



## **TOWN OF COLLINGWOOD JUDICIAL INQUIRY**

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### **CLOSING SUBMISSIONS OF THE TOWN OF COLLINGWOOD:PART 2**

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## **PART 1 - OVERVIEW**

1. On July 31, 2012 the Town of Collingwood (the “Town”) sold 50% of the shares in Collus Utility Service Corporation, the parent of Collus (“Collus”), to PowerStream (the “Sale”).

2. As summarized in the *Closing Submissions of the Town of Collingwood: Part 1*, the evidence from Part 1 of the Inquiry revealed serious irregularities with respect to the Sale. Those irregularities resulted in the loss of millions of dollars in potential revenue for the Town.<sup>1</sup>

3. Part 2 of the Inquiry investigated the allocation of the proceeds from the Sale to the construction of recreational facilities at Central Park and Heritage Park (the “Facilities”) and the payment of any fee or benefit of any kind on behalf of any person or entity involved in the creation or construction of the Facilities.

4. In many ways, Part 2 of the Inquiry revealed similar concerns as Part 1. Indeed, the concerns raised during Part 2 of the Inquiry involved many of the same individuals and can be summarized as follows:

- i. Sprung Instant Structures Ltd. (“Sprung”) and BLT Construction (“BLT”) were given an improper advantage with respect to the construction of the Facilities through the involvement and influence of Rick Lloyd, Paul Bonwick and Ed Houghton; and,
- ii. The recommendations of Town Staff regarding the Facilities, contained in Staff Report EMC 2012-01 (the “Staff Report”), were inadequately researched, inaccurate and misleading.

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<sup>1</sup> Closing Submissions of the Town of Collingwood: Part 1, dated August 30, 2019.  
Online:<[http://www.collingwoodinquiry.ca/submissions/pdf/Submissions\\_or\\_the\\_Town\\_of\\_Collingwood.pdf](http://www.collingwoodinquiry.ca/submissions/pdf/Submissions_or_the_Town_of_Collingwood.pdf)>

5. The flawed process leading to Staff's recommendation to acquire the Facilities resulted in the Town:

- i. Proceeding on a sole source basis, in contravention of its own purchasing bylaw, normal practice, and best practices; and,
- ii. Failing to even attempt to negotiate the price for the Facilities.

6. As with the Sale, Paul Bonwick substantially benefitted from the actions of the Town.

7. A high-level summary of the concerns raised in Part 2 of the Inquiry, and the related impact on the costs of the Facilities for the Town, is set out below, followed by detailed submissions on each of the issues.

**I. Sprung and BLT were Given an Improper Advantage**

8. The evidence from Part 2 of the Inquiry raises serious concerns that Sprung and BLT were given an improper advantage in the construction of the Facilities through the actions of Lloyd, Bonwick and Houghton. This advantage was to the Town's detriment. In particular:

- (a) Bonwick was a driving force in ensuring there was a sole source contract with Sprung and BLT from early on. At the same time, Deputy Mayor Rick Lloyd regularly shared significant and sensitive information with Bonwick about the Town's affairs;
- (b) Bonwick created a company, Green Leaf, in an attempt to avoid a perceived conflict of interest when he was conducting business with the Town regarding the Facilities;

- (c) Houghton had some level of ongoing awareness of, and/or involvement in, Green Leaf's business;
- (d) The terms of the written agreement signed by Green Leaf and BLT were significantly different from the work Green Leaf actually did for BLT;
- (e) Practically speaking, as of July 27, 2012, the construction of the Facilities was proceeding on a sole source basis with Sprung and BLT, without the knowledge or approval of Council;
- (f) Leading up to the August 27, 2012 Council meeting, Bonwick and Houghton had frequent dealings with respect to the Facilities. Houghton passed information from the Town onto Bonwick, who in turn provided the information to BLT;
- (g) Bonwick was inappropriately involved in the budgeting process for the Sprung/BLT sole source proposal. In particular, Bonwick directed BLT to increase the price by 6.5% across the board to account for his fee. Although BLT disputes it, the evidence strongly suggests that the Town paid 6.5% more than it otherwise would have;
- (h) Houghton failed to advise Mayor Cooper or members of Council of Bonwick's involvement in the Sprung/BLT sole source deal, even once he became aware that Bonwick's fee was \$750,000. Mayor Cooper did not make reasonable inquiries into her brother's dealings with the Town;
- (i) Bonwick went to great lengths to intentionally conceal his involvement in the construction of the Facilities from the Council and the public;

- (j) Deputy Mayor Rick Lloyd and Houghton repeatedly took steps to conceal the involvement of Green Leaf and Bonwick in the construction of the Facilities. In doing so, they misled other members of Council, members of the public, and the media; and,
- (k) Although Bonwick did not cause the Sprung/BLT deal to be sole sourced, his involvement ensured that it proceeded on that basis.

## **II. Failure to Conduct an Adequate Investigation**

9. The Inquiry heard considerable evidence concerning the drafting and approval of the Staff Report. The evidence uncovered significant concerns regarding the integrity and accuracy of the Staff Report. In particular:

- (a) Staff failed to adequately research and verify the factual claims in the Staff Report;
- (b) Staff permitted improper interference from Council members concerning the contents and presentation of the Staff Report;
- (c) The Staff Report inaccurately claimed to have been circulated to the Department Heads;
- (d) The Staff Report mischaracterized the involvement of WGD Architects;
- (e) The Staff Report falsely characterized the Sprung structures as LEED Silver equivalent; and,
- (f) The financial information in the Staff Report was inaccurate and misleading.

**III. The Cost of the Facilities to the Town**

10. The inevitable effect of the push to a sole source contract with BLT was to increase the cost of the Facilities to the Town. In particular, the fee paid to Bonwick was tied directly to the cost of the Facilities, thereby providing him with an incentive to ensure that the Facilities cost as much as possible. The sole source nature of the project deprived the Town of the opportunity to bargain and negotiate a better price for the Facilities.

**PART 2 - SUMMARY OF ISSUES AND EVIDENCE**

**I. Sprung and BLT were Given an Improper Advantage**

**A. *Background to the Involvement of Paul Bonwick and Green Leaf***

11. Bonwick became involved in the construction of the new rink and pool facilities, referred to as the “water and ice” project, early on.

12. During the Spring of 2012, Deputy Mayor Rick Lloyd and Bonwick were in close contact. Their conversations concerned a number of subjects. Bonwick also continued to act as a close advisor to his sister, Mayor Sandra Cooper.

