am aware of ... I don't think he works in Town much anymore but I did hear that he was running for the liberals again."

Mr. Bonwick testified that his answer was an attempt at humour, and "when you're sharing those kinds of comic emails, you never anticipated them being read in the public forum seven years later." Later, Mr. Bonwick testified that, at the time he sent the email, he was under the impression that the deputy mayor already knew of his involvement in the Sprung transaction

(as I discuss further in Part Two, Chapter 12), and so he did not read the deputy mayor's "FYI" email as posing the question of whether or not Mr. Bonwick was connected to BLT or Sprung.

Deputy Mayor Lloyd responded to Councillor West twice, first writing, "No not that I know," then, later, "More bullshit." Councillor West responded, "Yep but it looks like that is the next thing we are about to hear." The deputy mayor replied:

Yes and I hear that the Liberals want him to run against Kellie!

...

This is laughable, I haven't seen Bonwick doing any work in Collingwood as I think he is out of the country most times.

Terry is more active in the area, I think he picked up after Bonwick

Maybe Terry and Mark are involved! Maybe Amerasco [sic] was just a cover up! Maybe they own controlling shares in SPRUNG Hehehehe

NOT!

Nasty small thinking people that didn't get their own way with Central Park so now they will do anything to discredit this council.

Deputy Mayor Lloyd testified that he did not ask Mr. Bonwick if he was working with Sprung or BLT on the Collingwood projects, explaining:

I didn't see any presence of him. Going back to what you said earlier, when it came to the Collus share sale, it was open and transparent he was involved. I just assumed he wasn't involved in this because I would have thought that had he been involved, it would have been the same thing, we would have known.

The deputy mayor also testified that he "never thought of" advising Councillor West that Mr. Bonwick had made a presentation with Sprung in nearby Wasaga Beach.*

As I stated in Part Two, Chapter 12, I am satisfied the deputy mayor was well aware that Mr. Bonwick was working with BLT on the Collingwood

* I discuss this presentation further in Part Two, Chapter 12.

recreational facilities. I am also satisfied the deputy mayor understood Mr. Bonwick's response did not accurately reflect his role

Accordingly, the deputy mayor's response to Councillor West was misleading. Setting aside Mr. Bonwick's role with BLT, the deputy mayor was also aware that Mr. Bonwick was doing work in Collingwood, with Power-Stream and other clients.*

Deputy Mayor's Continued Denial

Deputy Mayor Rick Lloyd was asked again about Paul Bonwick's involvement a week later. On September 13, he met with Collingwood resident Steve Berman to discuss public concerns about the arena and pool projects. The next day, Mr. Berman emailed Deputy Mayor Lloyd, thanking him for the meeting and posing a series of questions, including a request for a copy of the construction contract and the names of the other companies that Town staff researched. He also asked: "Will you tell me of any connection between council, staff and Sprung, including anyone who lobbied for Sprung? This way you can get rid of all the conspiracy theorists that think people are profiting from this. Yourself, Sandra, Paul Bonwick ect ect [sic] ..."

The next day, Mr. Berman followed up with the deputy mayor about these questions. Rick Lloyd forwarded both of Mr. Berman's emails to Mr. Houghton, writing "?" Mr. Houghton replied to the deputy mayor at 11:03 that morning:

Well we can give them the contract but quite frankly it has nothing to do with them.

We can give them many names of other companies.

No relationship with Sprung.

...

Your choice ... Maybe he can answer if he has a conflict with his wife being a Y employee. His conflict for using this as a kick off for a Council position. Does he have other conflicts. Will he be responsible for libelous comments such as a private citizen being named in his email. Etc. Etc.

* I discuss this further in Part One, Chapter 6.

The deputy mayor responded, “I agree.”

Deputy Mayor Lloyd testified that he did not ask Mr. Bonwick about whether he was involved in the projects because he was sure Mr. Bonwick was not involved, stating: “Again, had he been involved, it wouldn’t have made any difference anyway, in my opinion.”

I am satisfied that the deputy mayor knew that Mr. Bonwick was involved. I am also satisfied that he knew that this information would make a difference to the public’s perception of Council’s decision to construct the Sprung facilities. Mr. Houghton testified that he did not disclose Mr. Bonwick’s work for BLT when the public began asking questions because he learned from the PowerStream situation that there was no need for disclosure. He explained: “if there was no conflict of interest, then where’s the conflict of interest? So it it’s a – that was my understanding. That was – that was why I acted the way I did.” When asked why he denied there was a relationship with Sprung, he defended his response as “accurate,” testifying: “Because I’d been told that there was no relationship with Sprung. He’s working with BLT.”

I pause here to note that there had been no public mention of BLT whatsoever by this time. As far as the public knew, the Town was dealing with Sprung on the recreational facilities. Therefore, I cannot accept Mr. Houghton’s claim that his response to Mr. Berman’s question was accurate. Mr. Berman’s question was asking whether anyone profited from Council’s decision to construct the Sprung structures. Mr. Berman did not ask about BLT because Mr. Berman did not know BLT was the Town’s counterparty in the construction contract. Mr. Houghton’s response was therefore both inaccurate and misleading.

I do not accept that Mr. Houghton saw a meaningful distinction between Sprung and BLT, as he made clear in his earlier testimony. It is apparent from the emails inquiring about Mr. Bonwick’s involvement that the matter would be controversial if it was revealed.

Concealing Mr. Bonwick’s involvement risked further undermining the public’s confidence in the municipality. To the extent Mr. Houghton, or the deputy mayor, testified that Mr. Bonwick’s role with BLT presented no issues, their conduct suggests otherwise.

As will be seen, Mr. Houghton’s efforts to conceal Mr. Bonwick’s involvement continued until 2018.

Town's Response to Freedom of Information Request

On October 12, 2012, Mr. Berman submitted a Freedom of Information request to the Town of Collingwood seeking, among other things, “An accounts payable listing of all fees paid by cheque or other method to Compenso from January 1, 2011, to present (October 12, 2012).” Town Clerk Sara Almas responded on October 26, 2012, advising that the Town did not have any record of any payments to Compenso during the requested period.

Once again, the thrust of Mr. Berman's inquiries is clear – he wanted to know if anyone benefited from the two major transactions the Town undertook. The only member of Town staff who had accurate information about Mr. Bonwick's involvement was Mr. Houghton. He withheld that information.

Mayor Questioned

The day after the November 5 Council meeting, a member of the public emailed Mayor Cooper and Councillors Mike Edwards and Ian Chadwick, describing “the scoop on what Collingwood is talking about,” including “i [sic] have also heard your cousin paul bonwick was paid a substantial amount to negotiate this deal.” The email concluded: “I would especially like to hear ... whether your close relative paul bonwick benefited from this deal!”

Mayor Cooper forwarded this email to Mr. Houghton with the covering message, “Really??” Mr. Houghton replied, “Not worth a response.”

Councillor Chadwick responded to the email that evening. In response to the questions about Mr. Bonwick's involvement, Councillor Chadwick wrote: “A Freedom of Information request recently filed to the town of Collingwood turned up NO payment to Mr. Bonwick for any service. Mr. Bonwick does not do business with the municipality.”

In a further exchange of emails with the citizen, Councillor Chadwick wrote:

Paul Bonwick did not negotiate the sale for Collus. It was done through the standard request for proposal (RFP), with sealed envelopes from several interested utility companies opened by a committee of staff, Collus board and council. That group analysed the proposals and made

a recommendation to council based on an evaluation matrix. No one received a commission for the sale.

[...]

A recent Freedom of Information request asked for a list of any payments made by to [sic] Mr. Bonwick or his company by the town. There were none. The town has not paid Mr. Bonwick for any service.

The citizen responded 12 days later:

[I]t is still a widely held belief in the community that paul bonwick [sic] profited from ... the sale of collus to powersteam [sic].

in such cases, just like the sale of a house, moneys are put in an account, payments are made through this account for fees to agents, lawyers etc. these payments are said to come from the account not the buyer or seller.

will you confirm that paul bonwick in no way profited from either of these or other town deals?

The Inquiry did not receive a response to this final email, if one was delivered.

Mayor Cooper testified that she “wasn’t focussed on rumors” when asked if she had made any inquiries of her brother after receiving an email suggesting that her brother benefited from the Sprung decision. She added: “Councillor Chadwick had responded appropriately with the information, and once he had responded, I was satisfied.”

When pressed on why she didn’t simply ask her brother if he had any involvement, Mayor Cooper testified:

I’m going to guess, and say he was busy. I was busy dealing with other matters as mayor, and a county Councillor, and other responsibilities. And – as well as personal – a lot of emails coming in, having to address those. I was satisfied with the answer.

Ms. Cooper further stated that she did not know about Mr. Bonwick’s involvement when these answers were provided to the public, and agreed it would have been beneficial to know about his participation at the time.

Mr. Houghton testified that he believed Mayor Cooper knew Mr. Bonwick was working for BLT, explaining: “I felt that she knew that he was working with BLT. And if – if my assumption was correct, then there was no – you know, there would be no need for me to say he got paid because I would – actually would assume that.” When asked if he had an obligation to confirm this assumption with the mayor, Mr. Houghton responded: “If ... she has no obligation to disclose that her brother is working, why is it my obligation?” He elaborated:

[Mr. Bonwick] was working for BLT. He was being compensated by BLT, wasn't coming out of the Town – Town coffers. And if I had told Her Worship, either, a) I would have offended her, or if she would have told me she knew or didn't know, it – I don't think it would have made a ... hill of beans difference.

I accept Ms. Cooper's evidence that she did not know that her brother was working for BLT. She should have asked him. It was irresponsible for her to permit Councillor Chadwick to respond to a member of the public's questions about whether her brother profited from the recreational facilities deal without confirming the accuracy of the answers he was providing. This wilful ignorance demonstrates the mayor's misunderstanding of her role as the head of Council and guardian of the public trust.

Similarly, Mr. Houghton's conduct in permitting answers he knew were incorrect and misleading is an example of his failure to understand his obligations as the Town's acting CAO.

There was also a more insidious reality developing – each time a member of the public was falsely advised that Mr. Bonwick had not been involved in the recreational projects, the potential repercussions for Mr. Houghton, the CAO who didn't disclose the payment of Green Leaf's fee to the Town, worsened. As a result, the incentive to conceal the payment increased.

WGD Report

WGD's Concern About Staff Report

On September 7, 2012, Richard Dabrus of WGD emailed Marta Proctor:

I've been made aware of a couple of issues on how our recent work has been used in the staff report to Council on August 27th. On page 71 it states that we knew we were in competition. This statement is wrong and puts our work in a negative context, as having a vested interest.

We don't.

We need to talk about this, as it is damaging to our firm's reputation.

After Ms. Proctor forwarded the email to Mr. Houghton, Mr. Houghton responded on September 8:

Ms. Proctor has forwarded your email for me to respond. I can reassure you that in no way were you or your firm's reputation put into question. The presentation that was made by our Treasurer was very respectful of the work that was done by your firm on behalf of the Steering Committee and the work completed at the request of Mr. McNalty. I believe the word competition meant that we were looking at different types of structures and your firm was aware that we were getting prices on other types of structures and your firm provided us the estimated numbers on the steel fabricated building. It did not mean however that you were in a competitive bidding process because we well know that you were providing budget numbers or estimates as our Central Park Project architect and not firm numbers as we may have gotten from a construction contractor. I trust that you accept this explanation and I thank you for your email.

Mr. Dabrus testified that he was not aware the Town was getting other prices on other types of structures. He did not have any further interactions with Mr. Houghton or the Town.

When questioned about his response to Mr. Dabrus at the hearings,

Mr. Houghton admitted that Council was given incorrect information about the role of WGD and that describing the firm as in competition was “unfortunate wording.” He further stated that Ms. Leonard and Mr. McNalty drafted this portion of the report, but added, “I’m not blaming any of them.”

Mr. Houghton testified that Mr. Dabrus’s concern that “one little sentence” would harm WGD’s reputation was a “little bit over the top.” He also suggested it would not have affected Council’s decision.

I do not accept that this error was minor. The staff report was a public document. When the report was brought to Mr. Dabrus’s attention, he was rightfully concerned about the effect on his firm’s reputation. In terms of Council’s decision, the misrepresentation of WGD’s work – as discussed in Part Two, Chapter 11 – was used to justify a non-competitive procurement. As can be seen from the disquiet in the community and the extraordinary efforts to find out what happened, Mr. Dabrus was rightly concerned about the effect on WGD’s reputation of the misrepresentation in the staff report. The significance to WGD cannot be downplayed.

Mr. Houghton’s Attempts to Discredit WGD Report

On October 5, 2012, Joe MacDonald of the Parks, Recreation and Culture Advisory Committee emailed the committee, Marta Proctor, and Councillors Dale West and Keith Hull a copy of WGD’s report on fabric and prefabricated steel arenas, commenting: “fyi report that compares the bubble to bricks.” Councillor West forwarded Mr. MacDonald’s email to Mr. Houghton and said, “just so you know, this is being circulated ...”

Thirty minutes after receiving Councillor West’s email, Mr. Houghton sent Mr. McNalty an excerpt of WGD’s report and wrote: “[T]his is what WGD Architects said when they compared a Steel Fabricated Building to a Sprung structure. Can you help with the errors in their comments? Once again this is time sensitive.” Mr. Houghton also asked BLT for assistance.

Mr. McNalty testified that he was not aware of the errors Mr. Houghton was referencing in his email. As I discuss in Part Two, Chapter 7, when WGD first submitted its report on August 17, 2012, WGD stated that fabric buildings were not insulated, a fact Mr. McNalty advised WGD was incorrect when it came to Sprung structures. WGD revised its report accordingly and

Mr. McNalty testified that, once that issue was addressed, he did not believe anything in WGD's report was wrong or inaccurate.

When asked about Mr. Houghton's October 5 email, Mr. McNalty repeated that he was not aware of any errors in WGD's report, although he still was not certain WGD understood the energy performance of a Sprung fabric building as compared with agricultural fabric buildings.

In any event, pursuant to Mr. Houghton's direction, Mr. McNalty prepared a memorandum about the WGD report. Although the memorandum did not expressly identify errors in the WGD report, it portrayed WGD's work in an unfavourable light.

First, the memorandum discussed that WGD initially stated that fabric buildings did not have insulation, but that comment was retracted after Sprung's style of fabric building "was introduced to WGD." The memorandum continued: "Prior to our suggestion, the architects seemed quite unaware of this advanced technology available in the market, and are naturally focused on the delivery of brick and mortar, concrete and steel facilities." In suggesting WGD was disinclined to learn about Sprung structures, the memorandum did not mention that WGD was prevented from contacting Sprung. As I discuss in Part Two, Chapter 7, Deputy Mayor Lloyd directed that Mr. Houghton be the only point of contact between the Town and Sprung.

Second, the memorandum indicated that green initiatives needed to be added to WGD's pre-engineered steel estimate in order to make a "realistic" comparison between the pre-engineered steel arena and the Sprung structure, which "would be provided with that level of qualification." As I detail in Part Two, Chapter 11, Sprung structures were not inherently LEED silver equivalent, and the addition of green initiatives to the pre-engineered steel budget overinflated the staff report's price difference between the pre-engineered steel and fabric arenas.

Third, the memorandum also noted that the cost of a second-floor mezzanine needed to be added to WGD's estimate* and concluded:

The estimated cost reduction of \$500,000 for a fabric structure that WGD Architects provided at the end of their report would have been baseless

* I discuss this point also in Part Two, Chapter 11.

as it was not for an insulated architectural membrane system. It has no relevance to the comparison.

At the Inquiry, Mr. McNalty explained that, when he wrote this passage, he believed WGD still did not have a clear understanding of the features of the Sprung structure and was “still looking at the wrong type of fabric building.” When asked why he did not raise this concern with WGD, Mr. McNalty stated: “Time and effort.” He expanded that, at this point in October, “there was no immediate need to have that conversation” because this was some time after Council’s vote and “there was no need, other than a housekeeping thing to go back to WGD to clarify information.”

I am satisfied that WGD’s estimate was not baseless or irrelevant. For the reasons I detail in Part Two, Chapter 11, WGD’s estimate of the price difference was reasonable and should have been presented to Council without adjustment, along with an explanation that the inclusion of a second-floor mezzanine may affect the estimates.

Fourth, the memorandum took issue with WGD’s conclusion that a pre-engineered steel building would have better energy performance than a fabric building with similar insulation. WGD arrived at this conclusion because the aluminum frames of a Sprung structure cut through the layer of insulation in the building. Each frame, in turn, created an opportunity for heat to escape in the winter and enter the building in the summer, an effect called “thermal bridging.” In contrast, insulation is continuous in a pre-engineered steel building.

The memorandum described WGD’s concerns about thermal bridging as “cautious.” It continued that staff “had already addressed this question with Sprung, and the explanation that was provided was satisfactory.” Specifically, the memorandum stated that spacing of the aluminum frames and the addition of caps on the frames “reduce the effect of the potential bridge.” It continued that “thermal bridging does not present an issue and there have not been issues associated with this in Sprung’s experience in various climactic [*sic*] locations.” Mr. McNalty confirmed that no one from the Town shared Sprung’s explanation with WGD.

The memorandum also incorrectly suggested that energy modelling was unnecessary. As I explain in Part Two, Chapter 7, the Town initially asked

WGD to analyze the expected energy use of a fabric and pre-engineered steel arena. WGD, however, did not have enough information to complete energy modelling by the Town's deadline. In the memorandum, Mr. McNalty wrote that, while energy modelling could be performed, "a published third-party comparison, copy attached, has already been performed on actual operating facilities, which is arguably more reliable than a theoretical model." The attachment was a report prepared in April 2012 by a company called RePower Canada Inc., comparing the energy use of two worship centres: one built by Sprung with R-25 insulation, and one built with concrete block and wood framing with R-12 insulation. The memorandum continued: "The third party audit and report presents a clear advantage in favour of the insulated architectural membrane structure."

At the hearings, Mr. McNalty testified that WGD was not instructed to do energy modelling because it would be a significant undertaking "in terms of time and cost," although he confirmed he did not discuss timing or cost with WGD. He also confirmed that Sprung had provided RePower's energy report to the Town. He believed he received it before the August 27, 2012, Council meeting. In either case, the fact that WGD had been told not to complete energy modelling owing to time and cost limitations was not referenced in the staff report or raised with Council.

Mr. McNalty testified that he believed that, while a worship facility would use energy "in a different range" than an arena, the "energy performance of the structure would be the same."

I am satisfied that the energy report was not a suitable substitute for the energy modelling WGD had initially proposed. The only purpose of raising the energy modelling at this point was to attempt to undermine WGD's conclusion, unfairly and after the fact, as I discuss below.

After Mr. McNalty finalized the memorandum on October 8, Mr. Houghton forwarded it to Mayor Cooper, the Executive Management Committee, and Ron Martin, the deputy chief building official, writing:

On Friday afternoon Councillor West sent me information that was being circulated by the Friends of Central Park. The information was a report produced at our request by WGD Architects comparing a steel fabricated building to the insulated architectural membrane building. The report

is being misread mainly because the report originally was not comparing the proper structures and was revised partially by WGD. Town Staff were aware of what was and was not revised but without this knowledge one can see how this could be misleading. The following is an excellent report from Dave McNalty fully explaining the report and how it is being misinterpreted and how it should be understood.

Mr. Houghton's email attached the memorandum, the energy-modelling study, another study looking at the airtightness of a Sprung prison in England, and Mr. McNalty's spreadsheet containing the adjustments he made to the WGD estimate for pre-engineered steel.*

Mr. Houghton's covering email was misleading. Specifically, it stated that the WGD report was being misread because "it was originally not comparing the proper structures" and then suggested that, although this error was addressed, further errors persisted, which were known to staff but were not apparent on the face of the report. However, as noted in Part Two, Chapter 7, Mr. McNalty, Ms. Proctor, and Ms. Leonard testified that they were not aware of any issues with WGD's report after it was submitted.

I am satisfied the WGD report did not contain any errors or misunderstandings that left it open to misinterpretation. Similarly, I find that the memo Mr. McNalty prepared at Mr. Houghton's direction did not reflect any actual concerns that staff had with WGD's report or estimates, other than the concern that the pre-engineered steel building estimate needed to be adjusted to be comparable to BLT's budget for the Sprung arena. As I detail in Part Two, Chapter 11, although Mr. McNalty believed these adjustments were necessary, the assumptions underlying them were flawed. They artificially inflated the cost difference between Sprung and pre-engineered steel arenas.

I am satisfied Mr. Houghton directed Mr. McNalty to prepare the report to undermine WGD's credibility, not to present an honest assessment of the WGD report.

* In Part Two, Chapter 11, I discuss the adjustments in detail. As I note there, the adjustments, and how they were presented in the staff report, exaggerated the price difference between pre-engineered steel and fabric arenas by at least \$3.39 million.

If Mr. Houghton's concerns regarding the accuracy of the WGD report were genuine, he would have provided Mr. McNalty's memorandum to WGD for comment before forwarding it to the mayor. Mr. Dabrus confirmed that no one from the Town ever approached the firm about errors in its report. At the hearings, Mr. Houghton rejected the suggestion that he did not send the memorandum to WGD because he was not interested in WGD's comments, testifying that he would say "to their face today" that the report was not well done.

Mr. Houghton did not want to know what WGD had to say because the purpose of the memorandum was to create the misleading impression that the WGD report contained errors.

Mr. Houghton wanted to discredit WGD. An example of Mr. Houghton's efforts occurred a week after Mr. McNalty finalized his report. Mr. Houghton was included on an email chain involving Dr. Mike Lewin, a resident, and Councillor Chadwick. As part of the chain, Dr. Lewin wrote on October 15:

I wonder why a membrane structure was necessary. Why not a structure made of steel or bricks? The town has an architect's comparison report that states that a steel structure would be a superior choice, costing only a little more, could be built just as fast and would be more energy efficient. This is a comparison of an R-30 membrane structure to a steel clad structure. Even more troubling is that the staff report for this project seems to contradict the architectural report. Were there other neutral expert opinions that favoured a membrane structure?

Mr. Houghton replied to Dr. Lewin's email, writing: "I'm really getting tired of this man totally misrepresenting information and disrespecting everything we have done." Dr. Lewin replied, asking how he was "misrepresenting & disrespecting everything." Mr. Houghton replied:

As I explained previously, the architect's report was originally based on a fabric building with no insulation. When we spoke to them they amended a portion of the report but not the energy conservation portion nor the costs associated with that. So when you read the report it only considers a portion of the whole picture.

Ed Houghton included in his response a portion of Dave McNalty's October 8, 2012, memo, "WGD Comparison of Various Construction Options for Arena at Central Park." Mr. Houghton concluded his email by writing: "I apologize for my comments but I have tried my very best to provide the facts and the rationale for the decisions that have been made. I understand that you fundamentally disagree with those decisions but I have always felt that working in a cooperative manner is far more productive than to continue to [go] down the same path."

Dr. Lewin responded:

One of the problems for people like myself is that information has been difficult to obtain and has come out in bits and pieces. I would love to see the third-party report that is quoted in Mr. McNalty's statements. It sounds like it would be quite reassuring. However I have re-read the WGD report and still feel that there are a couple of conflicting pieces of information. I have pasted them below. The time required to build is stated to be similar and the thermal performance clearly compares a steel rink to a membrane with insulation structure. I realize you are busy. There is no urgency for these clarifications.

Public Reaction to CBC Article

Public scrutiny about the Sprung structures intensified after the CBC published an article by journalist Dave Seglins on March 8, 2013, headlined: "Collingwood mayor's brother paid by casino, power companies."* The article reported that citizens had complained to the Ontario Provincial Police about Mr. Bonwick's role in the Collus Power sale and as a lobbyist for a proposed new casino.

Although the article did not mention the Sprung structures, three days later the *Collingwood Connection*, a local newspaper, reported that approximately 130 people held a rally outside of Collingwood Town Hall. The rally

* I discuss this article as it related to the Collus Power transaction in Part One, Chapter 10.

was organized by Steve Berman, who noted that the CBC article “presented a good opportunity for the public to comment on these and other complaints towards council ... people are upset about the recreational facility and the lack of transparency.” In another *Collingwood Connection* article covering the rally, Mr. Berman noted that he believed “that the rec facility decision was made by council before it was introduced to the public” and that he organized the protest “to give people the opportunity to voice their concerns.”

The article demonstrates that the lack of disclosure, and subsequent efforts to conceal Mr. Bonwick’s involvement, led to public comment and suspicion concerning the nature of Mr. Bonwick’s influence over Council’s decision making.

When asked if he agreed that it is better for a politician to know about a potential controversy than be surprised when it is reported in the media, Mr. Bonwick replied: “Not necessarily at the time.” When pressed further why he did not specifically inform his sister about his work for BLT when he learned Mr. Berman was asking about his involvement with Sprung and BLT, Mr. Bonwick replied:

I will have to assume that, based on my assessment during that period seven (7) years ago, that I didn’t feel it would necessarily offer any value to her.

After the CBC article was published, Mr. Bonwick testified that he had engaged a lawyer and was not discussing matters related to the OPP investigation with his sister.

Mr. Houghton’s Misleading of Reporter

During Mr. Houghton’s testimony at the hearings, Mr. Seglins posted on Twitter that he interviewed Mr. Houghton on March 5, 2013.

Mr. Seglins wrote that, during the interview, Mr. Houghton stated he did not believe Mr. Bonwick was “working with BLT / Sprung,” a fact that Mr. Houghton admitted during his testimony (and was undeniable by the time the Inquiry’s Part Two hearings began). At the Inquiry, Mr. Houghton stated he did not recall speaking with Mr. Seglins, adding that it “was a very

stressful time” and that he was “not doubting what Mr. Seglins is saying or his – his integrity.”

Counsel for the Town showed Mr. Houghton a transcript of a phone conversation Mr. Seglins had with Mr. Houghton in May 2018, which the CBC had published. During the conversation, Mr. Houghton denied that BLT had anyone assist it in securing the contract with the Town. When asked specifically what Mr. Bonwick’s role was, Mr. Houghton replied: “Nothing with me” and, with respect to Green Leaf, Mr. Houghton said: “I don’t know if Green Leaf Distribution had anything to do with the Sprung deal. From the Town’s perspective I don’t know.” These statements were demonstrably untrue.

During his testimony, Houghton acknowledged he was “avoiding answering” Mr. Seglins’ questions and that the answers he did provide were incorrect. When he was asked whether he was concerned that his conversation with Mr. Seglins might have a negative affect on Collingwood’s reputation, Mr. Houghton testified: “I certainly never thought about Collingwood’s reputation. But you don’t know why I was a retired guy either.”

During his testimony, Mr. Houghton also tried to excuse his behaviour by saying:

Well, in fairness to me, I was outside doing other things when he called, and this was bringing back a whole bunch of memories that I didn't really want to think about and I'd tried to push to the back of my mind.

Mr. Houghton also said: “In 2018, when this gentleman calls me, do I have an obligation to talk to him about things that happened six years previously?”

Regardless of whether Mr. Houghton was obliged to respond at all, once he did respond, he ought not to have misled Mr. Seglins. Mr. Houghton admitted that he regretted his exchange with Mr. Seglins, noting: “I regret doing everything here.”

Mr. Seglins tweeted during the hearings that Mr. Bonwick also denied involvement in the Sprung transaction during an interview in 2013. Mr. Seglins stated that his notes read “SPRUNG: No involvement. No Compensation.” When asked if the tweet refreshed his memory about his conversation with Mr. Seglins, Mr. Bonwick stated he could not recall all they discussed:

I thought and he may have spoke about Sprung, but I didn't know for sure. I have no reason to discredit or challenge Mr. Seglins' – Seglins' statement that in fact he may have, but I would also draw yourself to the fact that at no time was I or was my company engaged with Sprung.

And semantics aside, Green Leaf never received compensation from Sprung. Green Leaf never had a contract with Sprung. Paul Bonwick never had a contract with Sprung, Paul Bonwick's companies never had contracts or received remuneration from Sprung.

And so I'm not challenging Mr. Seglins' comments related to whether he did or didn't do that. I think I also indicated that Mr. Seglins would be aware of the fact because I was somewhere outside of James Bay snowmobiling when Mr. Seglins called me and tried to conduct an interview with me, standing on the seat of a snowmobile, trying to get phone reception to answer his questions.

Mr. Bonwick continued that he could not recall whether he denied being involved with Sprung, but regardless of what he may have said, the note saying "Sprung: No involvement No compensation" was accurate because he worked for BLT, not Sprung directly.

Resignation, Appointment, and Disbandment

Scrutiny of the Sprung decision added stress to the Executive Management Committee, culminating in Mr. Houghton stepping down as acting CAO on April 15, 2013, and Clerk Almas withdrawing from the EMC at the end of May in the hopes it would finally spur Council to find a new CAO.

Mr. Houghton's Resignation

At the hearings, Mr. Houghton testified that, on multiple occasions in 2012, he urged Council to begin the process of finding a new CAO. The first record of Mr. Houghton raising the issue was during the *in camera* session of the November 5, 2012, Council meeting. The minutes recorded:

Ed Houghton reviewed the comments of recent blogs and expressed his concerns about the content, defending his position. He also advised Council of his heavy workload and commitments, suggesting Council should be looking for a CAO in the New Year and perhaps look at a strong management team and offered his assistance.

At the hearings, Mr. Houghton testified that, at this point, he was “getting extremely tired” and could not “continue to do this. I was afraid that I wouldn’t be able to ... physically be able to do it. Mentally or emotionally ... it was a lot of work.” He also said he was not accustomed to the media and public scrutiny he had faced, commenting that “there was blogs written, there was all of this. I was not accustomed to ... that social media bullying.”

Mr. Houghton testified that, prior to November 5, he “often” raised his concerns to Council during *in camera* sessions, although this is not reflected in the minutes of earlier *in camera* sessions.

Mr. Houghton further stated that he spoke directly to Mayor Cooper and the deputy mayor about his concerns. Deputy Mayor Lloyd agreed when Mr. Houghton’s counsel suggested Mr. Houghton had expressed concerns from time to time, including at Council meetings. Mr. Houghton’s counsel did not ask Ms. Cooper if she recalled any such conversations.

As I discuss in Part Two, Chapter 12, Mr. Houghton apparently raised the prospect of quitting his position as acting CAO with Deputy Mayor Lloyd and Mr. Bonwick the day before the August 27, 2012 Council meeting, although he testified that he did not quit at the time because he did not want to leave the Town “in the lurch” and he was “not a quitter.” I note in that chapter that, although Mr. Houghton may have raised job dissatisfaction on the August 26 call with the deputy mayor, I find that the majority of the call was focused on strategizing for the next day’s vote on the Sprung structures.

On January 30, 2013, Council held a special meeting. At the meeting, Clerk Almas provided a brief overview of an operational review of all the Town’s programs and services (which I discuss further in the next section). Following the presentation, and at staff’s recommendation, Council voted to direct staff to develop terms of reference for a CAO recruitment strategy. In his testimony, Mr. Houghton agreed that this resolution reflected that Council was taking his request that it find a new CAO seriously.

Progress stalled, however. On April 9, 2013, Mr. Houghton advised the Town's department heads that he would be stepping down at the April 15 Council meeting to concentrate on Collus PowerStream. Mr. Houghton testified that he decided to step down at this point because "nothing was moving forward in a sense of recruiting a new CAO," he was "overtired," and the Collus PowerStream board wanted him back full time.

As described in Part One, Chapter 10, on April 15, 2013, Ed Houghton stepped down from the role of acting CAO of the Town of Collingwood. He remained the president and CEO of Collus PowerStream until his retirement from that position in June 2016.

Two days earlier, Mayor Cooper wrote to a member of staff regarding Mr. Houghton's departure:

You are correct that Ed has not received compensation. "volunteering his time." Council has not discussed this, but he may be recognized / compensated at some point in time. It remains a sensitive [*sic*] matter at this point in time.

Mr. Houghton testified that, although he did not ask to be paid for his work as CAO, he did receive a bonus in 2013 of "Maybe twenty or thirty thousand, something like that" for his efforts.

Other than this amount, Mr. Houghton did not receive additional compensation for taking on the role of acting CAO (see Part Two, Chapter 2). He saw himself as a volunteer. In his testimony, Mr. Houghton associated his lack of compensation with his length of term:

Council wanted deliverables in this term, and they were also not big on hiring consultants and things ... And I think that I was even a party to that, where I was – I think that's why I stayed longer than I should have stayed, because I was free.

Mr. Houghton then acknowledged that, in hindsight, the CAO job was too much for him to take on.

Clerk Almas's Withdrawal from EMC

Ms. Almas testified that, after Mr. Houghton stepped down, the Executive Management Committee (EMC) was “basically just managing day to day as best we could,” although she did not believe the group had taken on the responsibilities of the CAO. Ms. Almas said she ultimately withdrew from the EMC at the end of May 2013, after several stressful months.

In an affidavit she provided to the Inquiry, Ms. Almas described working on the EMC as a “unique opportunity but very stressful at times,” continuing: “Mr. Houghton was often occupied with his other responsibilities and so Marjory Leonard and I took on many of the CAO’s duties.”

Ms. Almas expressed some of her concerns to the EMC in emails she sent on January 29, 2013. At the time, Ms. Almas was responsible for overseeing an “operational review” for the Town, which involved reviewing all the programs and services offered by the municipality. At 9:40 p.m. on January 29, the day before a special Council meeting, Ms. Almas sent the EMC a draft slide presentation about the operational review, writing: “just REALLY need input on the content and direction we are looking for! HELP!” At 10:19, she sent another email with the subject: “Next Steps! – concerns ...” Ms. Almas wrote:

If an EMT is desired – regardless the Chair would be the presumed CAO in the publics preception (and staffs) [sic]. I am not sure if I can commit more than what I am doing now! I am trying so hard to keep up with everything and cannot afford any mistakes as the Clerk and for my family (as everyone is replaceable) I really appreciate Ed's role – as the Acting CAO it has been so important!! I am sure Ed and us all realize how important HE has been! (hence Ed's personal and professional responsibilities being compromised) Can we discuss tomorrow ... am very sorry to bring this up now – but I feel we need to discuss before any decisions are made.

At the Inquiry, Ms. Almas explained that when she wrote this email she was “extremely busy.” In addition to her regular responsibilities as clerk and overseeing the operational review, she was also dealing with the information requests relating to the Sprung decision and discussions about potential construction of a new casino in Collingwood. Ms. Almas testified that she

felt she “didn’t have any support” and that she “was doing more than my share on the EMC than others were.”

Earlier in her testimony, Ms. Almas said that the operational review itself “wasn’t too stressful,” however, her job became “very stressful” when she began dealing with the “public outcry” from the Sprung decision. During this time, Ms. Almas described herself as the “public facing person” at Town Hall, which meant dealing with a lot of inquiries from the public.

In addition, Ms. Almas testified that she believed “she couldn’t afford to make any mistakes,” explaining:

I was the bread winner for my family as well, so I was concerned because obviously I’d just seen the termination of the previous CAO that I was shocked about at the time, and so I couldn’t risk being in a compromised position that would afford something to cause me to lose my job.

Ms. Almas stepped down from the EMC around the end of May 2013. She testified that she decided to withdraw at that point because, without a CAO, the EMC was not productive:

I felt again frustrated that I was taking on more responsibility, nothing was happening for a position of CAO, so I felt that Council would just carry on with an EMC and – and if I step down, that would hopefully spark an interest to get the process going again ... on appointing a CAO.

KPMG’s Organizational Review

During the same period that Mr. Houghton stepped down as acting CAO and Clerk Almas withdrew from the EMC, the Town hired KPMG to assist with the organizational review of all the services provided by the municipality. The first phase of KPMG’s organizational review included a CAO position profile, a proposed CAO recruitment plan, and draft terms of reference for the EMC. As I explain in Part One, Chapter 10, Bruce Peever of KPMG presented the results of the first phase to Collingwood Council on May 13, 2013.

Mr. Peever’s presentation included the following comments:

1. The Town should hire someone who has already worked as a CAO to be the next Collingwood CAO. Mr. Peever explained that, “given [the Town’s history], it would be appropriate that [the Town] would recruit someone who is a seasoned CAO”;
2. The Town should consider retaining an executive search consultant for the CAO position because these consultants are trained to make objective judgments and offer confidentiality; and
3. The members of the EMC should be Town staff. On this point, Mr. Peever stated that “The importance of having your senior management as employees of the municipality can not be understated.” Mr. Peever was also quoted as saying that “If there are two employers... the individual would have somewhat of a conflict of whose interest (that person) is representing.”

Council discussed KPMG’s review again at the May 27 Council meeting. After an *in camera* discussion about a legal opinion the Town had received on having non-employees serve on the Executive Management Committee, Council voted in the public session to receive KPMG’s phase one report; approve the report’s description of a CAO’s responsibilities; proceed with an RFP to retain a consultant to conduct a search for a new CAO; and defer the creation of EMC terms of reference until the completion of the KPMG phase two report.

As I explain in Part One, Chapter 10, Mr. Peever’s comments at the May 13 Council meeting offended Mr. Houghton, who expressed his displeasure to John Herhalt of KPMG in an email on May 31. Mr. Herhalt had advised on the Collus Power RFP, but was not involved in the KPMG operational review. Specifically, Mr. Houghton wrote:

I’m sure you are not involved but I wanted to let you know that one of your colleagues, Mr Bruce Peever, has destroyed 35 years of a good partnership between the utility and the Town of Collingwood. His actual quote in the local paper in reference to what I have personally been doing for years is “The importance of having your senior leadership being employees of the Town (not employees of Collus) can’t be understated.”

I cannot believe this and I am so saddened by this.

Regretfully Ed.

Mr. Houghton's May 31 email initiated a series of communications within KPMG and between KPMG and the Town. In one email, Oscar Poloni of KPMG reported that he had spoken with Sara Almas, who commented that Mr. Peever "was correct about the senior management team, etc. but may not have stressed the need for good paper as much as he could have."

Mr. Poloni then stated: "That said, [the Clerk's] perception is that [Mr. Peever's] message was sound but just not what Council wanted to hear and as such, Bruce is pretty much mud up there now." According to Mr. Poloni, Clerk Almas also indicated Mr. Houghton was "lined up with some of the councilors so some of this may reflect the general environment."

At the Council meeting on June 10, 2013, Mr. Peever and Mr. Poloni of KPMG made a presentation to Council and recommended that the rest of KPMG's operational review be suspended until the Town of Collingwood hired a new CAO.

John Brown's Appointment

Following the KPMG presentation at the June 10 meeting, Council held an *in camera* session involving the remaining members of the EMC. The minutes record that the EMC recommended that Council consider appointing an interim CAO. As I discuss in Part One, Chapter 10, Council hired a new acting CAO, John Brown, in July 2013.

Continued Denial of Mr. Bonwick's Involvement

After he stepped down as the Town's CAO, Mr. Houghton continued to obscure Mr. Bonwick's connection to BLT and Green Leaf.

On May 24, 2013, an email by Collingwood resident Don Gallinger was published online that stated "Paul Bonwick's Office" had advised the Pretty River Academy in May or June 2012 that Green Leaf was a distributor for Sprung Structures in Ontario. Mr. Gallinger also noted he had met with Mr. Bonwick in June to discuss a Sprung structure for Pretty River Academy.

On May 30, 2013, Councillor Joe Gardhouse emailed Mr. Houghton, asking whether the statement in the letter was accurate and whether

Mr. Bonwick was “the distributor for Sprung?” Mr. Houghton responded: “I asked the same question and the answer is no.” Later in the email thread, Mr. Gardhouse told Mr. Houghton, “this letter ... says green leaf / bonwick is a distributor for Sprung ... Is Green Leaf Bonwick?” Mr. Houghton responded: “Bonwick is not involved. Abby is Green Leaf. Talk to her and she can tell you the facts.” Again, Mr. Houghton’s response to an inquiry about Mr. Bonwick’s involvement was wrong, and he knew it. Ms. Stec also confirmed in her testimony that Mr. Houghton’s response was inaccurate.

Mr. Houghton testified that he did not inform Councillor Gardhouse of Mr. Bonwick’s involvement with Green Leaf or the commission Green Leaf earned from the Sprung transaction because he felt Mr. Gardhouse’s email was specific to Mr. Bonwick’s involvement with Green Leaf during the May and June 2012 period referred to in Mr. Gallinger’s letter. He stated that he was not sure whether Mr. Bonwick was involved with Green Leaf in May and June 2012, and he thus told Mr. Gardhouse to ask his question of Ms. Stec, who had a more thorough understanding of Green Leaf’s business.

When he was examined by counsel for the Town of Collingwood, Mr. Houghton acknowledged that, at the time of his email conversation with Mr. Gardhouse, he knew Mr. Bonwick was an owner of Green Leaf and did not disclose this fact to Mr. Gardhouse. He later described his emails to Mr. Gardhouse as “unfortunate words sent very quickly [from] somebody who’s extremely busy to somebody that I’m hugely frustrated with.” Although the email conversation began with a reference to Mr. Gallinger’s letter, Councillor Gardhouse’s questions about Mr. Bonwick’s involvement in Green Leaf were not limited to a specific period. Similarly, Mr. Houghton’s answers did not indicate he was referring only to Mr. Bonwick’s involvement in Green Leaf as at May and June 2012.

I am satisfied that Councillor Gardhouse sought general information on Mr. Bonwick’s involvement with Green Leaf and Mr. Houghton chose to withhold this information from him.

Again, setting aside whether Mr. Houghton was obligated to respond to Mr. Gardhouse (who was still a councillor, despite Mr. Houghton’s frustrations), when he did respond, he ought to have been truthful.

Mr. Houghton's approach to answering Councillor Gardhouse's questions is consistent with how he handled similar questions when he was the Town's CAO.

Before this discussion with Councillor Gardhouse, Mr. Houghton answered questions about Mr. Bonwick in ways that, in some technical form, were accurate, but were also misleading. Here, Mr. Gardhouse's question to Mr. Houghton was as direct as they come: "Is Green Leaf Bonwick?" Mr. Houghton's response was equally direct: "Bonwick was not involved." When Mr. Houghton was finally asked point blank about Mr. Bonwick's connection to Green Leaf, he answered dishonestly. This exchange indicates that, during his time as CAO, Mr. Houghton's primary motive in answering questions about Mr. Bonwick was to provide answers that would mask Mr. Bonwick's involvement in the Sprung transaction.

When Mr. Houghton was asked by Inquiry Counsel whether it was in the best interests of the Town to conceal his knowledge of Mr. Bonwick's involvement with Green Leaf from Councillor Gardhouse, he responded:

Explain to me where it's not in the best interest, and please don't – I don't have much – you now suggesting that – that my thirty-nine years, my volunteerism, and everything I've done for the Town of Collingwood is – is – is not – should – should be taken into consideration but it's not. If – if – if it impacted on the Town of Collingwood, I would agree with you. It didn't.

I disagree with Mr. Houghton's assessment. His failure to be frank with Councillor Gardhouse did have a negative impact on the interests of the Town. Mr. Bonwick's involvement in Town affairs was still an open question within the Town at the time of Mr. Gardhouse's email, and the lack of transparency on the issue of Mr. Bonwick's involvement would, when discovered, further undermine public confidence in Council's decision to construct the Sprung structures.

In his closing submissions, Mr. Houghton emphasized that, at the time of his conversations with Councillor Gardhouse, he was no longer CAO of the Town and, as a result, he "had no obligation to the Town." This submission misses the point. Councillor Gardhouse's question was reasonable.

Mr. Houghton's answer revealed that concealing Mr. Bonwick's involvement took priority over providing the Town with complete and accurate information.

Conclusion

While staff and Council grappled with the public reaction to the Sprung decision, the Town also had to oversee the construction of the recreational facilities themselves, which brought its own set of challenges.

Construction of the Sprung Structures

Shortly after the August 27, 2012 Council meeting, staff began planning for the construction of the approved arena and pool. Ron Martin, the Town's deputy chief building official, was appointed to oversee both projects. He was immediately concerned about the contract the Town had signed with BLT Construction Services Inc. because it required the Town to pay a substantial amount upfront and did not detail what, exactly, BLT was obliged to build. Fortunately, Mr. Martin was able to work co-operatively with BLT to address the risks he identified.

Construction went well at the arena. Repurposing the 40-year-old outdoor pool, however, presented challenges. The Town paid \$405,000 to upgrade the pool so it could host competitive swim meets, in addition to other unforeseen costs. Council also approved spending an additional \$550,000 to add a warm-water therapy pool.

Meanwhile, the Town surveyed the public on how to spend the proceeds of the Collus share sale (see Part One, Chapter 8). The top three responses were the redevelopment of Hume Street, a main thoroughfare in Town, enhancements to the harbour, and decreasing the Town's debt – as many of the councillors had promised when elected. On June 13, 2013, as construction of the arena and the pool was approaching completion, Council voted to allocate the Collus proceeds to these two recreational facilities.

Senior Building Official to Coordinate Construction

In September 2012, after the Town executed the contract with BLT, Ed Houghton, the acting chief administrative officer (CAO), appointed Ron Martin to act as “construction coordinator” for the Sprung arena and pool. In the hearings, Mr. Martin testified that this role was “never really defined” but involved his acting as the Town’s representative in dealings with BLT during construction.

At the time, Mr. Martin had been on staff in the Town of Collingwood for more than 35 years. A graduate in the architectural technology program at George Brown College in Toronto, he worked in architects’ offices for approximately 15 years before joining the Town. He became Collingwood’s deputy chief building official in the early 2000s, where his responsibilities involved reviewing plans, conducting site inspections, and other building department business. He also served as the project manager for several large construction projects, including the Town’s new library and fire station as well as the reconstruction of a local museum. Mr. Martin testified that, as project manager, he was involved in those projects from inception to completion, including the “initial stages of the concept” – tendering architects, engineers, and contractors, developing construction documents and drawings, and overseeing construction itself.

Mr. Martin testified he thought the Town benefited from having a single person oversee large constructions projects from beginning to end:

When you ... have a background of why are we doing this in the first place, and then following it through right to basically final occupancy, certainly, anyone would have a better understanding of ... the whole picture of the project.

With the recreational facilities projects in 2012, however, Mr. Martin did not become involved until after the Town executed the contract with BLT. On September 20, Mr. Houghton introduced Mr. Martin to Mark Watts and

Dave Barrow, the president and executive vice-president, respectively, at BLT:

This email will first introduce you to Mr. Ron Martin, Building Officer who will be acting as our construction coordinator / facilitator for the above noted projects. And secondly request that you send the drawings and designs currently prepared to Ron for his review.

Mr. Martin recalled that Mr. Houghton also asked him to attend a meeting around this time with representatives from Sprung Instant Structures Ltd. and BLT to learn about the project.

In his testimony, Mr. Martin agreed he was never given a satisfactory explanation of why someone with his experience was not involved from the outset. When asked why he believed he wasn't included, he answered:

If I could give two answers. I think the first answer would be they didn't want me, or the second probably more realistic answer would be they didn't think they needed me, or needed someone like myself on – because of the nature of the design [build] contract, or a process they were going to follow.

Mr. Martin explained that, with a design-build contract, the contractor takes on the project manager role that he had filled for the Town's other projects and takes the project "from A to Z." In this case, BLT had agreed to "take care of all ... of the tendering and the processing and hiring of consultants and ... it probably works very well in some instances, it's really a turnkey project."

When testifying as to why Mr. Martin was not involved earlier in the project, Mr. Houghton first suggested that, sometime before August 27, he spoke with Bill Plewes, the chief building official, about involving Mr. Martin. He recalled that Mr. Plewes replied that Mr. Martin was very busy and that, if Mr. Houghton wanted to involve his deputy, the building department would need to hire an additional person.

Mr. Houghton then testified that the topic was raised again at the department heads' meeting on August 28. The minutes from that meeting state:

CBO Plewes noted that the Deputy CBO is busy and getting busier as project manager for the Fire Hall. If he is to also take the responsibility of managing the construction of both approved projects (Centennial Pool and the Ice Rink) then the CBO will require an additional Building Inspector for the Department to properly function.

In characterizing this meeting as the second time the issue was raised, Mr. Houghton left the impression that he had asked Mr. Plewes about Mr. Martin at some point before the department heads' meeting and that Mr. Martin would have been involved before the August 27 Council meeting if his schedule had allowed. When pressed on this timing, however, Mr. Houghton confirmed he did not ask about Mr. Martin's availability before August 27, testifying: "There was no function for Mr. Martin to be involved in the staff report, so I did not speak to Mr. Plewes. No."

Mr. Houghton testified that Mr. Martin was not involved earlier for two reasons. First, before August 27, staff were deciding what items should be included in the recreational facilities – for instance, the number of locker rooms and seats – and Mr. Martin did not have any experience with what needed to be included in a pool and an arena. Second, in contrast to the Town's other construction projects, this project was a design-build, so Mr. Martin was not needed as manager.

Ron Martin's First Impressions

When Mr. Martin became involved in the recreational facilities, he immediately became concerned that BLT's contract left the Town vulnerable. He testified that the first thing he was asked to review was the contract with BLT. At the same time, he also received the drawings that had been prepared to create the contract price, as reflected in the introductory email Mr. Houghton sent on September 20.

Mr. Martin had several concerns. As I explain in detail in Part Two, Chapter 13, Mr. Martin believed the contract's payment schedule was very unfavourable because it required the Town to pay 25 percent of the construction price before BLT did any work. He was also concerned that the contract did not require a performance bond to protect the Town in the event BLT

could not finish the project. He had never been involved in a Town project of this size without a bond.

In addition to these items, Mr. Martin had concerns about the lack of detail in the construction drawings. The following exchange during the hearings between Mr. Martin and counsel for the Town is illuminating:

Mr. RYAN BREEDON: Okay. So, when you took over this contract did you know what it was that BLT was going to be building?

Mr. RON MARTIN: No. At that ... time, at that date, having no participation up to that date, it was kind of like whomp ... So, I had no background information. I had no – all of these discussions on what's in or what's out. I ... wasn't – so, no, it was a bit of a shock, I guess I could say.

Mr. Martin continued that the drawings he received were “preliminary” and needed to be amended. Later in his testimony, he said that the contract and drawings did not have detailed specifications about what BLT was to include in the buildings – for example, the number of lighting fixtures. He described this gap as unusual.

Moreover, Mr. Martin found it odd that the Town had not stipulated that BLT should do the site-servicing work and had, instead, accepted responsibility for site servicing and hired a separate contractor, Arnott Construction Ltd., to assist. Mr. Martin testified that, typically, “a project was the entire project,” and the decision to divide the work led to two problems. First, he testified that it created some tension over health and safety responsibilities, with BLT responsible for health and safety on its site, and Arnott responsible for the area surrounding BLT's site:

So we ended up with a bit of a situation, fortunately it didn't happen, but should someone get injured on the site, on this side of line or on this side of the line, where did the responsibility fall. And ... it got even a little more difficult because you had to go across the site work project to get to the BLT project. So there was some pretty ... tense meetings for a while about that.

Second, Mr. Martin said that coordinating utilities presented challenges. For example, BLT's electrical contractor needed to coordinate with the site-servicing electrical contractor, which was "not as smooth as you would if it was all under ... one person's responsibility" and required matters to be dealt with in real time.

Finally, Mr. Martin testified, the contract was not clear about what items BLT was responsible for completing for the contract price and what items were left for the Town. Eventually, in November 2012, more than two months after the contract was signed, Mr. Martin worked with Paul Waddell, project manager at BLT, to create a spreadsheet setting out the items BLT was required to complete under the contract. Mr. Martin circulated the final "Responsibility Matrices" on November 20. Among other items, the matrix stated that the Town was responsible for the Sprung Shield (see below). Mr. Martin testified that the shield was not included in the original contract, but the Town could add it after the fact. The lack of detail in the contract could have been quite problematic for the Town had its design-builder sought to limit its responsibilities in the interest of increasing its return.

I accept that Mr. Martin was genuinely concerned about the issues he identified in his evidence. The fact that some of the concerns never materialized does not mean they were misguided. The Town was fortunate – and Mr. Martin played a role in that good fortune.

Response to Mr. Martin's Evidence

At the hearings, Mr. Houghton called John Scott to respond to Mr. Martin's evidence about the construction contract. Mr. Houghton's testimony was interrupted to accommodate Mr. Scott's schedule. Mr. Scott testified he had spent 50 years working in design-build construction, specializing in pre-engineered steel buildings and working primarily for pre-engineered steel suppliers. He had never appeared as an expert witness before.

Before calling Mr. Scott as a witness, Mr. Houghton's counsel delivered a report that stated it was authored by Mr. Scott. According to the report, Mr. Scott was asked to review Mr. Martin's evidence and the contract between the Town and BLT. After discussing the nature of design-build projects (including payment schedules), Sprung's reputation, the appropriateness

of separating site servicing from project construction, and the prevalence of construction bonds, Mr. Scott concluded in the report that Mr. Martin's evidence showed he lacked experience with both design-build projects and recreational facilities.

During the examination by Mr. Houghton's counsel, Mr. Scott expanded on the points in his report and addressed other matters relating to design-build projects.

A significant issue arose, however, relating to the origin of Mr. Scott's report. During examination by Inquiry counsel, Mr. Scott testified he did not provide Mr. Houghton's counsel with any previous drafts of his report, no one assisted him in drafting the report, and he had never spoken with Mr. Houghton directly. Inquiry counsel informed Mr. Scott that the meta-data for the report, submitted in Microsoft Word format, stated that the author of the report was an individual named "Ed." Mr. Scott denied knowing who Ed was or that anyone named Ed had any involvement in preparing the document. He then testified that when he sent the report to Mr. Houghton's counsel, "maybe my cover page was a bit rough, and I don't know if that was modified because I lacked some computer skills." When pressed on who may have indicated that the cover page was rough, Mr. Scott testified he was "speculating."

When re-examined by Mr. Houghton's counsel, Mr. Scott testified he had "[n]o doubt" he authored the report for the Inquiry.

Mr. Scott was then questioned by counsel for the Town, who inquired how Mr. Scott came to learn about the Inquiry. Mr. Scott testified that a friend, a Collingwood businessman, asked Mr. Scott to assist the Inquiry by explaining how design-build construction worked and how it was different from conventional construction or tendering. Mr. Scott testified he believed his friend was "familiar with Paul Bonwick." Mr. Houghton later testified that he too was friends with the businessman.

When he returned to the witness stand, Mr. Houghton testified he did speak with Mr. Scott and provided some assistance in the preparation of the report. He said that, the evening before Mr. Scott's report was submitted to the Inquiry, he participated in a telephone call with Mr. Scott and Mr. Houghton's counsel at the Inquiry. Mr. Houghton was at his counsel's house. During the call, Mr. Houghton said that Mr. Scott explained he was

finding it difficult to transmit his report, so Mr. Houghton's counsel asked him to re-send it by email to Mr. Houghton. Mr. Scott sent the report in a body of an email and, according to Mr. Houghton, his counsel asked him to paste the report into a Word document and add a cover page.

In addition, Mr. Houghton testified that, at his counsel's direction, he phoned Mr. Scott and asked for a curriculum vitae. Once he received it, via the same person who introduced Mr. Scott to the Inquiry, Mr. Houghton copied and pasted the CV into the document. He insisted that his request for Mr. Scott's CV was the only conversation he had with the expert.

Mr. Houghton continued that, after adding the cover page and CV, he drove home and then received a call from his counsel. He testified that his counsel advised he had spoken to Mr. Scott and directed Mr. Houghton to remove two sentences from Mr. Scott's report related to sole sourcing. Mr. Houghton testified he understood that the sentences were removed because they "didn't have anything to do with the design build part of it."

Mr. Houghton's testimony was adjourned so that Mr. Houghton and Mr. Houghton's counsel could produce all documents relating to the production of Mr. Scott's report. The produced documents included the version of the report that Mr. Scott submitted to Mr. Houghton in the email and the version that was submitted to the Inquiry in Microsoft Word format. The following two sentences appeared in Mr. Scott's email but not in the Microsoft Word report:

The selection and negotiating with a sole source contractor may have some small risks to get the most competitive pricing available, but carefull [sic] selection of the contractor will provide many benefits that far outweigh the risk. Professionals are available to vet costing proposals and generally research is done to ensure the key suppliers and contractor are providing a competitive price.

Mr. Houghton testified that he "didn't even read it when I was asked to remove those sentences, but when I look at it and I looked at it afterwards when we were putting this information together for you, ... it's not something that I would have been terribly fussed over."

I pause here to note that the pursuit of competitive pricing, consideration

of alternative contractors, the scope of research into recreational facilities by Town staff, the extent to which BLT's budgets were professionally vetted, and Mr. Houghton's failure to negotiate with BLT were all central issues before this Inquiry.

Mr. Houghton also produced a memorandum he prepared for Mr. Scott setting out the questions and issues he wanted Mr. Scott to address in his report. One of the items in the memorandum identified different "benefits of design build." Another section listed items "[w]e need to explain," including "[p]erformance bonds are not simply an insurance policy." Mr. Houghton agreed that this memorandum was a list of explanations he wanted Mr. Scott to include in his report, commenting: "See, not knowing – I thought – I mean, obviously this is from not knowing. I thought the expert witness was our expert witness ... I accept the problem. Now I understand ..." When asked if he agreed that the memorandum served as a "paint-by-numbers guide of what's supposed to go in the report," Mr Houghton responded: "I see all the pitfalls of what ... we did here, yes."

Finally, one item in the memorandum said: "We need to understand the benefits of sole sourcing and the possible pitfalls." Mr. Scott answered this point in the two sentences quoted above, only to have them removed in the Microsoft Word version that Mr. Houghton prepared. Mr. Houghton testified he was not aware of anyone ever telling Mr. Scott not to deal with this point. Although Mr. Houghton denied this explanation, he agreed that it appeared as though Mr. Scott had been asked to opine on sole sourcing, but, when his opinion was not favourable to Mr. Houghton, it was removed from the report.

In all the circumstances, I decline to rely on Mr. Scott's report.

Changes to the Pool

The Therapeutic Pool

Until 2010, Collingwood had a recreational facility called the "Contact Centre," which housed a yoga studio, fitness room, and therapeutic pool. This warm-water pool accommodated aging residents and individuals with disabilities. Council temporarily closed the Contact Centre in September 2010

for safety concerns after a building inspection identified numerous deficiencies, and in August 2011 it voted to sell the building. After the closure, Council approved a project to build a new therapeutic pool as part of a larger wellness centre at Heritage Park. Town Treasurer Marjory Leonard testified that the project was “shelved” because the costs “came back extremely high.”

The report of the Central Park Steering Committee noted that the therapeutic pool had not been replaced, even though there was “demonstrated need from diverse demographics for access to warm water for teaching and therapeutic purposes.” The Steering Committee recommended that the Town build a new 25 metre, six-lane pool that could be used for competitive swim meets, and that the existing YMCA pool in Central Park be used for therapeutic and teaching uses.

There is no evidence that the possibility of adding a therapeutic pool to the Centennial Pool facilities in Heritage Park was examined before the August 27, 2012 meeting, when Council approved the construction of a Sprung structure to cover that facility. The idea was raised, however, at Council’s planning and development meeting on September 17. The minutes of that meeting record that Mr. Houghton advised Council he would be discussing “the potential of a therapeutic pool for the community” with Marta Proctor, director of parks, recreation and culture, “in the upcoming weeks.” Mr. Houghton and Ms. Proctor also discussed adding a therapy pool to the Sprung pool project with the YMCA on September 26.

On October 2, Council directed staff to “prepare a report on having a therapeutic pool within the new Centennial Pool development.” Ms. Proctor circulated a draft staff report on October 9 which noted that adding a therapy pool would require adjustments to the site design and dimensions of the Sprung structure. The report continued: “Sprung / BLT ... confirmed that they would include the therapeutic pool component and associated site design accommodations at their construction cost.” The report provided preliminary estimates of \$500,000 to \$550,000 for the inclusion of the therapeutic pool. Under the heading “Effect on Town Finances,” the report simply stated that “[t]he costs of the new warm water therapeutic pool tank will be included in the overall cost of the Centennial Pool project.”

Mr. Houghton circulated a revised draft of the report on October 10 to Ms. Proctor, the Town department heads, and other staff involved in the

project. He suggested that Ms. Proctor “consider that this report comes from you at PRC [Parks, Recreation and Culture] with input from EMC [Executive Management Committee] and Dave McNalty [manager, fleet, facilities and purchasing].”

Clerk Sara Almas suggested that the report include a resolution requiring Council to determine how to proceed on the therapeutic pool question, explaining, “So it is Council that chooses which option to proceed with – it is not Staff’s recommendation.” Mr. Houghton agreed: “Very good point. We’ve been taking all the bullets.” Ms. Proctor circulated a revised draft on October 11 to the Parks, Recreation and Culture Advisory Committee, the Executive Management Committee, and Mr. Houghton with the following two recommendations:

THAT Council receive for information Staff Report PRC-2012-22 outlining an option to have a therapeutic pool within the new Centennial Pool development.

Or alternatively;

THAT Council receive Staff Report PRC 2012-22 and direct staff to proceed with incorporating a therapeutic pool within the current contract for the enclosed Centennial Pool development to an upset limit of \$550,000 (*excluding applicable taxes*).

At the hearings, Ms. Almas explained that, “since there was so much controversy” about the recommendation from the Executive Management Committee to sole source the Sprung facilities, the decision about the therapy pool “truly [needed] to be a Council decision.” She added that she “wasn’t about to put forward another staff report that made a recommendation that I wasn’t supportive of. Well, I shouldn’t say not supportive; that I didn’t have full information on it. I thought it was a Council, political decision to be making.” Ms. Almas explained further:

I didn’t want to be put in another compromised position. I have a position of authority and respect in the community, and I didn’t want to be ... associated with more ... controversy, more questionable actions, I guess.

The staff report was delivered to Council and placed on the agenda for the October 15 Council meeting. The agenda set out the resolutions Ms. Almas had suggested, but the final staff report, titled Therapeutic Pool Option – Centennial Pool, contained a different set of recommendations:

THAT Council receive for information staff report PRC 2012-22 outlining an option to have a therapeutic pool within the new Centennial Pool development

AND FURTHER THAT Council direct staff to proceed with confirming detailed specifications and firm costs to an upset limit of \$550,000 (excluding applicable taxes).

The staff report explained:

Recent discussions with various community stakeholders on the approved Centennial Pool project emphasised the need and value of a warm water therapeutic pool component. Support for this feature was also presented in several previous Parks, Recreation and Culture reports including the Central Park Redevelopment Final Report, the Heritage Park Retrofit Plan and the 2008 Leisure Services Master Plan ...

Based on Council's direction, follow up discussions with Sprung / BLT have confirmed that adding a warm water therapeutic pool tank to the Centennial Pool project is a viable option. To accommodate the therapeutic pool component the site design and dimensions would need to be adjusted[;] however[,] no impact to existing park uses is anticipated. The proposed therapeutic pool tank would be approx 25ft by 30ft with a constant depth of approximately 4 ft.

In addition, the report addressed the cost of the therapeutic pool:

Sprung / BLT continue to express a great level of interest in building this facility as a showcase for the Ontario / Eastern Canada marketplace. As a result, they have confirmed that they would include the therapeutic pool component and associated site design accommodations at their construction cost. Preliminary discussions have identified this cost in

the range of \$500,000 to \$550,000. In order to incorporate the therapeutic pool in the construction schedule of this project, Council direction is required as soon as possible.

On October 15, Council directed Town staff “to proceed with incorporating a therapeutic pool within the current contract for the enclosed Centennial Pool development to an upset limit of \$550,000 (excluding applicable taxes).”

Mr. Houghton testified that BLT received three quotes from therapeutic pool experts and went with the lowest bid. In his testimony, Mr. Martin stated that adding the therapy pool was “almost like a total separate project incorporated in the original project.” It required making the Sprung building larger and installing separate equipment for the warm-water pool.

Competitive Upgrades to Centennial Pool

After the Town signed its agreement with BLT, the Collingwood Clippers swim club advised staff and councillors that the outdoor pool did not meet the international requirements for competitive swim meets. The club requested that the pool be upgraded, by enlarging the pool tank, expanding the pool deck, installing accessories such as a pace clock, timing system, scoreboard, touch pads, and starter blocks, and other items.

The Clippers addressed Council at its meeting on November 5, 2012. Their slide presentation stated that, without a competitive pool, the club could not grow and the Town could not host or derive revenue from competitive swim meets. The presentation also discussed funding opportunities, including a grant application the club had made and possible public-private partnership opportunities.

Around the same time, an anonymous donor promised to contribute \$150,000 to the costs of upgrading the pool. In December, the Town and the donor agreed to give BLT \$10,000 from the donation to hire a pool consultant to analyze the pool, make recommendations on what needed upgrading, and assist BLT in preparing tender documents for a request for quotations (RFQ) from pool contractors. BLT agreed to return the \$10,000 if Council decided to proceed with the upgrades after reviewing the bids.

BLT issued an RFQ and reported the results to the Town on January 23, 2013.

Staff presented the results of the RFQ to Council in a staff report at the February 13 Council meeting. The lowest bid was \$583,000. The staff report stated that, in addition to the \$150,000 anonymous donation, the Clippers had committed to donate \$28,000 toward the upgrades. The remaining cost to the Town would be \$405,000, which the report stated could be funded through debenture, the Collus share-sale proceeds, internal borrowing, or any combination thereof. Council voted to proceed with the upgrades and, on February 19, BLT submitted a corresponding change order for \$583,976.

Mr. Martin testified that the competitive upgrade request “came a little bit late in the process, because we had already basically [*sic*] were under construction.” He recalled that it was a “big job” to assess the pool, determine what upgrades would be required, and implement the upgrades. Mr. Martin noted that, if upgrading the pool had been raised before the signing of the construction contract, it may have affected staff’s decision to cover Centennial Pool, as opposed to purchasing an entirely new facility.

At least, the Town could take some comfort that the price paid for the upgrades and therapy pool were obtained through a competitive process.

LEED Certification Is Investigated, Then Abandoned

In November 2012, two months after the Town signed its agreement with BLT and after preparations for construction had begun, Abby Stec, president of Green Leaf Distribution Inc.,* proposed that the Yolles Group, an engineering consulting firm, be retained to complete a feasibility study into whether the arena and pool could achieve LEED (leadership in energy and environmental design) certification. On November 12, Ms. Stec sent Mr. Houghton, as well as Mark Watts and Paul Waddell of BLT, details about the proposed study. She advised that the work would take approximately six weeks. She also noted:

* As I describe in Part Two, Chapter 6, Paul Bonwick was Green Leaf’s majority owner.

It is important to understand that the feasibility study may conclude that the pursuit of a LEED rating is not possible in the current project circumstances. This is especially important to for the pool [*sic*] which has already started work and has a very limited scope of mechanical / electrical upgrades. Yolles is more than happy to complete the analysis and make recommendations on changes that are required but may be not possible on this particular project. I believe it is in everyone's best interest to do so.

Mr. Waddell forwarded Ms. Stec's email to Mr. Barrow and Mr. Watts, expressing concerns about the extra costs and delays of pursuing LEED certification:

[O]nce "they" are involved beyond this report, all shop drawing review grinds to a complete halt as it has to go to Abby, Yolles for review and certification, and then to our consultants (and the first 2 charge additional fees each time). The process will most definitely delay us and the cost is nowhere near 1% of \$7M even with LEED shadow. The additional certification consulting fees alone would be double that ...

Mr. Barrow responded:

I say we award full steam ahead and forget the Leed other than it itself being a shadow in the background. I agree 1% is a joke 10% maybe. Deal with the extras if Ed decides we move forward.

Though she could not recall the date, Ms. Stec testified that she also attended a meeting with Mr. Watts and Mr. Houghton where both men stated that the feasibility study would be a "good thing to move forward with." Mr. Houghton authorized her to proceed with the study.

On November 20, Ms. Stec sent Mr. Watts, Mr. Barrow, and Mr. Waddell an email, copying a Yolles employee, advising that she had received hard copies of the purchase orders for the feasibility study. In her testimony, Ms. Stec stated that the feasibility study was essentially an "energy modeling" report that determined whether there would be any benefit to pursuing LEED status for the Sprung structures.

Although she could not recall when Yolles completed the study, she recalled that they concluded:

[T]he pool would not have generated any ... long-term operational cost benefits and it was ... determined, I believe, that ... the arena would ... be minimal, so that it wasn't ... worth going forward with the ... whole LEED certification.

Ms. Stec could not remember what the study concluded regarding whether it was possible for the Sprung structures to obtain LEED certification.

Mr. Barrow, who also could not recall when the study had been completed, testified that Yolles determined that the Sprung structures were “10 or 12 points away” from achieving “the basic” LEED certification, which is one level below LEED silver certification. Elsewhere in his testimony, Mr. Barrow noted that the study determined that the Collingwood structures were “fairly far off” from basic LEED certification and that it “would have taken a lot of time and money to get to a [LEED] certification level.”

According to Ms. Stec, after the study was completed, she provided the report to Mr. Houghton, who decided that he did not want to pursue LEED certification for the Sprung structures. Mr. Barrow had a similar recollection. A copy of the report was not provided to the Inquiry.

Multiple witnesses at the Inquiry testified that the pursuit of LEED certification was a matter that was best considered before the construction contract was signed and the erection of the Sprung structures began.

When Mr. Martin was asked whether it was possible to pursue LEED certification for a structure after construction begins, he stated:

I don't know how you'd do it after the fact ... all of those decisions are made very early on in the process before you even really do the drawings, before you even do the design ... you have to ... make those decisions really early in ... the process.

Mr. Martin further testified that the construction contract between BLT and the Town did not contemplate that the Sprung structures would be built to any sort of LEED standards. He stated that, if LEED certification was going to

be considered, it needed to be done “back before the projects were costed” so that the expense of pursuing LEED status “would have a dollar value attached.”

Tom Lloyd, regional sales manager for Sprung, similarly testified that, if the Town was planning to pursue LEED certification, BLT should have been told of these plans in advance. Ms. Stec agreed, testifying that it “can end up costing more” if LEED certification is not implemented during the planning stages. Mr. Barrow testified that, by the time Yolles completed its LEED feasibility study, pursuing certification was still possible, but would have required “re-engineering” certain elements of the project.

As I describe in Part Two, Chapter 11, the August 27 staff report advised Council that the Sprung structures had the LEED requirements built into their design. Mr. Houghton made a similar statement when he presented to Council that same day. Council was not advised that additional costs would be incurred to achieve LEED requirements and, if that was something it wished to pursue, it was best to do so at the outset of the project. In this regard, Mr. Martin testified: “I would think – [the pursuit of LEED certification] would be presented to Council in some way and say, okay, you want this, or you want to pay for this?”

The Construction Process

Mr. Martin testified that construction of the arena “went well” and the building “went up smooth” because “it was a clean site, easy to work on, relatively straightforward building.” In contrast, he stated, the construction of the pool went “[n]ot so well actually.”

It almost seemed every meeting there would be a new problem, a new piece of equipment, a new concrete slab, a ... new batch of piping that we couldn't reuse.

So it was almost on a weekly basis that we had to re-analyse and regroup and redesign and figure okay, how are we going to put all this together.

The difference, Mr. Martin explained, was that with the pool, BLT had to deal

with a “an existing pool, existing equipment, existing underground services, a little more problematic site.” Mr. Martin testified that he was not aware whether the site had been assessed before he was involved and, after his involvement, the only assessment done was on the pool’s tub to ensure it was structurally stable.

On April 29, 2013, Mr. Martin spoke to Council about the ongoing construction of the pool and arena. In response to a question from Councilor Keith Hull, he explained the unforeseen costs that had been incurred. He said the “major two items” were the therapy pool and the upgrades to the existing pool (as I discuss above). Their combined costs were \$955,000, excluding the contributions received for the pool upgrades. He also identified other unforeseen costs, including

- \$63,507 for soil removal for the pool. Mr. Martin explained: “[W]hen we increased the size of the building to the south, we had to excavate some of the old earth that had probably been put there in 1967 when the original pool was excavated, and we had a third party engineer come and it was deemed incapable of supporting the weight of the building. So, we had to remove that soil, bring in new soil, compact it under the supervision of a soils engineer.”
- \$14,926 for new piping in the pool. Mr. Martin explained: “We didn’t realize, nor anybody did, that the actual piping that came out of the old equipment room actually went to the east, then ran north, and then ran back under the pool. And when it was an outside pool, it didn’t really matter, but when we built the new building, our piping was outside the building ... and it wasn’t in great shape anyway.”

Mr. Martin testified that even if the piping had run in the right direction, some of it was “completely shot” and required replacement. He added that one of the reasons they did not know about the piping directions was that the Town did not have drawings showing how the pool was built in 1967.

When asked if would be better to just start over with a new pool, Mr. Martin testified:

I think it was well-intentioned, the concept was good, I think had everybody been given the time to really do ... an in-depth analysis of what we were dealing with there, that might have been the conclusion that perhaps it would be better to.

But ... you know, I wasn't part of that team. I hate to be the Monday morning quarterback here and ... say I might have made a different decision, because maybe I wouldn't have. But had that analysis been done, perhaps the result might have been lets [sic] just build a new pool. Similar to the arena, on a clean site.

By the end of the project, BLT submitted 17 change orders for the pool and arena, totalling \$1,516,383 (including HST).

Break-in at the Pool

On July 12, 2013, vandals cut a hole into the fabric building and drove a scissor lift into the pool. Construction was still in progress, so BLT had possession of the site and was responsible for the damage.

Nevertheless, the day after the break-in, Councillor Ian Chadwick emailed Mayor Sandra Cooper, Deputy Mayor Rick Lloyd, and staff about it:

In the presentations on the fabric buildings, in 2012, we were told that they had an 8 foot aluminum shield around their base. This was said a few times and the impregnability was one of the reasons I considered the buildings suitable.

I learned, Friday, that they don't have the shield. I don't recall a single discussion on not installing what were were [sic] told would be integral.

Mr. Lloyd forwarded Mr. Chadwick's email to Ed Houghton, who replied: "No idea what he is talking about. At the time I never knew about the Sprung shield until after." Later, Mr. Houghton wrote:

Tell him to stop talking about it or we will all look stupid. We have the good membrane. We chose not to spend the money on the other

because they can break into any building. The Sprung shield is just a barrier not a guarantee.

Mr. Lloyd then responded to Mr. Chadwick, saying, among other things: "... we have the good membrane and even with the sprung shield [*sic*] it doesn't make the structure impermeable." In return, Mr. Chadwick replied that his point was that Council had been told the shield was a feature that would protect the facilities, and it was not installed. He wanted to know who made the decision and why.

Councillor Hull also inquired why the shield had not been installed. In response, Mr. Houghton wrote that the shield was discussed at the July 27, 2012, meeting with Sprung and BLT. He wrote that Mr. Lloyd was at the meeting and that "I made the decision that there was no need for the additional cost of the Sprung Shield."

On July 22, 2013, Ron Martin emailed Dave Barrow and inquired why the aluminium shield had not been included in the project. Mr. Barrow replied at 1:04 p.m. that BLT had discussed the matter at a meeting with Ed Houghton, Marjory Leonard, and Larry Irwin "way back before the building was being erected." He added that "the cost was too high and they said vandalism was very low and did not think it an issue." Mr. Barrow continued that BLT "suggested doing the requirements in behind the fabric in case you wanted later but it was just not in the budget." He added that BLT could still install the shield, but it would be "very costly" since the building was now finished.

Mr. Martin forwarded Mr. Barrow's response to the individuals who had been members of the former Executive Management Committee, including Mr. Houghton, and asked if they agreed with Mr. Barrow's comments. Rather than respond to Mr. Martin, Mr. Houghton emailed Mr. Barrow, writing that the group that discussed the shield "was much larger than you suggested." Mr. Houghton then identified reasons why the Town did not include the shield, including that the membrane "was very robust in itself and that anyone wanting to cut into it would certainly have to work at it," that "anyone wishing into the building has other opportunities including the glass doors," and that "any building can be broken into." He continued:

The discussion then went to the cost, which was substantial, then to the amount of vandalism expected, which we felt was less and finally that it can be installed after the fact if vandalism proved to be an issue. I don't recall that it was going to be significantly more after the fact as you have noted.

I'm hoping that you remember my points and you revise your comments since this will be an issue.

At 5:17 p.m., Mr. Barrow sent a second response to Mr. Martin, this time including the points that Mr. Houghton had identified. Mr. Martin testified he was not aware that Mr. Houghton had emailed Mr. Barrow and did not recall receiving two responses from Mr. Barrow.

At the February 3, 2014, Council meeting, Marta Proctor presented Staff Report PRC2014-01, "Sprung Facilities – Shield Insurance and Security Update." It stated that the Sprung Shield, if it had been included at the time of construction, would have cost \$180,000. However, a "decision was made not to include this optional feature." The report continued that the estimated cost of adding the shield as a retrofit to both structures would cost an estimated \$352,008.

Allocation of the Collus Proceeds

When the Town announced it was seeking to sell 50 percent of Collus Power in November 2011 (see Part One, Chapter 5), it committed to consult the public on how to use the proceeds. The press release about the sale stated that the proceeds would be put into a special reserve account so that residents had "ample opportunity for input on the use of these funds."

As I discuss in Part Two, Chapter 3, Treasurer Marjory Leonard identified the share sale proceeds as a potential source of funding for new recreational facilities before Council's June 11, 2012, strategic planning workshop. The August 27 staff report recommending that Council sole source the arena and pool also identified that \$8,000,000 was available from the share sale, but noted "to be confirmed by public." At the August 27 Council meeting, Ms. Leonard reminded Council that it "did promise or pledge to the public that there would be discussions before we would use those funds for any capital items."

Clerk Sara Almas was responsible for overseeing the public consultation process. Council held a special meeting on December 1, 2012, to solicit input from the public about the use and allocation of the proceeds. At this meeting, Ms. Leonard presented four options for the Collus funds:

1. Pay down debt – cautioned that accelerating debt repayment would not be fiscally responsible as it would trigger penalties to the municipality.
2. Establish a legacy fund which would permit self financing of projects as recommended by Department Heads and re -pay with interest.
3. Invest a portion of the funds in the new recreation facilities and the balance into a legacy fund.
4. Allocate the funds to the following major projects: Hume Street rebuild; Sunset Point redevelopment; Harbour Redevelopment.

The minutes recorded that the attendees also presented further suggestions, including building additional recreational facilities (“namely a gym and a pool”), funding a performing arts centre, and investing in infrastructure.