13. The Deputy Mayor shared significant information about the affairs of the Town with Bonwick. This included highly sensitive information concerning the Town’s human resources issues. Notably, Rick Lloyd advised Bonwick of the process leading to the termination of the Chief Administrative Officer (“CAO”), Kim Wingrove.<sup>2</sup>

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<sup>2</sup> Email exchange between Paul Bonwick and Rick Lloyd dated April 2, 2012, TOC0136138.0001

14. Bonwick was also involved in the selection of Wingrove's replacement. Lloyd raised with Mayor Cooper whether or not the personnel issue would be placed on the in camera agenda "Re: Acting CAO".<sup>3</sup> He then involved Bonwick in this discussion.<sup>4</sup>

15. Following the intervention of Bonwick, the agenda for the Special Council Meeting was amended to include "discussion re: acting CAO".<sup>5</sup> Lloyd also sought Bonwick's assistance when an individual Councillor sought to postpone the discussion for several days given the absence of some Councillors.<sup>6</sup>

16. On April 12, 2012 Council voted to appoint Houghton as acting CAO of Collingwood.<sup>7</sup> Both Bonwick and Lloyd welcomed this decision.

17. Within a day of Houghton's appointment, a local Sprung sales representative, Pat Mills, "cold called" acting CAO Houghton to introduce himself.<sup>8</sup> As a former high school teacher, Mills was well known in Collingwood. He had read media accounts about proposals to build a bricks and mortar multi-use recreational facility ("MURF"). Mills followed up with an introductory email, in which he presented the idea that Sprung might build a double pad arena and cover the swimming complex in Collingwood. He requested a follow-up meeting with

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<sup>3</sup> Email chain including Tara Warder, Rick Lloyd, Sandra Cooper, and Paul Bonwick dated April 10, 2012, TOC0139448.0001; Evidence of Sandra Cooper, October 4, 2019, p. 144

<sup>4</sup> Email chain including Tara Warder, Rick Lloyd, Sandra Cooper, and Paul Bonwick dated April 10, 2012, TOC0139448.0001; Evidence of Paul Bonwick, October 23, 2019, p. 25

<sup>5</sup> Evidence of Sandra Cooper, October 4, 2019, pp. 144-145; Email chain including Tara Warder, Rick Lloyd, and Paul Bonwick dated April 10, 2012, TOC0139664.0001; Revised Special Meeting of Counsel Agenda dated April 12, 2012, TOC0139664.0001.0001

<sup>6</sup> Email chain including Tara Warder, Keith Hull, Town Councilors, Sara Almas, Sandra Cooper, Joe Gardhouse, Paul Bonwick, and Rick Lloyd, April 10-12, 2012, TOC041024.001

<sup>7</sup> Foundation Document Part II: Funding The Recreational Facilities at Central Park and Heritage Park ("FD2"), paras. 12, 95

<sup>8</sup> Email from Shelley Fuhre to Ed Houghton dated April 13, 2012, EHH0000018; Evidence of Ed Houghton, October 16, 2019, p. 164; Evidence of Ed Houghton, October 21, 2019, p. 123

Houghton. Houghton was open to a discussion, and eventually met Mills on April 25, 2012 at the Park Hyatt Hotel in Toronto.<sup>9</sup>

18. Based on his discussion with Mills, Houghton was “very intrigued” by the Sprung product.<sup>10</sup> Mills reasonably assumed that there would be some kind of process for any recreational project and wrote to him:

Thank you for offering to let me know when you will welcome “Expression of Interest”. As soon as I hear from you, we will respond promptly.<sup>11</sup>

19. Town staff also believed that there would be some sort of process surrounding any decision about a new recreational facility. The Director of Parks and Recreation, Marta Proctor, circulated a draft Request for Quotes (“RFQ”) for use in the “expression of interest” process.<sup>12</sup>

20. In the meantime, Deputy Mayor Rick Lloyd attended a conference of the Federation of Canadian Municipalities in Saskatoon from June 1<sup>st</sup> to 4<sup>th</sup>, 2012. He stopped by the Sprung booth. In his discussions, he was introduced to the nature and qualities of Sprung’s membrane building products. He was quite enthusiastic about the prospects of Sprung fabricating a building to meet Collingwood’s recreational needs and returned from the conference eager to promote the

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<sup>9</sup> Email chain including Pat Mills and Pam Hogg dated April 20, 2012, CJI0011211; Evidence of Ed Houghton, October 16, 2019, p. 167

<sup>10</sup> Evidence of Tom Lloyd, October 1, 2019, p. 84

<sup>11</sup> Email from Patrick Mills to Ed Houghton dated April 26, 2012, EHH0000021; Evidence of Marta Proctor, September 23, 2019, p. 48

<sup>12</sup> Email from Marta Proctor to Dave McNalty dated April 23, 2012, TOC0146713; The Corporation of the Town of Collingwood Request for Qualification, TOC0146714

idea.<sup>13</sup> Lloyd was somewhat deflated to learn that Houghton had already been approached by Sprung; nevertheless, he was enthusiastic about the possibilities for a Sprung structure.<sup>14</sup>

21. Tom Lloyd became the sales representative for Sprung in the Collingwood transaction. Prior to 2012, he had been involved in a number of transactions involving governments, including municipalities. He also expected some sort of process. To his knowledge, Sprung had never secured a sole source contract with an Ontario municipality.<sup>15</sup>

22. In his evidence, Tom Lloyd recalled a series of conversations with a group which included Dennis Seymour, the Parks and Recreation Facilities Manager of the Town of Collingwood, the Deputy Mayor and CAO Houghton.<sup>16</sup>

23. Rick Lloyd and Houghton emphasized that there had been frustration in Collingwood due to years of unsuccessful attempts to secure a new arena.<sup>17</sup> Council could not seem to advance the project, whether for lack of funding or other reasons. There was a group, the Friends of Central Park Steering Committee, which wanted a \$35 million project for a “bricks and mortar” facility. In these discussions, Tom Lloyd described how quickly a Sprung arena could be built. He testified that Town representatives were “shocked that [Sprung] could complete a project in the timeframe we mentioned, and they were very excited about that”.<sup>18</sup>

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<sup>13</sup> Evidence of Tom Lloyd, October 1, 2019, p. 86; Evidence of Sandra Cooper, October 4, 2019, p. 166; Evidence of Richard Lloyd, October 7, 2019, p. 119, p. 146, p. 155

<sup>14</sup> Evidence of Ed Houghton, October 16, 2019, pp. 174-175; Evidence of Ed Houghton, October 21, 2019, pp. 134-135; Evidence of Richard Lloyd, October 7, 2019, p. 159