During the meeting, Council was asked how its decisions regarding the allocation of the funds would be communicated to the public. Ms. Almas responded that all comments, including presentations and the minutes of the meeting, would be provided to Council and the public through the standard protocols, and that Council would decide on the use of these funds in an open meeting.

After the meeting, the Town distributed a public survey that identified several options for the Collus funds, including “[i]nvest in the new recreation facilities,” and left space for additional suggestions, comments, or explanations.

Ms. Leonard presented the results of the survey in a staff report that Council received at its February 25, 2013, meeting. The top three responses were the redevelopment of Hume Street, enhancements to the harbour, and decreasing the Town’s debt. Ms. Almas testified that Council was not bound by the survey results, but they would form part of the decision-making process.

The staff report also stated that the Collus funds totalled \$14,458,559, divided as follows:

Promissory Note	\$1,710,170
Cash Dividend	\$11,598,389
Funds held in Escrow	\$1,000,000
Future Dividend	\$150,000
Total	\$14,458,559

In respect of paying down the Town's debt, the staff report stated that the Town could repay only one debenture at its discretion. The cost of doing so would be \$12,639,610, including an estimated \$1,585,521 penalty for early repayment. The report also discussed using the funds to pay for the new arena and pool or other recreational amenities. It recommended that Council receive the staff report and, during the upcoming budget discussions, deliberate the use of the Collus funds. Council voted to follow the recommendation.

The minutes record that Councillor Hull brought a motion, seconded by Councillor Joe Gardhouse, that the proceeds from the Collus sale be held in an interest-bearing account until the Town identified a minimum of three strategic opportunities for the use of the proceeds on behalf of the taxpayers; a staff report was prepared for each opportunity, outlining the economic and social benefits and the financial investment of each opportunity; and further public dialogue was held to engage citizens for their input and comments on the opportunities. The motion was defeated.

On June 10, 2013, Council voted to allocate the Collus funds toward the recreational facilities and transfer any remaining funds to a reserve fund for the Hume Street redevelopment. The motion to allocate the proceeds was not included in the agenda among the motions Council would consider. Rather, it was listed under "older deferred business." Before Council considered the motion to allocate the funds, it voted to waive a procedural requirement that Council provide advance notice of its intention to consider a motion.

Ms. Almas testified that she had concerns about the way in which Council made its final decision. She noted that Council had not discussed the funds between the February 25 meeting and the June 10 meeting. She further stated that, as a result of the allocation motion being listed as "older deferred business" on the agenda, Council did not have either a list of allocation options before them or the staff report that had been presented at the

February 25 meeting. In addition, Ms. Almas expressed disappointment in Council's decision to waive the notice requirement:

I think I thought it was quite quick. Like, was there a reason why they couldn't have provide [sic] the notice, someone said this has been in older deferred business for this long, I would like to make a recommendation for the next meeting that we allocate it to these three – or two things, three things. And then make that ... come forward at the next Council meeting.

When asked why Council decided to waive the notice requirement and vote on the allocation of the funds at the June 10 meeting, Mayor Cooper testified: "That was a decision that Council had made, and Council wanted to move forward in that direction." Ms. Cooper said she was not aware of anything preventing Council from deferring the decision so it could provide notice.

Deputy Mayor Lloyd testified that Council waived the notice requirements "[j]ust to move forward."

The Facilities Open

The renovated Centennial Pool officially opened to the public on August 27, 2013, exactly a year after Council voted to proceed with the Sprung structures. The Central Park Arena had a "soft opening" on October 14, 2013.

On January 14, 2014, Mr. Waddell sent Mr. Martin a list of "Upgrades and Changes" for the arena that totalled \$378,780, including items such as "Center hung scoreboard" and "Increase in seating from 250 to nearly 400 seats." In the covering email, Mr. Waddell wrote: "I feel we've installed a more than premium facility and gone beyond what we initially imagined for this project."

Mr. Martin testified that Mr. Waddell sent this email as part of the negotiations about the release of the holdback amount – the final payment from which the Town could deduct for any deficiencies in BLT's work. Mr. Martin explained that Mr. Waddell was listing some of the items that BLT had

included in the project which were not cited in the contract. “[H]e’s saying look, we did all these extra things, you should forget about the deficiencies and give us ... our money.”

Mr. Martin spoke positively about BLT, stating that “all during the project” BLT was “good to work with ... I mean, they truly were, I’m not going to sit here and say anything different.” He also noted that BLT has people “from all over come and look at that arena ... as a marketing, basically, product.” “[O]bviously they want us, the Town to be satisfied clients and hopefully they can get more work from future clients,” he continued. “I think it was as simple as that really.”

In an affidavit, Mel Milanovic, the Town’s manager of recreational facilities since 2016, confirmed that the Town regularly receives requests from Sprung and BLT to host tours of the arena and the pool, and he accommodates them as often as he can.

Mr. Milanovic’s affidavit also discussed a series of repairs to the pool facilities, totalling \$360,518, that the Town had undertaken since 2016. The repairs had been the subject of a staff report that the Department of Parks, Recreation and Culture had delivered to Council on September 16, 2019, five days after the Inquiry’s Part Two hearings began. The report requested an additional \$32,500 for an ongoing repair to change-room tiles, for which Council had already approved a budget of \$144,970. The report also included a list of unplanned expenditures for the pool, including the tile replacement (Figure 15.1).

AMENDMENTS

During an update to the Corporate and Community Services Standing Committee, it was requested that a total value of all unplanned expenditures at the CAC be shared along with this report:

2016 Warm Water Pool Tiles (mould found behind rubber liner)	= \$82,986
2017 Lobby Floor epoxy finish to replace rubber tile (tiles were peeling)	= \$9,328
2017 Main Pool perimeter deck tiles (to meet Building Code)	= \$62,115
2018 Warm Water Pool perimeter deck tile (to meet Building Code)	= \$50,771
2019 Change Room partitions	= 10,348
2019 Change Room tile replacement (per this report)	= <u>\$144,970</u>

Total = \$360,518

Figure 15.1: Unplanned Expenditures for the Pool

Note: CAC is the abbreviation for the Centennial Aquatics Centre.

Source: Exhibit A to Affidavit of Mel Milanovic, sworn October 15, 2019.

In his affidavit, Mr. Milanovic stated the pool had been closed since September 1, 2019, for the tile replacement. He said that, about a year and a half earlier, staff began noticing “hollow spots” in the change-room tile floors, which had been installed during the pool’s construction. Staff also observed issues with water migration. During a renovation to a change room in September 2018, some tiling was removed and staff discovered that the drains were not at the lowest points in the floor. That problem, as well as other issues, led the Town to decide to replace the tiles and add more drains to improve drainage.

On September 5, six days before the Part Two hearings began, Mr. Milanovic emailed Sprung and BLT about the repairs. He enclosed photos of the tiles and wrote:

Not sure who you used to set the tiles, but the quality of workmanship is very poor as you can see in the pictures below. Wrong materials were used, there was no waterproofing, adhesives were incorrect, floors were not sloped at all toward the drains, the type of tile is not correct for this application and not enough floor drains were installed for these areas.

Our facilities are your flag ship buildings when it comes to arenas and pools. The groups that I tour through these facilities or that call to enquire about them are asking about the quality of workmanship and the longevity of materials used. I think you need to take a long, hard look at what went on here.

Tom Lloyd of Sprung responded: “I spoke to BLT and they are looking into this. As you know the Collingwood Inquiry is starting next week so timing is not great.” In his testimony, he stated that this email was the first time he had heard of the tiling issue. He also agreed with Mr. Milanovic’s statement that the pool and the arena were BLT’s flagship buildings for arenas and pools, “given that we haven’t built many more,” and that staff “[q]uite often” provide tours of the arena and pool.

In response to Mr. Milanovic’s email, Mr. Barrow wrote:

Even though the warrantee period is over I would like to see if you would like me to send someone to review the tile work? This is the first time

hearing you are changing the tile and we were not aware that there was an issue before this email. I would have liked to have been told so we could see what we could have done to help you. The workmanship would be easier to point out if it was still laid to get the trade involved.

Mr. Barrow also agreed that the pool and the arena were BLT's flagship buildings for arenas and pools. He testified he was shocked when he read the email because he had not heard about any problems with the pool.

At the hearings, Paul Bonwick asked several witnesses to comment on the quality of the arena and the pool and the value the Town received. They all gave positive reviews. It is beyond the Inquiry's scope to assess the quality of these recreational facilities. The question may also be premature: as the Town noted in its submissions, "only time will tell whether the Sprung structures were a sensible solution."

Conclusion

When the process is not transparent, when the facts have been spun, courses of action can be fairly questioned. Public trust in the integrity of the Town's decision making is easy to lose. When public trust is lost, the road back can be long and hard. It is impossible to say what Council would have done had there been a competitive process, or what would have occurred if BLT had not retained Mr. Bonwick. What can be said is that the decision to sole source the recreational facilities was compromised by the process that led to the decision, the undisclosed payments to Mr. Bonwick's company Green Leaf, and the misleading statements to cover them up.



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Associate Chief Justice Frank N. Marrocco

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Recommendations

Recommendations

Introduction

Public inquiries investigate broad systemic and institutional issues and report to the public. Their reports include findings of fact and recommendations made in the public interest. Public inquiries are not trials. They are not intended to resolve disputes between parties or establish the guilt or innocence of accused persons in the criminal context.

The recommendations that follow respond to the matters I was directed to investigate by the Terms of Reference. These recommendations are directed to the Town of Collingwood, but the matters raised in the Terms of Reference are central to municipal governance. The concepts underlying these recommendations are, therefore, applicable to municipalities throughout the Province of Ontario.

Many of the matters addressed in my recommendations are referred to in legislation, have been commented on in previous inquiries and their recommendations, or have been discussed at length in academic and professional writing and are subject to ongoing efforts to improve municipal governance. Despite these efforts, the same issues arise. As a result, I repeat and reiterate earlier guidance throughout my recommendations.

In my recommendations I have also emphasized the need for leadership and education. The importance of maintaining and enhancing a culture of integrity for Council, staff, and those who wish to deal with municipalities is fundamental to good government at the local level.

Part Three of my Inquiry consisted of a series of panels discussing the issues of municipal governance. I was fortunate to receive the assistance in this endeavour of a group of knowledgeable and experienced people. I am indebted to the Honourable David Wake, Honourable Denise Bellamy, John

Fleming, Anna Kinastowski, Greg Levine, Valerie Jepson, Rick O'Connor, Mary Ellen Bench, Wendy Walberg, Marian MacDonald, Michael Pacholok, Suzanne Craig, Linda Gehrke, Robert Marleau, and Town of Collingwood chief administrative officer, Fareed Amin. Collectively, they advised on topics including roles and responsibilities in municipal government, conflicts of interest, municipally owned corporations, procurement, and lobbying. Their advice informed my recommendations and I thank them for volunteering their time and assistance.

I am aware that the Town of Collingwood has made significant changes in its practices, policies, and procedures since 2012 to address issues that I discuss in the Report and highlight in these recommendations. Some of those changes were rightly praised by the experts listed above who participated in the Part Three panels. My recommendations, however, are rooted in the Terms of Reference and respond to the policies, procedures, and decisions captured by my Terms of Reference. Nothing in this Report should be viewed as an express or implied criticism of the Town's efforts to improve its policies, practices, and procedures.

I have organized my recommendations by topic, addressing key municipal positions and specific municipal functions in turn. This structure permits a comprehensive discussion of the considerations that underlie the ethical exercise of each role and the resulting responsible municipal action.

Mayor

It became evident during the Part One and Part Two hearings that the mayor's roles and responsibilities were misunderstood.

That misunderstanding flowed, at least in part, from the description in the *Municipal Act, 2001*, of the head of Council (in the Town of Collingwood, the mayor) as the "chief executive officer of the municipality." The role and responsibilities of a head of Council differ from those of a corporate chief executive officer (CEO) in a meaningful way: the head of Council does not have the same powers as the CEO of a corporation. More specifically, unlike a corporate CEO, the head of Council does not have the power to commit the municipality to anything unilaterally. The head of Council becomes a

trustee in the public interest when she or he accepts the role, and that trust is in danger when imprecise analogies are drawn.

The erroneous belief that the mayor, by virtue of being described as the “chief executive officer of the municipality,” had the power to provide unilateral direction on behalf of Council, without Council’s agreement or approval, underpinned the lack of transparency around the origins of the Collus share sale, where directions from the mayor were treated as if they had the weight of directions issued by Council. That misunderstanding contributed in part to the blurring of the lines between Council and staff that pervaded the Collus share sale transaction and decisions about the new recreational facilities.

The recommendations below clarify the mayor’s leadership role in ensuring appropriate Council conduct and protecting the boundary between Council and staff, as well as eliminating any misunderstanding that the mayor may act on behalf of the municipality without Council’s agreement.

Amendments to the Ontario Municipal Act, 2001¹

- 1** The Province of Ontario should amend sections 225 and 226.1 of the *Municipal Act* to remove the inaccurate description of the head of Council as the chief executive officer of the municipality. The head of Council of a municipality is responsible to Council and does not have the authority to bind Council.

- 2** Describing the mayor as both the head of Council and chief executive officer blurs the fact that the mayor is the head of Council and the chief administrative officer (CAO) is the head of staff. There must be a clear division of roles and responsibilities between the mayor and the CAO, a separation of the political from the administrative.²

Town of Collingwood

- 3** The Town of Collingwood should set out in a bylaw its expectations concerning the mayor. Specifically, it should provide that the mayor demonstrate leadership to Council members regarding compliance with ethical policies and codes of conduct, as well as relevant bylaws and Town policies. It should also state that integrity and transparency in municipal government should be a priority for the mayor.³
- 4** The mayor should intervene where she or he becomes aware of uncivil conduct at Council meetings, at committee meetings, and in other work-related circumstances.⁴
- 5** The mayor should be involved in hiring the chief administrative officer.⁵
- 6** Although the relationship between the mayor and chief administrative officer (CAO) should be one of trust and collaboration, there may be instances where the division between the political role of the mayor and the public service role of the CAO is unclear. Accordingly, there should be a mechanism for resolving issues between the mayor and the CAO when the division between the political role of the mayor and the public service role of the CAO is unclear. The mechanism should be public and transparent.

Council Members

There was a lack of transparency regarding Council members' interests and actions in the events I examined in Parts One and Two of the Inquiry. Members of Council failed to identify and respond appropriately to conflicts of interest. The deputy mayor involved himself in staff's work without

Council's authorization and engaged with vendors seeking to deal with the Town outside of the Council process.

Factors leading to this lack of transparency included a failure to appreciate the importance of avoiding conflicts of interest and of disclosing real and apparent conflicts of interest to maintain public confidence. This result in part flowed from a failure to appreciate the role of Council members and of Council as a whole. That lack of transparency permitted political interests to infiltrate the staff's work, interfering with its efforts to provide objective information and advice to Council. It undermined public confidence in the municipality's actions and negatively affected the reputations of members of Council, staff, and others working to carry out the business of the Town. The legislation about conflicts of interest in effect at the time was confusing. I address this issue in my recommendations below.

It was apparent that all Council members were aware of the *Municipal Conflict of Interest Act*. It was also apparent that it is far too easy to misconstrue the *Municipal Conflict of Interest Act* as addressing all the kinds of conflict of interest that Council members must confront. Despite its name, the *Municipal Conflict of Interest Act* does not provide a complete conflict of interest code for municipal actors. It addresses the pecuniary interests of a narrowly defined group of family members related to a Council member which are by virtue of the *Act* deemed to be pecuniary interests of the Council member. Council members are obligated to avoid all forms of conflicts of interest or, where that is not possible, to appropriately disclose and otherwise address those conflicts.

Like the head of Council, members of Council are trustees of the public interest. Council members must ensure that this trust governs all their actions and decisions. Members of Council must also respect the need for a neutral and impartial public service, which gives its best advice based on the merits of the question before it. When this respect is lacking, staff's work risks becoming politicized and staff are in danger of failing to fulfill their obligations to the public, which in turn creates the risk of loss of public confidence.

The Council as a whole is the directing mind of the municipality, not individual members. It is responsible for setting policies and priorities, allocating resources, and providing direction to staff on the material,

operational, and financial business of the municipality. Council members must not seek to wield that power unilaterally or away from the Council chamber. Explicit Council authorization should be required where Council delegates its authority to a specific member of Council. Council's silence is not the same as Council's consent.

The recommendations below regarding Council members increase the transparency around political decision making and clarify the role of Council members in directing the business of the municipality. The concepts underlying these recommendations are not new. Other public inquiries have made recommendations similar to some of mine. I reiterate them here because the matters I examined in Parts One and Two of the Inquiry illustrated the need for increased commitment to these core principles.

Amendments to the Ontario Municipal Act, 2001

- 7** The Province of Ontario should amend the *Municipal Act* to define the roles and responsibilities of individual Council members.⁶ It should be made clear that only Council as a whole, not a single Council member, has the authority to direct staff to carry out a particular function, or act on any other matter, unless specifically authorized by Council.

- 8** The Province of Ontario should amend the *Municipal Act* to include a provision mandating the annual proactive financial disclosure of private interests of elected municipal officials. Proactive financial disclosure is critical to transparency. The requirement should state that Council members must provide financial disclosure within 90 days of assuming office. Types of financial interests that Council members should disclose include profession, employment, or businesses; debts, property holdings, and directorships; as well as a list of family members who have related financial interests in these matters. Disclosure of these financial interests should be consistent with the disclosure currently required of provincial and federal

elected officials in Canada. A record of these disclosures by Council members should be available to the public.⁷

Before enacting this provision in the *Municipal Act*, the Province should consult Council members in municipalities across Ontario.

- 9** Section 223.2(4) of the *Municipal Act* states the Minister of Municipal Affairs may make regulations prescribing one or more subject matters that a municipality is required to include in a code of conduct. Regulation 55/18 of the *Municipal Act*,⁸ which prescribes the subject matters that must be included in codes of conduct for Council members, should be amended to require that municipal codes of conduct for Council members include provisions on real, apparent, and potential conflicts of interest.
- 10** The Province of Ontario should amend the *Municipal Act* to require that the Staff / Council Relations Policy in each municipality contain specific provisions. For example, the Staff / Council Relations Policy should include the following:

 - a** Council members must respect the role of staff to provide advice based on objectivity and political neutrality and without undue influence from an individual Council member or group of Council members;
 - b** no member of Council shall use, or attempt to use, his or her power or authority to pressure, intimidate, threaten, coerce, or command a staff member in order to interfere with the staff member's duties;
 - c** no Council member shall maliciously or falsely injure the professional or the ethical reputation of staff and all Council members must treat staff with respect and courtesy;
 - d** only Council as a whole – and no single Council member – has the authority to direct staff to carry out a particular function unless specifically authorized by Council.⁹

- 11** The Province of Ontario should amend section 246 of the *Municipal Act* to state that, if a member abstains from voting because of a real, apparent, or potential conflict of interest, this should not be deemed a negative vote, but instead recorded as an abstention.

***Amendments to the Municipal Conflict of Interest Act*¹⁰**

- 12** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to broaden its scope beyond deemed pecuniary interest to encompass any real, apparent, and potential conflict of interest.

EXPANSION OF DEEMED PECUNIARY INTEREST

- 13** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to include an expanded group of family members. At a minimum, this should include:
 - a** spouse, common-law partner, or any person with whom the person is living with as a spouse outside marriage;
 - b** parent, including stepparent, and legal guardian;
 - c** child, including stepchild;
 - d** grandchild;
 - e** siblings;
 - f** aunt, uncle, nephew, niece, first cousins; and
 - g** in-laws, including mother- and father-in-law, sister- and brother-in-law, and daughter- and son-in-law.¹¹
- 14** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to state that the real and apparent conflicts of interest of the expanded group of family members are also deemed to be the conflicted interest of the Council member.

Disqualifying and Non-disqualifying Conflicts of Interest

- 15** The Province of Ontario should amend the *Municipal Conflict of Interest Act* to define disqualifying and non-disqualifying interests. A disqualifying interest prevents Council members from participating in debate, voting on the issue, or attempting to influence other Council members or staff at the municipality. A non-disqualifying interest is one which, upon proactive disclosure by the Council member, permits the member to vote on the issue, engage in discussions with other members of Council, or participate in debate.¹²

- 16** The Province of Ontario should explicitly provide that Council members can rely on advice from the integrity commissioner as to whether a disqualifying or non-disqualifying interest exists in a particular matter.

The Collingwood Code of Conduct for Council Members

- 17** The Code of Conduct should state that Council members must perform their duties with integrity, objectivity, transparency, and accountability to promote public trust and confidence. The public is entitled to expect the highest standards of conduct from the individuals they elect to local government. This provision should be placed in the body of the Code of Conduct for Council members and not in the preamble to the Code.¹³

- 18** The Code of Conduct should state that Council members at the Town of Collingwood must comply with all applicable provincial and federal legislation, Town bylaws, and Town policies concerning “their position as an elected official.”¹⁴

- 19** The Code of Conduct should include a provision mandating the annual financial disclosure of private interests of all elected

municipal officials. The provision should state that Council members are required to provide financial disclosure within 90 days of assuming office. Types of financial interests that should be disclosed include profession, employment, or businesses; debts; property holdings; and directorships; as well as a list of immediate relatives who might have financial interests in these matters. (Recommendation 29 discusses which family relationships constitute “immediate relatives.”) A record of these disclosures by Council members should be available to the public.

- 20** The Code of Conduct should explicitly state that Council members at the Town of Collingwood must discharge their duties in a manner that not only promotes public confidence in the integrity of the individual Council member but also fosters respect for Council as a whole.¹⁵
- 21** The Code of Conduct should reflect the differences in the roles and responsibilities of Council members and staff. Council members should fully understand the roles of staff and never blur the distinction between their duties as elected officials and that of staff at the Town of Collingwood. For example, the Code of Conduct for Council members and the Code of Conduct for staff should state that it is the staff at the Town of Collingwood who are responsible for: a) undertaking research and providing objective, politically neutral advice to Council on policies and programs of the Town of Collingwood, b) implementing Council’s decisions and establishing “administrative practices and procedures to carry out Council’s decisions,” and c) carrying out other duties required under legislation including the *Municipal Act* and “other duties assigned by the municipality.”¹⁶
- 22** The Code of Conduct should provide that Council members must “encourage public respect for the” Town’s bylaws

and policies and should “convey information ... openly and accurately” on adopted policies, procedures, and decisions at the Town of Collingwood.¹⁷

- 23** The Code of Conduct should state that Council members at the Town of Collingwood shall not “use the influence of [their] office for any purpose other than for the exercise of [their] official duties.”¹⁸
- 24** The Code of Conduct should state that Council members at the Town of Collingwood must respect “the role of staff to provide advice based on political neutrality and objectivity and without the undue influence” of a Council member or group of Council members.¹⁹
- 25** The Code of Conduct should state that Council members at the Town of Collingwood should not falsely or maliciously “injure the professional or ethical reputation” of any staff member.²⁰
- 26** The Code of Conduct should state that Council members must be aware of and comply with the requirements of the Lobbyist Code of Conduct. (See the recommendations on lobbying.)
- 27** The Code of Conduct should contain specific provisions addressed to apparent and potential conflicts of interest as well as real conflicts of interest.²¹
- 28** The Code of Conduct should state that Council members must understand and adhere to their obligations concerning real, apparent, and potential conflicts of interest under the *Municipal Act*, the *Municipal Conflict of Interest Act*, the Code of Conduct for Council members in Collingwood, and other relevant Town policies and legislation.

- 29** The Code of Conduct should define “immediate relatives” to include a spouse, common law partner, or any person with whom the person is living as a spouse outside marriage; parent, including stepparent, and legal guardian; child, including stepchild; grandchild; sibling; aunt, uncle, nephew, niece, first cousin; and in-laws, including mother- and father-in-law, sister- and brother-in-law, and daughter- and son-in-law.²²
- 30** The Code of Conduct should state that the pecuniary interests of the expanded group of “immediate relatives” are also deemed to be the interest of the Council member.
- 31** The Code of Conduct for Council members in Collingwood should include provisions on disqualifying and non-disqualifying interests. The Code should prohibit Council members from participating in “decision-making processes” related to “their office when they have a disqualifying interest in the matter.”²³

A disqualifying interest is “an interest in a matter, that by virtue of the relationship between the Member of Council and other persons and bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could not participate impartially in the decision-making processes related to the matter.”²⁴

A non-disqualifying interest is “an interest in a matter that, by virtue of the relationship between the Member of Council and other persons or bodies associated with the matter, is of such a nature that reasonable persons fully informed of the facts would believe that the Member of Council could participate impartially in the decision-making processes related to the matter,”²⁵ if

- a** the Council member “fully discloses the interest” and provides “transparency” regarding the relationship;²⁶

- b** the Council member thoroughly explains “why the interest does not prevent” the Council member “from making an impartial decision on the matter;”²⁷
- c** the Council member promptly files a Transparency Disclosure Form established by the Town which is available to the public and posted on the Town of Collingwood website.²⁸

Whether a Council member is challenged or not, the assessment of whether a disqualifying or non-disqualifying interest exists should be subject to the advice of the integrity commissioner.

- 32** The Code should explicitly state that “only Council as a whole,” and no single Council member, “unless specifically authorized by Council,” “has the authority to direct” any staff “to carry out a particular function,” policy, or matter.²⁹
- 33** Notwithstanding that this type of conduct is unacceptable in any context, the Code should explicitly state that no Council member shall “use or attempt to use their authority or influence” to threaten, coerce, intimidate, command, or otherwise influence “any staff member with the intent of interfering with that person’s duties.”³⁰
- 34** The Code should state that Council members must “represent the public and the interests” of the Town of Collingwood with objectivity and impartiality and that “the acceptance of a gift, benefit, or hospitality can imply favoritism,” influence, or bias on the part of the Council member.³¹
- 35** The Code of Conduct should prohibit Council members from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from lobbyists.³²

- 36** The Code of Conduct should state that a Council member shall not receive gifts, favours, benefits, or hospitality which “a reasonable member of the public” would believe is “gratitude for influence, to induce influence,” or goes beyond the “appropriate public functions involved. For these purposes, a gift, benefit, or hospitality provided” to an “immediate relative” as defined in the recommendations, or to the Council “member’s staff, that is connected directly or indirectly to the performance of the” Council member’s duties is deemed to be a gift, benefit, or hospitality to that Council member.³³
- 37** The Code of Conduct should contain a provision prohibiting Council members from accepting gifts, favours, entertainment, trips, or benefits of any kind from any bidder or potential bidder in either the pre-procurement phase or during the procurement process.
- 38** “To enhance transparency and accountability” concerning gifts, favours, benefits, and hospitality, Council members should be required to file a disclosure statement each month relating to all such gifts, favours, benefits, hospitality, including any sponsored travel. The integrity commissioner should add the disclosure statement to the public gifts registry operated by the integrity commissioner. The disclosure statement should at a minimum indicate:
- a** the source of the gift, favour, benefit, hospitality;
 - b** a description of the gift, favour, benefit, or hospitality;
 - c** “its estimated value”;
 - d** the circumstances in which the Council member received it;
 - e** the date of the gift, favour, benefit, or hospitality;
 - f** the estimated value of the gifts, favours, benefits, hospitality received by the Council member from that person, organization, or group in the previous 12 months.³⁴

- 39** Council members should be encouraged to seek advice from the integrity commissioner regarding the propriety of accepting any gift, favour, benefit, or hospitality.³⁵
- 40** The gifts registry should be regularly updated and posted on the Town of Collingwood's website for public viewing.
- 41** The Code of Conduct should contain provisions on the appropriateness of a Council member attending charity events.³⁶
- 42** The Code of Conduct should state that Council members cannot use their position to “influence the decision of another person to the private advantage” of the Council member, his or her family and/or “immediate relatives” as defined in these recommendations, friends, business associates, or staff at the Town of Collingwood.³⁷
- 43** The Code of Conduct should contain comprehensive provisions concerning confidential information.³⁸
- 44** The Code of Conduct should prohibit Council members from using confidential information and non-public information received by virtue of their position, for personal or private gain, for the gain of family or “immediate relatives” (defined in Recommendation 29), or of any person or corporation. This information includes emails and correspondence from other Council members or third parties.³⁹
- 45** The Code of Conduct should state that Council members at the Town of Collingwood should not “disclose or release by any means” to any person, in oral or written form, “confidential information acquired by virtue of their office,” except when “required by law or when authorized explicitly by Council to do so.”⁴⁰

- 46** The Code of Conduct should state that Council members must not use confidential information to cause harm or detriment to Council or the Town of Collingwood.⁴¹
- 47** The Code of Conduct should state that Council members must keep information confidential both during and after their terms as Council members.⁴²
- 48** The Code of Conduct should state that no Council member shall “access or attempt to gain access to confidential information in the custody of the” Town of Collingwood “unless it is necessary for the performance of their duties and is not prohibited by Council policy.”⁴³
- 49** The Code of Conduct should state that no Council member shall “directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of ... property or assets” at the Town of Collingwood.⁴⁴
- 50** Council members who hold positions on municipal corporations at the Town of Collingwood may be in a conflict of interest position. Council members who believe they might have a potential, real, or apparent conflict of interest regarding their responsibilities and obligations to Council and their responsibilities and obligations to the municipal corporation should seek the advice and guidance of the integrity commissioner.
- 51** Former Council members should not accept employment for one year on specific matters on which they worked as an elected official at the Town of Collingwood.
- 52** The Code should state that Council members who have reasonable grounds to believe that a violation of the Code of Conduct has occurred should promptly report such behaviour

or activity in writing to the integrity commissioner or his or her delegate.

- 53** Integrity commissioners require sufficient resources to investigate promptly complaints of violations of the Code of Conduct for Council members and to take prompt action where a complaint is well founded.
- 54** Council members must fully co-operate during an investigation of alleged wrongdoing concerning any activity or behaviour contained in the Code of Conduct. Sanctions should exist for Council members who fail to co-operate with such investigations of the integrity commissioner.⁴⁵
- 55** Reprisal or retaliation by a Council member against a complainant, witness, or other person involved in an investigation should be prohibited, and such behaviour should result in the imposition of an appropriate penalty on the Council member.⁴⁶
- 56** Ethical misconduct by Council members is serious misconduct and the penalties should reflect this. An appropriate range of penalties for Council members must exist for violations of the Code of Conduct and other ethical policies and bylaws. This range includes a reprimand, suspension of remuneration paid to the Council member, a public oral or written apology by the Council member, the return of property or reimbursement of its value or monies spent, removal from membership of a committee, or removal as chair of a committee. The integrity commissioner should have the authority to recommend to Council any of these sanctions.⁴⁷
- 57** The integrity commissioner should have the necessary resources to provide ethical education and material for Council members. Council members must receive training

and education on the Code of Conduct, conflict of interest rules, and other pertinent legislation and policies. Conveying accurate and comprehensive information to Council members on managing conflicts must be a priority. The training should also make it clear that each time a Council member reviews a report, the Council member should consider whether the report affects his or her business interests or property, or whether it affects a family member, relative, or friend.⁴⁸

- 58** Training and education are critical to promoting and maintaining a strong ethical culture at the Town of Collingwood. Training should be mandatory and occur at regularly scheduled times. When new legal and other issues arise, Council members should receive timely additional training and education.⁴⁹
- 59** Training and education of newly elected Collingwood Council members by the integrity commissioner should be mandatory and occur promptly after the election.
- 60** An online provincial training program should also be created with the involvement of municipal integrity commissioners. All newly elected Council members should be required to take this training program.
- 61** A public record of the subjects of the training sessions provided to Council members as well as the attendance of Council members at the training sessions should be maintained.
- 62** The integrity commissioner should meet with each Council member on an annual basis.⁵⁰
- 63** Council members should be encouraged to seek guidance and advice on ethical issues including the Code of Conduct from the integrity commissioner or his or her designate.⁵¹

- 64** The integrity commissioner should regularly forward interpretation bulletins and educational material to all Council members on the Code of Conduct, conflict of interest rules, and other pertinent legislation and policies.⁵²
- 65** The website of the integrity commissioner should contain the Code of Conduct, FAQs, and other educational material on the ethical obligations of Council members.⁵³
- 66** The integrity commissioner should be responsible for holding meetings for prospective candidates seeking to become Council members in a municipal election at the Town of Collingwood. The integrity commissioner should educate potential candidates on conflicts of interest, the Code of Conduct for Council members, and all relevant policies and statutory provisions. This information will enable individuals to make informed choices about seeking election to the Collingwood Town Council.⁵⁴
- 67** The integrity commissioner should be responsible for submitting an annual report to Council on the number of Code of Conduct complaints received and processed, the nature of the allegations, the resolution of the complaints, and any recommendations made by the integrity commissioner. Council should disclose this annual report at an open Council meeting. The annual report should be available to the public and placed on the website of the integrity commissioner.⁵⁵
- 68** Council members at the Town of Collingwood should be required to sign annually an acknowledgement that they are aware of their obligations and will abide by the provisions in the Code of Conduct for Council members.⁵⁶
- 69** The Code of Conduct should regularly be reviewed when relevant legislation is amended, and at other times when

appropriate, to ensure that it remains current for Council members at the Town of Collingwood.⁵⁷

Chief Administrative Officer

It was apparent in the matters I examined in Parts One and Two of the Inquiry that the importance of the chief administrative officer (CAO) in the proper functioning of the Town was not appreciated. This lack of appreciation manifested itself in the manner that the role was treated publicly and in the approach to the role taken behind closed doors. This failure weakened a key pillar in the structure of the municipality, contributed to the blurring of the boundary between Council and staff, and made it easier to avoid proper procedure in the pursuit of Council's goals. It was also detrimental to the staff's confidence and morale and interfered with their efforts to provide objective information to Council.

The CAO is a full-time position that comes with significant responsibility. Someone with the education and experience required to maintain a culture of integrity and to provide the best information and advice to Council should always fill the CAO role. The CAO must operate independently, advising Council and carrying out Council's direction while remaining unaffected by political influence.

The recommendations that follow focus on providing a clear framework for the CAO role, including hiring, training, tenure, responsibilities, and a mechanism for addressing complaints about the CAO's conduct.

Amendments to the Ontario Municipal Act, 2001⁵⁸

- 70** The Province of Ontario should amend section 229 of the *Municipal Act* to mandate that municipalities the size of the Town of Collingwood appoint a chief administrative officer.⁵⁹

- 71** The Province of Ontario should amend the *Municipal Act* to describe fully the role and responsibilities of the chief administrative officer.⁶⁰

Town of Collingwood

- 72** The Town of Collingwood should establish in a bylaw the position of chief administrative officer (CAO) and must appoint a person to that position. This bylaw should define and describe the role and responsibilities of the CAO at the Town of Collingwood.⁶¹
- 73** As head of the public service, the chief administrative officer should have clear responsibilities and accountability for managing the administration of the Town, which must be described fully in the bylaw.⁶²
- 74** The bylaw should state that there must be a distinct separation between the administrative role of the chief administrative officer and the political role of the mayor and Council members.
- 75** The bylaw should state that the chief administrative officer (CAO) provides advice to Council, and receives instructions and policy directions from Council, and that the CAO must work with staff to ensure Council's directives are carried out.
- 76** The bylaw should state that the chief administrative officer (CAO) has a responsibility to provide impartial advice to Council. It should also state that the CAO has the ultimate responsibility for the accuracy of information presented to Council.
- 77** The chief administrative officer (CAO) should be the only member of staff who reports to Council. All other staff report

to the CAO. Where the CAO delegates his or her authority, such delegation should be explicit.⁶³

- 78** The bylaw should state that the chief administrative officer (CAO) must have the authority to direct staff at the Town of Collingwood and ensure that staff respect the separation between elected members on Council and staff. It is the role of the CAO, not the mayor or other members of Council, to direct staff.
- 79** The bylaw should state that the chief administrative officer is responsible for leading and fostering a “culture rooted in the highest ethical standards” for staff at the Town of Collingwood.⁶⁴
- 80** There should be training for new chief administrative officers at the Town of Collingwood on the role and responsibilities of the position, codes of conduct and policies on ethical obligations, Town bylaws, and relevant statutes such as the *Municipal Act* and *Municipal Conflict of Interest Act*.
- 81** There should be training for the mayor and Council members on the role and responsibilities of the chief administrative officer.
- 82** The chief administrative officer's term should be a six-year non-renewable term.
- 83** A process for complaints regarding the chief administrative officer should be established. Such complaints should be reported to the integrity commissioner.⁶⁵
- 84** Any reprisal or retaliation against a complainant, witness, or other persons for providing information to the integrity commissioner should be prohibited.⁶⁶ Similarly, it should also be prohibited for the chief administrative officer (CAO) to obstruct the integrity commissioner in her or his investigation.

Such behaviour on the part of the CAO should result in the imposition of an appropriate penalty.

- 85** Termination of the chief administrative officer before the end of his or her term of employment should require a two-thirds vote of members of Council.

Staff

Municipal staff are imperative to the functioning of the Town. It is staff's role to provide Council with objective information and recommendations, to inform Council's decision making, and to carry out Council's directions in a manner that maintains public confidence in the integrity of Council, staff, and the municipality. Staff are subject to a number of pressures and require clear guidelines, boundaries, and resources to respond appropriately. The consequences of failing to protect and support staff were apparent in the Part One and Two hearings. The evidence proved that political will trumped proper process, and public confidence was lost along the way.

The recommendations below are intended to clarify staff's role, reiterate staff's ethical obligations, and articulate mechanisms to address issues that arise in municipal public service.

Amendments to the Ontario Municipal Act, 2001

- 86** The Province of Ontario should amend the *Municipal Act* to mandate that each municipality establish a Code of Conduct for staff.⁶⁷
- 87** The Province of Ontario should amend the *Municipal Act* to declare that staff are expected to be neutral, objective, and impartial in all their work for the municipality.