<sup>15</sup> Evidence of Tom Lloyd, October 1, 2019, p. 54

<sup>16</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 62-64

<sup>17</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 69-70; Evidence of Sandra Cooper, October 7, 2019, p. 29

<sup>18</sup> Evidence of Tom Lloyd, October 1, 2019, p. 72

24. During the course of the numerous phone conversations between Tom Lloyd and the Deputy Mayor, the Deputy Mayor mentioned that it would be useful for Bonwick to get involved in the project. Bonwick was passionate about getting infrastructure for Collingwood.<sup>19</sup>

25. Tom Lloyd recalled the Deputy Mayor saying that Bonwick could “first and foremost get the project done whether its Sprung or anyone else”.<sup>20</sup> The Deputy Mayor told him that Bonwick could “put the ball in the end zone” for a “touchdown”.<sup>21</sup>

26. Although the Deputy Mayor had given Bonwick a hearty endorsement, Tom Lloyd did not have an understanding of just what Bonwick would do to “put the ball in the end zone”.<sup>22</sup>

27. In his evidence, Rick Lloyd claimed to have no recollection of any discussions with Mr. Tom Lloyd, but this evidence is not credible. Tom Lloyd described a long series of conversations beginning from an initial meeting in the Mayor’s office on July 11, 2012 extending through to completion of the building.<sup>23</sup> He testified that the Deputy Mayor raised numerous issues with him during the summer. Tom Lloyd often initiated telephone calls “if I was getting back to him on certain information”.<sup>24</sup>

28. From early on, Houghton, Bonwick and Rick Lloyd were working together to steer the construction of the facilities.

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<sup>19</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 124-125

<sup>20</sup> Evidence of Tom Lloyd, October 1, 2019, p. 125

<sup>21</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 125-126

<sup>22</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 125-126

<sup>23</sup> Evidence of Tom Lloyd, October 1, 2019, p. 123

<sup>24</sup> Evidence of Tom Lloyd, October 1, 2019, p. 123

**B. *The Relationship Between Paul Bonwick, Green Leaf and BLT Construction***

29. 2295210 (“229”) was incorporated on August 12, 2011.<sup>25</sup> It appears to have been an “off the shelf” corporation. On May 22, 2012, Bonwick purchased 100 shares of 229 for \$10.00. 229 officially took the name “Green Leaf” on August 31, 2012.<sup>26</sup> Green Leaf operated out of the same premises as Bonwick’s consulting company, Compenso.

30. Green Leaf was created in order to address the “perceived conflict” if Bonwick conducted business with the Town regarding the recreational facilities using Compenso as the vehicle.<sup>27</sup>

31. In June 2012, Abby Stec purchased 20% of the Green Leaf shares from Bonwick for \$69,000.<sup>28</sup> Stec had previously worked with Bonwick and Houghton on the Collus/PowerStream solar vent program and was also associated with Compenso.<sup>29</sup>

32. After Stec purchased the shares, Bonwick convened a meeting at the office of a Collingwood lawyer, Paul Shaw. Shaw drafted a “partnership agreement” (in reality, a unanimous shareholders agreement) for Green Leaf. Bonwick advised that Stec would be the President and CEO of Green Leaf. This was the first Stec learned of her new role as Bonwick had not previously discussed this with her. Stec regarded this as a “placeholder” rather than a

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<sup>25</sup> Corporation Profile Report for Ontario Corp Number 2295210 dated May 30, 2013, CJI0006106

<sup>26</sup> FD2, para. 20; Corporation Profile Report for Ontario Corp Number 2295210 dated May 30, 2013, CJI0006106

<sup>27</sup> Evidence of Abigail Stec, September 11, 2019, p. 104

<sup>28</sup> Evidence of Abigail Stec, September 11, 2019, p. 42; Receipt from Paul Bonwick to Abby Stec and associated records dated June 19, 2012, CJI0006122

<sup>29</sup> FD2, paras. 26-28; Email chain including Ed Houghton, Abby Stec, and Ed Houghton dated October 3, 2011, TOC0060871; Email from Abby Stec to Ed Houghton dated October 26, 2011, TOC0063888

real title.<sup>30</sup> In her view, this was done in order to address the perceived conflict associated with Bonwick's involvement in the Sprung/BLT deal.<sup>31</sup>

33. The only inference to be drawn from this is that Bonwick thought that the public and Council would have concerns if Compenso were once again involved as it had been in the Collus sale. Stec testified that Bonwick "didn't want any perceived conflict to even enter the realm of – of the project and that – that was my understanding".<sup>32</sup>

***C. Roles of Abby Stec, Paul Bonwick and Ed Houghton at Green Leaf***

34. Stec regarded Green Leaf as an environmental company. It was not a lobbying firm. Compenso was a lobbying firm, but Green Leaf was not.<sup>33</sup> Stec understood that her own responsibilities would be to get some energy modelling done on the pool and arena with a view to seeing whether the Town would proceed to seek LEED certification.<sup>34</sup> On the other hand, Bonwick "would be leveraging his relationships in the community".<sup>35</sup>

35. In cross-examination, Stec testified that in the very first discussions with BLT, Bonwick brought up making the project a sole source contract. That was fundamentally what he brought to the table.<sup>36</sup>

36. Stec was vague in her knowledge about Bonwick's activities on behalf of Green Leaf. While she was aware of the prospect that Bonwick was undertaking lobbying, she made no

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<sup>30</sup> Evidence of Abigail Stec, September 11, 2019, pp. 140-141

<sup>31</sup> Evidence of Abigail Stec, September 11, 2019, pp. 144-145

<sup>32</sup> Evidence of Abigail Stec, September 11, 2019, p. 146

<sup>33</sup> Evidence of Abigail Stec September 11, 2019, p. 230

<sup>34</sup> Evidence of Abigail Stec, September 11, 2019, p. 74

<sup>35</sup> Evidence of Abigail Stec, September 11, 2019, p. 74

<sup>36</sup> Evidence of Abigail Stec, September 11, 2019, p. 235

inquiries about his activities.<sup>37</sup> She felt that it was not her place to do so (notwithstanding that Bonwick was undertaking these activities in the name of Green Leaf, a company which she partly owned).

37. Both Stec and Bonwick hoped that Houghton would become involved in Green Leaf, which was already invested in the solar vent initiative. For Stec, it would have been a “home run” given Houghton’s connections in the community and within the energy sector.<sup>38</sup> Stec had invested in Green Leaf in part because of the prospect that Houghton would become part of the company.<sup>39</sup> For that reason, Stec kept Houghton, as well as Bonwick, apprised of Green Leaf’s business and opportunities.