Code of Conduct

- 88** The Town of Collingwood should pass a bylaw establishing a comprehensive Code of Conduct for staff. The Code of Conduct should set standards of ethical conduct designed to promote and protect the public interest and enhance public confidence and trust in the integrity, objectivity, impartiality, honesty, accountability, diligence, and transparency of all staff at the Town of Collingwood.⁶⁸
- 89** The Code of Conduct at the Town of Collingwood “should be written in plain language” and easily understandable by staff and members of the public.⁶⁹
- 90** Staff at the Town of Collingwood should be mandated to sign an annual acknowledgement that they are aware of their obligations under the Code of Conduct and will adhere to and uphold the provisions in the Code.⁷⁰
- 91** The Code of Conduct should state that staff at the Town of Collingwood must conduct themselves in an ethical manner with integrity, objectivity, impartiality, honesty, accountability, diligence, and transparency.⁷¹
- 92** The Code of Conduct should state that staff at all times should act, and be seen to act, in the public interest to maintain public confidence and trust in the Town of Collingwood.⁷²
- 93** The Code of Conduct should state that the role of staff is the implementation of Council’s decisions and the establishment of “administrative practices and procedures to carry out” the decisions of Council.⁷³
- 94** The Code should state that staff must undertake research and provide impartial and objective advice to Council concerning

the policies and programs of the Town of Collingwood and other duties assigned by the municipality, including those required under legislation such as the *Municipal Act*.⁷⁴

- 95** Staff should take measures to ensure that they are not influenced in their advice or recommendations to Council by an individual Council member or group of Council members. Staff are obligated at all times to provide information to Council that is politically neutral. There must be a clear separation between Council and staff when staff are formulating their advice and recommendations.⁷⁵
- 96** Staff have an obligation to speak the truth to their superiors and to Council.⁷⁶
- 97** Staff must not conceal or manipulate information. Staff must never intentionally misrepresent facts or information.⁷⁷
- 98** Staff must not use intimidation or fear in the workplace.⁷⁸ Staff must not inappropriately disclose or share confidential information.⁷⁹
- 99** Staff must be aware of and comply with the requirements of the Lobbyist Code of Conduct.⁸⁰

CONFLICTS OF INTEREST

- 100** The Code of Conduct for staff at the Town of Collingwood should provide detailed rules on conflicts of interest including real, apparent, and potential conflicts of interest.⁸¹
- 101** Staff should be prohibited from participating “in the analysis of information” or making any “decisions on an issue or matter in which” staff have “a real or apparent conflict of interest.”⁸²

- 102** The Code of Conduct should prohibit staff from using their positions at the Town of Collingwood “to further their private interests.”⁸³
- 103** The Code of Conduct should explicitly state that staff are prohibited from giving preferential treatment to family, relatives, or friends.⁸⁴
- 104** Staff “shall not use information for personal or private gain” or the gain of family, relatives, or friends.⁸⁵
- 105** Staff must take immediate action to prevent or resolve real, apparent, or potential conflicts of interest.⁸⁶
- 106** Staff must promptly inform the chief administrative officer in writing “that they are unable to act on a matter in which there is a real or apparent conflict of interest.”⁸⁷
- 107** Staff shall “decline employment, including self-employment,” with regard to matters that are incompatible or in conflict with the staff’s official responsibilities and duties at the Town of Collingwood.⁸⁸
- 108** Staff who hold positions on a municipal corporation at the Town of Collingwood may be in a conflict of interest position. Staff who believe they might have a potential, real, or apparent conflict of interest regarding their responsibilities and obligations to Council and their responsibilities and obligations to the municipal corporation should seek the advice and guidance of the chief administrative officer.

REPORTS

- 109** The Code of Conduct should state that staff reports must be objective and identify a full range of options for Council to consider. The risks associated with options must be clearly and fully presented. At no time should the fiscal impacts of any option be minimized by staff.⁸⁹
- 110** Staff at the Town of Collingwood should receive training on drafting clear, accurate, objective, and comprehensive reports.
- 111** Staff reports, including draft reports, should not be shared or disclosed to individual Council members or groups of Council members, except where explicitly authorized by Council.⁹⁰ If a Council member requests information from staff, the requested information should be provided to all Council members.⁹¹ The Code should provide that every effort should be made by staff to ensure that each member of Council has the same information.
- 112** The Code of Conduct should state that staff should not summarize or explain the findings of a consultant's report. A consultant should be available to speak to Council and respond to questions and issues that arise from the consultant's report. If the report is lengthy, the consultant should provide an executive summary of the report.⁹²

GIFTS

- 113** The Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting staff from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from lobbyists.⁹³

- 114** The Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting staff from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from any bidder or potential bidder in either the pre-procurement phase or during the procurement process.⁹⁴
- 115** Staff should be permitted in certain circumstances “to accept gifts, entertainment,” or “benefits of nominal value.”⁹⁵ Any gifts received should be reported on a Town of Collingwood gift registry to promote and ensure transparency.⁹⁶
- 116** Staff should be encouraged to consult and seek advice from the chief administrative officer or his or her designate regarding the propriety of accepting a gift.
- 117** The gift registry should contain at a minimum the following information:
- a** the name and position of the staff who received the gift;
 - b** the person, organization, or group who gave the gift;
 - c** “a description of the gift”;
 - d** the date on which it was received;
 - e** its estimated value; and
 - f** the estimated value of gifts received by the staff from that person, organization, or group in the previous 12 months.⁹⁷
- 118** The gift registry should be regularly updated and posted on the Town of Collingwood website for public viewing.

VIOLATIONS OF CODE OF CONDUCT, INVESTIGATIONS, AND SANCTIONS

- 119** Staff “who have reasonable grounds to believe a violation of the Code of Conduct has occurred” should promptly report in

writing such behaviour or activity to the chief administrative officer or his or her designate.⁹⁸

- 120** Complaints of alleged violations of the Code of Conduct should be investigated promptly and appropriate actions taken when there is a violation.⁹⁹
- 121** The Code of Conduct should contain reprisal protection for staff at the Town of Collingwood. The purpose of such protection provisions is to facilitate disclosure of wrongdoing, ensure that disclosures of wrongdoing are investigated, and protect from reprisal staff who report wrongdoing in good faith.¹⁰⁰
- 122** Reprisal or retaliation should be prohibited against a complainant, witness, or other persons involved in an investigation. Reprisal or retaliation should “result in appropriate disciplinary action.”¹⁰¹
- 123** All staff must fully co-operate “during an investigation of alleged wrongdoing” concerning any activity or behaviour contained in the Code of Conduct.¹⁰² Sanctions should exist for staff who fail to co-operate with such investigations by the chief administrative officer.
- 124** Any staff “found to have violated the Code of Conduct may be subject to disciplinary action,” “including discharge from employment.” A clear message must be sent that ethical misconduct by staff is serious misconduct and the penalties should reflect this principle.¹⁰³

TRAINING AND EDUCATION

- 125** Regular training and education are critical to promoting and maintaining a strong ethical culture at the Town of Collingwood.

The chief administrative officer should have the mandate and resources to provide ethical education programs and material for staff.

- 126** Training for staff on the Code of Conduct and their ethical obligations should be mandatory and occur at regularly scheduled times. In circumstances in which new legal and other related issues arise, there should be timely additional staff education and training.¹⁰⁴
- 127** Training on the Code of Conduct for staff should be practical and job-related to ensure that it is relevant to staff in different departments and various positions at the Town of Collingwood.
- 128** Information bulletins and other educational materials regarding the ethical obligations and Code of Conduct for staff should be sent regularly to staff at the Town of Collingwood.
- 129** Staff should be encouraged to seek guidance and advice on ethical issues from the chief administrative officer or his or her designate.¹⁰⁵
- 130** Hiring practices “should include appropriate questions designed to elicit perspective on the ethics” of a person applying for a position at the Town of Collingwood. Responses to ethical issues should be an essential consideration in the Town's hiring decisions.¹⁰⁶
- 131** Staff newly hired at the Town of Collingwood “should receive immediate training” on the Code of Conduct for staff.¹⁰⁷
- 132** The Code of Conduct for staff should be available to the public and posted on the Town of Collingwood website. Publication of the Code of Conduct may assist the public, including anyone considering work in the public service, in understanding the

responsibilities of public service holders and the manner in which they are expected to conduct themselves.

FORMER STAFF

- 133** Former Town of Collingwood staff should “not directly or indirectly use or disclose” any confidential information obtained during their employment at the Town of Collingwood.¹⁰⁸
- 134** Former Town of Collingwood staff should not accept employment for one year on specific matters on which they worked in their positions at the Town of Collingwood.

MANAGEMENT

- 135** The Code of Conduct for staff should contain specific provisions addressed to management at the Town of Collingwood.¹⁰⁹
- 136** The Code of Conduct should state that management at the Town of Collingwood should lead and promote a culture of the “highest ethical standards.”¹¹⁰
- 137** The Code of Conduct of staff should state that management at the Town of Collingwood should at all times behave in a way that is “consistent with the Code of Conduct.”¹¹¹
- 138** Management should “establish and maintain” “systems, procedures, and controls” to support compliance with the Code of Conduct for staff at the Town of Collingwood.¹¹²
- 139** Management should take appropriate steps both to prevent and to put an end to violations of the Code of Conduct that

come to their attention.¹¹³ They should deal expeditiously with any issues or allegations of violations of the Code of Conduct.¹¹⁴ Management with reasonable grounds to believe that a violation of the Code of Conduct has occurred should promptly report such behaviour or activity in writing to the integrity commissioner or his or her designate.

- 140** Information disclosed by management to a member of Council should be shared with all members of Council.¹¹⁵
- 141** Management should ensure that staff receive regular training and educational sessions on the Code of Conduct and other relevant ethical policies and guidelines.¹¹⁶
- 142** Management should “promote a safe and healthy workplace” that encourages all staff to report allegations of violations of the Code of Conduct without “fear of reprisal or retaliation.”¹¹⁷
- 143** To ensure that the Town receives the benefit of the relevant expertise of its staff, the Code of Conduct should state that every major initiative at the Town of Collingwood should be disclosed to and considered by the chief administrative officer and all members of management.

Procurement

Part One of the Inquiry, which examined how Council procured a strategic partner for its electric utility, and Part Two of the Inquiry, into how Council procured recreational facilities, revealed a failure to appreciate and follow proper procurement procedures. The two transactions I examined demonstrated a lack of transparency; a misconception of the roles of Council, staff, the Town solicitor, and suppliers; and a failure to appreciate the need for equitable treatment of proponents to secure the best information and prices the market has to offer.

The importance of transparency and fairness in public sector procurement is not a new concept. Prior municipal inquiries have made recommendations regarding procurement, and some of those recommendations are reflected here. I repeat and reiterate these recommendations because issues continue to arise despite the guidance previously issued. These core concepts remain as important as ever because, as former Ontario Superior Court Justice Denise Bellamy observed, “procurement is the biggest shopping with the people’s money that gets done in government.”¹¹⁸ If the integrity of procurements is maintained, so too is public confidence; if that confidence is lost, great efforts are required to restore it.

In the public sector, political actors are to remain at arm’s length from the procurement process. Council as a whole develops procurement policies and processes, identifies municipal needs and sets budgets, and makes final procurement decisions informed by staff’s non-partisan research and recommendations. There is no appropriate role for individual Council members in the execution of a procurement process. Council members must ensure that they guard against the risk of politicizing the procurement process. The chief administrative officer and senior staff must also do so.

Staff ensure successful public procurement through effective planning, maintaining clear and public policies, running transparent procurement processes, and executing and managing contracts with the successful proponents. The Town solicitor is a key member of the procurement team and must be involved from the inception of any major procurement.

Suppliers who wish to do business with the municipality must act ethically. Council members, staff, and suppliers must be aware of any potential conflicts of interest posed by a procurement and, as they are obliged to do, they must avoid those conflicts where possible, and address them appropriately where avoidance is not a viable option. These obligations continue throughout the procurement process.

The recommendations that follow articulate the goals and objectives that should guide municipal procurement and delineate the appropriate roles, responsibilities, and obligations of municipal and other actors in procurement.

Amendments to the Ontario Municipal Act, 2001¹¹⁹

144 The *Municipal Act* requires municipalities to adopt and maintain policies regarding the procurement of goods and services. The Province of Ontario should amend the *Municipal Act* to state that municipal procurement policies must be designed to promote the following objectives: openness, honesty, fairness, integrity, accountability, and transparency in the procurement process; competition in the procurement process; the best value for money for goods and services; equitable treatment of suppliers in the procurement process; and maintaining public confidence in the municipal procurement process.

Procurement at the Town of Collingwood

145 Procurement at the Town of Collingwood should be open, fair, ethical, and transparent.¹²⁰

146 The goals and objectives of the procurement bylaw and related policies and codes of conduct at the Town of Collingwood should:¹²¹

- a** promote openness, honesty, fairness, integrity, accountability, and transparency in the procurement process;
- b** encourage competition in the procurement process;
- c** prevent conflicts of interest – real, apparent, and potential – between suppliers and the Town’s elected officials and staff;
- d** ensure that goods and services are acquired at the best value for money;
- e** require that suppliers are treated equitably, consistently, and without discrimination throughout the entire procurement process;

- f** clearly identify the roles, responsibilities, and accountability of individuals involved in the procurement process, including the purchasing officer, the treasurer, procurement staff, department heads, consultants, senior staff, and the Town solicitor; and
- g** instill confidence in the public and in participants in the procurement process.

COMPETITIVE PROCUREMENT PROCESSES

- 147** There should be a strong presumption in favour of mandatory competitive tendering for all procurements at the Town of Collingwood. Criteria for exemption from competitive tendering should be strictly defined in the purchasing bylaw. A competitive procurement process should be used for procurements at the Town of Collingwood unless the conditions are met for a non-competitive procurement process.¹²²

NON-COMPETITIVE PROCUREMENT PROCESSES

- 148** The Town of Collingwood should be required, except for emergency situations, to issue an advance contract award notice when it plans to proceed with a non-competitive procurement process. Issuing an advanced contract award gives potential suppliers the opportunity to indicate whether they can meet the business needs of the Town and it provides the Town with information as to whether there is competition in the marketplace. The advance contract award informs members of the public that the Town intends to engage in a non-competitive procurement process and it promotes transparency and openness.¹²³

- 149** Exceptions to a competitive process, such as sole sourcing and single sourcing, should be delineated in the purchasing bylaw. Emergencies and monopolies are examples of situations in which a non-competitive procurement process may be appropriate. Other examples are lack of response to a competitive process, and a single supplier in the marketplace for the particular goods or services required by the Town.¹²⁴
- 150** Lack of planning or insufficient time to conduct a competitive procurement, except in an emergency situation, should not be an allowable exception.¹²⁵
- 151** A high level of scrutiny is necessary for non-competitive procurements.¹²⁶ The approval of the treasurer must be obtained to proceed with a non-competitive procurement.

UNSOLICITED PROPOSALS

- 152** The procurement bylaw should specify the conditions for unsolicited proposals.¹²⁷
- 153** The procurement bylaw should state that there must be one point of contact within Town staff for unsolicited proposals.¹²⁸
- 154** Before an unsolicited proposal is accepted, the Town should notify the marketplace that it plans to proceed with the unsolicited proposal. Notification should occur in a way that allows suppliers to compete and enable the Town to determine if another supplier has a superior proposal.¹²⁹
- 155** The treasurer should submit a report on the non-competitive and competitive procurement transactions annually to Council in an open session.¹³⁰ This promotes openness, integrity, accountability, and transparency in the procurement process.

TRAINING

- 156** Procurement staff at the Town of Collingwood should receive comprehensive and regular training on the procurement bylaw, procurement policies and practices, and relevant codes of conduct. Training should be mandatory and should include ethical issues that arise in the procurement process.¹³¹
- 157** Procurement staff at the Town of Collingwood should engage in discussions with procurement staff in other municipalities and in the province of Ontario to share best practices.¹³²
- 158** Senior staff and Council members should also be trained on the principles and objectives of the procurement bylaw, related policies, and codes of conduct. This training should include the ethical principles that arise in the procurement process and the presumption of competitive procurement at the Town.
- 159** The Town should make the training and educational material it provides to its procurement staff, senior staff, and Council members available to the public and post it on its website.¹³³

Council

- 160** Council is responsible for requiring and enforcing a fair, transparent, honest, and objective procurement process.¹³⁴
- 161** Council has a minimal role in procurements, and the separation between the role of Council and staff in procurements at the Town must be clear. Council's role is to set the budget and approve the overall procurement plan. In addition, Council must be satisfied that the procurement process is fair, honest, impartial, and equitable before it accepts staff's

recommendation of the supplier who is to be awarded the contract with the Town.¹³⁵

162 Council should be asked to approve the award of contracts where:

- a** the purchase is over budget or the “approved funding is insufficient for the award”,¹³⁶
- b** “the contract is not being awarded to the lowest bid that has met the specifications and terms and conditions of the quotation, tender, or proposal”,¹³⁷
- c** “the award is for a single source contract” or other contract in a non-competitive procurement process in which the total value “of the contract exceeds \$100,000”,¹³⁸
- d** the purchasing officer has recommended an award to a supplier whose response does not meet the specifications and qualification requirements set out in the solicitation or whose response may not represent the best value to the Town based on the evaluation criteria set out in the solicitation;
- e** “a major irregularity precludes the award of a tender to” a “supplier submitting the lowest responsive bid”,¹³⁹
- f** the chief administrative officer or treasurer recommends Council approval,¹⁴⁰
- g** the term of the contract exceeds five years; or¹⁴¹
- h** Council approval is mandated by statute.¹⁴²

163 Council members must remain at arm's length from staff and suppliers in the procurement process. Elected officials should be prohibited from involvement in the selection of the procurement process, evaluation of the bids, or selection of the successful supplier.¹⁴³

164 Council members should not receive or review any information or documents related to a particular procurement during the procurement process.¹⁴⁴

- 165** Council members must adhere to their obligations in the Code of Conduct for Council Members, the Lobbyist Code of Conduct, and other related policies and bylaws that address procurement at the Town.

Role of Staff

- 166** The procurement bylaw should clearly define the roles, responsibilities, and accountability of staff involved in the procurement process.¹⁴⁵
- 167** Procurement staff are responsible for recommending the most appropriate procurement method, overseeing all stages of the procurement process, and interacting with department staff to assess the business needs of the Town.¹⁴⁶
- 168** Procurement staff should identify additional resources, such as a fairness monitor, consultants, or professionals (for example, architects or engineers) to assist in the development or oversight of the procurement.¹⁴⁷
- 169** Staff must adhere to all their obligations in the Code of Conduct for staff and other related codes of conduct, bylaws, and policies related to lobbyists and procurement.

Fairness Monitor

- 170** The Town should retain a fairness monitor for procurements that are complex, high-risk, controversial, or of a substantial dollar value. The fairness monitor promotes the integrity of the procurement process and protects against bias or discriminatory practices.¹⁴⁸

- 171** A fairness monitor should be an independent third party who monitors the procurement process and provides feedback to Council on fairness issues. The fairness monitor should provide an objective, unbiased, and impartial opinion to Council as to whether the procurement process is conducted following the principles of openness, fairness, transparency, honesty, and consistency and in accordance with the procurement bylaw, codes of conduct, and other related policies at the Town. The fairness monitor can also provide guidance and advice on best practices in the procurement process to the Town.¹⁴⁹
- 172** The Town should be satisfied that the fairness monitor has the expertise and specialized knowledge necessary to provide an informed opinion on the particular procurement.
- 173** The decision to retain a fairness monitor is at the discretion of the chief administrative officer.

Consultants

- 174** Before issuing a significant, high-risk, complex, or substantial dollar value procurement, the Town should consider retaining consultants to provide expert advice and guidance.¹⁵⁰
- 175** The retainer agreement should identify the client. The retainer agreement should also provide clear and detailed instructions concerning the responsibilities of the consultant and the work the consultant is to perform.¹⁵¹
- 176** The Town should retain consultants at the beginning of a significant procurement process to provide expert advice, guidance, and assistance throughout the procurement process. Consultants can also offer advice on best practices from other municipalities and other jurisdictions.¹⁵²

- 177** Consultants retained by the Town to provide advice on the procurement process are precluded from submitting a bid or participating as a vendor or purchaser in the procurement process.¹⁵³
- 178** Consultants retained by the Town are prohibited from assisting or providing advice to “any potential bidder in a forthcoming tender.”¹⁵⁴
- 179** Consultants retained by the Town must declare any real, apparent, or potential conflicts of interest.
- 180** Consultant reports should be appended to staff reports. Town staff are precluded from modifying in any way the consultant’s report. If an executive summary of the consultant’s report is required, the consultant, not Town staff, should prepare it.¹⁵⁵

Timing for Submission of Bids

- 181** When dealing with a significant procurement, Town Council should obtain assurance from the chief administrative officer that staff have sufficient time to prepare the solicitation, as well as to evaluate the responses of prospective suppliers.
- 182** When setting deadlines for the submission of bids, the Town should provide sufficient time for suppliers to assess the requirements of the particular procurement and to prepare their bid. Adequate timing will help ensure that the Town receives the best value for the particular goods or services. There are costs associated with short timelines. Some suppliers may not respond to the solicitation, with the consequence that there may be adverse financial impacts to the Town.¹⁵⁶

Code of Conduct for Suppliers

- 183** The Town should establish a Code of Conduct for suppliers to promote a strong procurement process, as well as transparency, fairness, integrity, accountability, and honesty.¹⁵⁷
- 184** As part of the procurement process, the Town should include links and references to its relevant codes of conduct in tender documents, emphasizing that all bidders are under an obligation to be aware of and adhere to the provisions in the codes of conduct. This includes the Code of Conduct for suppliers, the Code of Conduct for lobbyists, the Code of Conduct for Council members, and the Code of Conduct for staff.
- 185** The Code of Conduct for suppliers should state that all suppliers must comply with the provisions in the Code of Conduct.¹⁵⁸ It should also require compliance with all applicable federal laws and provincial laws, including the *Municipal Act* and *Municipal Conflict of Interest Act*, relevant trade agreements, the Town of Collingwood procurement bylaws, and related policies.¹⁵⁹
- 186** The Town should include in all procurement documents a provision stating that sanctions may be imposed for violations of the Code of Conduct for suppliers and other relevant codes of conduct.
- 187** The supplier should provide the Town with a formal statement of compliance with the Code of Conduct for suppliers as a condition precedent to making a bid. The supplier should explicitly agree in the certification that material non-compliance with the Code of Conduct for suppliers, regardless of when it is discovered, is a basis for terminating the contract.¹⁶⁰

HONESTY

- 188** The Code of Conduct for suppliers should state that all suppliers must respond to the Town's "solicitations in an honest, fair, and comprehensive manner that accurately reflects" their ability "to satisfy the requirements ... in the solicitation."¹⁶¹
- 189** "Suppliers shall submit a bid only if they know they can satisfactorily perform all the obligations of the contract in good faith."¹⁶²
- 190** Suppliers must act with integrity and in accordance with their obligations pursuant to their contract with the Town.

CONFIDENTIALITY

- 191** Suppliers must maintain the confidentiality of all "information disclosed to the supplier as part of the" procurement process.¹⁶³
- 192** Any misuse by a bidder of confidential information belonging to the Town or another bidder should be grounds for disqualification of the bid.¹⁶⁴

CONFLICT OF INTEREST

- 193** Suppliers must ensure that all apparent, real, or potential conflicts of interest are appropriately addressed.¹⁶⁵
- 194** "Suppliers must declare and fully disclose any" apparent, real, or potential conflicts of interest or unfair advantage concerning "the preparation of their bid" or "in the performance of" their contract. Examples of such conflicts include:¹⁶⁶

- a** engaging family members, friends, or “business associates of any public office holder” at the Town “which may have, or appear to have, any influence on the procurement process, or subsequent performance of the contract”;¹⁶⁷
- b** “communicating with any person” to obtain “preferred treatment in the procurement process”;¹⁶⁸
- c** engaging current staff or public office holders at the Town to take part “in the preparation of the bid or the performance of the contract, if awarded”;¹⁶⁹
- d** engaging former Town staff or former “public office holders to take any part in the” development “of the bid or the performance of the contract, if awarded, any time within” one year of such person “having left the employ or public office” at the Town;¹⁷⁰
- e** “prior involvement by the supplier or affiliated persons in developing the” “specifications or other evaluative criteria for the solicitation”;¹⁷¹
- f** access to related confidential information “by the supplier, or affiliated persons” that is not readily available “to other prospective suppliers”;¹⁷²
- g** “conduct that compromises, or could be seen to compromise, the integrity of the procurement process.”¹⁷³

COLLUSION AND OTHER UNETHICAL PRACTICES

- 195** No supplier shall communicate, “directly or indirectly, with any other supplier” or their affiliates, regarding the supplier’s submission.¹⁷⁴
- 196** A supplier must “disclose any previous convictions” “for collusion, bid-rigging, price-fixing, bribery, fraud, or other similar” conduct “prohibited under the *Criminal Code*, *Competition Act*, or other applicable law, for which they have not received a pardon.”¹⁷⁵

INTIMIDATION

- 197** “No supplier may threaten, intimidate, harass, or otherwise interfere with any” Town staff or public office holders.¹⁷⁶
- 198** No supplier may “threaten, intimidate, harass, or otherwise interfere with an attempt by any other prospective supplier to bid for a” “contract or to perform any contract awarded by the” Town.¹⁷⁷

GIFTS

- 199** No supplier or potential supplier “shall offer gifts, favours, inducements of any kind to” Town staff “or public office holders, or otherwise attempt to influence or interfere with their duties” and responsibilities concerning the procurement or management of the process.¹⁷⁸
- 200** Town staff are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers in either the pre-procurement phase or during the procurement process.¹⁷⁹
- 201** Council members are prohibited from accepting gifts, favours, entertainment, meals, trips, or benefits of any kind from suppliers or potential suppliers at any time during the pre-procurement phase or procurement phase of the process.

SANCTIONS

- 202** The Code of Conduct should explicitly state that any material violation of the Code, “including any failure to disclose potential conflicts of interest or unfair advantages, may be

grounds for” disqualifying the supplier or terminating the contract.¹⁸⁰

- 203** Suppliers who have violated the Code of Conduct may be prohibited from bidding on future contracts at the Town for a designated period.¹⁸¹

Planning

- 204** A procurement plan for the Town should be prepared annually and published.¹⁸² Procurement planning helps insulate the procurement process from political influence.
- 205** Before initiating any procurement process for goods or services, the purchasing department shall, (a) prepare detailed specifications and quantity requirements for the particular goods or services, and (b) certify that the goods or services are required for the Town of Collingwood.
- 206** “A standard checklist should be prepared” and published “indicating all the elements that should be in place before the” Town issues a tender.¹⁸³
- 207** Procurement staff and senior staff should take measures to ensure that lobbying in the Town does not have any impact on the design of the tender so as to unfairly favour a bidder.

Designated Contact Person

- 208** The tender document should specify the name and contact information of the person whom prospective bidders can contact with questions. The tender document should make it clear that for the duration of the procurement process, only this

Town staff member can be contacted by bidders regarding the tender.¹⁸⁴

209 If a bidder requests information, the designated contact person should notify the bidder that the information requested and conveyed may be disclosed to other bidders.

210 “To ensure that there is no appearance of advantage for bidders who” have communicated with the designated contact person, “that person should not participate” in the evaluation of the bids.¹⁸⁵

Blackout Period

211 Every tender document should define the “blackout period” when communication between bidders and the Town is prohibited.¹⁸⁶

212 During the blackout period, suppliers must refrain from contacting anyone but the designated person at the Town of Collingwood.

Legal Counsel

213 For each major procurement, the Town should retain a solicitor who should be involved from the inception of the procurement.¹⁸⁷ Major procurements include high-risk, complex, controversial procurements, as well as procurements that involve a substantial dollar value. The Town solicitor helps to ensure that the procurement process is open and transparent. The Town solicitor can identify risks in the procurement process, review procurement documents, and help to ensure compliance with the Town’s procurement bylaw and other relevant bylaws,

policies, and codes of conduct. The Town solicitor can also identify situations where legal counsel with particular expertise may be required for part or all of the transaction.¹⁸⁸

Evaluation of Bids

- 214** No person “involved in evaluating the bids” at the Town “should have a pre-existing relationship with any of the bidders or be influenced” “by anyone else’s pre-existing relationship with a bidder.”¹⁸⁹
- 215** No person “involved in the pre-procurement phase or the bidding process should be involved in evaluating the proposals.”¹⁹⁰
- 216** The Town “should have clear practices” for reading the bids.¹⁹¹
- 217** Each member of the evaluation team “should sign a conflict of interest declaration disclosing any entertainment, gifts,” meals, favours, or benefits of any kind “received from any of the proponents or their representatives.”¹⁹²
- 218** Each member of the evaluation team should sign a declaration “that they will conduct the evaluation” fairly and objectively, “free from any conflict of interest or undue influence.”¹⁹³
- 219** “The weight to be assigned to price in determining the winning bid should be carefully considered” and determined “in advance.”¹⁹⁴
- 220** The Town “should maintain a record of when” and who tells a bidder that they have been successful.¹⁹⁵

Debriefings

- 221** Following a “decision to award a contract, unsuccessful bidders are entitled to a debriefing” that explains “the evaluation process that led to the” Town’s “selection of the successful bidder.”¹⁹⁶

Supplier Complaint Process

- 222** The Town should establish a comprehensive complaints process for suppliers and potential suppliers.¹⁹⁷
- 223** A complaint process is essential to promote and maintain transparency and integrity in the procurement process and to ensure the objective and equitable treatment of all suppliers.¹⁹⁸
- 224** All supplier disputes or complaints, whether sent to Council members or staff, shall be referred to the treasurer.
- 225** In no circumstances, should Council members or staff act as advocates for aggrieved or successful suppliers.¹⁹⁹
- 226** Suppliers should try to resolve any pre-award disputes by communicating in writing directly to the treasurer as quickly as possible after the basis for the dispute becomes known to them. The treasurer should have the authority: (a) to dismiss the dispute; or (b) to accept the dispute and direct the Town’s purchasing officer to take appropriate remedial action, including, but not limited to, rescinding the award and any executed contract, as well as cancelling the solicitation.²⁰⁰ The treasurer may decline to delay the award or any interim step of a procurement if the complaint appears to the treasurer to have no merit or if the supplier has failed to notify the treasurer

immediately after the disputed conduct came to the supplier's attention.

- 227** Any dispute of an award decision must be submitted in writing to the treasurer as soon as possible after the disputed conduct comes to the attention of the complainant.

Lobbying

Lobbying at the municipal level can be defined as “communication with a public office holder” by a person “who is paid or represents a business or financial interest”: the objective is to influence a legislative action, including the development, passage, “amendment, or repeal of a bylaw, motion, resolution, or outcome of a decision on any matter before Council, a Committee of Council,” Council member, or municipal staff.²⁰¹

Council and staff were subject to considerable lobbying during the two transactions examined in Parts One and Two of this Inquiry. The lobbying was not open or transparent. As I discuss in Parts One and Two of the Report, lobbying behind closed doors damages public confidence in Council members, municipal staff, and the business of the municipality. It can also have broad and long-term implications for the municipality, including discouraging businesses from doing business with the Town. Ethical and transparent lobbying activity, however, can assist staff and Council members in making informed decisions in the interest of the municipality.²⁰²

Lobbying must happen in the light of day. There is no room for secrecy and no place for claims that lobbyists, as private businesspeople, should not disclose details of the dealings they have or the compensation they receive for their work advocating Council members on behalf of specific interests. Ultimately, dealing with a municipality involves dealing with the public, and that requires openness, transparency, and honesty.

The recommendations that follow provide for an open, transparent, and ethical lobbying framework to govern lobbyists, businesses who wish to lobby the municipality, and municipal actors who may be subject to lobbying.

228 Members of the public and public office holders should be educated to understand that lobbying has a legitimate role in municipal government and can benefit elected officials and staff, provided it is properly conducted and controlled.²⁰³ Although a lobbyist is in the business of seeking to influence Council members and staff, this activity is not necessarily against the public interest. What is against the public interest is lobbying that occurs in secret and that is not transparent.²⁰⁴ The public has the right to know how decisions are made in the Town of Collingwood and what attempts are made to influence decision makers.

Lobbyist Registry

229 The Town of Collingwood should establish a Lobbyist Registry after consultation with businesses, staff, and Council members.²⁰⁵ The primary purpose of the registry is to foster transparency and integrity in government decision making. The Lobbyist Registry also assists in managing behaviour because the behaviour occurs in the open.²⁰⁶

230 The Lobbyist Registry should include all those who are paid or represent a business or financial interest whose objective is to influence elected officials or staff at the Town of Collingwood.²⁰⁷

231 Only persons registered in the Lobbyist Registry should be permitted to participate in any lobbying activity in the Town of Collingwood.²⁰⁸

232 The Lobbyist Registry should contain at a minimum the following information:²⁰⁹

- a** the name of the lobbyist, the name of the company or partnership represented, and “the names of all principals in the company or partnership”;²¹⁰
- b** the lobbyist’s contact information;
- c** “the subject matter of the lobbying activity;”²¹¹
- d** detailed disclosure of the lobbyist’s client, its business activities, or its organizational interests. This disclosure includes information on anyone who, to the knowledge of the lobbyist, controls or directs the client or otherwise has significant control of the client, the client’s business activities, or its organizational interests.
- e** identification by the lobbyist of who at the Town of Collingwood is the subject of the lobbying. This information should be detailed and include, for example, the name and title of the staff being lobbied, as well as the staff’s department;²¹²
- f** the “amount paid to the lobbyist for the lobbying activity;”²¹³
- g** the date, hour, and location where the lobbying took place, as well as details of the lobbying activity.

233 Council members and staff in the Town of Collingwood should be required to record “information on their meetings with lobbyists in the Lobbyist Registry.”²¹⁴

234 Sanctions should be imposed on lobbyists for failing to register.²¹⁵

Code of Conduct for Lobbyists

235 The Town of Collingwood should establish a Code of Conduct for lobbyists because it is important to the integrity of government decision making. A Code of Conduct for lobbyists indicates that compliance with the rules of proper conduct is more than

voluntary. Creating such a code of conduct also helps establish that lobbying is a legitimate activity.²¹⁶

- 236** A Code of Conduct is a required companion to a Lobbyist Registry.²¹⁷
- 237** The Code of Conduct should contain minimum standards with which lobbyists must comply. It should clearly delineate permissible and prohibited lobbying activities.²¹⁸
- 238** Every lobbyist must “agree to be bound” by the Code of Conduct before engaging in lobbying at the Town of Collingwood.²¹⁹
- 239** Lobbyists should “inform their client, employer or organization” of their obligations under the Town of Collingwood Code of Conduct for lobbyists and the Lobbyist Registry.²²⁰
- 240** The Code of Conduct for lobbyists should mandate that documents in relation to the activities of the lobbyist at the Town of Collingwood be retained and preserved by the lobbyist for a period of 10 years.
- 241** Lobbyists should be prohibited from giving gifts or providing entertainment, meals, trips, favours, or benefits of any kind to Council members or staff in the Town of Collingwood.²²¹
- 242** The Code of Conduct for lobbyists should contain a provision that states that lobbyists are prohibited from placing elected officials or staff in a real, apparent, or potential conflict of interest.²²²
- 243** Lobbyists must be transparent about who they are representing and the purpose of their lobbying activity. The Code of Conduct should prohibit lobbyists from misrepresenting for whom they act or the subject matter of their lobbying activity.²²³

- 244** Lobbyists who receive confidential information concerning Town business either intentionally or inadvertently from Council members or staff should immediately report this to the lobbyist registrar. In addition, the Code of Conduct should prohibit lobbyists from seeking confidential information or using any confidential information to the benefit of their client.
- 245** Lobbyists should be prohibited from receiving contingency fees or any type of payment, bonus, or commission connected or “tied to a successful outcome.”²²⁴ Although the lobbyist registrar should be able to rely upon the lobbyist’s representations regarding any fees received, the registrar should also have the power under the bylaw to verify information concerning any fees paid to the lobbyist.²²⁵
- 246** There should be a prohibition on lobbying during the procurement process about the subject matter of the procurement.²²⁶
- 247** Any communication by lobbyists in the pre-procurement phase should be registered on the Lobbyist Registry. “Lobbying aimed at influencing the procurement process before” it takes place, with the objective of favouring the lobbyist’s client in the procurement process, is inappropriate and should be prohibited.²²⁷
- 248** Each bidder should be required to provide a warranty to the Town of Collingwood that it will adhere to the relevant ethical standards in the Town’s bylaws and policies, and acknowledge that the Town reserves the right to annul any contract if there has been misuse of confidential information or any other material non-compliance with the Lobbying By-Law, the Procurement By-Law, or other relevant Town bylaws, policies, and codes of conduct.²²⁸

- 249** A lobbyist registrar should be appointed by the Town of Collingwood to oversee and ensure compliance with the Lobbyist Registry and the Code of Conduct for lobbyists. The lobbyist registrar, who could also be the integrity commissioner, should perform the function of providing advice, interpretation, monitoring, and enforcement of the Lobbyist Registry and the Code of Conduct.²²⁹
- 250** The lobbyist registrar should be independent of the Town of Collingwood Council and staff.²³⁰
- 251** The lobbyist registrar should be appointed for a non-renewable term.²³¹
- 252** “The lobbyist registrar should prepare an annual report.”²³² This report should include complaints, investigations, and sanctions imposed, as well as recommendations for improvement of lobbying activity in the Town of Collingwood.
- 253** The annual report, the Code of Conduct for lobbyists, the Lobbyist Registry, as well as interpretation bulletins and informational materials for lobbyists, Council members, and staff, should be placed on the Town of Collingwood website and should be easily accessible. This information should be updated on a regular basis.²³³
- 254** The lobbyist registrar should provide continuing education for lobbyists, their prospective clients and suppliers, Council members and staff, as well as the public, on the purpose of the Lobbying Registry and Codes of Conduct that address lobbying activity. This activity should include providing advice to people who want to know whether they are required to register. The responsibility of the lobbyist registrar should also include the obligation to provide a training tool for lobbyists, the chief administrative officer, and Town staff.²³⁴

- 255** One of the purposes of the educational component should be to ensure that staff in all departments within the Town of Collingwood, lobbyists, and their prospective clients, as well as prospective suppliers, understand why an accountability regime has been set up. Specifically, the educational component should ensure that the Town, lobbyists, and their prospective clients, as well as prospective suppliers, understand that a Lobbyist Registry mitigates the risk to the municipality that the public will believe or come to believe that the money it entrusts to elected officials has been used for the private gain of an individual or company.²³⁵
- 256** Council members and staff should be trained by the lobbyist registrar on the requirements for dealing with lobbyists and should be encouraged to seek advice and guidance from the lobbyist registrar on legitimate and prohibited activities of lobbyists.²³⁶
- 257** Lobbyists who fail to comply with the Lobbyist Registry or the Code of Conduct should be prohibited from any further lobbying activity with the Town of Collingwood.²³⁷ The Lobbyist Registrar should promptly communicate this information to public office holders to ensure that Council members and staff are aware of the non-compliance and the prohibition on the lobbyist from continuing to carry on any further lobbying activity with the Town.

Council Members and Staff

- 258** Council members and staff at the Town of Collingwood should be mandated to report breaches of the Code of Conduct for lobbyists to the lobbyist registrar.²³⁸

- 259** Staff reports submitted to Council at the Town of Collingwood should list the lobbyists who have contacted them “on the subject matter of the report.”²³⁹
- 260** The Code of Conduct for Council members at the Town of Collingwood should contain provisions on prohibited lobbying activities with Council members, as well as a duty to report lobbyists who engage in prohibited activities to the registrar. For example, the Code of Conduct for Council members should contain a provision that precludes receiving a gift, benefit, entertainment, meal or hospitality from lobbyists or anyone doing business with the Town of Collingwood.²⁴⁰
- 261** The Code of Conduct for staff at the Town of Collingwood should contain provisions on prohibited staff activities with lobbyists. The Code of Conduct should prohibit accepting gifts, entertainment, meals, trips, favours, or benefits of any kind from persons who do business with the Town and a duty to inform lobbyists of this requirement. This code of conduct should also provide that staff have a duty to inform lobbyists that they cannot accept gifts, entertainment, meals, trips, favours, or benefits of any kind. In addition, the Code of Conduct for staff should provide that staff have a duty to inform lobbyists that there is a registration system.²⁴¹
- 262** The Code of Conduct for Council members and the Code of Conduct for staff at the Town of Collingwood should contain a provision prohibiting the disclosure of confidential information to others, including lobbyists.
- 263** Council members and staff have the duty to inform people who are lobbying them that they must register on the Town of Collingwood’s Lobbyist Registry.²⁴²

264 Former Council members and former staff at the Town of Collingwood should be prohibited from lobbying on matters on which they were involved during their tenure at the Town of Collingwood. With respect to other activities, former Council members at the Town of Collingwood should be prohibited from lobbying staff or elected public office holders at the Town of Collingwood for a minimum of one year after they leave office. Similarly, former staff at the Town of Collingwood should be prohibited from lobbying elected public office holders or staff at the Town of Collingwood for a minimum of one year after they leave their public service position.²⁴³

Municipally Owned Corporations

The governance of municipally owned corporations presents unique issues for Council, municipal staff, the corporation's board of directors, and its management. A clear understanding of the roles, responsibilities, and obligations of corporate management and the board of directors is required to ensure that decisions are made by the proper parties and that there is an appropriate and timely flow of information between the corporation and the municipality. As I discuss in Part One of my Report, the misplaced belief that corporate management was acting in the best interests of the municipality led to the subordination of the Town's interests to those of the corporation in the Collus share sale.

The recommendations that follow ensure that the roles of Council, municipal staff, the corporate board of directors, and corporate management are clearly defined and understood.

265 Municipally owned corporations at the Town of Collingwood must be accountable and transparent.²⁴⁴

Board of Directors – Selection Process

- 266** The selection process for board membership on a municipally owned corporation at the Town of Collingwood must be robust. It should involve a broad invitation for applications, a review of resumés, an interview process, recommendations by a nomination committee, followed by the appointment of a director by resolution of Council.²⁴⁵
- 267** The selection process must be applied consistently.²⁴⁶
- 268** The selection process should “be clear and understandable, and available to the public.”²⁴⁷
- 269** The selection of board members must be objective and based on the skills and qualifications of the applicants.²⁴⁸
- 270** The board should be composed of directors with a variety of experiences and backgrounds. Council may, for example, seek a member with a financial background, another with an auditing background, and other board members who have different skills to ensure that the board can serve the interests of the corporation.²⁴⁹
- 271** Appointees to the board should be committed to principles of integrity, ethical conduct, and the “values of public service.”²⁵⁰
- 272** The majority of board members on the municipally owned corporation should be independent of management. This independence will help ensure that the board functions in the best interests of the municipal corporation.²⁵¹
- 273** Appointments to the board should be staggered to ensure continuity.²⁵²

274 Appointments to the board should have “set term limits with options for renewal.”²⁵³

275 Vacancies on the board should be filled promptly.²⁵⁴

Clarity of Roles

276 A municipal bylaw should delineate the roles and responsibilities of board members representing the municipality.²⁵⁵

277 The role of the chair of the board and that of the chief executive officer (CEO) of the municipally owned corporation should be separate positions, and those positions should be held by different individuals to ensure “a check and balance” on each other’s authority. This separation ensures that the board can function independently from management. The CEO should “not be a voting member of the Board.” The chair is accountable to the shareholder or shareholders, and the CEO “is accountable to the Board.” “Combining the two positions creates” “conflicts of interest” and blurs accountability.²⁵⁶

278 The board’s role in a municipally owned corporation is to set the strategic direction of the corporation and to “monitor the performance and results achieved by management in implementing” that “direction.”²⁵⁷

279 “Monitoring the performance of the CEO” is also an important “responsibility of the Board.”²⁵⁸

280 Management is responsible for providing the board with “high quality information on a timely basis.” “Information and management proposals” must be submitted “to the Board in a manner that facilitates” board members’ “understanding of

the overall impact” of a decision. Information must be objective, useful, and relevant to the options under consideration and the decision that must be made. Board members should receive clear, accurate, reliable, and comprehensive information to fulfill their role as a board of a municipally owned corporation.²⁵⁹

- 281** The agenda of board meetings of municipally owned corporations should periodically include time reserved for *in camera* sessions. *In camera* meetings “without the presence of ... management” enables the board to discuss any “issues or concerns they may not wish to raise” in the presence of management. It also permits the board to discuss candidly the performance of senior management and its impact on the municipally owned corporation.²⁶⁰ The board should meet periodically *in camera* with the chief financial officer in the absence of the chief executive officer, and with the auditor in the absence of management so that the chief financial officer and the auditor have an unfettered opportunity to raise matters of concern.

Training

- 282** There should be comprehensive training for both current and newly appointed members of the board of directors of municipally owned corporations at the Town of Collingwood.²⁶¹
- 283** The training package for all members of the board should be comprehensive. It should include the mandate and purpose of the municipal corporation, the role and responsibilities of members of the board, conflict of interest and ethical principles, relevant legislation, such as the *Municipal Act* and the *Municipal Conflict of Interest Act*, and relevant Town bylaws and policies.²⁶²

- 284** Council members on the board of a municipally owned corporation at the Town of Collingwood must have extensive training on the Code of Conduct for Council members, other codes of conduct and ethical policies, and bylaws relevant to their position as board members of the municipally owned corporation. The training must include their duties and responsibilities to that municipally owned corporation and their duties and responsibilities as elected members to Council.²⁶³
- 285** Town staff on the board of a municipally owned corporation must have extensive training on the Code of Conduct for staff and other relevant codes of conduct, ethical policies, and bylaws relevant to their roles and responsibilities concerning the municipally owned corporation and their roles and responsibilities to Council.²⁶⁴

Conflicts of Interest

- 286** Council members and staff at the Town of Collingwood who hold positions on municipally owned corporations may be in a conflict of interest position. Council members and staff who believe they might have a potential, real, or apparent conflict of interest regarding their obligations to Council or their obligations to the municipally owned corporation should seek the advice and guidance of the integrity commissioner.

Board Meetings

- 287** It is the responsibility of the board, not management, to set the agenda for the board meeting. The lead responsibility for the agenda is generally the function of the chair. "A Board should not rely on management to set the agenda."²⁶⁵

288 Minutes of board meetings should be recorded and detailed.²⁶⁶

Role of Council

289 Council should be trained on the obligations that officers and directors of that corporation owe to the corporation.²⁶⁷

290 A municipally owned corporation is at arm's length from the municipality. When Council wishes to compel the corporation to act, Council should issue a shareholders resolution. Council speaks as one voice. At no time, does an individual Council member speak for Council at the Town except where explicitly authorized by Council.²⁶⁸

291 Board members who refuse to comply with a direction from Council can resign or be removed from their position by Council. The appointment bylaw for members of the board should state that they serve at the pleasure of Council and that they are subject to removal by Council.²⁶⁹

Reporting to Council

292 The chair of the board of the municipally owned corporation must submit an annual report to Council at the Town of Collingwood. Reporting to Council promotes accountability. The annual report should include the municipally owned corporation's business plans, strategies, financial statements, and information on its achievements and outcomes, as well as compliance with ethical policies and codes of conduct. The information should be transparent and understandable to members of the public. The annual report should be published on the Town of Collingwood website.²⁷⁰

Sale of the Corporate Asset

293 The board of directors of a municipally owned corporation should not have a direct role in the decision of the municipality to sell its asset. The role of the board is to be a resource to staff whose responsibility it is to provide information and advice to Council.²⁷¹

294 A solicitor retained by the Town of Collingwood should be involved from the inception to ensure that all rules, policies, and bylaws are strictly followed and to provide advice and guidance to Council.²⁷²

Integrity Commissioner

The absence of clear information and guidance about conflicts of interest, including identifying and addressing conflicts, was the subject of much evidence during Parts One and Two of the Inquiry and discussion in participants' closing submissions. The absence of a clear understanding of conflicts of interest was obvious and disturbing. The Town of Collingwood did not have an integrity commissioner during the events I examined. It is only fair to Council members, regardless of their occupation, to provide them with an adequate and complete understanding of real, apparent, and potential conflicts of interest.

According to the *Municipal Act, 2001*,²⁷³ the integrity commissioner reports to Council and is responsible for discharging in an independent manner the functions assigned by the municipality. These can include the application of the Code of Conduct for Council members, as well as the application of the *Municipal Conflict of Interest Act*.²⁷⁴ The integrity commissioner is a resource and educator for Council and an educator for staff and the public.

The recommendations that follow further clarify the role and importance of the integrity commissioner in municipal governance.

- 295** An integrity commissioner is a neutral, independent officer as defined in the *Municipal Act*. The integrity commissioner at the Town of Collingwood should be appointed by Council for a fixed non-renewable term of five years.²⁷⁵
- 296** The integrity commissioner should report directly to Council, not to the mayor, to ensure the independence of the integrity commissioner. (I recognize that section 223.3 of the *Municipal Act* contains a similar provision. I make this recommendation to emphasize that the integrity commissioner should report to Council not the head of Council.)
- 297** The removal from office of the integrity commissioner should require a two-thirds vote of all Council members.²⁷⁶
- 298** The integrity commissioner should have a dedicated website at the Town of Collingwood for education, training, and outreach purposes. It should contain material on the roles and responsibilities of the integrity commissioner; educational content for Council members, staff, and the public, such as interpretation bulletins, codes of conduct, updates on relevant statutory provisions, regulations, bylaws, and policies; and a section on frequently asked questions (FAQs), as well as the annual report of the integrity commissioner.
- 299** The integrity commissioner should be obliged to discharge the responsibilities described in my recommendations. (See my recommendations on Mayor/Council Members, CAO/Staff, Lobbying, and Municipally Owned Corporations.)
- 300** Integrity commissioners in municipalities in Ontario should share information and best practices. The sharing of information will enable integrity commissioners in smaller municipalities, such as the Town of Collingwood, to learn from each other and from integrity commissioners in larger

municipalities. While I am aware that an organization of integrity commissioners already exists, the purpose of this recommendation is to emphasize the importance of regular education and sharing of information and resources among integrity commissioners.

301 “An external auditor should periodically review the operations”
“of the integrity commissioner.”²⁷⁷

Municipal Solicitor

Council received filtered, incomplete, and at times misleading accounts of the advice provided by professional advisors. The filtering and incomplete nature of the advice sought and communicated to Council was particularly apparent when it came to the advice of the municipal solicitor in Part One, and the absence of legal advice regarding the procurement process and resulting contract in Part Two. Ineffective communication, as well as a lack of clear division of roles, responsibilities, and reporting structure, impeded Council’s interactions with the Town’s solicitor in Part One, the Collus share sale. The Town’s legal counsel were largely excluded from decisions concerning the recreational facilities in Part Two.

Council as a whole, the directing mind of the municipality, must receive legal advice directly from the lawyer retained to provide it. The need for direct communication becomes obvious where there is a clear understanding that Council as a whole is the municipal solicitor’s client. Staff may work with the solicitor to inform Council. Still, the solicitor’s duties are owed to Council, and Council must ensure that solicitors retained by the municipality report to it. Council must ensure that no one Council member or member of staff can leave a false impression that reporting to them is the same as reporting to Council.

The recommendations I set out in this section are foundational to establishing and maintaining the proper relationship between Council and the municipal solicitor.

Amendments to the Ontario Municipal Act, 2001²⁷⁸

- 302** The Province of Ontario should amend the *Municipal Act* to mandate that municipalities the size of the Town of Collingwood should have a solicitor on retainer to provide legal advice.

Town of Collingwood

- 303** A solicitor retained by the Town of Collingwood should have a direct reporting relationship to Council. Council is the client, not the mayor, deputy mayor, individual Council members, or Town staff.²⁷⁹
- 304** When the Town of Collingwood retains a solicitor, there must be a retainer letter.²⁸⁰

Professional Consultants

Professional consultants were involved in both of the transactions I examined in the Inquiry. In Part One, KPMG was involved in assessing options for Collus Power and in the request for proposal for a strategic partner for the electric utility; in Part Two, WGD Architects analyzed arena options. In both cases, these professional advisors issued reports, but those reports were not provided to Council.

The recommendation that follows ensures that the relationship between the Town and its professional advisors is clearly articulated and documented.

- 305** Every time a consultant is retained, there should be a retainer or engagement letter setting out, in part, that the Town is the client, the scope of the work, and the consultant's reporting obligations.

Follow-Up to Public by Town of Collingwood on Recommendations

- 306** The Town of Collingwood Council should issue a public report on the first anniversary of the release of this Report describing Council's response to these recommendations.

Notes

- 1 *Municipal Act, 2001*, SO 2001 c 25 [*Municipal Act*].
- 2 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 50.7–50.24; John Fleming, Good Governance Panel, November 27, 2019, 81.10–81.17, 83.1–84.7.
- 3 The Honourable Denise Bellamy, Introductory Remarks, November 27, 2019, 37.5–39.7, 47.23–48.2. See also *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 71 [*TCLI/TECI Report*].
- 4 See *TCLI/TECI Report* at Recommendation 16. See also City of Ottawa, by-law 2019-8, *Rules of Procedure* (January 30, 2019), s 12(2); City of Mississauga, by-law 139-13, *Council Procedure By-law* (June 19, 2013), ss 23, 25; County of Simcoe, by-law No 6703, *Procedure By-law* (November 28, 2017), s 8.3; City of Vaughan, by-law No 7-2011, *A By-Law to govern the proceedings of Council and Committees of Council* (Jan 25, 2011), s 3.1; Town of Caledon, by-law No BL-2015-108, *Town of Caledon Procedural By-law*, s 4.3.5; City of Toronto, by-law Chapter 27, *Council Procedures* (July 29, 2020), §§ 27-6.1, 27-6.5.
- 5 See *TCLI/TECI Report* at Recommendation 84.
- 6 See example: *Municipal Act*, CCSM c M225, ss 82, 83(1).
- 7 Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 67.10–68.16.
- 8 O Reg 55/18, *Codes of Conduct – Prescribed Subject Matters*.
- 9 See examples: City of Kingston, Council, *Council/Staff Relations*, Policy 74 (September 2019), s 3.1; City of Brampton, City Clerk’s Office, *Council Staff Relations Policy*, GOV-140 (March 1, 2019), ss 5, 6; City of Vaughan, City Manager, *Council-Staff Relations*, 13.C.04 (May 1, 2019), ss 1, 5; Corporation of the Town of Caledon, Town Council, *Council-Staff Relations Policy*, Staff Report 2020-0031 (February 18, 2020), s 5.
- 10 *Municipal Conflict of Interest Act*, RSO 1990, c M50 [*Municipal Conflict of Interest Act*].
- 11 City of Vaughan, Council, *Code of Ethical Conduct for Members of Council and Local Boards*, CL-011 (June 28, 2011), Definitions s 5 “Family Member” [Vaughan Council Code of Conduct]; Rick O’Connor, Conflict of Interest Panel, November 28, 2019, 44.7–44.10. Similar provisions exist in County of Simcoe, Warden, CAO, Clerk and Archives: Clerk’s Department, CLK 8.0.1 (October 9, 2018), s 4.5 [Simcoe Council Code of Conduct]; Town of Caledon, *Town of Caledon Code of Conduct for Members of Council and Designated Boards*, Definitions “Family” [Caledon Council Code of Conduct].
- 12 Simcoe Code of Conduct, s 6.8; Rick O’Connor, Conflict of Interest Panel, November 28, 2019, 85.2–86.6; Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 63.3–63.12, 86.9–86.12.

- 13 See City of Mississauga, *Council Code of Conduct* (December 11, 2013), r 1(b), (c) [Mississauga Council Code of Conduct]; Simcoe Council Code of Conduct, s 1; Vaughan Council Code of Conduct, r 1(b), (g); City of Ottawa, by-law 2018-400, *Code of Conduct for Members of Council* (December 12, 2018), s 4(1) [Ottawa Council Code of Conduct]. See also *TCLI/TECI Report* at Recommendation 2.
- 14 Ottawa Council Code of Conduct, s 4.2.
- 15 See Mississauga Council Code of Conduct, r 1(c); Simcoe Council Code of Conduct, s 1; Vaughan Council Code of Conduct, r 1(g).
- 16 Ottawa Council Code of Conduct, s 10; John Fleming, Good Governance Panel, November 27, 2019, 80.18–81.17. See also *TCLI/TECI Report* at Recommendation 15.
- 17 Simcoe Council Code of Conduct, ss 6.15.3, 6.16.4; Vaughan Council Code of Conduct, r 13.
- 18 Mississauga Council Code of Conduct, r 7(1); Simcoe Council Code of Conduct, s 6.10; Vaughan Council Code of Conduct, r 7; City of Toronto, Office of the Integrity Commissioner, *Toronto Council Code of Conduct* (July 7, 2010), Part VIII [Toronto Council Code of Conduct].
- 19 Mississauga Council Code of Conduct, r 13(3); Simcoe Council Code of Conduct, s 6.17.3; Vaughan Council Code of Conduct, r 16(3); Ottawa Council Code of Conduct, s 10(5); Toronto Council Code of Conduct, Part XII. See also *TCLI/TECI Report* at Recommendations 15, 18.
- 20 Mississauga Council Code of Conduct, r 13(4); Simcoe Council Code of Conduct, s 6.17.3; Vaughan Council Code of Conduct, r 16(4); Ottawa Council Code of Conduct, s 10(6); Toronto Council Code of Conduct, Part XII.
- 21 See *TCLI/TECI Report* at Recommendation 20. See Simcoe Council Code of Conduct, ss 4.11, 6.8. See also Mississauga Council Code of Conduct, Definition (f), r 1(b); Vaughan Council Code of Conduct, r 1(c); Ottawa Council Code of Conduct, s 4(5).
- 22 Vaughan Council Code of Conduct, Definitions s 5 “Family Member.”
- 23 Simcoe Council Code of Conduct, s 6.8.5.
- 24 Simcoe Council Code of Conduct, s 6.8.2.
- 25 Simcoe Council Code of Conduct, s 6.8.3.
- 26 Simcoe Council Code of Conduct, s 6.8.3.
- 27 Simcoe Council Code of Conduct, s 6.8.3.
- 28 Simcoe Council Code of Conduct, s 6.9.1.
- 29 Simcoe Council Code of Conduct, s 6.17.5.
- 30 Ottawa Council Code of Conduct, s 10(6); Simcoe Council Code of Conduct, s 6.17.6.
- 31 Ottawa Council Code of Conduct, s 13(1).
- 32 See *TCLI/TECI Report* at Recommendations 61, 62. Ottawa Council Code of Conduct, s 12(4).
- 33 Ottawa Council Code of Conduct, s 13(2).
- 34 See Ottawa Council Code of Conduct, ss 13(3), (4); *TCLI/TECI Report* at Recommendations 66, 67.

- 35 *TCLI/TECI Report* at Recommendation 68. See Mississauga Council Code of Conduct, r 2.
- 36 *TCLI/TECI Report* at Recommendation 69. See Mississauga Council Code of Conduct, r 2.
- 37 Mississauga Council Code of Conduct, r 7; Simcoe Council Code of Conduct, s 6.10; Vaughan Council Code of Conduct, r 7; Ottawa Council Code of Conduct, s 8; Toronto Council Code of Conduct, Part VIII.
- 38 See examples: *TCLI/TECI Report* at Recommendations 26, 27; Simcoe Council Code of Conduct, s 6.4; Mississauga Council Code of Conduct, r 4; Vaughan Council Code of Conduct, r 3; Caledon Council Code of Conduct, s 2; Toronto Council Code of Conduct, Part V.
- 39 See Simcoe Council Code of Conduct, s 6.4.3. See also Mississauga Council Code of Conduct, r 4(4)(c); Vaughan Council Code of Conduct, r 3(2); Ottawa Council Code of Conduct, s 5(1); Toronto Council Code of Conduct, Part V.
- 40 Mississauga Council Code of Conduct, r 4.4; Simcoe Council Code of Conduct, s 6.4.3(a); Vaughan Council Code of Conduct, r 3(1); Ottawa Council Code of Conduct, s 5.2; Caledon Council Code of Conduct, s 2; Toronto Council Code of Conduct, Part V.
- 41 See Simcoe Council Code of Conduct, s 6.4.3(b).
- 42 Simcoe Council Code of Conduct, s 6.4.2.
- 43 Mississauga Council Code of Conduct, r 4(4)(d). See also *TCLI/TECI Report* at Recommendation 27. See examples: Simcoe Council Code of Conduct, s 6.4.3(f); Vaughan Council Code of Conduct, r 3(6); Caledon Council Code of Conduct, s 2.4; Toronto Council Code of Conduct, Part V.
- 44 See Mississauga Council Code of Conduct, r 4(4)(c); Simcoe Council Code of Conduct, s 6.4.3; Vaughan Council Code of Conduct, r 3(3); Toronto Council Code of Conduct, Part V.
- 45 See Simcoe Council Code of Conduct, s 6.20.
- 46 See Mississauga Council Code of Conduct, r 16(2); Simcoe Council Code of Conduct, s 6.20.3; Vaughan Council Code of Conduct, r 19.2; Toronto Council Code of Conduct, Part XVI.
- 47 *TCLI/TECI Report* at Recommendation 47. See examples: Mississauga Council Code of Conduct, Complaint Protocol, s 9(4); Simcoe Council Code of Conduct, Complaint Protocol s 9(4); Vaughan Council Code of Conduct, r 20; Ottawa Council Code of Conduct, s 15; Caledon Council Code of Conduct, s 18; Toronto Council Code of Conduct, Part XVIII.
- 48 See *TCLI/TECI Report* at Recommendations 8, 49.
- 49 See *TCLI/TECI Report* at Recommendations 8, 49.
- 50 See the Honourable J. David Wake, *Ethical Government in Ontario*, November 28, 2019, 32.21–33.19.
- 51 See *TCLI/TECI Report* at Recommendations 12, 22.

- 52 Valerie Jepson, Conflict of Interest Panel, November 28, 2019, 34.1–34.10; *TCLI/TECI Report* at Recommendation 49.
- 53 See *TCLI/TECI Report* at Recommendation 50.
- 54 Rick O'Connor, Conflict of Interest Panel, November 28, 2019, 104.8–105.9.
- 55 See Ottawa Council Code of Conduct, Appendix “A” s 6; Caledon Council Code of Conduct, s 15.1; Mississauga Council Code of Conduct, Complaint Protocol, s 3(1); Simcoe Council Code of Conduct, Complaint Protocol s 3(3).
- 56 *TCLI/TECI Report* at Recommendation 10.
- 57 See Simcoe Council Code of Conduct, s 3.2; Mississauga Council Code of Conduct, r 1(h).
- 58 *Municipal Act, 2001*, SO 2001, c 25 [*Municipal Act*].
- 59 John Fleming, Good Governance Panel, November 27, 2019, 119.7–119.15.
- 60 John Fleming, Good Governance Panel, November 27, 2019, 119.7–119.15.
- 61 See examples: City of Toronto, by-law Chapter 169, *Officials, City* (April 30, 2020), § 169-1 [Toronto Officials By-Law]; The Corporation of the Town of Caledon, Town Council, *Delegation of Powers and Duties to the CAO*, Staff Report 2020-0092 (April 28, 2020), s 2.1 [Caledon CAO By-Law].
- 62 See examples: Toronto Officials By-Law, § 169-1; Caledon CAO By-Law, s 2.1.
- 63 John Fleming, Good Governance Panel, November 27, 2019, 140.20–140.21.
- 64 City of Toronto, by-law Chapter 192, *Public Service* (October 3, 2019), § 192-33(1) [Toronto Public Service By-Law].
- 65 See John Fleming, Good Governance Panel, November 27, 2019, 132.12–132.21.
- 66 See Greg Levine, Good Governance Panel, November 27, 2019, 138.4–138.8; *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 43 [*TCLI/TECI Report*]; Toronto Public Service By-Law, §§ 192-47, 192-51.
- 67 See examples of Codes of Conduct: City of Vaughan, Human Resources, *Employee Code of Conduct*, 13.A.02 (November 20, 2018) [Vaughan Employee Code of Conduct]; City of Ottawa, City Manager: *Employee Code of Conduct* [Ottawa Employee Code of Conduct].
- 68 See examples: Vaughan Employee Code of Conduct; Ottawa Employee Code of Conduct.
- 69 *TCLI/TECI Report* at Recommendation 3.
- 70 *TCLI/TECI Report* at Recommendation 10; Vaughan Employee Code of Conduct, s 10.1.
- 71 Vaughan Employee Code of Conduct, Purpose, s 1.1.1.
- 72 Vaughan Employee Code of Conduct, Purpose. See also Ottawa Employee Code of Conduct, at 8.
- 73 This is stated in *Municipal Act*, s 227(a), but should be reiterated in the Code of Conduct for staff.
- 74 This is stated in *Municipal Act*, s 227(b), but should be repeated in the Code of Conduct

- for staff. John Fleming, Good Governance Panel, November 27, 2019, 81.10–81.17. See also *TCLI/TECI Report* at Recommendation 87.
- 75 See *TCLI/TECI Report* at Recommendation 82.
- 76 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 19.19–19.23, 22.9–22.19, 24.10–24.14; *TCLI/TECI Report* at Recommendation 87.
- 77 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 22.14–22.19; Vaughan Employee Code of Conduct, s 2.2.4.
- 78 Vaughan Employee Code of Conduct, s 1.1.4. See also Ottawa Employee Code of Conduct at 14.
- 79 *TCLI/TECI Report* at Recommendations 26; Toronto Public Service By-Law, § 192-16; Vaughan Employee Code of Conduct, s 2.2.
- 80 See Toronto Public Service By-Law, § 192-21; Vaughan Employee Code of Conduct, s 3.11.
- 81 *TCLI/TECI Report* at Recommendations 20, 21. See examples: Vaughan Employee Code of Conduct, s 1.2.3, 3; Toronto Public Service By-Law, § 192-11; Ottawa Employee Code of Conduct at 8.
- 82 Vaughan Employee Code of Conduct, s 3.8; *TCLI/TECI Report* at Recommendations 21, 22.
- 83 *TCLI/TECI Report* at Recommendation 23. See Toronto Public Service By-Law, § 192-12.
- 84 *TCLI/TECI Report* at Recommendation 30. See examples: Vaughan Employee Code of Conduct, s 3.3; Toronto Public Service By-Law, § 192-12.
- 85 Vaughan Employee Code of Conduct, s 2.2.5.
- 86 *TCLI/TECI Report* at Recommendation 22. Vaughan Employee Code of Conduct, s 1.2.3.
- 87 See Vaughan Employee Code of Conduct, s 3.6. (However, note that the Vaughan by-law instructs staff to inform their supervisor, not the CAO.)
- 88 Vaughan Employee Code of Conduct, s 3.9; *TCLI/TECI Report* at Recommendation 24.
- 89 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 23.18–24.12; Anna Kinastowski, Good Governance Panel, November 27, 2019, 98.9–99.4; Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 108.12–108.22; *TCLI/TECI Report* at Recommendation 87.
- 90 Anna Kinastowski, Good Governance Panel, November 27, 2019, 107.16–107.22; John Fleming, Good Governance Panel, November 27, 2019, 109.3–109.15.
- 91 Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 112.15–113.7.
- 92 John Fleming, Good Governance Panel, November 27, 2019, 146.8–146.13; Anna Kinastowski, Good Governance Panel, November 27, 2019, 146.14–146.19; Mike Pacholok, Procurement Panel, November 29, 2019, 119.15–119.25.
- 93 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.23–87.5. See also *TCLI/TECI Report* at Recommendations 61, 62.
- 94 See *TCLI/TECI Report* at Recommendation 204.
- 95 *TCLI/TECI Report* at Recommendation 61; Vaughan Employee Code of Conduct, s 8.1; Toronto Public Service By-Law, § 192-13(c).

- 96 See *TCLI/TECI Report* at Recommendation 66.
- 97 *TCLI/TECI Report* at Recommendation 67.
- 98 Vaughan Employee Code of Conduct, s 12.1. See also Toronto Public Service By-Law, § 192-35; Ottawa Employee Code of Conduct at 16.
- 99 See Vaughan Employee Code of Conduct, ss 12.2-12.4.
- 100 Greg Levine, Good Governance Panel, November 27, 2019, 138.4–138.15. See examples: Vaughan Employee Code of Conduct, s 13; Toronto Public Service By-Law, § 192-47.
- 101 Vaughan Employee Code of Conduct, ss 13.1, 13.3. See examples: Toronto Public Service By-Law, § 192-49; Ottawa Employee Code of Conduct at 16.
- 102 Vaughan Employee Code of Conduct, s 13.2. See also Toronto Public Service By-Law, § 192-41; Ottawa Employee Code of Conduct at 15.
- 103 Vaughan Employee Code of Conduct, s 14.1. See also Toronto Public Service By-Law, § 192-45.
- 104 Anna Kinastowski, Good Governance Panel, November 27, 2019, 147.7–147.15.
- 105 See Toronto Public Service By-Law, §§ 192-10, 192-11.
- 106 *TCLI/TECI Report* at Recommendation 6.
- 107 *TCLI/TECI Report* at Recommendation 7.
- 108 Toronto Public Service By-Law, §§ 192-11(C), 192-16; Vaughan Employee Code of Conduct, s 2.2.3.
- 109 See examples: Vaughan Employee Code of Conduct, s 9.1; Toronto Public Service By-Law, §§ 192-33, 192-34.
- 110 See Toronto Public Service By-Law, §§ 192-33, 192-34. See also Vaughan Employee Code of Conduct, s 9.1.1.
- 111 Vaughan Employee Code of Conduct, s 9.1.3.
- 112 Vaughan Employee Code of Conduct, s 9.1.6. See also Toronto Public Service By-Law, § 192-34(A).
- 113 Vaughan Employee Code of Conduct, s 12.2.
- 114 Vaughan Employee Code of Conduct, s 9.1.7.
- 115 Fareed Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 112.15–113.7.
- 116 See for example: Vaughan Employee Code of Conduct, s 11.2.
- 117 Vaughan Employee Code of Conduct, s 9.1.5.
- 118 The Honourable Denise Bellamy, Introductory Remarks, Part Three, November 27, 2019, 33.9–33.10.
- 119 *Municipal Act, 2001*, SO 2001, c 25 [*Municipal Act*].
- 120 Mike Pacholok, Procurement Panel, November 29, 2019, 58.5–58.12. See also *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 129 [*TCLI/TECI Report*].
- 121 See City of Toronto, by-law Chapter 195, *Purchasing* (January 31, 2019), § 195-1.1 [Toronto Purchasing By-Law]; City of Vaughan, Procurement Services, *Corporate Procurement*

- Policy*, PS-003 (March 21, 2017), s 1.3 [Vaughan Procurement Policy]; City of Ottawa, by-law 2017-362, *Procurement By-law*, s 2 [Ottawa Procurement By-Law]; County of Simcoe, Corporate Performance: Procurement Fleet and Property, *Procurement Bylaw*, 2013-02 (July 1, 2018), s 4.1 [Simcoe Procurement Policy]; Corporation of the Town of Essex, by-law 1043, *A By-Law to Adopt a Policy for the Procurement and Disposal of Goods and Services* (September 20, 2010), s 2 [Essex Procurement Policy]; The Regional Municipality of Peel, by-law 30-2018, *A By-law to Govern the Procurement and Disposal of Goods and Services* (May 10, 2018), s 1 [Peel Procurement By-Law]; The Regional Municipality of Halton, by-law 83-19, *A By-Law to Amend By-Law No. 74-15, Being A By-Law to Define Procurement Policies and Procedures for the Regional Municipality of Halton* (November 20, 2019), s 1 [Halton Procurement By-Law].
- 122 See *TCLI/TECI Report* at Recommendation 146; Mike Pacholok, Procurement Panel, November 29, 2019, 58.13–58.22, 69.1–70.11; Marian MacDonald, Procurement Panel, November 29, 2019, 107.9–107.13. See examples: Toronto Purchasing By-Law, § 195-6.3; Ottawa Procurement By-Law, ss 2, 22; Simcoe Procurement By-Law, ss 2.1, 13; Essex Procurement Policy, ss 2.02, 3.01; Peel Procurement By-Law, s 3.1; Halton Procurement By-Law, ss 4.1, 7.1.
- 123 Mike Pacholok, Procurement Panel, November 29, 2019, 70.8–70.22; Marian MacDonald, Procurement Panel, November 29, 2019, 97.23–98.23. See example: Vaughan Procurement Policy, s 4.2.7.
- 124 Mike Pacholok, Procurement Panel, November 29, 2019, 69.1–70.2. See examples: Toronto Purchasing By-Law, § 195-7.1; Vaughan Procurement Policy, s 4.2.4; Ottawa Procurement By-Law, s 22; Simcoe Procurement By-Law, s 13; Essex Procurement Policy, s 9.08.
- 125 Marian MacDonald, Procurement Panel, November 29, 2019, 63.7–63.14; Mike Pacholok, Procurement Panel, November 29, 2019, 70.3–70.7.
- 126 Mike Pacholok, Procurement Panel, November 29, 2019, 69.15–69.18.
- 127 See examples: Vaughan Procurement Policy, s 10; Ottawa Procurement By-Law, s 25; Essex Procurement Policy, s 45.06; Peel Procurement By-Law, s 11.1; Halton Procurement By-Law, s 22.1.
- 128 See examples: Vaughan Procurement Policy, s 10; Ottawa Procurement By-Law, s 25; Peel Procurement By-Law, s 11.1.
- 129 See Mike Pacholok, Procurement Panel, November 29, 2019, 70.8–71.3.
- 130 See examples: Vaughan Procurement Policy, s 4.6.1; Peel Procurement By-Law, s 17.1.
- 131 *TCLI/TECI Report* at Recommendations 136, 137, 138. See example: Toronto Purchasing By-Law, §§ 195-3.1(J), 4.1(A).
- 132 *TCLI/TECI Report* at Recommendation 141.
- 133 See *TCLI/TECI Report* at Recommendation 147.
- 134 See *TCLI/TECI Report* at Recommendation 129.
- 135 Marian MacDonald, Procurement Panel, November 29, 2019, 61.16–62.5, 79.2–79.22;

- Mike Pacholok, Procurement Panel, November 29, 2019, 77.21–78.13; See *TCLI/TECI Report* at Recommendation 130.
- 136 Vaughan Procurement Policy, s 3.6. See also: Ottawa Procurement By-Law, s 9(c); Essex Procurement Policy, s 7.03(b).
- 137 Essex Procurement Policy, s 7.03(b); Halton Procurement By-Law, s 23.1(b).
- 138 Vaughan Procurement Policy, s 3.6; Halton Procurement By-Law, ss 23.1(a), (e).
- 139 Ottawa Procurement By-Law, s 9(1)(e); Peel Procurement By-Law, s 16.1.2.
- 140 Essex Procurement Policy, s 7.03(b); Vaughan Procurement Policy, s 3.6(e).
- 141 Toronto Purchasing By-Law, § 195-8.5(B).
- 142 Vaughan Procurement Policy, s 3.6(b).
- 143 Marian MacDonald, Procurement Panel, November 29, 2019, 61.16–62.5; Mike Pacholok, Procurement Panel, November 29, 2019, 81.3–81.22; *TCLI/TECI Report* at Recommendation 130.
- 144 *TCLI/TECI Report* at Recommendation 131.
- 145 Mike Pacholok, Procurement Panel, November 29, 2019, 58.19–58.22. See also *TCLI/TECI Report* at Recommendation 155. See examples: Toronto Purchasing By-Law, § 195-1.1(E); Vaughan Procurement Policy, s 3; Ottawa Procurement By-Law, s 5; Essex Procurement Policy, s 7; Peel Procurement By-Law, Part IV; Halton Procurement By-Law, s 5.
- 146 Marian MacDonald, Procurement Panel, November 29, 2019, 61.7–61.15.
- 147 Mike Pacholok, Procurement Panel, November 29, 2019, 75.12–75.17. See also *TCLI/TECI Report* at Recommendation 159.
- 148 Mike Pacholok, Procurement Panel, November 29, 2019, 117.5–118.3. See: *TCLI/TECI* at Recommendation 166. See example: Vaughan Procurement Policy, s 7.
- 149 Mike Pacholok, Procurement Panel, November 29, 2019, 117.5–118.3. See example: Vaughan Procurement Policy, s 7.
- 150 Marian MacDonald, Procurement Panel, November 29, 2019, 105.6–105.24. See *TCLI/TECI Report* at Recommendation 159.
- 151 See *TCLI/TECI Report* at Recommendation 161.
- 152 Marian MacDonald, Procurement Panel, November 29, 2019, 118.8–118.16.
- 153 See Marian MacDonald, Procurement Panel, November 29, 2019, 118.10–119.9.
- 154 *TCLI/TECI Report* at Recommendation 160.
- 155 Mike Pacholok, Procurement Panel, November 29, 2019, 119.10–120.6.
- 156 Marian MacDonald, Procurement Panel, November 29, 2019, 64.21–65.16, 87.20–88.18; Mike Pacholok, Procurement Panel, November 29, 2019, 88.25–89.17.
- 157 See Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See examples: Toronto Purchasing By-Law, § 195-13; The Regional Municipality of Halton, Supply Chain Management Division: *Vendor Code of Conduct* [Halton Vendor Code of Conduct].
- 158 Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See example: Toronto Purchasing By-Law, § 195-13.12.

- 159 Halton Vendor Code of Conduct at 6–7.
- 160 Mike Pacholok, Procurement Panel, November 29, 2019, 120.7–121.2. See example: Toronto Purchasing By-Law, § 195-13.12.
- 161 Toronto Purchasing By-Law, § 195-13.1(A).
- 162 Toronto Purchasing By-Law, § 195-13.1(B).
- 163 Toronto Purchasing By-Law, § 195-13.2(A). See also: Halton Vendor Code of Conduct at 8.
- 164 See examples: Toronto Purchasing By-Law, § 195-13.12; Halton Vendor Code of Conduct at 19.
- 165 See example: Halton Vendor Code of Conduct at 10.
- 166 Toronto Purchasing By-Law, § 195-13.3.
- 167 Toronto Purchasing By-Law, § 195-13.3(B).
- 168 Toronto Purchasing By-Law, § 195-2.1 Definitions: “Conflict of Interest or Unfair Advantage.”
- 169 Toronto Purchasing By-Law, § 195-13.3(A).
- 170 Toronto Purchasing By-Law, § 195-13.3(A) (Note: the Toronto Purchasing By-Law specifies two years).
- 171 Toronto Purchasing By-Law, § 195-13.3(B).
- 172 Toronto Purchasing By-Law, § 195-13.3(D).
- 173 Toronto Purchasing By-Law, § 195-2.1 Definitions: “Conflict of Interest or Unfair Advantage.”
- 174 Toronto Purchasing By-Law, § 195-13.4.
- 175 Toronto Purchasing By-Law, § 195-13.5(A).
- 176 Toronto Purchasing By-Law, § 195-13.6. See also: Mike Pacholok, Procurement Panel, November 29, 2019, 72.17–72.23.
- 177 Toronto Purchasing By-Law, § 195-13.6.
- 178 Toronto Purchasing By-Law, § 195-13.7. See also: Mike Pacholok, Procurement Panel, November 29, 2019, 72.17–72.23; Halton Vendor Code of Conduct at 11.
- 179 *TCLI/TECI Report* at Recommendation 204.
- 180 Toronto Purchasing By-Law, § 195-13.12(A).
- 181 Mike Pacholok, Procurement Panel, November 29, 2019, 120.13–121.2. See examples: Toronto Purchasing By-Law, § 195-13.13; Halton Vendor Code of Conduct at 19.
- 182 Marian MacDonald, Procurement Panel, November 29, 2019, 62.22–63.14.
- 183 *TCLI/TECI Report* at Recommendation 156.
- 184 Marian MacDonald, Procurement Panel, November 29, 2019, 65.25–66.5; Mike Pacholok, Procurement Panel, November 29, 2019, 94.15–94.24; *TCLI/TECI Report* at Recommendation 205. See also: Vaughan Procurement Policy, s 1.1.9; Essex Procurement Policy, s 5.01; Peel Procurement By-Law, s 12.1.
- 185 *TCLI/TECI Report* at Recommendation 207.
- 186 *TCLI/TECI Report* at Recommendation 208; Marian MacDonald, Procurement Panel, November 29, 2019, 92.21–93.4; Mike Pacholok, Procurement Panel, November 29, 2019, 93.16–94.8.