38. On January 4, 2013, Stec sent a memo to Houghton and Bonwick at Bonwick’s request. The memo reviewed various Green Leaf ventures. Stec enclosed a cover note which said:

I put together a very brief overview of some of the current initiatives I am working on. I have outlined those that a priority for January/February and thought they could [form] the basis for conversation the next time we touch base.<sup>40</sup>

39. Houghton wrote back and said, “I am not sure why you sent this to me. ? I’m sure it was in error.”<sup>41</sup> Stec apologized to Houghton (again on the instructions of Bonwick) and wrote that the email was meant for “another of my contacts”.<sup>42</sup>

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<sup>37</sup> Evidence of Abigail Stec, September 11, 2019, p. 75

<sup>38</sup> Evidence of Abigail Stec, September 11, 2019, p. 225

<sup>39</sup> Evidence of Abigail Stec, September 11, 2019, p. 42

<sup>40</sup> Evidence of Abigail Stec, September 11, 2019, p. 225; Email from Abby Stec to Paul Bonwick and Ed Houghton dated January 4, 2013, TOC0261151; Green Leaf “Current Initiatives” document, TOC0261152

<sup>41</sup> Email chain including Ed Houghton, Paul Bonwick, and Abby Stec dated January 4, 2013, TOC0261286

<sup>42</sup> Evidence of Abigail Stec, September 11, 2019, p. 199; Email chain including Ed Houghton, Paul Bonwick, and Abby Stec dated January 4, 2013, TOC0261286

40. Stec was “shocked, but – not shocked” by Houghton’s response, because she expected he might be worried about a conflict of interest.<sup>43</sup> She agreed with the suggestion that, “the email that was sent subsequently was intended to provide some cover for Mr. Houghton if anyone ever searched his emails [...]”.<sup>44</sup>

41. The inference to be drawn is that Houghton had ongoing involvement in Green Leaf’s business but did not want a paper record of that involvement to exist as he was aware that it would create a conflict of interest given his position at the Town.

***D. Meetings and Agreement Between Green Leaf and BLT***

42. In July of 2012, Tom Lloyd of Sprung met with Stec and Bonwick and concluded that involving Bonwick in the proposal for a Sprung project in Collingwood would be a good idea. He had an initial discussion with Stec and Bonwick in the latter part of July.

43. On July 23, 2012, Tom Lloyd emailed Dave Barrow of BLT and stated that:

We are working with Abby Stec and her partner Paul Bonwick on the Collingwood project. They would like to meet at your office on Thursday July 26<sup>th</sup> at 2:00pm. Please confirm that 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?<sup>45</sup>

44. On July 26, 2012, a meeting took place at BLT’s office. The attendees were Stec and Bonwick on behalf of Green Leaf, and Dave Barrow and Mark Watts on behalf of BLT. Stec,

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<sup>43</sup> Evidence of Abigail Stec, September 11, 2019, p. 196

<sup>44</sup> Evidence of Abigail Stec, September 11, 2019, p. 226

<sup>45</sup> Evidence of Tom Lloyd, October 1, 2019, p. 128, p. 161; Email from Tom Lloyd to Dave Barrow, Dave MacNeil and Abby Stec dated July 23, 2012, CJI0007128

Barrow and Bonwick all testified that Tom Lloyd was also in attendance, although he stated that he did not attend.<sup>46</sup>

45. Bonwick reviewed the background on the history of recreational facilities in Collingwood. He described the opportunities which were available for Sprung and BLT.<sup>47</sup>

46. BLT quickly concluded an agreement in principle to work with Green Leaf. Barrow had no information about Green Leaf prior to the meeting with Bonwick and Stec.<sup>48</sup> BLT appeared to rely on Tom Lloyd's suggestion that, "[Bonwick] had been in politics. He had been on a council. And that he could get us inside of doors we just couldn't get inside of."<sup>49</sup>

47. Phone records show that Bonwick and Houghton spoke six times on the day of the meeting with BLT.<sup>50</sup>

48. Eventually, Green Leaf and BLT reduced their agreement to writing. The contract which was signed bore little resemblance to the tasks that Green Leaf would actually undertake for BLT. The contract contemplated that Green Leaf would in substance supply leads for future business to BLT. Of course, this was fictional. By reason of the enthusiasm of Rick Lloyd and Houghton, Sprung and BLT already had a strong lead before they ever met Bonwick and Green Leaf.

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<sup>46</sup> Email from Tom Lloyd to Dave Barrow, Dave MacNeil and Abby Stec dated July 23, 2012, CJI0007128, Evidence of Abigail Stec, September 11, 2019, pp. 60-61; Evidence of David Barrow, October 3, 2019, pp. 86-87; Evidence of Paul Bonwick, October 23, 2019, p. 84; Evidence of Tom Lloyd, October 1, 2019, pp. 164-165

<sup>47</sup> Evidence of Abigail Stec, September 11, 2019, p. 60, p. 66; Evidence of David Barrow, October 3, 2019, p. 84

<sup>48</sup> Evidence of David Barrow, October 3, 2019, p. 84

<sup>49</sup> Evidence of David Barrow, October 3, 2019, p. 85

<sup>50</sup> Spreadsheet of Phone Records dated January 2, 2012 – August 31, 2012, CJI0011327

49. In fact, Green Leaf's role was to exert Bonwick's influence behind closed doors, to ensure nothing derailed the sole source deal.

***E. July 27, 2012 Meeting Between The Town, Sprung and BLT***

50. The Town met with Tom Lloyd of Sprung and representatives of BLT on July 27, 2012. Barrow and Watts from BLT were also in attendance.<sup>51</sup> At that meeting, there was some discussion about whether local contractors would be used to install the Sprung structures or whether BLT would be used. If local trades were to be involved, BLT was content to act as a Project Manager providing overall direction.<sup>52</sup>

51. BLT was Sprung's usual constructor. However, at the meeting BLT representatives emphasized that they had no particular expertise in aquatics or an ice plant but "we could build anything inside of a Sprung structure just using the right professional person to do it".<sup>53</sup> BLT was never asked to provide references for its work. For his part, Houghton understood that BLT was the only company which worked to erect Sprung structures.<sup>54</sup>

52. As a practical matter, from the date of July 27<sup>th</sup> meeting, the project was proceeding on a sole source basis with Sprung and BLT. This is reflected in an email which Dave MacNeil from Sprung sent to Houghton that day. MacNeil provided Houghton with a link to access a suite of drawings:

Please use the link below to access the documents that were included in your packages as well as a few sample drawings to help give you an idea when deciding how you would like to see the layout of the interior of the

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<sup>51</sup> Evidence of Tom Lloyd, October 1, 2019, p. 188, p. 192; Evidence of David Barrow, October 3, 2019, p. 102

<sup>52</sup> Evidence of Tom Lloyd, October 1, 2019, p. 188; Evidence of David Barrow, October 3, 2019, p. 106

<sup>53</sup> Evidence of David Barrow, October 3, 2019, p. 39

<sup>54</sup> Evidence of Ed Houghton, October 16, 2019, p. 183

arena ... I look forward to our meeting next week to discuss the design, please let me know a time that works best for you and your colleagues.<sup>55</sup>

***F. Paul Bonwick and Green Leaf Dealings with the Town/Ed Houghton***

53. Houghton met with Bonwick on August 1, 2012. Bonwick advised him that Green Leaf had “created a relationship” with Sprung and BLT. He understood that Stec was “going to be the local facilitator for BLT”.<sup>56</sup>

54. Stec’s note to the representatives of BLT said:

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.<sup>57</sup>

55. Through the month of August, Bonwick and Houghton had a number of dealings. Some of these took place with Stec as an intermediary, but she was at all times instructed by Bonwick.<sup>58</sup>

56. On August 2, 2012, Stec emailed the representatives of Sprung and BLT “scope of work” documents which set out information about buildings contemplated for the Central Park Arena and the Centennial Pool. Houghton provided these to Stec; they had been prepared by Dave McNalty, Manager of Fleet, Facilities and Purchasing for the Town. Bonwick instructed Stec to

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<sup>55</sup> Email from David MacNeil to Ed Houghton dated July 27, 2012, EH0000028

<sup>56</sup> Evidence of Ed Houghton, October 17, 2019, p. 210

<sup>57</sup> Email from Abby Stec to Dave Barrow, Mark Watts, and Paul Bonwick dated August 1, 2012, CJI0007247

<sup>58</sup> Evidence of Ed Houghton, October 17, 2019, pp. 209-210; Evidence of Abigail Stec, September 11, 2019, pp. 89-91, pp. 94-97, pp. 98-99

incorporate the information from the Town in a Green Leaf memorandum and send it on to BLT.<sup>59</sup>

57. In early August, Houghton provided some Sprung cost estimates from July 16, 2012 to Bonwick.<sup>60</sup> Bonwick discussed the Sprung estimates with Barrow and others at BLT. He forcefully expressed the view that the cost numbers coming from BLT should be close to the projected costs which Sprung had earlier provided.<sup>61</sup>

58. On August 28<sup>th</sup>, Stec wrote to BLT representatives:

I just spoke with ED 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...<sup>62</sup>

59. In her evidence, Stec said that she relied on Houghton for this information; in his evidence, Houghton said that he had relied on Stec to provide her information about BLT's proposed contract, including the amount of the payment due on signing.<sup>63</sup> Thereafter, Houghton spoke to Deputy Mayor Rick Lloyd given his experience in construction.<sup>64</sup>

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<sup>59</sup> Evidence of Abigail Stec, September 11, 2019, pp. 95-96

<sup>60</sup> Email chain including Paul Bonwick, Abby Stec, Dave Barrow, Dave McNalty, David MacNeil, Rick Lloyd, Sandra Cooper, Tom Lloyd, Patrick Mills, and Ed Houghton, July 16, August 21, 2012, CJI0007217; Sprung Budgetary Pricing for New Sprung Performance Arena, Centennial Pool Cover, and Outdoor Arena Cover, CJI0007217\_0001; Evidence of Ed Houghton, October 17, 2019, pp. 217-219

<sup>61</sup> Email chain including Paul Bonwick, Abby Stec, Dave Barrow, Dave McNalty, David MacNeil, Rick Lloyd, Sandra Cooper, Tom Lloyd, Patrick Mills, and Ed Houghton, July 16, August 21, 2012, CJI0007217; Evidence of Ed Houghton, October 23, 2019, p. 151

<sup>62</sup> Email from Abby Stec to Mark Watts, Dave Barrow, and Paul Bonwick dated August 28, 2012, CJI0007201

<sup>63</sup> Evidence of Abigail Stec, September 11, 2019, pp. 158-159; Evidence of Ed Houghton, October 17, 2019, pp. 201-202, pp. 221-222

<sup>64</sup> Evidence of Abigail Stec, September 11, 2019, p. 158; Evidence of Ed Houghton, October 22, 2019, p. 91

60. On August 24<sup>th</sup>, Houghton contacted Stec to ensure that the large garage doors for the pool were included within the budget.<sup>65</sup> This was important given that the pool was expected to be an outdoor pool during the summer and an indoor pool during the winter.

61. On August 24<sup>th</sup>, Stec and a group from Sprung/BLT prepared information concerning the Sprung/BLT proposal to assist Houghton in his preparation for Council the following Monday.<sup>66</sup>

**G. *Paul Bonwick's Involvement in Budgeting and the 6.5% Green Leaf Fee***

62. Remarkably, Stec and Bonwick were involved in the budgeting process for the Sprung/BLT sole source proposal. On August 20, 2012, Stec wrote to Barrow at BLT, "I was wandering [sic] if you had a chance to get the pricing nailed down for the two facilities. Can you please let me know?"<sup>67</sup> The content of the budget emails was dictated by Bonwick.<sup>68</sup>

63. Stec followed up again on August 21<sup>st</sup>.<sup>69</sup> Later that morning Barrow provided construction budgets for the arena and pool to Bonwick and Stec. The budgets were evidently fairly malleable. Barrow wrote:

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. [emphasis added]<sup>70</sup>

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<sup>65</sup> Email chain including Paul Bonwick, Abby Stec and Dave Barrow dated August 24, 2012, CJI0007208; Evidence of Abigail Stec, September 11, 2019, pp. 132-133, pp. 219-221; Evidence of Ed Houghton, October 17, 2019, pp. 220-221; Evidence of Ed Houghton, October 22, 2019, pp. 59-60

<sup>66</sup> Evidence of Abigail Stec, September 11, 2019, p. 238

<sup>67</sup> Email chain including Abby Stec and Dave Barrow dated August 20, 2012, CJI0007223; Evidence of Abby Stec, September 11, 2019, p. 110