- 187 See *TCLI/TECI Report* at Recommendation 164.
- 188 Marian MacDonald, Procurement Panel, November 29, 2019, 110.8–111.5; Mike Pacholok, Procurement Panel, November 29, 2019, 111.6–113.3
- 189 *TCLI/TECI Report* at Recommendation 213.
- 190 *TCLI/TECI Report* at Recommendation 214.
- 191 *TCLI/TECI Report* at Recommendation 212.
- 192 *TCLI/TECI Report* at Recommendation 215.
- 193 *TCLI/TECI Report* at Recommendation 215.
- 194 *TCLI/TECI Report* at Recommendation 218.
- 195 *TCLI/TECI Report* at Recommendation 228.
- 196 *TCLI/TECI Report* at Recommendation 229; Mike Pacholok, Procurement Panel, November 29, 2019, 122.8–122.12; Marian MacDonald, Procurement Panel, November 29, 2019, 122.13–123.4. See examples: Toronto Purchasing By-Law, §§ 195-2.1 Definitions: “Supplier Debriefing,” 195-10.2; Ottawa Procurement By-Law, s 46.3(a); Peel Procurement By-Law, s 15.1.
- 197 *TCLI/TECI Report* at Recommendation 230; Mike Pacholok, Procurement Panel, November 29, 2019, 121.12–122.12. See for example: Toronto Purchasing By-Law, § 195-10; Vaughan Procurement By-Law, s 9; Ottawa Procurement By-Law, s. 46; Simcoe Procurement Policy, ss 10.4, 10.5.
- 198 *TCLI/TECI Report* at Recommendation 230.
- 199 See *TCLI/TECI Report* at Recommendation 232.
- 200 See Toronto Purchasing By-Law, § 195-10.
- 201 City of Ottawa, by-law 2012-309, *Lobbyist Registry By-law*, Definitions: “lobby” [Ottawa Lobbyist Registry By-Law]. See City of Vaughan, by-law 165-2017, *Lobbyist Registry By-law* (December 11, 2017), s 1 Definitions: “lobby” [Vaughan Lobbyist Registry By-Law]; City of Toronto, by-law Chapter 140, *Lobbying* (December 13, 2018), § 140-1 Definitions: “lobby” [Toronto Lobbying By-Law].
- 202 See Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 16.6–16.10; *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at 79-80 [*TCLI/TECI Report*].
- 203 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 16.11–16.17, 51.25–52.22; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 50.16–50.23, 51.9–51.17. See *TCLI/TECI Report* at Recommendation 97.
- 204 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 17.25–18.4; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 59.11–59.20.
- 205 See examples: Ottawa Lobbyist Registry By-Law, s 2; Vaughan Lobbyist Registry By-Law, s 2; Toronto Lobbying By-Law, § 140-34.
- 206 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 17.18–18.4, 31.20–32.12, 53.4–54.2; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 63.11–63.23

- referencing *TCLI/TECI Report* at Recommendation 116; Fared Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 117.23–118.7.
- 207 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 31.20–33.25. See also *TCLI/TECI Report* at Recommendation 117.
- 208 *TCLI/TECI Report* at Recommendation 118. See also Toronto Lobbying By-Law, § 140-10.
- 209 *TCLI/TECI Report* at Recommendation 119; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 68.24–69.16; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 69.18–72.11; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 72.21–73.3.
- 210 *TCLI/TECI Report* at Recommendation 119.
- 211 *TCLI/TECI Report* at Recommendation 119.
- 212 *TCLI/TECI Report* at Recommendation 119.
- 213 *TCLI/TECI Report* at Recommendation 119.
- 214 See *TCLI/TECI Report* at Recommendation 121.
- 215 *TCLI/TECI Report* at Recommendation 123; Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 13.16–13.21; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 100.5–100.15. See examples: Ottawa Lobbyist Registry By-Law, s 10; Vaughan Lobbyist Registry By-Law, s 9.
- 216 Fared Amin, Town of Collingwood CAO's Presentation, December 2, 2019, 110.9–110.14. See *TCLI/TECI Report* at Recommendation 98; Vaughan Lobbyist Registry By-Law, Schedule "A" [Vaughan Lobbyist Code of Conduct]; Ottawa Lobbyist Registry By-Law, Appendix "A" [Ottawa Lobbyist Code of Conduct]; Toronto Lobbying By-Law, § 140, art VI.
- 217 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 64.5–65.20; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 66.23–67.10. See also *TCLI/TECI Report* at Recommendation 98.
- 218 *TCLI/TECI Report* at Recommendation 98.
- 219 *TCLI/TECI Report* at Recommendation 98; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 64.16–65.11, 72.3–72.11.
- 220 Ottawa Lobbyist Code of Conduct, s 4(1); Vaughan Lobbyist Code of Conduct, s 4; Toronto Lobbying By-Law, §140-43.
- 221 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–86.25; *TCLI/TECI Report* at Recommendation 109. See example: Toronto Lobbying By-Law, § 140-42.
- 222 *TCLI/TECI Report* at Recommendation 103. See example: Ottawa Lobbyist Code of Conduct, s 6(2).
- 223 Linda Gehrke, Lobbyist Registries Panel, Dec 2, 2019, 72.12–73.3; *TCLI/TECI Report* at Recommendation 101. See examples: Ottawa Lobbyist Code of Conduct, s 3(1); Vaughan Lobbyist Code of Conduct, s 3(a); Toronto Lobbying By-Law, § 140-40.
- 224 *TCLI/TECI Report* at Recommendation 112; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 8.11–8.24. See example: Toronto Lobbying By-Law, § 140-8.

- 225 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 98.12–98.22. See Toronto Lobbying By-Law, § 140-35.
- 226 *TCLI/TECI Report* at Recommendation 107. See Toronto Lobbying By-Law, § 140-41.
- 227 *TCLI/TECI Report* at Recommendation 108.
- 228 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 75.7–76.15; *TCLI/TECI Report* at Recommendations 54–56.
- 229 Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 15.9–15.14; *TCLI/TECI Report* at Recommendation 122. See Ottawa Lobbyist Registry By-Law, s 9; Vaughan Lobbyist Registry By-Law, s 6; Toronto Lobbying By-Law, § 140-33.
- 230 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 19.11–19.23. See Ottawa Lobbyist Registry By-Law, s 8.
- 231 Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 10.11–10.16, 21.23–22.4.
- 232 *TCLI/TECI Report* at Recommendation 124; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 10.11–10.16.
- 233 See *Vaughan Lobbyist Registry-By-Law*, s 2(b); *Toronto Lobbying By-Law*, § 140-34.
- 234 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 83.13–84.11; *TCLI/TECI Report* at Recommendation 125.
- 235 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 83.13–84.11.
- 236 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 51.5–51.13; Linda Gehrke, Lobbyist Registries Panel, December 2, 2019, 87.22–88.7; See Suzanne Craig, Lobbyist Registries Panel, 84.7–84.11. See also *TCLI/TECI Report* at Recommendation 125.
- 237 See Suzanne Craig, Lobbyist Registries Panel, December 2, 2019, 100.5–100.15. See also *TCLI/TECI Report* at Recommendation 123.
- 238 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 87.1–87.12; Linda Gehrke, Lobbyist Registry Panel, December 2, 2019, 88.8–89.20.
- 239 See *TCLI/TECI Report* at Recommendation 106.
- 240 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18.
- 241 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18; *TCLI/TECI Report* at Recommendations 61–62, 100, 204.
- 242 Robert Marleau, Lobbyist Registries Panel, December 2, 2019, 86.20–87.18.
- 243 *TCLI/TECI Report* at Recommendations 110, 111. See also Fareed Amin, Town of Collingwood CAO’s Presentation, December 2, 2019, 116.13–117.3.
- 244 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17.6–17.9, 45.11–45.18; Guy Holburn and Adam Fremeth, “Best Practice Principles of Corporate Governance for Crown Corporations” (March 2019) Ivey Energy Policy and Management Centre, at 5. Although this article deals with corporate governance for crown corporations, we have relied on it.

- 245 Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 15.12–15.20.
- 246 Holburn & Fremeth at 9; Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17:9–17:15.
- 247 Holburn & Fremeth at 9.
- 248 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 16.17–17.5; Holburn & Fremeth at 9.
- 249 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 32.22–33.11; Holburn & Fremeth at 10.
- 250 Holburn & Fremeth at 9.
- 251 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 18.9–18.15; Holburn & Fremeth at 12.
- 252 Holburn & Fremeth at 11; Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17.20–18.3.
- 253 Holburn & Fremeth at 11, 26, citing Office of the Auditor General Manitoba, *Study of Board Governance in Crown Organizations* (Winnipeg: Office of the Auditor General, 2009) at 7 [Auditor General Manitoba].
- 254 Holburn & Fremeth at 11.
- 255 See Holburn & Fremeth at 8.
- 256 Holburn & Fremeth at 12, 28, citing The Independent Commission on Good Governance in Public Services, *The Good Governance Standard for Public Services* (London, UK: Office for Public Management Ltd and The Chartered Institute of Public Finance and Accountancy, 2004) at 11 [Commission on Good Governance]; Treasury Board of Canada Secretariat, *Review of the Governance Framework for Canada's Crown Corporations* (Ottawa: Treasury Board of Canada Secretariat, 2005) at 23 [Treasury Board of Canada Secretariat]; Auditor General Manitoba at 8; and Canadian Coalition for Good Governance, *Building High Performance Boards* (Toronto: Canadian Coalition for Good Governance, 2013) at 8.
- 257 Holburn & Fremeth at 6, 17, 34, citing Auditor General Manitoba at 84.
- 258 Holburn & Fremeth at 17, 34, citing Auditor General Manitoba at 87.
- 259 Holburn & Fremeth at 18, 36, citing Auditor General Manitoba at 72; and Office of the Auditor General of British Columbia, *Making the Right Decisions: Information Use by the Boards of Public Sector Organizations* (Victoria: Office of the Auditor General of British Columbia, 2009/2010) at 12.
- 260 Holburn & Fremeth at 17, 35, citing Auditor General Manitoba at 31.
- 261 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17.20–18.3; Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 20.4–20.11; Holburn & Fremeth at 11.
- 262 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 17.20–18.3, 24.23–25.17; Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 20.4–20.11; Holburn & Fremeth at 11, 26, citing Crown Agencies

- and Board Resourcing Office, *Best Practice Guidelines: Governance and Disclosure Guidelines for Governing Boards of British Columbia Public Sector Organizations* (Victoria: Crown Agencies and Board Resourcing Office, 2005) at 28–30.
- 263 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 24.23–25.17.
- 264 Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 20.4–20.11.
- 265 Holburn & Fremeth at 13, 29, citing Auditor General Manitoba at 30.
- 266 Holburn & Fremeth at 13.
- 267 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 24.23–25.17; Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 25.19–25.22.
- 268 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 13.6–13.9, 21.3–21.23; Wendy Walberg, Municipally-Owned Corporations Panel, 23.12–23.17.
- 269 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 31.16–31.25.
- 270 See Holburn & Fremeth at 18, 37, citing Auditor General Manitoba at 103–104; Treasury Board of Canada Secretariat at 34; and Commission on Good Governance at 24.
- 271 Mary Ellen Bench, Municipally-Owned Corporations Panel, November 29, 2019, 46.2–46.25.
- 272 Mary Ellen Bench and Wendy Walberg, Municipally-Owned Corporations Panel, November 29, 2019, 47.7–47.18.
- 273 *Municipal Act, 2001*, SO 2001 c 25 [*Municipal Act*].
- 274 *Municipal Conflict of Interest Act*, RSO 1990, c M50.
- 275 See *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 35 [*TCLI/TECI Report*].
- 276 *TCLI/TECI Report* at Recommendation 35.
- 277 *TCLI/TECI Report* at Recommendation 51.
- 278 *Municipal Act, 2001*, SO 2001 c 25 [*Municipal Act*].
- 279 Anna Kinastowski, Good Governance Panel, November 27, 2019, 93.10–93.16, 124.14–124.18.
- 280 See *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 2: Good Government* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at Recommendation 95.

The Inquiry Process

The Inquiry Process

Establishment of the Collingwood Public Inquiry Under the *Municipal Act, 2001*¹

The *Municipal Act* of Ontario empowers a municipality to request by resolution that a judge of the Superior Court of Justice conduct a judicial investigation into specific affairs of the local government. The Superior Court of Justice must assign a judge to conduct the investigation, and the municipality is required to pay for the costs of the inquiry.² Section 274 of the *Municipal Act* provides explicitly that

- 274 (1) If a municipality so requests by resolution, a judge of the Superior Court of Justice shall,
- a. investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality;
 - b. inquire into any matter connected with the good government of the municipality; or
 - c. inquire into the conduct of any part of the public business of the municipality, including business conducted by a commission appointed by the council or elected by the electors.
- (2) Section 33 of the *Public Inquiries Act, 2009* applies to the investigation or inquiry by the judge.
- (3) The judge shall report the results of the investigation or inquiry to the council as soon as practicable.

- (4) The council may hire counsel to represent the municipality and pay fees for witnesses who are summoned to give evidence at the investigation or inquiry.
- (5) Any person whose conduct is called into question in the investigation or inquiry may be represented by counsel.
- (6) The judge may engage counsel and other persons to assist in the investigation or inquiry and the costs of engaging those persons and any incidental expenses shall be paid by the municipality.

This power of Ontario municipalities dates back before Confederation. Apart from a few minor amendments, section 274 of the *Municipal Act* remains substantially unchanged from its predecessor section in 1866.³ Justice Binnie of the Supreme Court of Canada observed in a decision that this extensive history of inquiries in Canada “reflects a recognition through the decades that good government depends in part on the availability of good information.”⁴ It has been remarked that “much of the history of Canada could be interpreted through the work of commissions of inquiry.”⁵ Justice Binnie also wrote that “[t]he power to authorize a judicial inquiry is an important safeguard of the public interest” and that a “municipality, like senior levels of government, needs from time to time to get to the bottom of matters and events within its bailiwick.”⁶

Municipal inquiries are not uncommon. At present, the Red Hill Valley Parkway Inquiry, established by the City of Hamilton in 2019, is conducting an inquiry into several issues surrounding the low friction levels of a municipal expressway.⁷ In 2009, the City of Mississauga established the Mississauga Judicial Inquiry, which investigated problems related to the shareholders’ agreement with Enersource Hydro Mississauga and the acquisition by the municipality of land in the city centre.⁸ In 2002, the City of Toronto created the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry to investigate information technology (IT) transactions between outside suppliers and the City of Toronto.⁹ In 2002, the City of Waterloo established the RIM Park Financing Judicial Inquiry to inquire into a local park’s financing arrangements.¹⁰

In establishing this Inquiry, the Town of Collingwood stated that it “hope[d] that this process will provide necessary answers and strengthen the

Town's accountability and transparency provisions.”¹¹ Resolution 042-2018 (Appendix B) of its request for an inquiry specifically provides that

WHEREAS, under s. 274 of the *Municipal Act, 2001* S.O. 2001, c. 25, the Council of a Municipality may, by resolution, request a judge of the Superior Court of Justice to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business;

AND WHEREAS any judge so requested shall make inquiry and shall report the results of the investigation or inquiry to the Council as soon as practicable;

AND WHEREAS the Town of Collingwood concluded a Share Purchase Agreement on March 6, 2012 in which it sold 50% of Collingwood Utility Services Corporation to PowerStream Inc. (“the Transaction”; “PowerStream”);

AND WHEREAS concerns have been raised about the wisdom and reasons for the Transaction;

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

1. An inquiry is hereby requested to be conducted pursuant to s. 274 of the *Municipal Act* which authorizes the Commissioner to inquire into, or concerning, any matter related to a supposed malfeasance, breach of trust, or other misconduct on the part of a member of Council, or an officer or employee of the Town or of any person having a contract with it, in regards to the duties or obligations of the member, officer, or other person to the corporation, or to any matter connected with the good government of the municipality, or the conduct of any part of its public business; and
2. The Honourable Chief Justice Smith, Chief Justice of the Superior Court of Ontario, be requested to designate a judge of the Superior Court of Ontario as Commissioner for the inquiry and the judge so designated as Commissioner hereby authorized to conduct the inquiry in two stages:

- 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 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.
- b. Having conducted the documentary review to determine what, if any, public hearings ought to be held into the matters designated for the inquiry herein;

AND IT IS FURTHER RESOLVED THAT the Terms of Reference of the Inquiry shall be: to inquire into all aspects of the above matters, their history and their impact on the ratepayers of the Town of Collingwood as they relate to the good government of the municipality, or the conduct

of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of the inquiry.

AND IT IS FURTHER RESOLVED THAT the Commissioner, in conduct [*sic*] the inquiry into the transactions in question to which the Town of Collingwood is a party, is empowered to ask any questions which he or she may consider as necessarily incidental or ancillary to a complete understanding of these transactions, and for the purpose of providing fair notice to those individuals who may be required to attend and give evidence, without infringing on the Commissioner's discretion in conducting the inquiry in accordance with the Terms of Reference stated herein, it is anticipated that the inquiry may include the following:

- a. Was there adequate Council oversight of the transactions listed above?
- b. Was Council's delegation of authority in relation to the transaction appropriate?
- c. Did council receive sufficient independent professional advice prior to delegating its authority to conduct the RFP negotiate or finalize the Transaction?
- d. Where 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?

Resolution 042-2018 requested the Honourable Heather Smith, Chief Justice of the Superior Court of Justice, to designate a judge to conduct this inquiry. On April 6, 2018, I was appointed by Chief Justice Smith as Commissioner to the Collingwood Judicial Inquiry.¹²

Before I turn to the organization of the Collingwood Judicial Inquiry, its Rules of Procedure and other matters related to the process of the Inquiry, I discuss the purposes of public inquiries and how public inquiries differ from civil trials and criminal prosecutions.

Purposes of Public Inquiries

Public inquiries owe their popularity and extensive use throughout Canada's history to their many virtues and the purposes they fulfill. Some of these benefits are clear and apparent, but others are less obvious.

Public inquiries are highly effective fact-finding processes. Governments convene public inquiries to inquire independently into the facts or matters that are the subject of the inquiry and to make recommendations. They are established by federal, provincial, or municipal governments in the aftermath of a scandal, an accident, or other matters of public concern. They often follow closely in the wake of public suspicion, fear, disillusionment, or distress to uncover the truth of what has happened.¹³

To that end, public inquiries are well positioned for this fact-finding exercise. They have extensive investigative powers, including the ability to summon any person to produce documents and materials relevant to the subject matter of the inquiry and to summon any individual to testify under oath at an inquiry.¹⁴ In addition, they also educate the public. They do so by investigating their mandate in a genuinely public fashion. Matters of public interest are investigated in full public view, with the presentation of evidence publicly.¹⁵

Public inquiries do not examine issues in private but in a public forum, with the participation of the public who are most afflicted by these issues. The observations of Justice Grange, Commissioner of the Inquiry into Certain Deaths at the Hospital for Sick Children in Toronto, are of note in this regard.¹⁶ After the publication of his report, Justice Grange recalled how, at the beginning of the process, he thought that all the evidence presented at the inquiry had the exclusive purpose of convincing him of the facts as he prepared to write his final report. But he came to realize "there was another purpose to the inquiry just as important as one man's solution to the mystery, and that was to inform the public. Merely presenting the evidence in public, evidence which had hitherto been given only in private, served that purpose. The public has a special interest, a right to know, and a right to form its opinion as it goes along."¹⁷

The opinion the public forms, however, is not restricted to appreciating

the facts of the particular controversy. It extends to understanding the complex systemic issues in the community underlying the problem. The combination of the fact-finding and public education processes of public inquiries allows them to be the means for the public and governments to understand systemic issues and prevent past mistakes from reoccurring.

Public inquiries also consider matters of governance and public policy. The independence of inquiries provides them with the “objectivity and freedom from time constraints not often found in the legislature.”¹⁸ Public inquiries are vehicles of neutrality and institutional freedom. They complement conventional government institutions and focus on the systemic issues afflicting our communities, taking a long-term view of the problems presented.

Public inquiries provide members of the community with an opportunity to voice their grievances about the subject of the inquiry. They are often the first such opportunity for some members of the community.¹⁹ The fact-finding process of the inquiry further contributes to the community by uncovering evidence of public interest. This process is strengthened by the public policy recommendations aimed at preventing the reoccurrence of the events that led to the inquiry.

Policy hearings, the recommendations borne from them, and the hope of changes to prevent other similar occurrences all help to restore public confidence in the institutions or the processes investigated.²⁰ Public inquiries accomplish this end by isolating the root cause of the problem, separating it from government’s non-problematic functions, and formulating recommendations to treat it. Public inquiries also restore public confidence by contributing to a unique process of dealing with a community problem, one that entrenches the inquiry in an ongoing social process to address the problem. Justice Le Dain of the Supreme Court of Canada described the unique social function of public inquiries as follows:

What gives an inquiry of this kind its social function is that it becomes, whether it likes it or not, part of this ongoing social process. There is action and interaction ... Thus this instrument, supposedly merely an extension of Parliament, may have a dimension which passes beyond the political process into the social sphere. The phenomenon is changing

even while the inquiry is in progress. The decision to institute an inquiry of this kind is a decision not only to release an investigative technique but a form of social influence as well.²¹

To summarize briefly, public inquiries serve several purposes. They are highly effective mechanisms to get to the truth of a matter. They educate the public by incorporating them in the inquiry process. They allow for the community and the government to understand and resolve systemic issues, and they restore public confidence in the investigated organizations and institutions. I trust that the Collingwood Judicial Inquiry will satisfy all these purposes.

The public hearings were designed to get to the truth of how 50 percent of the Collus Power Corporation shares came to be sold, and how the proceeds from that sale were allocated to the construction of the recreational facilities in Central Park and Heritage Park. The accessibility of the Inquiry, with hearings held in Council chambers in Collingwood to facilitate attendance of the public and streamed by a local TV broadcaster for those who could not attend physically, as well as the publication of our Foundation Documents, exhibits, and transcripts on our website, all allowed the public to come to their own conclusions. In the public policy part of the Inquiry, we had presentations from experts in municipal governance to address the systemic issues that arose from our Terms of Reference. Early in the life of the Inquiry, we organized a community meeting to inform the community about our process. I hope, as a result, that public confidence is restored and that publication of this Report adds to the ongoing public discourse about what is expected from municipal government.

Types of Public Inquiries

There are generally two different types of public inquiries: investigative inquiries and policy inquiries.

Investigative inquiries are, as the name suggests, investigative. They are usually called in the wake of public controversy. Their mandate is to conduct an independent, transparent, and comprehensive review of the events

underlying the controversy and to report what happened.²² One way the commissioner fulfills this mandate is by hearing evidence from witnesses and compelling individuals to produce documents.²³

Whereas investigative inquiries look back, seeking to find out what happened, policy inquiries look forward to propose policy reforms in an area of public concern. They are established to prevent a reoccurrence of undesirable events and to address and rectify systemic problems.²⁴ Policy inquiries are completed through research, consulting with experts and community members, and developing policy options to be considered by government.²⁵

Public inquiries as such can be opportunities to look back or to look forward. They can also be both.²⁶ Inquiries have had dual mandates to investigate an event and to propose policy reform to prevent its reoccurrence. For instance, the Toronto Computer Leasing Inquiry and Toronto External Contracts Inquiry examined IT transactions between outside suppliers and the City of Toronto. They made recommendations under the broad themes of ethics, lobbying, procurement, and governance.²⁷

The Town of Collingwood Inquiry also had a dual mandate, both looking back to uncover the truth of what happened and looking forward to make policy recommendations to prevent the reoccurrence of these events.

Difference Between Public Inquiries and Civil and Criminal Proceedings

People observing public inquiries sometimes mistakenly believe that public inquiries are the same or similar to civil or criminal trials. The public hearings are often held in spaces resembling a court, the commissioner is frequently a judge, and witnesses are usually examined and cross-examined by lawyers.²⁸ However, it is important to understand that public inquiries are neither criminal nor civil trials. An inquiry does not find anyone guilty of a crime and cannot punish anyone with penal consequences.²⁹ An inquiry also cannot hold anyone civilly liable or order anyone to pay monetary damages.

The differences in results among these three proceedings are best understood by contrasting their distinctive purposes. The purpose of a criminal

trial is to identify whether the person accused of a crime is guilty of that offence. Similarly, civil trials are focused on the relationship between the plaintiff and the defendant and whether the defendant harmed the plaintiff in such a way that monetary compensation is owing. In contrast, the purpose of public inquiries is to understand holistically how an event transpired or a condition emerged as well as all the contributing factors and circumstances that facilitated their materialization. The hearings unfold in public view, with participation by the public and the parties who have been granted the right to participate.³⁰ With this comprehensive understanding, a public inquiry can make meaningful recommendations to alleviate a particular problem or to prevent its reoccurrence.

Role of the Commissioner and Commission Counsel

The difference in purposes and results between a trial and a public inquiry presents unique roles for a judge acting as commissioner of a public inquiry and the lawyers who assume commission counsel positions. Unlike a trial, which is adversarial in nature, public inquiries are inquisitorial.

In a public inquiry, the commissioner is not removed from the investigation. Rather, the commissioner conducts the investigation and is tasked with inquiring into the matters that form the terms of reference and reporting on them.³¹ The commissioner determines the process of the inquiry through rules of procedure and also decides which witnesses to interview and which to call for examination at the public hearings. The commissioner also determines who will have rights of participation at the inquiry and the extent of that participation. To help discharge these responsibilities, the commissioner has the assistance of commission counsel.

The lawyers who act as commission counsel similarly play a different role than they do at a trial. This distinction results from the different relationship between a judge and a lawyer and between a commissioner and commission counsel. In a trial, the lawyers are selected by the parties who appear before a judge. The lawyers develop their cases privately and then lead evidence at a hearing before a judge in an effort to persuade the judge to agree with their theory of the case. In a public inquiry, however, the commissioner

appoints commission counsel to assist in investigating the subject matter of the inquiry and also to lead evidence at the hearings. Throughout the inquiry, commission counsel act on behalf of and under the instruction of the commissioner.³²

The primary responsibility of commission counsel is to ensure that all the evidence, all the issues, and all perspectives bearing on the inquiry are brought to the commissioner's attention.³³ Commission counsel go through a rigorous cycle of investigating, testing, and verifying the evidence. This process ensures that the commissioner will hear all the relevant evidence undistorted by the perspective of a party with a vested interest in a specific outcome of the inquiry.³⁴

In addition to leading and probing the testimony of witnesses at public hearings, commission counsel also interview witnesses, prepare summaries of anticipated testimony at hearings, and draft affidavits to be used in lieu of some or all of a witness's testimony. Commission counsel consult with the commissioner about which witnesses to call, the order of calling those witnesses, and whether expert witnesses are required. Commission counsel act as the intermediaries between the commission and the participants, providing them with information about the rules of procedure and the scheduling of witnesses, and liaising with them when concerns arise to ensure that the public hearings proceed in an orderly fashion. Commission counsel assist the commissioner in designing the inquiry itself and in helping to draft rules of procedure, rules of evidence, and rules governing participation.

Principles by Which the Collingwood Public Inquiry Were Governed

Public inquiries can develop their own rules and procedures to fulfill their mandate. At the beginning of my mandate, Commission counsel and I reviewed the rules and procedures developed by previous inquiries. We circulated draft rules to the participants for their comment before the rules were finalized. Five principles guided both our approach to the Rules of

Procedure and the Inquiry more generally: thoroughness, proportionality, expediency, fairness, and accessibility.

Thoroughness

As I discuss above, a dominant feature of a public inquiry is that it investigates in order to learn the truth regarding the subject matter of its mandate. It is of great importance that every inquiry be, and appear to be, impartial and independent.³⁵ To that end, an inquiry must explore all relevant issues thoroughly and carefully.³⁶

In practice, this principle led the Collingwood Judicial Inquiry to collect more than 440,000 documents. Commission counsel conducted many confidential witness interviews, speaking to people who had information or documents related to the Inquiry's subject matter. The Inquiry received evidence from 57 witnesses, including expert witnesses, along with presentations from the Hon. Denise Bellamy, a retired justice of the Superior Court of Justice, and the Town of Collingwood's chief administrative officer, over 61 days.

When Commission counsel questioned witnesses during the hearings, they probed them for the truth. I also allowed participants with standing to propose witnesses to be called. The Commission's rules provided a process for participants to apply for permission to call a witness if Commission counsel elected not to call that person.³⁷ My Commission counsel did not oppose calling any witnesses whom the participants requested.

Proportionality

The thoroughness principle was balanced by the principle of proportionality. That meant I had to decide carefully which issues related to the Inquiry's mandate were to be explored and to what extent. I had to ensure that a proposed line of investigation was sufficiently relevant to the Inquiry and would advance the Inquiry appropriately to justify the expenditure of resources and time on it. The principle of proportionality dictated that our focus remained on what was significant and important to our Terms of Reference.³⁸

Expediency

We implemented a number of mechanisms to ensure that this Inquiry was completed promptly. For instance, Commission counsel worked with some witnesses to prepare sworn affidavits in place of part or all of that individual's oral testimony.³⁹ We produced two Foundation Documents, one for each of the first two parts of the Inquiry. The Foundation Documents summarized the materially relevant information from the documents collected. One of the reasons we produced the Foundation Documents was to expedite examinations at the hearings. On one occasion, multiple witnesses were examined at the same time.⁴⁰

When granting participants the right to participate in the Inquiry, I confined that participation only to those portions of the Inquiry related to their particular interest or perspective.⁴¹ Even with these specified participatory rights, participants were encouraged and did co-operate with Commission counsel to avoid unnecessarily prolonging the proceedings.

Fairness

The public interest in uncovering the truth must be balanced with the right of those involved in the process to be treated fairly, particularly those parties that may be implicated negatively in the process.⁴² To that end, Commission counsel and I took measures to ensure that participants with standing had notice of the evidence we anticipated witnesses would provide at the Inquiry. For example, after conducting confidential witness interviews, Commission counsel prepared confidential summaries of the witness's anticipated evidence and circulated it first to the witness for review and then to the parties with participation rights.⁴³ The participants and their counsel received these summaries after signing an undertaking that stated:

I undertake to the Town of Collingwood Judicial Inquiry (the "Inquiry") that all documents and information disclosed to me, either inadvertently or otherwise, in connection with the Inquiry (the "Information") will not be disclosed to anyone and will not be used by me for any purpose other than the Inquiry's proceedings. I will not disclose the Information to

anyone and I shall continue to treat the Information as confidential after the completion of the Inquiry.

I did not make a finding of misconduct on the part of any person unless that person had reasonable notice of the substance of the alleged misconduct and was allowed the opportunity to be heard and to respond.⁴⁴ Notices of potential misconduct findings were delivered on a confidential basis to the person to whom the allegations of misconduct referred.⁴⁵ Recipients of these notices could call witnesses in response.

Accessibility

Records introduced into evidence at the Inquiry were available to the public to examine, and witness testimony was available for the community to hear. The public has a right to know what happened and a right to form its opinion as the process of an inquiry unfolds. More than just hearing the evidence, the public also has a right to examine the process of the inquiry itself and to measure whether the inquiry is proceeding thoroughly, proportionately, expeditiously, and fairly.⁴⁶ Openness and accessibility are linked to public confidence. Transparency functions to instill public confidence in the inquiry and to restore public confidence in the institutions investigated. In short, a public inquiry should be public as much as that is practicable.⁴⁷

To that end, shortly after the Inquiry was established, it set up a website with information about its mandate, the Commissioner, Commission counsel, Commission staff, and other relevant information.

To introduce ourselves to the residents of the Town of Collingwood and also to hear from those residents, the Inquiry held a community meeting on August 13, 2018.⁴⁸

We uploaded both Foundation Documents and the documents they referred to on our website for public access. We also uploaded transcripts of the proceedings as soon as practicable in addition to the exhibits that the witnesses referred to in oral evidence for Part One and Part Two of the Inquiry. For Part Three of the Inquiry, we uploaded transcripts of the hearings and the slide decks used in the experts' presentations.

As to the public hearings, we decided early on to hold them in

Collingwood, to allow the residents of the Town easy access to attend.⁴⁹ In addition, the hearings were live streamed on the local cable network, and later uploaded on the network's website for those people who were unable to attend in person.

Using the website and live streaming the hearings on the internet meant that residents of the Town of Collingwood could read the same documents we read, see the exhibits referred to in oral testimony as we saw them, and watch the witnesses testify in the public hearings.

Division of the Mandate

The Terms of Reference (Appendix A) provided me with a mandate that I divided into three interconnected parts. As I discuss above, Part One concerned the sale of shares of a municipal asset; Part Two concerned the use of proceeds from that sale to construct recreational facilities; and Part Three focused on policy issues related to the first two parts of the Inquiry.

Part One: The 2012 Sale of the Collingwood Utility Services Corporation Shares

Part One of the Inquiry dealt with the sale of an interest in a municipal asset: it investigated the sequence of events that led the Town of Collingwood to conclude a share purchase agreement for the sale of shares of the Collingwood Utility Services Corporation to PowerStream Incorporated on March 6, 2012.⁵⁰

The Commission was asked in its Terms of Reference to inquire into

- the request for proposal process used by the Town of Collingwood for the purposes of this transaction;
- the nature and extent of the delegation of authority by Council to those who negotiated;
- any subsequent contracts entered between or among the Town of Collingwood and PowerStream, Collus PowerStream, and any other Collus company;

- any fee or benefit of any kind paid, or conferred, by or on behalf of PowerStream to any person in relation to the transaction;
- the commercial relationship between PowerStream, Collus PowerStream, and any other Collus entity and the Town of Collingwood before 2017, and in particular, any agreement entered into between or among any of these parties; and
- 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.⁵¹

Part Two: Funding the Recreational Facilities at Central Park and Heritage Park

Part Two of the Inquiry focused on the use of the funds from the sale in Part One. Specifically, it investigated the allocation of the proceeds of the sale of shares in Collus Power to the construction of the arena and the pool at Central Park and Heritage Park, respectively. It was also concerned with the payment of any fee or benefit of any kind on behalf of any person involved in the creation or construction of the recreational facility at Central Park and Heritage Park.⁵²

Part Three: Issues of Policy and Good Governance

In Part Three of the Inquiry, I focused on policy issues raised by the events of Part One and Part Two. I examined the impact of Part One and Part Two on the Town of Collingwood as they related to the good governance of the municipality. Part Three of the Inquiry was of great assistance in helping me to formulate my recommendations to the Town of Collingwood and the public.

Unlike the first two parts of the Inquiry, I did not hear from fact witnesses during Part Three of the mandate. Rather, public hearings were held between November 27 and December 2, 2019, when I heard panel presentations from experts. The panellists had significant breadth of municipal and provincial expertise, including in good governance, conflict of interest, ethics in government, municipally owned corporations, procurement, and

lobbying. We also heard evidence from the Hon. Denise Bellamy, a retired justice of the Superior Court of Justice in Ontario who served as commissioner of two municipal judicial inquiries involving the City of Toronto: the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry. Commission counsel, counsel for the Town of Collingwood, and I had the opportunity to ask the Hon. Denise Bellamy about her views concerning the subject matters listed above. The purpose of these presentations was to inform the Inquiry about public policy matters in relation to the systemic issues at this Inquiry. The expert evidence in Part Three was invaluable.

Participation and Funding

Participation

On August 20, 2018, I announced my first decision on who would receive standing to participate in the Inquiry and to what extent the parties would be able to participate (Appendix J). In preparation for this decision, we published a “Call for Applications for Participation at the Inquiry’s Public Hearings” in relevant newspapers and through radio advertising (Appendix E). The Inquiry website also posted the Call for Applications. The notice invited applications from any person or group

- a. with a substantial and direct interest in the subject matter of the Inquiry;
- b. who is likely to be notified of a possible finding of misconduct;
- c. whose participation would further the conduct of the Inquiry; or,
- d. whose participation would contribute to the openness and fairness of the Inquiry.⁵³

We produced an application form (Appendix F) that asked potential participants to identify under which of the above-mentioned criteria they were seeking to participate and to explain how they satisfied the criteria. Applicants were also asked about the extent of the participation they sought.⁵⁴ Options for participation included delivering written submissions, a seat at counsel table, making an opening statement, leading evidence, leading

expert evidence, cross-examining witnesses, making closing submissions, or other participatory rights as the applicant identified.⁵⁵

In the interest of efficiency, the form also requested applicants to identify whether they had a common interest with any other party that wanted to participate and, if so, the applicant's position on shared participation.⁵⁶ Applicants were asked to submit a completed application form, either electronically or in writing, no later than 4:00 p.m. on July 20, 2018.⁵⁷ In some cases, additional correspondence or information was requested from applicants to participate concerning their interest and the nature of participation sought.⁵⁸

Parallel to this process, the Inquiry identified several parties as having presumptive interests in the subject matter of the Inquiry. These parties included the Corporation of the Town of Collingwood, Mayor Sandra Cooper, Alectra Utilities Corporation (as the successor corporation to PowerStream), Collus PowerStream Corporation, and Paul Bonwick. For efficiency and expediency purposes, the Inquiry adopted an expedited process for these parties whereby they were not required to make formal applications for participation but, rather, were asked to confirm whether they wanted participation rights and, if so, to advise which level of participation they sought.⁵⁹

I asked the parties applying to participate to identify the issues they believed affected them substantially and directly and to provide a brief statement indicating how their participation would enhance the Inquiry's work. The identification of a presumptive interest did not automatically allow for participation in all phases of the Inquiry. The Inquiry reserved the right to set appropriate limits on participation rights for those with presumptive interests.⁶⁰

After the receipt of the written applications, I held a hearing on August 14, 2018, in the Council Chambers located at 97 Hurontario Street.⁶¹ Although not all applicants made oral submissions, in total eight parties sought participation rights.⁶²

On August 20, 2018, I released my decision concerning participation. In addressing the question of participation, I balanced the principles of thoroughness, proportionality, and expedition. I also applied the following principles:

- the participation of those with a substantial and direct interest will assist the Inquiry in being thorough and complete;
- there is a benefit to having a variety of perspectives available to the Inquiry;
- applicants will be granted the right to participate only on those portions of the Inquiry that relate to their particular interest or perspective;
- Commission Counsel are present and will participate throughout the Inquiry. They represent the public interest. Their role is not adversarial or partisan;
- witnesses may have counsel present during their evidence;
- where participants have the same interest, they will be expected to cooperate with Commission Counsel to avoid the unnecessary expense of prolonged proceedings; and,
- where participants have standing in specific areas, they will stay within the permitted areas.⁶³

In my reasons, I granted all eight applicants participation rights, though in varying degrees and only for the portions of the Terms of Reference for which they had a direct and substantial interest.⁶⁴ I also made it clear that participation carries the obligation to assist the Inquiry in carrying out its mandate. Participants who were not discharging this obligation or otherwise not complying with the Inquiry's procedures could find their participation curtailed.⁶⁵

After the conclusion of the Part One hearings, I received an application for participation in Part Two of the hearings. I granted this applicant standing on July 26, 2019 (Appendix O). In total, there were nine participants with participation rights in the Inquiry (Appendix H).

Funding

Parties with standing were entitled, but not required, to participate in the Inquiry through the representation of a lawyer.⁶⁶ The Terms of Reference did not grant me the ability to order the Town of Collingwood to provide legal counsel funding. However, I could make non-binding recommendations to the Town to fund the legal representation of a participant.⁶⁷

For me to recommend to the Town that it fund a party's legal representation, I requested that the party concerned identify in the written application for participation rights whether it was seeking a recommendation for funding.⁶⁸ The Inquiry explained that a recommendation for funding would occur if I was of the view that a party would not otherwise be able to participate in the Inquiry without funding (Appendix G).⁶⁹ Other considerations for a recommendation included

- the applicant had a unique perspective that would not be presented to the Inquiry if the applicant did not participate;
- the applicant had an established record of concern for and a demonstrated commitment to the interest he or she sought to represent;
- the applicant had a special experience or expertise in respect of the Inquiry's mandate;
- the applicant had a proposal concerning the use of funds and how the applicant would account for funds; and
- the applicant could be part of a group with similar interests.⁷⁰

The application for participation form asked the applicants to identify which of these criteria applied to them and to explain how they satisfied them.⁷¹ Those seeking funding were also required to attend the August 14, 2018, Hearing on Standing to Participate.

Applicants required an affidavit outlining financial circumstances and explaining why they would not otherwise be able to participate in the Inquiry without funding.⁷² Supporting documents were required to substantiate the statements made in the affidavits.⁷³ These documents could include tax returns, bank or other financial information, and statements of expenses that could support the funding application.⁷⁴

In total, four participants sought funding to participate in the Inquiry.⁷⁵ Some of those requesting funding made further requests for additional funding as the Inquiry was underway and their funding already exhausted.⁷⁶ In some instances, I recommended that the Town supply the necessary funds. In other instances, I was not satisfied with the applicant's evidence, and I suggested that the Town of Collingwood act under several principles

that had guided other inquiries. I explained these principles before considering requests for funding.⁷⁷ They included the following:

- it is not in the public interest to have open-ended funding;
- it is not in the public interest to provide individuals with their lawyer of choice at that lawyer's regular hourly rate;
- the Town should establish compensation for counsel for the purposes of this Inquiry, which should include reasonable time for preparation by counsel as well as for attendance at the hearings. Limits should be set on preparation time;
- attendance of counsel at the hearings should be limited to attending when the client's interests are engaged;
- counsel should be entitled to compensation for their reasonable disbursements;
- where appropriate, disbursement rates should be set;
- funding available from third party sources, such as directors' and officers' liability insurance, should be applied first, before public funds are made available;
- no fees incurred before the date of Council's decision to hold a public Inquiry should be paid;
- no fees related to interlocutory proceedings, appeals, judicial reviews or any other matters (e.g., civil litigation) should be paid by the Town; and,
- accounts should be subject to review by an independent third party.

Rules of Procedure

In order to ensure the fair and efficient operation of the Inquiry, Rules of Procedure (Appendix C) were established to guide the participants throughout the process. The Rules governed the conduct of the hearings and outlined responsibilities and expectations for the parties participating in these public hearings.

The Rules addressed matters such as the mandate of the Inquiry; the inclusion of Inquiry material in the public record; the date, time, and

location of the public hearings; and the Inquiry's commitment to a fair process. The Rules also contained a procedure, at my discretion, for potential amendments to the Rules.⁷⁸

Preparation of Evidence

DOCUMENTARY EVIDENCE

To accomplish the Inquiry's mandate effectively, the Inquiry established processes to collect documents that were relevant to the subject matter of the Inquiry.

As soon as possible following the granting of participation rights, I required participants to produce all the documents in their possession, power, or control that had any bearing on the subject matter of the Inquiry. Participants were also required to provide a plan to the Inquiry setting out how they would produce these documents. In addition, they provided the Inquiry with a list of the witnesses they believed should be heard. All documents received by the Inquiry were treated as confidential until they were made part of the public record. Commission counsel were also able to transmit submitted documents to potential witnesses.⁷⁹

Issues of Privilege

The Inquiry was not entitled to the production of privileged documents. As a result, the Rules included protocols for handling documents that were subject to claims of privilege.

IDENTIFYING AND PREPARING WITNESSES

Evidence provided by witnesses formed an essential part of the Inquiry. Before the first public hearing of the Inquiry, Commission counsel spent a considerable amount of time reviewing documents and compiling lists of witnesses for the hearings. The Inquiry received evidence from 57 witnesses, including expert witnesses, along with presentations from the Hon. Denise Bellamy, a retired justice of the Superior Court of Justice, and the Town of Collingwood's chief administrative officer, over 61 days. Certain witnesses gave evidence in part or wholly via affidavit. Receiving evidence

by way of affidavit reduced hearing time while ensuring that the evidence was heard.

Witness Interviews

Before testifying at the hearings, potential witnesses were confidentially interviewed by Commission counsel, with the opportunity to have legal counsel present, to determine if the witness had information or documents that helped to fulfill the Inquiry's mandate. If Commission counsel decided to call the witness to testify, they prepared a confidential summary of each witness's anticipated evidence which was shared with the witness and participants before the witness testified.⁸⁰

Expert Witnesses

In Part Three of the Inquiry, I heard from 13 expert witnesses on matters concerning good governance, conflict of interest, ethics in government, municipally owned corporations, procurement, and lobbying. I received the evidence of the expert witnesses in panels using a conversational format. The Hon. Denise Bellamy, a retired justice of the Superior Court of Justice in Ontario, also presented. Justice Bellamy served as commissioner of two municipal judicial inquiries involving the City of Toronto: the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry. Fareed Amin, then Collingwood's chief administrative officer, also presented.

Inquiry Evidence

I had the discretion to receive evidence that I considered helpful in fulfilling the mandate of the Inquiry. Since the process of a judicial inquiry differs from a regular court proceeding, as I discuss above, I was able to receive evidence that might not be admissible in a court of law. In addition, throughout the Inquiry, I was able to rely on the Foundation Documents.⁸¹

FOUNDATION DOCUMENTS

Following the collection of documentary evidence and before the hearing of oral evidence, I relied on Commission counsel to prepare a set of Foundation Documents. Foundation Documents 1 and 2, corresponding respectively to

Part One and Part Two of the Inquiry, summarized the materially relevant information from the documents collected. These Foundation Documents proved to be extremely valuable because they provided notice to the participants of the issues, organized the results of a mass collection of documents, and provided an effective resource document for counsel and witnesses to reference during oral testimony and cross-examination. The Foundation Documents were posted on the Inquiry's website and were available to the general public.

ORAL EVIDENCE

In addition to documentary evidence, I also heard oral evidence from witnesses and experts at the Inquiry. Witnesses were served a summons by Commission counsel to testify.⁸² Witnesses were entitled to have their own legal counsel present while testifying.⁸³

The order of examination of each witness began with direct examination by Commission counsel. The only exception was one witness who asked to be led by his own counsel, which I allowed. In their examination, Commission counsel were entitled to ask both leading and non-leading questions. Each participant had the opportunity to cross-examine the witness.⁸⁴ Counsel for the witness was then able to examine their client, before Commission counsel had the opportunity for re-examination.*

RIGHT TO COUNSEL

All witnesses and participants were provided with the right, but not the obligation, to have counsel present while they were being interviewed or during their testimony. They were responsible for retaining counsel at their own expense, though, as I discuss above, they had the ability to apply to me for a recommendation for funding from the Town.⁸⁵

NOTICES OF MISCONDUCT

As Commissioner of a Judicial Inquiry, I could make a finding of misconduct. The Rules provided I would not make such a finding against an individual unless the individual had reasonable notice of the alleged

* In the case of the witness who was led by his own counsel, that counsel was provided with the right to conclude the testimony.

misconduct and had the opportunity to be heard in person or by counsel. Any such notices were provided on a confidential basis. The recipients of a notice of misconduct had the opportunity to present evidence in response.⁸⁶

Amendment of the Rules

Public inquiries are dynamic processes that sometimes require their Rules to be amended to adapt to changing circumstances and provide clarification. I had the ability to amend the Rules of Procedure and add new Rules.⁸⁷ After the publication of the initial Rules of Procedure, I decided to make some amendments on October 4, 2018. These amendments clarified what constituted the “public record”; clarified the hearing times; clarified what we would do with documents produced that were deemed irrelevant or privileged; and how we would dispose of the database of documents following the Inquiry’s conclusion.⁸⁸ The participants were informed of these amendments, and the website was updated accordingly.

Community Meeting

We advertised and held a community meeting (Appendix D) at the Collingwood Public Library on August 13, 2018, before any of the Inquiry’s public hearings were held. In the first part of the meeting, I introduced myself and explained the Inquiry to those in attendance. I described public inquiries, their purposes, their recommendations, and why the Collingwood Public Inquiry was established. I went through the Terms of Reference and the division of the mandate. I provided a brief overview of the investigative process, including document collection and review and the ability of the parties granted standing to participate in the process. I took the opportunity to introduce Commission counsel and Commission staff. I also informed the community that they could attend the public hearings, watch them on the local cable network, and visit our website for more information.

Next we asked to hear from the community. We invited anybody interested to make brief remarks. We indicated that this meeting was not a

formalized process, and we encouraged everybody to share their thoughts and ideas. A number of community members took to the podium, and I appreciated their comments. I found their remarks helpful, providing real context to what I had to do.

Location of the Hearings

My decision to hold the Inquiry hearings in Collingwood was straightforward and not difficult to make. In line with the guiding principle of accessibility, the hearings needed to be held in a location where members of the community affected by the Inquiry's mandate could readily attend with minimal cost, effort, and disruption of their daily lives. The fairness principle also dictated that we should not overburden witnesses and participants with unnecessary travel and expense. As such, it was natural to hold the hearings in a location connected to the Inquiry's Terms of Reference.

Hearing Schedule

Public hearings for the Inquiry took place Monday through Friday. On Tuesdays, Wednesdays, and Thursdays, they went from 10:00 a.m. to 4:30 p.m.; on Mondays, from 1:00 p.m. to 6:00 p.m.; and on Fridays, from 10:00 a.m. to 1:00 p.m., unless otherwise directed.⁸⁹ The later starts on Monday and early endings on Friday were designed to accommodate the witnesses, participants, and counsel who had to commute to Collingwood from other areas of Ontario. In practice, and with the participants' and their counsel's co-operation, I often commenced the hearing day at 9:00 a.m. and regularly sat beyond 1:00 p.m. on Fridays.

The scheduling of the public hearings for Part One and Part Two of the Inquiry required flexibility and continued co-operation with all counsel and participants. Scheduling the public hearings became a test of balancing the principles of proportionality and expedition with thoroughness. Although we tried to expedite the proceedings as much as possible, we were

determined not to let timing detract from the Inquiry's thoroughness. In effect, the scheduling of the hearings was a rolling process that required flexibility from all participants.

Conduct of the Hearings

The purpose of hearings in a public inquiry is to elicit evidence from witnesses relevant to the inquiry's mandate. As such, for Part One and Part Two of the Inquiry, Commission counsel issued and served summons to witness to those individuals who had knowledge relevant to the mandate of the Inquiry.⁹⁰ The witnesses were required to testify under oath or affirmation with regard to the matters described in the Terms of Reference.⁹¹

The Inquiry almost always called one witness at a time during Part One and Part Two. In one instance in Part One, three witnesses were called to testify in a panel.⁹² Witnesses at the hearings were entitled to have their own counsel present during their testimony.⁹³ A witness could also be called more than once.⁹⁴

Guided by the principle of thoroughness, if Commission counsel elected not to call a witness or file a document, the Rules allowed anyone with standing to apply for an Order directing Commission counsel to do so.⁹⁵ Transcripts and evidence from the hearings were made available as soon as possible for public viewing.⁹⁶

Part Three of the Inquiry consisted of expert witnesses who testified in panels. The panellists first made a presentation on their topic, and Commission counsel then asked the panellists questions. Counsel for the Town of Collingwood – the only participant granted status in Part Three – could also ask questions at this time.

Submissions for Part One and Part Two

Before the start of public hearings for Part One and Part Two of the Inquiry, participants were invited to make opening submissions in writing. The

Inquiry received six such submissions in Part One and two in Part Two. We uploaded each of these opening submissions to our website for access by the public.

Closing submissions provided the participants with an opportunity at the end of the hearings to suggest how the evidence presented at the Inquiry should be interpreted. The public hearings for Part One of the Inquiry concluded on June 28, 2019. The participants had until August 31, 2019, to deliver their closing written submissions. After these closing submissions were delivered, they were posted online on September 5, 2019. A similar process took place with Part Two of the Inquiry. The public hearings for Part Two concluded on October 24, 2019, and closing submissions of the participants were due by January 10, 2020. The submissions were then uploaded to the website on January 16, 2020.

Website

To maximize engagement from the public, increase accessibility, and allow the community to follow the Inquiry, it was important to establish a website that would allow us to share information and be in constant communication with the public. Early on in the Inquiry we did so at the domain name <collingwoodinquiry.ca>.

The website allowed us to introduce the Inquiry, its mandate, the Commissioner, Commission counsel, and Commission staff. It also gave the public access to many procedurally important documents, including the Council resolution establishing the Inquiry, the Terms of Reference, the Inquiry's Rules of Procedure, material related to the process of seeking participation and funding, and the decisions on those applications. The website contained affidavits, the two Foundation Documents, and all the exhibits and materials referred to in terms of evidence.

When the hearings commenced, transcripts of the hearings were uploaded; exhibits referred to in oral testimony were also organized in an easily accessible format on the website. Visitors to the website could access the opening and closing submissions of the various participants in Parts One and Two of the Inquiry and view the presentation materials for Part

Three. The website also served the more traditional role of allowing us to communicate information of the Inquiry's progress, the hearing dates, and the schedule to both the community and the wider public.

Conclusion

Public inquiries enjoy a rich history in Canadian social and political development. They are unique mechanisms through which we can uncover the truth behind an event or a condition of public significance and formulate recommendations to prevent a reoccurrence of that event or to address a systemic issue.

At the start of a public inquiry, the commissioner tries to put together a jigsaw puzzle, not knowing what the final picture will be. The commissioner cannot leave out a puzzle piece, or the image will be incomplete. Assembling the puzzle requires attention to detail, a fair process, and a small dedicated team committed to completing the puzzle. I trust we have met all these criteria in the Collingwood Judicial Inquiry.

Notes

- 1 *Municipal Act, 2001*, SO 2001, c 25 [*Municipal Act*].
- 2 *Municipal Act*, s 274(6).
- 3 *Consortium Developments (Clearwater) Ltd. v Sarnia (City)*, [1998] 3 SCR 3 at para 26; *Act Respecting the Municipal Institutions of Upper Canada*, 29-30 Vic c 51 (1866), s 380.
- 4 *Consortium Developments (Clearwater) Ltd. v Sarnia (City)*, [1998] 3 SCR 3 at para 26.
- 5 Law Reform Commission of Canada, “Administrative Law: Commissions of Inquiry” (1977) Law Reform Commission of Canada Working Paper 17 at 11, as cited in R. A. Macdonald, “The Commission of Inquiry in the Perspective of Administrative Law” (1980) 18:3 *Alberta Law Review* 366 at 369.
- 6 *Consortium Developments (Clearwater) Ltd. v Sarnia (City)*, [1998] 3 SCR 3 at para 26.
- 7 City of Hamilton, City Council, General Issue Committee, “Appendix ‘B’ to Item 12(a) of GIC Report 19-008,” in *City Council Agenda*, 19-008 (April 24, 2019).
- 8 *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (Mississauga, ON: City of Mississauga, 2011) (Commissioner J. Douglas Cunningham) at 1.
- 9 *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 3: Inquiry Process* (Toronto: City of Toronto Publications, 2005) (Commissioner Denise E. Bellamy) at 33–35.
- 10 *Report of the Waterloo RIM Park Inquiry* (Waterloo, ON: Waterloo City Centre, 2003) (Commissioner Ronald C. Sills) at Appendix A.
- 11 Town of Collingwood, *Judicial Inquiry*, online: <collingwood.ca/council-government/town-council/judicial-inquiry>.
- 12 Appendix A, Terms of Reference.
- 13 *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 62.
- 14 *Public Inquires Act, 2009*, SO 2009, c 33, Sched 6, s 33(3).
- 15 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process* (Toronto: Ministry of the Attorney General, 2007) (Commissioner Sidney B. Linden) at 3-4.
- 16 The Inquiry into Certain Deaths at the Hospital for Sick Children investigated the deaths of 32 babies and children between July 1980 and March 1981 at the Hospital for Sick Children, Toronto. See *Report of the Royal Commission of Inquiry into Certain Deaths at the Hospital for Sick Children and Related Matters* (Toronto: Ontario Ministry of the Attorney General, 1984) (Commissioner S.G.M. Grange) at 1–2.
- 17 The Honourable Justice S.G.M. Grange, “How Should Lawyers and the Legal Profession Adapt?” (1990) 12:3 *Dalhousie Law Journal* 151 at 154–55.
- 18 Law Reform Commission of Canada, “Administrative Law: Commissions of Inquiry” (1977) Law Reform Commission of Canada Working Paper 17 at 20, as cited in *Starr*

- v Houlden*, [1990] 1 SCR 1366 at p 1411. See also *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 62.
- 19 Ronda Bessner, "Introduction to Public Inquiries in Canada," in Ronda Bessner and Susan Lightstone (eds.), *Public Inquiries in Canada: Law and Practice* (Toronto: Thomson Reuters, 2017) 1 at 15.
 - 20 *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 62.
 - 21 Gerald E. Le Dain, "The Role of the Public Inquiry in Our Constitutional System," in Jacob S. Ziegel (ed.), *Law and Social Change* (Toronto: Osgoode Hall Law School, 1973), 79 at 85, cited by Justice Cory in *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 64.
 - 22 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 2-4.
 - 23 Bessner, "Introduction to Public Inquiries in Canada," 6.
 - 24 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 2-4.
 - 25 Bessner, "Introduction to Public Inquiries in Canada," 6.
 - 26 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 2-4.
 - 27 *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 3: Inquiry Process*, 5-6.
 - 28 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 4-6.
 - 29 *Di Iorio v. Warden of the Montreal Jail*, [1978] 1 SCR 152 at p 201.
 - 30 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 4.
 - 31 *Beno v Canada (Commissioner and Chairperson, Commission of Inquiry into the Deployment of Canadian Forces to Somalia)*, [1997] 2 FC 527 at para 23.
 - 32 Justice Dennis O'Connor, "The Role of Commission Counsel in a Public Inquiry" (Summer 2003) 22 (1) *Advocates' Society Journal* 9-11.
 - 33 *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 18.
 - 34 *Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report, Volume 3: Inquiry Process* at 42-43.
 - 35 *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 SCR 97 at para 175.
 - 36 *Part One: Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues* (Toronto: Ministry of the Attorney General, 2002) (Commissioner Dennis R. O'Connor) at 472; *Report of the Ipperwash Inquiry, Volume 3: Inquiry Process*, 13; *Report of the Events Relating to Maher Arar: Analysis and Recommendations* (Ottawa: Gilmore Print Group, 2006) (Commissioner Dennis R. O'Connor) at 282.
 - 37 Appendix C, Amended Rules of Procedure, Rule 28.
 - 38 *Inquiry into Pediatric Forensic Pathology in Ontario, Report: Volume 4: Inquiry Process* (Toronto: Ministry of the Attorney General, 2008) (Commissioner Stephen T. Goudge) at 636-637.
 - 39 Appendix C, Amended Rules of Procedure, Rule 24.

- 40 Michael Angemeer, Neil Freeman, and Kristina Gaspar, Part One, May 29, 2019.
- 41 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018), 5.
- 42 *Public Inquiry into the Safety and Security of Residents in the Long-Term Care Homes System, Report: Volume 4: The Inquiry Process* (Toronto: Ministry of the Attorney General, 2019) (Commissioner Eileen E. Gillese) at 6.
- 43 Appendix C, Amended Rules of Procedure, Rules 22–23.
- 44 Appendix C, Amended Rules of Procedure, Rule 42.
- 45 Appendix C, Amended Rules of Procedure, Rule 43.
- 46 The Honourable Justice S.G.M. Grange, “How Should Lawyers and the Legal Profession Adapt?” (1990) 12:3 *Dalhousie Law Journal* 151 at 154–55.
- 47 *Report of the Walkerton Inquiry: Part One*, 473.
- 48 Appendix D, Notice of Community Meeting.
- 49 Appendix C, Amended Rules of Procedure, Rule 3.
- 50 Appendix A, Terms of Reference 3(a)(i).
- 51 Appendix A, Terms of Reference 3(a)(ii)–(vi).
- 52 Appendix C, Amended Rules of Procedure, Rule 1(vii)–(viii).
- 53 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 6.
- 54 Appendix F, Application Form – Request for Standing to Participate, p 2.
- 55 Appendix F, Application Form – Request for Standing to Participate, p 2.
- 56 Appendix F, Application Form – Request for Standing to Participate, p 3.
- 57 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 7.
- 58 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 7.
- 59 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at paras 8–9.
- 60 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 9.
- 61 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 12.
- 62 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at paras 20–54.
- 63 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 13.
- 64 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at paras 20–54.
- 65 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at para 14.

- 66 Appendix C, Amended Rules of Procedure, Rule 40.
- 67 Appendix C, Amended Rules of Procedure, Rule 41.
- 68 Appendix F, Application Form – Request for Standing to Participate, p 3.
- 69 Appendix G, Information about Seeking Funding to Participate, p 1.
- 70 Appendix G, Information about Seeking Funding to Participate, p 1; Appendix F, Application Form – Request for Standing to Participate, p 3.
- 71 Appendix F, Application Form – Request for Standing to Participate, p 3.
- 72 Appendix G, Information about Seeking Funding to Participate, p 1.
- 73 Appendix G, Information about Seeking Funding to Participate, p 1.
- 74 Appendix G, Information about Seeking Funding to Participate, p 1.
- 75 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at paras 29–30, 40–41, 46–47, 52.
- 76 Appendix M, Response to Request for Further Funding Recommendations from Sandra Cooper (May 8, 2019).
- 77 Appendix J, Reasons and Decision Concerning Participation and Funding (August 20, 2018) at paras 55–56; Appendix G, Information about Seeking Funding to Participate, p 2.
- 78 Appendix C, Amended Rules of Procedure, Rules 1–5, 45.
- 79 Appendix C, Amended Rules of Procedure, Rules 14–15, 17.
- 80 Appendix C, Amended Rules of Procedure, Rules 21–22.
- 81 Appendix C, Amended Rules of Procedure, Rule 27.
- 82 Appendix C, Amended Rules of Procedure, Rules 29–30.
- 83 Appendix C, Amended Rules of Procedure, Rule 31.
- 84 Appendix C, Amended Rules of Procedure, Rule 34(a)–(b).
- 85 Appendix C, Amended Rules of Procedure, Rules 40–41.
- 86 Appendix C, Amended Rules of Procedure, Rule 44.
- 87 Appendix C, Amended Rules of Procedure, Rule 45.
- 88 Appendix C, Amended Rules of Procedure, Rules 2, 4, 16A, 16B, and 16C.
- 89 Appendix C, Amended Rules of Procedure, Rule 4.
- 90 Appendix C, Amended Rules of Procedure, Rule 30.
- 91 Appendix C, Amended Rules of Procedure, Rules 29–30.
- 92 Appendix C, Amended Rules of Procedure, Rule 29.
- 93 Appendix C, Amended Rules of Procedure, Rule 31.
- 94 Appendix C, Amended Rules of Procedure, Rule 32.
- 95 Appendix C, Amended Rules of Procedure, Rule 35.
- 96 Appendix C, Amended Rules of Procedure, Rule 38.

Appendices



APPENDIX A

Commission of Inquiry Town of Collingwood Terms of Reference

WHEREAS on February 26, 2018, the Council of the Town of Collingwood passed Resolution 042-18 (the "Resolution") asking the Honourable Heather Smith, Chief Justice of the Superior Court of Justice, to designate a judge of the Superior Court of Justice to conduct an Inquiry in relation to the Town of Collingwood concluding a Share Purchase Agreement for the sale of Collingwood Utility Services Corporation to PowerStream Inc. on March 6, 2012 (the "Transaction"). The Resolution requesting the Inquiry was made pursuant to s. 274 of the *Municipal Act, 2001* and is attached as **Annex 1**.

AND WHEREAS on April 6, 2018, Chief Justice Smith designated the Honourable Frank Marrocco, Associate Chief Justice of the Superior Court of Justice, to serve as Commissioner to this Inquiry.

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.

- 4. The Commissioner may engage counsel and other persons to assist in the Inquiry and the costs of engaging those persons and any incidental expenses shall be paid by the Town of Collingwood.

RES-042-2018

Moved by Deputy Mayor Saunderson
Seconded by Councillor Madigan

WHEREAS, under s. 274 of the *Municipal Act*, 2001 S.O. 2001, c. 25, the Council of a Municipality may, by resolution, request a judge of the Superior Court of Justice to inquire into or concerning any matter connected with the good government of the municipality, or the conduct of any part of its public business;

AND WHEREAS any judge so requested shall make inquiry and shall report the results of the investigation or inquiry to the Council as soon as practicable;

AND WHEREAS the Town of Collingwood concluded a Share Purchase Agreement on March 6, 2012 in which it sold 50% of Collingwood Utility Services Corporation to PowerStream Inc. (“the Transaction”; “PowerStream”);

AND WHEREAS concerns have been raised about the wisdom and reasons for the Transaction;

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

1. An inquiry is hereby requested to be conducted pursuant to s. 274 of the *Municipal Act* which authorizes the Commissioner to inquire into, or concerning, any matter related to a supposed malfeasance, breach of trust, or other misconduct on the part of a member of Council, or an officer or employee of the Town or of any person having a contract with it, in regards to the duties or obligations of the member, officer, or other person to the corporation, or to any matter connected with the good government of the municipality, or the conduct of any part of its public business; and
2. The Honourable Chief Justice Smith, Chief Justice of the Superior Court of Ontario, be requested to designate a judge of the Superior Court of Ontario as Commissioner for the inquiry and the judge so designated as Commissioner hereby authorized to conduct the inquiry in two stages:
 - (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 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.

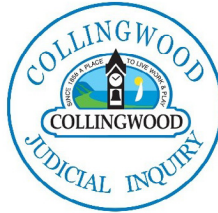
(b) Having conducted the documentary review to determine what, if any, public hearings ought to be held into the matters designated for the inquiry herein;

AND IT IS FURTHER RESOLVED THAT the Terms of Reference of the Inquiry shall be: to inquire into all aspects of the above matters, their history and their impact on the ratepayers of the Town of Collingwood as they relate to the good government of the municipality, or the conduct of its public business, and to make any recommendations which the Commissioner may deem appropriate and in the public interest as a result of the inquiry.

AND IT IS FURTHER RESOLVED THAT the Commissioner, in conduct the inquiry into the transactions in question to which the Town of Collingwood is a party, is empowered to ask any questions which he or she may consider as necessarily incidental or ancillary to a complete understanding of these transactions, and for the purpose of providing fair notice to those individuals who may be required to attend and give evidence, without infringing on the Commissioner's discretion in conducting the inquiry in accordance with the Terms of Reference stated herein, it is anticipated that the inquiry may include the following:

- (c) Was there adequate Council oversight of the transactions listed above?
- (d) Was Council's delegation of authority in relation to the transaction appropriate?
- (e) Did council receive sufficient independent professional advice prior to delegating its authority to conduct the RFP negotiate or finalize the Transaction?
- (f) Where 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?

<i>COUNCIL</i>	<i>Yea</i>	<i>Nay</i>
<i>Cooper</i>		x
<i>Saunderson</i>	x	
<i>Fryer (absent)</i>		
<i>Edwards (absent)</i>		
<i>Ecclestone</i>	x	
<i>Jeffery</i>	x	
<i>Doherty</i>	x	
<i>Madigan</i>	x	
<i>Lloyd (absent)</i>		
<i>TOTAL</i>	5	1



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 to 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.

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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.

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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;

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- (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 withstanding 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.

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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.

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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

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- (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.



**Notice of Community Meeting
Town of Collingwood Judicial Inquiry**

At the Town of Collingwood Council Meeting held February 26, 2018 the Town Council passed Resolution 042-2018, requesting a judicial inquiry into the matter of the 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc., in 2012. I have been appointed to conduct this Inquiry.

A Community Meeting will be held on Monday, August 13, 2018, from 6:00 PM – 8:00 PM., at the Collingwood Public Library in the Community Meeting Rooms B & C | 3rd Floor, located at 55 Ste. Marie Street | Collingwood, ON. It is open to anyone wishing to attend.

The purpose of the Community Meeting is to introduce the Inquiry team and provide an introduction for interested members of the community to the anticipated work and process of the Inquiry.

If you wish to speak at the Community Meeting, advance notice is appreciated. Please contact the Town of Collingwood Judicial Inquiry Office via email at info@collingwoodinquiry.ca, by telephone at 705-445-1030 extension 3800, or by writing to the Town of Collingwood Judicial Inquiry | 97 Hurontario Street, Box 275 | Collingwood, ON | L9Y 3Z5

Further information may be found on the Town of Collingwood Judicial Inquiry website at www.collingwoodinquiry.ca

Associate Chief Justice Frank N Marrocco
Justice of the Town of Collingwood Judicial Inquiry

APPENDIX E **Call for Applications to Participate at Inquiry's
Public Hearings (Standing)**



Town of Collingwood Judicial Inquiry into the 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc.

CALL FOR APPLICATIONS TO PARTICIPATE AT THE INQUIRY'S PUBLIC HEARINGS (STANDING)

An Inquiry into the 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc. was requested by the Town of Collingwood by Resolution 042-2018.

The Honourable Mr. Justice Frank Marrocco, Associate Chief Justice of the Superior Court of Justice has been appointed to conduct this this Inquiry.

The Inquiry's mandate is to inquire into the sequence of events leading to the sale transaction, the Request for Proposal (RFP) process, fees and benefits paid to anyone in relation to the sale transaction, contracts entered into among the parties. The Inquiry will also look into the allocation of proceeds of the transaction for recreational facilities at Central Park and Heritage Park and any fees or benefits paid to any person of the entity involved in the creation of the recreational facilities. The Inquiry will examine the impact of these events on the ratepayers of the Town of Collingwood as they relate to the good governance of the municipality and make any recommendations the Judge may deem appropriate and in the public interest.

Applications to participate at the Inquiry's public hearings are invited from any person: (a) with a substantial and direct interest in the subject matter of the Inquiry; (b) who is likely to be notified of a possible finding of misconduct; (c) whose participation would further the conduct of the Inquiry; or, (d) whose participation would contribute to the openness and fairness of the Inquiry. The manner of participation of those persons given the right to participate shall be determined by the Judge.

Further information to **Request Standing to Participate** and application form may be found on the Inquiry's website: www.collingwoodinquiry.ca

Any person or group of persons wishing to apply to participate must submit a completed application form, electronically or in writing, to the Inquiry offices no later than 4:00 PM on Friday, July 20, 2018.

Hearings on the **Standing to Participate** are open to the public and will take place on Tuesday, August 14, 2018, starting at 10:00 AM until 4:00 PM., in the Council Chambers, located at 97 Hurontario Street, 2nd Floor of the Town Hall.



Application Form | Request for Standing to Participate

Town of Collingwood Judicial Inquiry into the 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc.

Note: This application form must be submitted electronically to info@collingwoodinquiry.ca or in writing to the Town of Collingwood Judicial Inquiry Office located at Town of Collingwood | 97 Hurontario Street | PO Box 275 | Collingwood, ON | L9Y 3Z5

All applications must be received by the Inquiry no later than 4:00 PM on Friday, July 20, 2018

THE APPLICANT:

I. Individual *

Name: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

II. Corporation or Organization *

Name: _____

Contact Person [name and position] _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

*** IF REPRESENTED BY COUNSEL:**

Name: _____

Firm: _____

Email Address: _____

Mailing Address: _____

Telephone Number: _____

CRITERIA FOR PARTICIPATION [STANDING]

Participation is based on the following criteria. Check that all apply to you.

- a) I have a substantial and direct interest in the subject matter of the inquiry.
- b) I am likely to be notified of a possible finding of misconduct.
- c) My participation would further the conduct of the Inquiry.
- d) My participation would contribute to the openness and fairness of the Inquiry.

Explain below how you satisfy the criteria you checked off:

TYPES OF PARTICIPATION SOUGHT:

If given the right to participate in the Public Hearings, which of the following types of participation do you seek? Check all that apply.

- Deliver written submissions
- Seat at Counsel table
- Make an opening statement
- Lead evidence
- Lead expert evidence
- Cross-examine witnesses
- Make closing submissions
- Other _____

The Inquiry aims to avoid duplication and to encourage efficiency. Please indicate if you have a common interest with any other individual or company that may be seeking standing. If so, specify their name and indicate your position on whether the Inquiry should grant you shared standing.

Common interest with individual(s) _____

Common interest with company(ies) _____

Indicate below your position on whether the Inquiry should grant shared standing to you and those with whom you have a common interest.

FUNDING

Will you be seeking a recommendation for funding for legal counsel from the Town of Collingwood in order to be able to participate in the Town of Collingwood Judicial Inquiry?

Yes

No

If you checked yes, complete the next questions.

Recommendations for funding will consider the following criteria. Check that all apply to you.

- a) I will not be able to participate in the Inquiry without funding.
- b) I have a unique perspective that will not be presented to the Inquiry if I do not participate.
- c) I have an established record of concern for and a demonstrated commitment to the interest I seek to represent.
- d) I have a special experience or expertise in respect of the Inquiry’s mandate.
- e) I have a proposal as to the use of funds and how I will account for funds.
- f) I can be part of a group with similar interests.

Explain below how you satisfy the funding criteria you checked off:

Signature

Date (month/day/year)



Information about Seeking Funding to Participate

Town of Collingwood Judicial Inquiry

What do I need to do for the Judge to recommend that I receive funding?

The Judge of the Judicial Inquiry may recommend that you receive funding only if he is of the view that you would not otherwise be able to participate in the Inquiry without funding. Recommendations for funding will consider whether:

- you will be able to participate in the Inquiry without funding;
- you have a unique perspective that will not be presented to the Inquiry if you do not participate;
- you have an established record of concern for and a demonstrated commitment to the interest you seek to represent;
- you have a special experience or expertise in respect of the Inquiry's mandate;
- you have a proposal as to the use of funds and how you will account for funds; and
- you can be part of a group with similar interests.

Therefore, you will need to come to the Hearing on Standing to Participate on Tuesday, August 14, 2018, and, in advance, provide evidence to show the Judge which of the above considerations apply to you.

What kind of evidence will I need to provide?

If you are seeking funding, you will need to provide an affidavit **on or before August 3, 2018**, outlining your financial circumstances and explaining why you would not otherwise be able to participate in the Inquiry without funding. You will also need to provide documents to support the statements in your affidavit.

Please send your affidavit and supporting documentation to the Town of Collingwood Judicial Inquiry Office, either electronically to info@collingwoodinquiry.ca or in writing to the Judicial Inquiry Office located at 97 Hurontario Street | PO Box 275 | Collingwood, ON | L9Y 3Z5. Submissions must be received by the Inquiry no later than 4:00 p.m. on Friday, August 3, 2018.

In your affidavit, you should refer to any relevant financial circumstances, including alternative sources of funding. For example, you may want to provide evidence of your annual net income, the number of dependents you have and the expenses associated with supporting those dependents. Examples of documents you may wish to attach to your affidavit in support of your application for funding include:

- Tax returns;
- Bank or financial statements; and
- Other financial documentation that support your application for funding, such as a statement of expenses.

What is an affidavit?

An affidavit is a sworn written statement that outlines the facts and/or attaches documents to support those statements.

What limits will be placed on funding for legal fees?

In making any recommendation for funding, the Judge will recommend to the Town of Collingwood that it apply these principles and formulate guidelines in deciding on funding for legal fees for witnesses or participants:

1. It is not in the public interest to have open-ended funding.
2. It is not in the public interest for public funds to provide individuals their lawyer of choice at that lawyer's regular hourly rate.
3. The Town should establish reasonable hourly rates for senior and junior counsel for the purposes of this inquiry.
4. Whatever hourly rate or scale of compensation the Town selects, it should include reasonable time for preparation by counsel as well as for attendance at the hearings.
5. The Town should either limit the number of counsel or specify the use that would be made of junior counsel.
6. Counsel should be entitled to compensation for their reasonable and necessary disbursements.
7. Where appropriate, disbursement rates should be set.
8. Limits should be set on preparation time.
9. Time spent at the hearings should be limited to a reasonable number of hours.
10. Attendance of counsel at the hearings should be limited to attending when the client's interests are engaged.
11. No fees incurred before the date of Council's decision to hold a public inquiry should be paid.
12. No fees related to any other matters (e.g., civil litigation) should be paid.
13. Accounts should be subject to assessment.

APPENDIX H **List of Participants with Standing**

Participant	Counsel
Alectra Utilities Corporation (Part One)	<i>Gowling WLG LLP</i> Michael Watson Belinda Bain Heather Fisher
BLT Construction Services Inc. (Part Two)	<i>William Trudell Professional Corporation</i> William Trudell <i>Neubauer Law</i> Eric Neubauer
EPCOR (Part One)	<i>McCarthy Tétrault</i> Patrick Gajos Julie Parla <i>EPCOR</i> Marcus Ostrowerka
Edwin Houghton (Parts One and Two)	Frederick Chenoweth
Ian Chadwick (*Limited Standing for Part One)	Self-represented
Paul Bonwick (Parts One and Two)	Self-represented
Sandra Cooper (Parts One and Two)	George Marron
Timothy Fryer (Part One)	Self-represented
Town of Collingwood (Parts One, Two, and Three)	<i>Lenczner Slaght Royce Smith Griffin LLP</i> William McDowell Andrea Wheeler <i>Breedon Litigation</i> Ryan Breedon

*Mr. Chadwick was granted limited standing to “participate by providing a written comprehensive timeline of events and activities.”