<sup>68</sup> Evidence of Abigail Stec, September 11, 2019, p. 102

<sup>69</sup> Email chain including Abby Stec and Dave Barrow dated August 21, 2012, CJI0007101; Evidence of Abby Stec, September 11, 2019, p. 110

<sup>70</sup> Email from Dave Barrow to Paul Bonwick, Abby Stec and Mark Watts dated August 21, 2012, CJI0007116

64. Barrow attached budgets of \$3,467,731.50 for the pool and \$7,157,191.00 for the arena.<sup>71</sup> Bonwick did some work evaluating the proposed BLT budgets which Sprung had submitted to the Town.<sup>72</sup> Bonwick was concerned about the discrepancy between the July 16<sup>th</sup> numbers and those that had been sent on August 21<sup>st</sup>. In an email to Barrow, he wrote:

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!<sup>73</sup>

65. Barrow understood Bonwick's concern that BLT/Sprung might be trying to take advantage of the situation. He explained that the budgets were not correct because approximately 12 items relating to the second floor of the arena had not been included in the original July 16<sup>th</sup> budget.<sup>74</sup>

66. On the afternoon of August 21, 2012 Stec emailed Barrow:

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 Ed suggested, please put 6 ½ percent across the board on all the numbers reflecting the Green Leaf compensation. At that point the numbers can be sent to Ed [...].<sup>75</sup>

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<sup>71</sup> BLT Budget for Collingwood Pool issued August 13, 2012, CJI0007116\_001; BLT Budget for Collingwood Arena issued August 20, 2012, CJI0007116\_002

<sup>72</sup> Evidence of David Barrow, October 3, 2019, p. 167; Evidence of Dave McNalty, September 26, 2019, p. 133

<sup>73</sup> Email from Paul Bonwick to Dave Barrow, Mark Watts and Abby Stec dated August 21, 2012, CJI0007217

<sup>74</sup> Email chain dated July 16 and August 21, 2012, CJI0007248; Budgetary Pricing for Centennial Pool Cover letter from David MacNeil to Rick Lloyd, CJI0007248.001; Budgetary Pricing for New Sprung Performance Arena letter from David MacNeil to Rick Lloyd, CJI0007248.002; Budgetary Pricing for Outdoor Arena Cover letter from David MacNeil to Rick Lloyd, CJI0007248.003; Evidence of David Barrow, October 3, 2019, p. 170

<sup>75</sup> Email from Abby Stec to Dave Barrow dated August 21, 2012, CJI0007218

67. Once again, Mr. Bonwick dictated the content of Stec's email.<sup>76</sup> In particular, Bonwick specified the 6.5% Green Leaf fee.

68. Barrow added the 6.5% across the board as Stec had asked.<sup>77</sup> Significantly, BLT was not involved in any discussions with the Town concerning the format for the budgeted numbers, but communicated only through Stec.

69. Stec was concerned about the 6.5% amount given that it would generate a very large fee for Green Leaf. Bonwick justified the fee on the basis that the deal might have taken two years to come to completion.<sup>78</sup> Neither the amount nor the operative percentage for Green Leaf's fee was specified in the intermediary agreement.

70. The final budget numbers were transmitted to the Town on August 22, 2012. The 6.5% increase remained in the budget but was not identified as Green Leaf's fee.<sup>79</sup>

71. BLT maintains that, notwithstanding the explicit content of Stec's August 21, 2012 email to Barrow, the Green Leaf fee did not increase the cost of the facilities to the Town. Barrow explained that this was the case because BLT reduced its usual profit margin on the Sprung structure by approximately half.<sup>80</sup>

72. Given the documents provided to the Inquiry, it is difficult to accept this statement. BLT's evidence on this point amounts to bare assurances. BLT did not provide sufficient

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<sup>76</sup> Evidence of Abigail Stec, September 11, 2019, p. 125

<sup>77</sup> Evidence of David Barrow, October 3, 2019, pp. 176-177

<sup>78</sup> Evidence of Abigail Stec, September 11, 2019, p. 126

<sup>79</sup> Email from Dave Barrow to Ed Houghton dated August 22, 2012, TOC0202989; BLT Construction Services Inc. Collingwood Arena Budget dated August 21, 2012, TOC0202990; BLT Construction Services Inc. Collingwood Pool Budget dated August 21, 2012, TOC0202991

<sup>80</sup> Evidence of David Barrow, October 3, 2019, pp. 160-161

financial documents to substantiate the position. Further, on the largest line item in the pool and arena projects, the Sprung structures, BLT charged the Town a 30% mark-up.

73. The evidence strongly suggests that the cost to the Town was increased by at least 6.5% due to the hidden Green Leaf fee.

#### ***H. Role of the Mayor***

74. At all material times, Bonwick continued to be a close advisor to his sister, Mayor Cooper. Houghton was aware of this, and from time to time used him as a channel to communicate with the Mayor. For example, at one point when Houghton was contemplating quitting as interim CAO, he advised Bonwick of this because “he was a personal advisor for her worship”.<sup>81</sup>

75. Houghton claimed to have an emotional allergy to issues of conflict of interest.<sup>82</sup> Nevertheless, Houghton did not advise Mayor Cooper or members of Council of Bonwick’s involvement in the Sprung/BLT sole source deal.<sup>83</sup> He offered different reasons for this. In the first place, he said he believed that Deputy Mayor Rick Lloyd and Mayor Cooper were aware of Bonwick’s involvement.<sup>84</sup> He offered no evidence to support why Mayor Cooper might have known of Bonwick’s involvement in the Sprung/BLT transaction. After all, she had known nothing about his involvement in the Collus transaction until months had passed from his initial work commencing.

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<sup>81</sup> Evidence of Ed Houghton, October 22, 2019, p. 243

<sup>82</sup> Evidence of Ed Houghton, October 17, 2019, p. 221; Evidence of Ed Houghton, October 22, 2019, p. 247

<sup>83</sup> Evidence of Ed Houghton, October 17, 2019, p. 211; Evidence of Ed Houghton, October 21, 2019, p. 272

<sup>84</sup> Evidence of Ed Houghton, October 22, 2019, p. 244

76. In the second place, he testified that when he had insisted upon Bonwick disclosing his interest to the Town leadership in the Collus sale transaction, no one seemed to care. There didn't appear to be any concern on the part of the Mayor or Deputy Mayor, and, on that basis, Houghton "did not think it was going to be an issue".<sup>85</sup>

77. Houghton did not tell the Mayor when Bonwick advised that his fee would be approximately \$750,000 despite the fact that this might have led to an increased cost to the Town. While Bonwick assured him that his fee would be paid out of BLT's profit, Houghton did not contact BLT to verify this, or take any other steps as due diligence to ensure that the cost to the public of the facilities had not increased because of the involvement of Green Leaf.<sup>86</sup>