APPENDIX I **List of Witnesses for Part One and Part Two**

Witnesses, Part One		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Sara Almas Clerk, Town of Collingwood	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	April 15 and 16, 2019
Kimberly Wingrove Chief Administrative Officer, Town of Collingwood (Until 2012)		April 16 and 18, and May 17, 2019
Sandra Cooper Mayor, Town of Collingwood	George Marron	April 23, 24, and 25, 2019
Richard Lloyd Deputy Mayor, Town of Collingwood		April 30, and May 1 and 2, 2019
Ian Chadwick Councillor, Town of Collingwood		May 1 and 3, 2019
Jonathan Erling Managing Director, KPMG	<i>Dentons Canada Norm Emblem</i>	May 3 and 13, 2019
Cynthia Chaplin Appeared as an expert witness regarding the Ontario Energy Board		May 13, 2019
Timothy Fryer Chief Financial Officer, Collus/Collus PowerStream Corporations (Until September 2012) Chief Financial Officer, Collingwood Public Utilities Service Board (Until September 2012)		May 13, 14, and 15, 2019
Ralph Neate Auditor, Gaviller & Company LLP	<i>Baulke Stahr McNabb LLP Ryan Baulke</i>	May 15, 2019 Provided Affidavit
David McFadden Independent Director, Collus Power Corp. Until July 2012 Director, Collus PowerStream Corporations (August 2012 onwards)		May 15 and 16, 2019

Witnesses, Part One		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Cindy Shuttleworth Controller, Collingwood Public Utilities Service Board (June 2011–September 2012) Chief Financial Officer, Collingwood Public Utilities Service Board (October 2012 onwards) Controller, Collus/Collus PowerStream Corporations (June 2011–September 2012) Chief Financial Officer, Collus/Collus PowerStream Corporations (October 2012 onwards)	<i>McCarthy Tétrault</i> Patrick Gajos <i>EPCOR</i> Marcus Ostrowerka	May 16 and 17, 2019 Provided Affidavit
Pamela Hogg Executive Assistant to Ed Houghton; Manager, Human Resources and Board Secretary, Collus/Collus PowerStream Corporations	<i>McCarthy Tétrault</i> Patrick Gajos <i>EPCOR</i> Marcus Ostrowerka	May 17, 2019 Provided Affidavit
John Herhalt Global Leader of Government and Infrastructure Services, KPMG	<i>Dentons Canada</i> Norm Emblem	May 22 and 23, 2019
Marcus Firman Manager, Water and Wastewater Services, Collingwood Public Utilities Service Board		May 23, 2019 Provided Affidavit
Kris Menzies Partner, MHBC (Current)		May 23, 2019 Provided Affidavit
Brian MacDonald Manager of Engineering Services, Town of Collingwood	<i>Lenczner Slaght Royce</i> <i>Smith Griffin LLP</i> William McDowell Andrea Wheeler <i>Breedon Litigation</i> Ryan Breedon	May 23, 2019 Provided Affidavit
Ron Clark Partner, Aird & Berlis LLP	<i>Stockwoods Barristers</i> Luisa Ritacca	May 24, 2019
Leo Longo Partner, Aird & Berlis LLP	<i>Stockwoods Barristers</i> Luisa Ritacca	May 27, and 28, 2019

Witnesses, Part One		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Dennis Nolan Corporate Counsel, Executive Vice-President Corporate Services and Secretary, PowerStream Inc.	<i>Gowling WLG LLP</i> Michael Watson Belinda Bain Heather Fisher	May 28, 29, and 30, 2019
Michael Angemeer President & CEO, Veridian Corp.	<i>Borden Ladner Gervais LLP</i> Ewa Krajewska	May 29, 2019
Neil Freeman Vice President, Business Development and Corporate Relations, Horizon Utilities Corp.		May 29, 2019
Kristina Gaspar Manager of Strategy and Risk, Hydro One Inc.		May 29, 2019
Brian Bentz President & CEO, PowerStream Inc.	<i>Gowling WLG LLP</i> Michael Watson Belinda Bain Heather Fisher	May 30, 31, June 3, 2019
John Glicksman CFO, PowerStream Inc.	<i>Gowling WLG LLP</i> Michael Watson Belinda Bain Heather Fisher	June 3 and 4, 2019 Provided Affidavit
Edwin Houghton President & CEO, Collus/Collus PowerStream Corporations Executive Director, Engineering and Public Works, Town of Collingwood (until April 2013) Acting CAO, Town of Collingwood (April 2012–April 2013) President & CEO, Collingwood Public Utilities Service Board	Frederick Chenoweth	June 4, 7, 10, 11, and 12, 2019
Paul Bonwick Principal and Founder, Compenso Communications Inc.		June 12, 13, and 14, 2019
Shirley Houghton	Frederick Chenoweth	June 14, 2019 Provided Affidavit
John Rockx Partner, KPMG	<i>Dentons Canada</i> Norm Emblem	June 17 and 18, 2019 Provided Affidavit

<i>Witnesses, Part One</i>		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Peter Budd International Solar Solutions Inc.		June 18, 2019
John Brown Chief Administrative Officer, Town of Collingwood (2013 onwards)	<i>Heller, Rubel Barristers</i> Howard Rubel	June 26 and 27, 2019
Kevin Lloyd Councillor, Town of Collingwood		June 28, 2019
Robert Hull Partner, Gowling WLG LLP		Affidavit Only
Tom Bushey International Solar Solutions Inc.		Affidavit Only
Doug Garbutt Board Member, Collus Corporations (Until July 2012) Board Member, Collingwood Public Utilities Service Board (Until July 2012)		Affidavit Only

Witnesses, Part Two		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Abigail Stec President & CEO, Green Leaf Distribution Inc.		September 11, 2019
Sara Almas Clerk, Town of Collingwood	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	September 12, 2019 Provided Affidavit
Ron Martin Deputy Chief Building Official, Town of Collingwood	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	September 13, 2019
Marta Proctor Director of Parks, Recreation, Culture, Town of Collingwood		September 23 and 24, 2019
Dave McNalty Manager of Fleet, Facilities, Purchasing, Town of Collingwood	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	September 24, 26, and 30, 2019
Tom Lloyd Regional Sales Manager, Sprung Instant Structures Ltd.	<i>Embry Dann LLP Dean Embry</i>	October 1, 2019
David Barrow Executive Vice President, BLT Construction Services Inc.	<i>William Trudell Professional Corporation William Trudell Neubauer Law Eric Neubauer</i>	October 3, 2019
Richard Dabrus Principal in Charge, WGD Architects		October 4 and 9, 2019
Sandra Cooper Mayor, Town of Collingwood	George Marron	October 4 and 7, 2019
Richard Lloyd Deputy Mayor, Town of Collingwood		October 7 and 8, 2019

Witnesses, Part Two		
<i>Witness Name and Position during 2010–2014</i>	<i>Counsel</i>	<i>Date</i>
Marjory Leonard Treasurer, Town of Collingwood	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	October 15 and 16, 2019
Edwin Houghton President & CEO, Collus/Collus PowerStream Corporations Executive Director, Engineering and Public Works, Town of Collingwood (until April 2013) Acting CAO, Town of Collingwood (April 2012–April 2013) President & CEO, Collingwood Public Utilities Service Board	Fredrick Chenoweth	October 16, 17, 18, 21 and 22, 2019
John Scott Called by Edwin Houghton as an expert witness regarding design-build construction		October 17, 2019
Paul Bonwick Principal and Founder, Compenso Communications Inc. Majority Shareholder, Green Leaf Distribution Inc.		October 23 and 24, 2019
Mel Milanovic Manager of Recreation Facilities, Town of Collingwood (Current)	<i>Lenczner Slaght Royce Smith Griffin LLP William McDowell Andrea Wheeler Breedon Litigation Ryan Breedon</i>	Affidavit only

APPENDIX J **Reasons and Decision Concerning Participation and Funding
(August 20, 2018)**



Town of Collingwood Judicial Inquiry

August 20, 2018

REASONS AND DECISION CONCERNING PARTICIPATION AND FUNDING

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?

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- 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

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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.

INQUIRY PROCESS

- 3. The Inquiry will be divided into three parts. Part I will deal with the sequence of events leading to the transaction, the corporate relationships and the impact of the Town's 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc.
- 4. Part II will consider 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.
- 5. Part III will consider broader policy and good governance issues arising from the findings related to both transactions.

CALL FOR APPLICATIONS FOR PARTICIPATION (STANDING) AND FUNDING RECOMMENDATIONS

- 6. The Inquiry published a Call for Applications for Participation at the Inquiry's Public Hearings (Standing) in relevant newspapers and via radio advertising. The Inquiry website also posted the Call for Applications. The notice invited applications from any person or group:
 - (a) with a substantial and direct interest in the subject matter of the Inquiry;
 - (b) who is likely to be notified of a possible finding of misconduct;
 - (c) whose participation would further the conduct of the Inquiry; or,
 - (d) whose participation would contribute to the openness and fairness of the Inquiry.
- 7. Persons or groups of persons wishing to participate were asked to submit a completed application form, electronically or in writing, to the Inquiry offices no later than 4:00 pm on July 20, 2018. In some cases, additional correspondence or information was

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requested from applicants to participate concerning their interest and the nature of participation sought.

8. In addition, the Inquiry identified several persons as having presumptive interests in the subject matter of the Inquiry:
 - Corporation of the Town of Collingwood;
 - Mayor Sandra Cooper;
 - Alectra Utilities Corporation (as the successor corporation to PowerStream Inc.);
 - Collus PowerStream Corp.; and
 - Paul Bonwick.
9. For purposes of efficiency and expediency, the Inquiry adopted an expedited process for these people, in which they were not required to make formal applications for standing. Rather, they were asked to confirm whether they wanted standing and, if so, to advise of the level of participation sought. They were also asked to identify the issues believed to substantially and directly affect them and provide a brief statement indicating how their participation would enhance the Inquiry's work, taking note of the Terms of Reference. The identification of a presumptive interest did not automatically allow for participation in all phases of the Inquiry. The Inquiry reserved the right to set appropriate limits on participation rights for those with presumptive interests.
10. Applicants requesting recommendations for funding were asked to provide personal financial information. This personal financial information was received on a confidential basis because it is desirable to have complete financial disclosure to assess the funding applications and to avoid the indiscriminate disclosure of personal financial information.
11. Some personal financial information was delivered to the Inquiry immediately before the commencement of the hearing and could not be fully reviewed until after the hearing ended. Having now had the opportunity to review all personal financial information and to deliberate, I have decided that confidentiality should be maintained over the personal financial information provided. It may be that participants seeking funding will be asked to provide similar information directly to the Town, but I leave that matter for the Town to address in making its decisions around funding.
12. The Participation (Standing) Hearing, including the submissions on the funding applications, was open to the public and took place on August 14, 2018, in the Council Chambers, located at 97 Hurontario Street, 2nd Floor of the Town Hall.

Principles Applied to the Determination of Participation

13. In addressing the question of participation, I have applied the following principles:
 - The participation of those with a substantial and direct interest will assist the Inquiry in being thorough and complete.
 - There is a benefit to having a variety of perspectives available to the Inquiry.

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- Applicants will be granted the right to participate only on those portions of the Inquiry that relate to their particular interest or perspective.
 - Inquiry counsel are present and will participate throughout the Inquiry. They represent the public interest. Their role is not adversarial or partisan.
 - Witnesses may have counsel present during their evidence.
 - Where participants have the same interest, they will be expected to cooperate with Inquiry counsel to avoid the unnecessary expense of prolonged proceedings.
 - Where participants have standing in specific areas, they will stay within the permitted areas.
14. 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.

Principles Applied to the Determination of Funding Recommendations

15. Rule 41 of the Inquiry's Rules of Procedure address funding issues. It provides:
- 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.
16. In the course of submissions on funding, applicants' counsel referred me to a report to Town Council from Staff dated April 30, 2018, which provides cost estimates for the Town's funding of "Counsel for Parties, Council Members and Staff". It reads:
- Legal Counsel retained to represent the Town cannot represent the interests of individual employees or Members of Council. The Commissioner cannot order the Town to provide funding however, in order to ensure that all parties, staff and Council Members are treated in a fair and unbiased manner, the Town should consider funding these costs. Staff can only guess at the potential costs and are assuming these costs would be similar to the costs for Town counsel: \$240,000.
17. To determine my recommendations for funding, I considered whether each applicant had:
- demonstrated an inability to participate in the Inquiry without funding for representation;
 - a unique perspective that will not be presented to the Inquiry if the applicant does not participate;

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- an established record of concern for and demonstrated commitment to the interest the applicant seeks to represent;
- any special experience or expertise which the applicant may provide in respect of the Inquiry's mandate; and
- a proposal as to the use of the funds and how the funds will be accounted for.

THE APPLICATIONS FOR PARTICIPATION (STANDING)

18. For the purposes of this Inquiry, the right to participate may include:
- consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to the participant's interest; and
 - the opportunity to make closing submissions, either orally, in writing or both.
19. I turn to the individual applications for participation. I will address each of the applicants in alphabetical order. Where applicants included a request for a recommendation for funding along with the request to participate, I have addressed the requests at the same time.

Alectra Utilities Corporation (represented by Mr. Michael Watson and Ms. Belinda Bain)

20. Alectra Utilities Corporation is the successor corporation to PowerStream Inc., which was the purchaser of 50% of the shares of Collingwood Utility Services Corporation from the Town of Collingwood. As one of the two primary parties concerned with the transaction, Alectra is likely to be directly affected and as a purchaser of the shares, it can provide substantial documentation and context into the transaction.
21. Alectra has identified the portions of the Terms of Reference in which it has an interest. These are sections 1, 2, 3 (a) (i), (iii), (iv), (v) and (vi), which relate to the 50% share sale transaction that will fall into Part I of the Inquiry.
22. Alectra also identified the portions of the Terms of Reference in which it does not have a direct interest, which are found at Questions (i) through (iv) and the issues described in sections 3 (a) (vii) and (viii) in the Terms of Reference.
23. I grant Alectra the right to participate in Part I of the Inquiry, specifically those aspects of the Inquiry dealing with the issues described by sections 1, 2, 3 (a) (i), (iii), (iv), (v) and (vi) of the Terms of Reference, to the extent that they concern Alectra's interests and perspective. Alectra may participate in the following ways:

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- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Alectra’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.
24. Alectra did not apply for funding.

Paul Bonwick (represented by Mr. David O’Connor)

25. Mr. Bonwick of Compenso Communications Inc. has identified an interest in the Inquiry arising from his ownership of a company known as Green Leaf Distribution Inc., which provided consulting services to corporate entities involved in the Town purchase of recreational facilities in 2012. Mr. Bonwick also submits that he has unique involvement and detailed knowledge relating to the 50% share sale of Collingwood Utility Services Corporation to PowerStream in 2012.
26. Mr. Bonwick seeks to further the conduct of the Inquiry and states that his participation would contribute to the openness and fairness of the Inquiry. Mr. Bonwick also identified a genuine reputational interest in the Inquiry.
27. The material provided connects Mr. Bonwick and his companies, Compenso and Greenleaf, to aspects of Part I and Part II of the Inquiry, and the issues described in sections 3(a) (i), (ii), (iii), (iv), (vii) and (viii) of the Terms of Reference.
28. I grant Mr. Bonwick the right to participate in these portions of the Terms of Reference, to the extent that they concern his interest and perspective. He may participate in the following ways:
- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mr. Bonwick’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.

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29. Mr. Bonwick also applied for funding and provided an affidavit concerning his personal financial information in support of his request.
30. Aspects of Mr. Bonwick's available personal financial information support a recommendation for funding. However, he has not provided details of the assets and liabilities of his companies. We recommend that the Town obtain this information prior to deciding whether to provide Mr. Bonwick with funding.

Ian Chadwick

31. Mr. Chadwick was a member of the Town's council from 2010-2014, during the events described in the Terms of Reference. He participated in several of the decisions and has documented the process on-line. He identified interests in common with other members of Council. He is willing to testify if called upon.
32. Mr. Chadwick seeks to be able to provide the Inquiry with a comprehensive timeline of events and activities.
33. Mr. Chadwick will be permitted to participate by providing a written comprehensive timeline of events and activities.
34. Mr. Chadwick did not apply for funding.

Collus PowerStream Corp. (represented by Mr. George Vegh and Ms. Julie Parla)

35. Collus PowerStream Corp. seeks standing to participate on the basis that it is the successor to Collingwood Utility Services Corporation, the entity that was the subject of the share-purchase transaction. Collus PowerStream has relevant documents and information concerning the Transaction, and relevant communications with Town Council members. Collus PowerStream has also identified an interest in being allowed to participate to ensure the accuracy of information concerning the share sale.
36. Collus PowerStream has established a substantial and direct interest in Part I of the Inquiry and I grant it the right to participate in Part I with respect to the issues described by sections 1, 2, 3 (a) (i), (ii), (iii), (iv), (v) and (vi) of the Terms of Reference, to the extent that they concern Collus PowerStream's interests and perspective. It may participate in the following ways:
 - consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Collus PowerStream's interest; and
 - the opportunity to make closing submissions, either orally, in writing or both.

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37. Collus PowerStream made no request for funding.

Mayor Sandra Cooper (represented by Mr. George Marron)

38. Mayor Cooper was the Mayor of Collingwood during the share sale transaction and the recreational facility purchase decision. Mayor Cooper has a substantial and direct interest in the subject matter of the Inquiry and an ability to further the conduct of the Inquiry.
39. I find that Mayor Cooper has a right to participate in the subject matter of the Inquiry in relation to the issues to be considered in Parts I and II of the Inquiry, to the extent that they concern her interests and perspective. In her role as the head of Council, Mayor Cooper's interests and ability to participate relate to sections 1, 2 and 3 of the Terms of Reference, and the questions outlined in the first part of Council's resolution. She may participate in the following ways:
- consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mayor Cooper's interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.
40. Mayor Cooper has also applied for funding and provided an affidavit concerning her personal financial information in support of her request.
41. I recommend that the Town favorably consider the Mayor's request for funding, based on my review of her financial information and because she was the Mayor at the relevant times.

Councillor Tim Fryer (represented by Mr. Raivo Uukkivi and Ms. Adrianna Pilkington)

42. Councillor Fryer is a member of Council for the Town of Collingwood.
43. Mr Fryer has a substantial and direct interest in the subject matters of the Inquiry, arising from his long-time employment at Collingwood Utility Services Corporation and his role as its Chief Financial Officer at the time of the transaction.
44. Councillor Fryer has identified an interest in financial and public accountability, including an interest in the oversight of utility operations. Councillor Fryer has identified this issue as being important to the scope of the Inquiry.
45. I grant Councillor Fryer the right to participate in Part I of the Inquiry with respect to the issues described by sections 1, 2, 3 (a) (i), (ii), (iii), (iv), (v) and (vi) of the Terms of

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Reference, up to September 2012 and to the extent that they concern his interests and perspective. He may participate in the following ways:

- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Councillor Fryer’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.
46. Councillor Fryer has also applied for funding and provided an affidavit concerning his personal financial information.
47. I recommend that the Town favorably consider Mr. Fryer’s request for funding based on my review of his financial information.

Edwin Houghton (represented by Mr. Fred Chenoweth)

48. Mr. Houghton seeks to participate because of his extensive involvement with the share sale transaction, given his prior role as Chief Executive Officer of Collingwood Utility Services Corporation. He also seeks to participate because of his involvement with the Town of Collingwood recreational facility transaction, at the time of which Mr. Houghton was the Town’s acting Chief Administrative Officer. In those capacities, he had direct personal involvement in both transactions.
49. Mr. Houghton cites his substantial and direct involvement, issues of fairness and his ability to assist the Inquiry in its work.
50. The material provided establishes that Mr. Houghton has a substantial and direct interest in the issues that will be addressed during Part I and Part II of the Inquiry, and the issues described in sections 3(a) (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of the Terms of Reference.
51. I grant Mr. Houghton the right to participate for those portions of the Inquiry, to the extent that they concern his interests and perspective. He may participate in the following ways:
- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;

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- the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mr. Houghton’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.
52. Mr. Houghton applied for funding and provided an affidavit with some general information about his financial situation. Mr. Houghton did not provide details concerning his financial situation. His counsel did indicate that Mr. Houghton may have access to an alternative source of funding. As a result, I recommend that the Town’s consideration of funding for Mr. Houghton be made after production of this information to the Town and with the provision that the Town consider whether funding from other sources could be applied first.

Town of Collingwood (represented by Mr. Will McDowell and Mr. Ryan Breedon)

53. The Corporation of the Town of Collingwood will be directly and substantially affected by all aspects of the Inquiry. The Town called for the Inquiry and the Terms of Reference involve Town transactions, entities and elected representatives. The Town is financially responsible for the costs of the Inquiry. Finally, the recommendations that are requested from the Inquiry relate to the good governance of the Town.
54. I grant the Corporation of the Town of Collingwood the right to participate in the Inquiry in the following ways for Parts I, II and III of the Inquiry, to the extent that its interests and perspective are concerned:
- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to the Town’s interests;
 - the opportunity to make closing submissions, either orally, in writing or both; and
 - the opportunity to make submissions on any interlocutory applications of other participants.

GENERAL RECOMMENDATIONS AS TO FUNDING PRINCIPLES FOR THE TOWN OF COLLINGWOOD

55. As with other public inquiries, there is a necessary balance between providing funding for counsel to ensure the process is fair and using public funds prudently.

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56. In making these recommendations for funding, I suggest that the Town of Collingwood act in accordance with principles that have guided other inquiries:
- It is not in the public interest to have open-ended funding.
 - It is not in the public interest to provide individuals with their lawyer of choice at that lawyer's regular hourly rate.
 - The Town should establish compensation for counsel for the purposes of this Inquiry, which should include reasonable time for preparation by counsel as well as for attendance at the hearings. Limits should be set on preparation time.
 - Attendance of counsel at the hearings should be limited to attending when the client's interests are engaged.
 - Counsel should be entitled to compensation for their reasonable disbursements. Where appropriate, disbursement rates should be set.
 - Funding available from third party sources, such as directors' and officers' liability insurance, should be applied first, before public funds are made available.
 - No fees incurred before the date of Council's decision to hold a public Inquiry should be paid.
 - No fees related to interlocutory proceedings, appeals, judicial reviews or any other matters (*e.g.*, civil litigation) should be paid by the Town.
 - Accounts should be subject to review by an independent third party.

CONCLUSION

57. Persons who have been granted rights of participation are required to file a plan setting out how they will identify, locate and produce the documents that have any bearing on the subject matter of the Inquiry. They must do so within 15 days of this decision. By the same date, they may also provide any suggestions for amendment to the Inquiry's Rules of Procedure.
58. I thank counsel for their submissions and assistance in this stage of the Inquiry.


Associate Chief Justice Frank N. Marrocco

Applications for Standing & Funding heard on August 14, 2018

Reasons released on August 20, 2018

Town of Collingwood Judicial Inquiry
97 Hurontario Street, Box 275, Collingwood, ON, L9Y 3Z5
info@collingwoodinquiry.ca



Town of Collingwood Judicial Inquiry

October 30, 2018

REASONS AND DECISION ON TWO APPLICATIONS FOR ADDITIONAL FUNDING RECOMMENDATIONS FOR PAUL BONWICK AND MAYOR SANDRA COOPER

MARROCCO A.C.J.S.C.

INTRODUCTION

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. On August 14, 2018, the Inquiry heard applications for recommendations that the Town fund legal expenses for four participants in the Inquiry.
3. On October 29, 2018, two individuals who were granted participation rights at the Inquiry, Paul Bonwick and Mayor Sandra Cooper, brought applications to request amendments to the funding recommendations.
4. Mr. Bonwick asks that I review my recommendation for funding and direct the Town to reconsider its refusal to pay his legal fees.
5. Mayor Cooper asks for a recommendation or a direction to the Town to apply the criteria set out in the Reasons and Decision Concerning Participation and Funding and increase the amount of funding granted for her.

BACKGROUND TO THE APPLICATIONS

6. Mr. Bonwick, in his application for funding, provided an affidavit concerning his personal financial information in support of his request.
7. I recommended that the Town obtain further information concerning the assets and liabilities of his companies prior to deciding whether to provide Mr. Bonwick with funding.
8. Mayor Cooper, also originally supplied an affidavit concerning her personal financial information in support of her funding request.

9. I recommended that the Town favorably consider Mayor Cooper's request for funding, based on my review of her financial information and because she was the Mayor at the relevant times.
10. The materials filed on the latest applications indicate that Mayor Cooper has been offered funding for legal expenses and Mr. Bonwick's application for funding has been declined.

THE LATEST APPLICATIONS

11. In the latest applications, both applicants asked that the Chief Administrative Officer (CAO) for the Town of Collingwood be called as a witness. At the hearing of these applications, Mayor Cooper's counsel withdrew this request. Counsel for Mr. Bonwick did not.

A. The Town's CAO Cannot be Compelled to Testify

12. In his written response to the applications, counsel for the Town of Collingwood submits that the CAO was exercising delegated authority on behalf of the Council for the Town, and by making a statutory power of decision he is not compellable as a witness concerning the exercise of that authority.
13. I agree. No summons will issue for the CAO.
14. Decisions made by a legislative body composed of numerous persons are "unknowable"; the motives for decision-making by members of such bodies are not relevant to the validity of the decision [*Consortium Developments (Clearwater) Ltd v Sarnia (City)*, [1998] 3 SCR 3 (the "Clearwater rule")].
15. Even if I thought that the *Clearwater* rule did not apply to the funding decisions made by the CAO on behalf of the members of Town Council, I would have found that deliberative secrecy/privilege applies and that, as a result, the CAO is not compellable. [See *Cherubini Metal Works Ltd v Nova Scotia (Attorney General)*, 2007 NSCA 37; *Taylor v Ontario (Workplace Safety & Insurance Board)*, 2017 ONSC 1223; *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8.]
16. In addition, I am satisfied that there is nothing in the material before me that justifies lifting this privilege.

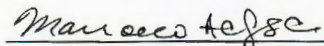
B. Mayor Cooper's Application

17. At the hearing, Mayor Cooper withdrew her application for a further funding recommendation. She did so without prejudice to her right to renew this application and without prejudice to her right to apply to the Town for additional funding in the future.

C. Mr. Bonwick's Application

18. Mr. Bonwick provided no additional affidavit evidence in support of his application because he expected to be able to cross-examine the Town's CAO. Counsel did, however, read from portions of email correspondence with the CAO.

19. During submissions, counsel for the Town advised that during the City of Mississauga Judicial Inquiry, a similar funding issue arose, which was resolved by cross-examination of the person concerned upon a detailed financial affidavit. Counsel for Mr. Bonwick indicated that this was not an acceptable course of action for his client. He did however offer to produce his client for an interview with the CAO.
20. Having regard to the material filed and the submissions made, I decline to make any additional recommendations for funding concerning Mr. Bonwick.


Associate Chief Justice Frank N. Marrocco

Reasons and Decision on Two Applications for Additional Funding Recommendations for Paul Bonwick and Sandra Cooper

Reasons released on October 30, 2018

APPENDIX L **Reasons and Decision on Application for Additional Funding
Recommendation for Paul Bonwick (March 27, 2019)**



Town of Collingwood Judicial Inquiry

March 27, 2019

**REASONS AND DECISION ON AN APPLICATION FOR ADDITIONAL FUNDING
RECOMMENDATION FOR PAUL BONWICK**

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. On August 14, 2018, the Inquiry heard applications for recommendations that the Town fund legal expenses for four participants in the Inquiry.
3. On October 29, 2018, two individuals who were granted participation rights at the Inquiry, Paul Bonwick and Mayor Sandra Cooper, brought applications to request amendments to the funding recommendations.
4. On March 11, 2019, Mr. Bonwick brought a further application to request amendments to the funding recommendations. Mr. Bonwick asks that I review my recommendation for funding and direct the Town to reconsider its refusal to pay his legal fees.

August 2018 Application for Funding

5. Mr. Bonwick, in his original application for funding, provided an affidavit concerning his personal financial information in support of his request. 1.
6. On August 20, 2018 I made the following observation and recommendation concerning Mr. Bonwick's application for funding:

Aspects of Mr. Bonwick's available personal financial information support a recommendation for funding. However, he has not provided details of the assets and liabilities of his companies. We recommend that the town obtain this information prior to deciding whether to provide Mr. Bonwick with funding.

October 2018 Application for Funding

7. Materials Mr. Bonwick supplied in October indicated that Mr. Bonwick's application to the Town for funding was declined.

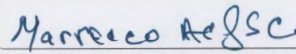
8. During submissions, counsel for the Town advised that the funding impasse might be resolved if Mr. Bonwick were to provide a more detailed financial affidavit and subject himself to cross examination.
9. At the time, counsel for Mr. Bonwick indicated that this was not an acceptable course of action for his client. He did however offer to produce his client for an interview with the CAO.

MR. BONWICK'S APPLICATION

10. On March 11, 2019 Mr. Bonwick made a further application for funding. In his application he asked that I review my recommendation for funding and direct the Town to reconsider its refusal to pay his legal fees.
11. A recommendation that the Town fund Mr. Bonwick is not possible based on the material provided and accordingly I have directed my Counsel not to cross-examine Mr. Bonwick on his affidavit in support of this application.
12. Inquiry Counsel has sent Mr. Bonwick's counsel a letter listing the deficiencies apparent on the face of the material provided and identifying additional information that would be required to understand his current financial situation.

RECOMMENDATION

13. My recommendation to the Town is that it engage directly with Mr. Bonwick to determine whether the identified deficiencies apparent on the face of the material provided have been addressed and whether it should reverse its decision to decline funding his participation in the Inquiry


Associate Chief Justice Frank N. Marrocco

Reasons and Decision on an Application for Additional Funding Recommendation for Paul Bonwick

Reasons released on March 27, 2019

APPENDIX M **Response to Request for Further Funding Recommendations from Sandra Cooper (May 8, 2019)**

97 Hurontario Street | Box 275
Collingwood, ON | L9Y 3Z5



PH: 705-445-1030 EXT 3800 | Fax: 705-445-2448
Email: kmcgrann@collingwoodinquiry.ca

May 8, 2019

DELIVERED VIA EMAIL

Lenczner Slaght Royce Smith Griffin, LLP
Attention: Mr. William McDowell, Partner
Suite 2600-130 Adelaide Street West
Toronto, ON M5H 3P5
wilmcdowell@litigate.com

Breedon Litigation Professional Corporation
Attention: Mr. Ryan Breedon
86 Worsley Street
Barrie, ON L4M 1L8
ryan@breedon.ca

Dear Mr. McDowell and Mr. Breedon:

The Inquiry has received a request for a further funding recommendation from Ms. Cooper.

Provided the Town is satisfied with the accounts rendered to date and provided that Ms. Cooper's financial circumstances remain materially unchanged those described in her affidavit dated August 7, 2018, I recommend that the Town favorably consider continuing to provide funding until the completion of Part I. This recommendation is made without prejudice to any request that Ms. Cooper may make with respect to the hearings for Part II of the Inquiry.

A copy of this letter will be published to the Inquiry's website at www.collingwoodinquiry.ca

If you have any questions, please do not hesitate to contact Kate McGrann, Inquiry Counsel, at kmcgrann@collingwoodinquiry.ca

Yours truly,

A handwritten signature in blue ink that reads "Frank Marrocco".

The Honourable Frank N. Marrocco
Inquiry Judge, Associate Chief Justice of Ontario

c. George Marron, Barrister & Solicitor
Kate McGrann, Inquiry Counsel
John Mather, Associate Inquiry Counsel

Inquiry Judge
Associate Chief Justice Frank Marrocco

Inquiry Counsel
Kate McGrann

Associate Inquiry Counsel
John Mather

Director of Communications
Peter Rehak

Executive Director
Shelley Fuhré

APPENDIX N **Order Concerning Production of List of Privileged Documents
(May 25, 2019)**



Town of Collingwood Judicial Inquiry

May 25, 2019

ORDER CONCERNING PRODUCTION OF LIST OF PRIVILEGED DOCUMENTS

MARROCCO A.C.J.S.C.

It is ordered that:

1. EPCOR Utilities Inc. is ordered to produce the list of documents over which it maintains a claim of privilege in the Town of Collingwood Judicial Inquiry to the Corporation of the Town of Collingwood forthwith.

A handwritten signature in black ink, appearing to read "Marrocco Frank N.", is written over a horizontal line.

Associate Chief Justice Frank N. Marrocco

Town of Collingwood Judicial Inquiry
97 Hurontario Street, Box 275
Collingwood, ON, L9Y 3Z5
info@collingwoodinquiry.ca

APPENDIX O **Reasons and Decision Concerning BLT Application for Standing to Participate (July 26, 2019)**



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

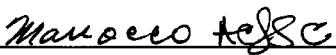
4. The Inquiry adopted an expedited process for those wishing to participate. That process and the principles applied to requests for standing to participate are described in detail in my Reasons and Decision Concerning Participation and Funding dated August 20, 2018.
5. Participation carries with it 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

APPENDIX P **Response to Request for Funding Recommendation from Sandra Cooper for Part II (July 29, 2019)**



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Collingwood, ON | L9Y 3Z5

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Email: kmcgrann@collingwoodinquiry.ca

July 29, 2019

DELIVERED VIA EMAIL

Lenczner Slaght Royce Smith Griffin, LLP
Attention: Mr. William McDowell, Partner
Suite 2600-130 Adelaide Street West
Toronto, ON M5H 3P5

willmcdowell@litigate.com

Breedon Litigation Professional Corporation
Attention: Mr. Ryan Breedon
86 Worsley Street
Barrie, ON L4M 1L8

ryan@breedon.ca

Dear Mr. McDowell and Mr. Breedon:

The Inquiry has received a request for a further funding recommendation from Ms. Cooper for Part II of the Inquiry.

Provided the Town is satisfied with the accounts rendered to date and provided that Ms. Cooper's financial circumstances remain materially unchanged from those described in her affidavit dated August 7, 2018, I recommend that the Town favorably consider continuing to provide funding until the completion of Part II.

A copy of this letter will be published to the Inquiry's website at www.collingwoodinquiry.ca

If you have any questions, please do not hesitate to contact Kate McGrann, Inquiry Counsel, at kmcgrann@collingwoodinquiry.ca

Yours truly,

A handwritten signature in blue ink, appearing to read "Frank Marrocco".

The Honourable Frank N. Marrocco
Inquiry Judge, Associate Chief Justice of Ontario

c. George Marron, Barrister & Solicitor
Kate McGrann, Inquiry Counsel

Inquiry Judge
Associate Chief Justice Frank Marrocco

Inquiry Counsel
Kate McGrann

Associate Inquiry Counsel
John Mather

Director of Communications
Peter Rehak

Executive Director
Shelley Fuhré

APPENDIX Q **Response to Request for Further Funding Recommendation from Sandra Cooper (November 27, 2019)**



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November 27, 2019

DELIVERED VIA EMAIL

George Marron, Q.C.
Barrister
59 Chamberlain Crescent
Collingwood, Ontario L9Y 0C9

Dear Mr. Marron:

I write in response to your request for a further recommendation for continued funding for the legal representation of Ms. Cooper. Your request is addressed by my letter dated July 29, 2019, in which I wrote:

Provided that the Town is satisfied with the accounts rendered to date and provided that Ms. Cooper's financial circumstances remain materially unchanged from those described in her affidavit dated August 7, 2018, I recommend that the Town favorably consider continuing to provide funding until the completion of Part II.

A copy of this letter will be published to the Inquiry's website at www.collingwoodinquiry.ca.

If you have any questions, please do not hesitate to contact Kate McGrann, Inquiry Counsel, at kmcgrann@collingwoodinquiry.ca.

Yours truly,

A handwritten signature in blue ink, appearing to read "Frank Marrocco".

The Honourable Frank N. Marrocco
Inquiry Judge, Associate Chief Justice of Ontario

c. William McDowell, Lenczner Slaght Royce Smith Griffin, LLP
Ryan Breedon, Breedon Litigation Professional Corporation
Kate McGrann, Inquiry Counsel

Inquiry Judge
Associate Chief Justice Frank Marrocco

Inquiry Counsel
Kate McGrann

Associate Inquiry Counsel
John Mather

Director of Communications
Peter Rehak

Executive Director
Shelley Fuhré

APPENDIX R **Key Events and Statistics**

Key Events	Date
At the regular meeting of Council, resolution 042-2018 calling for a Judicial Inquiry into the 2012 Collus Share Sale to Power-Stream was passed. Staff were directed to forward the resolution to the Chief Justice of the Superior Court of Justice.	Monday, February 26, 2018
A letter is sent from the Town of Collingwood to The Honourable Heather J. Smith, Chief Justice of the Superior Court of Justice, seeking the appointment of a Commissioner, pursuant to the <i>Municipal Act, 2001</i> , to conduct a Judicial Inquiry.	Tuesday, March 06, 2018
The Honourable Heather J. Smith, Chief Justice of the Superior Court of Justice, appoints The Honourable Frank N. Marrocco, Associate Chief Justice of the Superior Court of Justice, as Commissioner to the Collingwood Judicial Inquiry.	Friday, April 06, 2018
Community Meeting	Monday, August 13, 2018
Hearing: Participation and Funding	Tuesday, August 14, 2018
Hearing: Status Hearings (Production of Documents / Discussion on Funding)	Monday, October 29, 2018
First Day of Part I Hearings (Collus Share Sale)	Monday, April 15, 2019
Last Day of Part I Hearings	Friday, June 28, 2019
First Day of Part II Hearings (Allocation of Share Sale Proceeds)	Wednesday, September 11, 2019
Last Day of Part II Hearings	Thursday, October 24, 2019
First Day of Part III Hearings (Policy Panels)	Wednesday, November 27, 2019
Last Day of Part III Hearings	Monday, December 02, 2019
Closing to Mark End of Hearings	Monday, December 02, 2019

Statistics	
Total Number of Parties with Standing	9
Part I: Limited Standing	1
Part I: Full Standing	7
Part II: Limited Standing	0
Part II: Full Standing	5
Number of Opening Submissions (Part I)	6
Number of Closing Submissions (Part I)	10
Number of Opening Submissions (Part II)	2
Number of Closing Submissions (Part II)	6
Number of Affidavits (Part I)	12
Number of Affidavits (Part II)	2
Number of Documents	469,031
Number of Pages of Foundation Documents	910
Number of Exhibits	2,988
Number of Pages of Transcripts	18,946
Number of Hearing Days	63
Part I: Number of Witnesses	33
Part I: Number of Expert Witnesses	1
Part II: Number of Witnesses	14
Part II: Number of Expert Witnesses	1
Total Number of Witnesses	42
Total Number of Expert Witnesses	2
Part III: Number of Panels	5
Part III: Number of Presenters	15

APPENDIX S **Part III Panellists and Presenters**

Part 3 Panellists		
<i>Panel Topic</i>	<i>Names and Positions</i>	<i>Date</i>
Roles and Responsibilities in Municipal Government	John Fleming Integrity Commissioner, Town of Caledon	Wednesday, November 27, 2019
	Anna Kinastowski City Solicitor, City of Toronto (retired)	
	Greg Levine Barrister and Solicitor	
Conflict of Interest in the Municipal Context and the <i>Municipal Conflict of Interest Act</i>	Valerie Jepson Integrity Commissioner, City of Toronto	Thursday, November 28, 2019
	Rick O'Connor City Solicitor, City of Ottawa	
	The Honourable J. David Wake Ontario Integrity Commissioner	
Municipal Boards and Corporations: Roles, Responsibilities and Accountability	Mary Ellen Bench City Solicitor, City of Mississauga (retired)	Friday, November 29, 2019
	Wendy Walberg City Solicitor, City of Toronto	
Procurement and Best Practices	Marian MacDonald Assistant Deputy Minister, Supply Chain Ontario (retired)	Friday, November 29, 2019
	Mike Pacholok Chief Purchasing Officer, City of Toronto	

Part 3 Panellists		
<i>Panel Topic</i>	<i>Names and Positions</i>	<i>Date</i>
Lobbying	Suzanne Craig Integrity Commissioner, City of Vaughan	Monday, December 02, 2019
	Linda Gehrke Lobbyist Registrar, City of Toronto (2008–2016)	
	Robert Marleau Integrity Commissioner, City of Ottawa	

Part 3 Presenters	
<i>Names and Positions</i>	<i>Date</i>
The Honourable Denise Bellamy Superior Court of Justice (retired)	Wednesday, November 27, 2019
Fareed Amin Former Chief Administrative Officer, Town of Collingwood	Monday, December 02, 2019

Commissioner and Inquiry Staff

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The Honourable Frank N. Marrocco
Associate Chief Justice of the Superior Court of Justice

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