78. Mayor Cooper testified that she had no knowledge of the activities of her brother, Bonwick, and Green Leaf in relation to the Sprung/BLT sole source transaction until she read the Foundation Document in the Fall of 2019.<sup>87</sup>

79. As of 2012, Mayor Cooper thought that Green Leaf was an environmental company. She understood that it was involved in publicity and other efforts for the Collus/PowerStream solar attic vent project. Green Leaf attended the solar vent launch in August 2012.<sup>88</sup> At that time, Mayor Cooper Google searched the company out of curiosity, but learned nothing about its principals.<sup>89</sup>

80. In 2018, the CBC published several hundred pages of the sworn Information to Obtain a Search Warrant ("ITO"). At that time Houghton, by then retired from Collus, contacted her to

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<sup>85</sup> Evidence of Ed Houghton, October 22, 2019, p. 248

<sup>86</sup> Evidence of Ed Houghton, October 17, 2019, p. 226; Evidence of Ed Houghton, October 22, 2019, pp. 111-113

<sup>87</sup> Evidence of Sandra Cooper, October 4, 2019, p. 214

<sup>88</sup> Evidence of Sandra Cooper, October 4, 2019, pp. 206-207

<sup>89</sup> Evidence of Sandra Cooper, October 4, 2019, p. 211

advise that Green Leaf was mentioned in the OPP document, and that Bonwick owned the company.<sup>90</sup>

81. The Mayor made no effort to find out more about Bonwick's involvement with Green Leaf. Although Houghton had taken the unusual step in his retirement of advising her that Green Leaf was mentioned in the ITO and that Bonwick owned Green Leaf, Mayor Cooper did not ask him why he had thought it important to make her aware of this information.<sup>91</sup>

82. Similarly, she did not ask Bonwick any questions about Green Leaf, his involvement in it, or why his activities had become a matter of interest for the police. Cooper offered several explanations for her failure to make any inquiry about Bonwick. In Part 1 of the Inquiry, she testified that, as a rule, she did not make any inquiries about how her siblings made a living. In Part 2 of the Inquiry, she added to that by saying that Bonwick had advised her that he had signed confidentiality agreements concerning his business. "[N]o one would have discussion with him, it would be his own information."<sup>92</sup>

83. Cooper was quite determined to remain in the dark about Bonwick and his Collingwood activities. In November 2012, a citizen of Collingwood inquired whether or not Bonwick or any other of Mayor Cooper's relatives had benefitted from the Collus sale transaction. The request was quite pointed:

[I] have also heard your cousin [P]aul [B]onwick was paid a substantial amount to negotiate this deal ... [I] would especially like to hear ...

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<sup>90</sup> Evidence of Sandra Cooper, October 4, 2019, p. 214

<sup>91</sup> Evidence of Sandra Cooper, October 4, 2019, p. 215

<sup>92</sup> Evidence of Sandra Cooper, October 7, 2019, p. 55

whether your close relative [P]aul [B]onwick ... benefited from this deal!"<sup>93</sup>

84. Councillor Chadwick responded several hours later saying:

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.<sup>94</sup>

85. For Mayor Cooper, this was an adequate response. In answer to a suggestion that questions like these, if left unanswered, can undermine public trust, Mayor Cooper responded that:

[T]here were many emails coming through, some of which were disturbing, and they were rumours.

As the mayor, I wasn't prepared to address every rumour that was there....<sup>95</sup>

86. Mayor Cooper did not see it as part of her responsibilities to address rumours. She was concerned about matters of fact.<sup>96</sup>

87. She acknowledged that it would have been "beneficial" for her to know Bonwick's involvement which would have allowed her to consult with the Clerk and take "the proper steps".<sup>97</sup>

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<sup>93</sup> Email chain including Member of the Public, Sandra Cooper and Ed Houghton dated November 6, 2012, TOC0240669.0001

<sup>94</sup> Email from Ian Chadwick to Member of the Public, Mike Edwards, Sandra Cooper and Ed Houghton dated November 6 2012, TOC0240831.0001

<sup>95</sup> Evidence of Sandra Cooper, October 7, 2019, p. 65

<sup>96</sup> Evidence of Sandra Cooper, October 7, 2019, p. 67

<sup>97</sup> Evidence of Sandra Cooper, October 7, 2019, p. 69

88. She was unsure what those steps would have been, but she would have been so advised by the Clerk. In her view, Houghton ought to have advised her about Bonwick's activities in relation to the Sprung/BLT sole source transaction in 2012, rather than waiting until 2018.<sup>98</sup>

***I. Paul Bonwick's Efforts to Conceal His Activities***

89. Bonwick took considerable pains to ensure that his activities did not come to the attention of the Councillors (or public):

- (a) He used Green Leaf as the vehicle for his activities. To this point, the company had undertaken activities in the environmental sector, for example, the deodorant used in relation to composting, and the activities in relation to the solar vent initiative.
- (b) He also required that BLT sign a non-disclosure agreement. It was Stec's understanding that the intent of the NDA was to prevent disclosure of the fact that Green Leaf was acting for BLT. She believed this was "standard practice" and meant that BLT could not tell the Town that Bonwick, Stec and Green Leaf were involved.<sup>99</sup> It would "protect both -- both companies from their sort of company secrets."<sup>100</sup> Although Stec felt that there was nothing unusual about NDA, as Green Leaf has used them before, the context here was different – in the past, an NDA had been used when Green Leaf disclosed details of the design it wanted for moldings to house its solar vents to a prospective manufacturer.<sup>101</sup> Understandably, in that case, Green Leaf didn't want the prospective

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<sup>98</sup> Evidence of Sandra Cooper, October 7, 2019, pp. 76-77

<sup>99</sup> Evidence of Abigail Stec, September 11, 2019, p. 229

<sup>100</sup> Evidence of Abigail Stec, September 11, 2019, p.283

<sup>101</sup> Evidence of Abigail Stec, September 11, 2019, pp. 76-77

manufacturer to steal the design and sell it for its profits. Here, the NDA would be used to shield Bonwick's lobbying activities.

- (c) He also required that BLT execute an intermediary contract. The provisions of this intermediary contract did not reflect what BLT had contracted Green Leaf and Bonwick to do. A number of the recitals spoke to Green Leaf's supposed function as a corporate matchmaker:

AND WHEREAS 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;

AND WHEREAS Green Leaf has expertise in consulting, strategic planning, prospect identification and matching third parties who have specific needs with companies such as BLT that have the capacity of fulfilling those needs;

[...] AND WHEREAS the third party leads that Green Leaf has are valuable and compensable to Green Leaf for which Green Leaf is entitled to be compensated by BLT in accordance with the provisions of this agreement.<sup>102</sup>

90. Bonwick described his interactions with the Town as discussions "in social environments as well as others ... to have discussions with various members of Council, ... and I don't know that we necessarily reflected specifically on the term 'sole source', but certainly the ability to focus in on one solution and deliver a solution in a timely fashion [...]". Bonwick acknowledged that as a practical matter this meant a sole source solution, whether or not that term was actually used.<sup>103</sup>

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<sup>102</sup> Intermediary Contract between BLT and Green Leaf dated August 27, 2012, CJI0007627

<sup>103</sup> Evidence of Paul Bonwick, October 23, 2019, pp. 14-15

**J. Concealment of Paul Bonwick's Activities by Rick Lloyd and Ed Houghton**

91. Following the closing of the Sprung/BLT sole source transaction, and Council's approval, Deputy Mayor Rick Lloyd and Houghton repeatedly took steps to conceal the involvement of Green Leaf and Bonwick. In so doing, they misled other members of Council, members of the public, and the media.

92. On September 6, 2012, Councillor Dale West emailed Rick Lloyd inquiring, "is there a connection with [P]aul [B]onwick in this that I haven't heard about?".<sup>104</sup> Lloyd responded by saying, "No not that I know", and later that evening, "more bullshit". He elaborated:

Hehehehhehe

This is laughable, I haven't seen Bonwick doing any work in Collingwood as I think he is out of the country most times ...

Nasty small thinking people that didn't get their own way with Central Park so now they will do anything to discredit this Council.<sup>105</sup>

93. In his evidence, Rick Lloyd maintained that, "I didn't think [Bonwick] was involved in Collingwood at all [...]".<sup>106</sup> This evidence is at odds with the evidence of Tom Lloyd that he had been introduced to Bonwick by the Deputy Mayor; it is also inconsistent with the exchange between Rick Lloyd and Bonwick concerning contact which the latter had had with the Town of Wasaga Beach.<sup>107</sup>

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<sup>104</sup> Email chain including Dale West, Rick Lloyd, and Paul Bonwick dated September 6 and 7, 2012, TOC0210652.0001

<sup>105</sup> Email from Rick Lloyd to Dale West dated September 7, 2012, TOC0210640.0001; Email chain including Dale West and Rick Lloyd dated September 6 and 7, 2012, TOC0210682.0001

<sup>106</sup> Evidence of Richard Lloyd, October 8, 2019, p. 66

<sup>107</sup> Email chain including Rick Lloyd, Paul Bonwick, Tom Lloyd, Mark Watts, David MacNeil, Dave Barrow, and Abby Stec dated August 22, 2012, CJI0007255; Evidence of Ed Houghton, October 17, 2019, pp. 262-263

94. Houghton also engaged in subterfuge to conceal the involvement of Bonwick. On September 7, 2012, he sent Tom Lloyd of Sprung an email:

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.<sup>108</sup>

95. Tom Lloyd responded,

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.<sup>109</sup>

96. A resident sent an email to Sprung inquiring about the company's interaction with the Town of Collingwood. Tom Lloyd responded to the questions, noting that "Sprung has not or will not be paying any type of fee to insiders, or anyone of the Collingwood area".<sup>110</sup>

97. In his evidence, Houghton conceded that he was aware that Bonwick had profited handsomely from his arrangement with BLT.<sup>111</sup> His intention in asking the question was simply to learn whether Sprung had also paid Bonwick independent of any payments from BLT.<sup>112</sup> Given that the ostensible purpose of Houghton's email to Tom Lloyd was to put to bed a rumour concerning whether Bonwick had benefitted from the Sprung/BLT transaction, Houghton's answer does not make sense; while he accepted that both he and Lloyd knew that Bonwick had benefitted from the Sprung/BLT transaction, he denied that the email exchange was contrived.<sup>113</sup>

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<sup>108</sup> Email chain including Ed Houghton and Tom Lloyd dated September 7, 2012, TOC0211157.0001

<sup>109</sup> Email chain including Ed Houghton and Tom Lloyd dated September 7, 2012, TOC0211157.0001

<sup>110</sup> Email chain including Tom Lloyd, Dave MacNeil and Steve Berman dated September 17, 2012, CJI0006661

<sup>111</sup> Evidence of Ed Houghton, October 22, 2019, pp. 260-261

<sup>112</sup> Evidence of Ed Houghton, October 22, 2019, p. 262

<sup>113</sup> Evidence of Ed Houghton, October 22, 2019, p. 264

98. When Tom Lloyd was asked why he answered Houghton's question in that way, he replied "Well, how else would I answer? ... Sprung didn't pay Mr. Bonwick anything. The question was, did Sprung pay Mr. Bonwick? The answer is no."<sup>114</sup> Tom Lloyd explained that he did not mention that Sprung had originally considered having Bonwick earn a commission because no transaction happened, so there was "nothing to mention" in his opinion.<sup>115</sup>

99. Houghton also seems to have misled Councillor Joe Gardhouse concerning Bonwick's involvement in the Sprung/BLT project.

100. On May 30, 2013, Councillor Gardhouse forwarded a constituent's letter and inquired about a statement attributed to Paul Bonwick to the effect that Green Leaf was the "Mid-Ontario Distributor for Sprung's Structures".<sup>116</sup>

101. Houghton responded in part,

Green Leaf is not distributing. I called Abby and asked her to explain it to you. I understand the emails are pretty clear that Abby was working on behalf of the [Pretty River Academy ("PRA")] and not Green Leaf.

102. There was the further exchange which was somewhat muddled. It culminated in Councillor Gardhouse's question, "[...] [i]s Green Leaf Bonwick?". Houghton replied, "[...] Bonwick is not involved. Abby is Green Leaf. Talk to her and she can tell you the facts."<sup>117</sup>

103. Houghton explained that his answer was meant to address Bonwick's involvement in Green Leaf at a particular point in time. He was no longer the CAO of Collingwood, and he was

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<sup>114</sup> Evidence of Tom Lloyd, October 1, 2019, p. 245

<sup>115</sup> Evidence of Tom Lloyd, October 1, 2019, pp. 245-246

<sup>116</sup> Email from Joe Gardhouse to Ed Houghton dated May 30, 2013, CPS0010922\_00001; Letter from Don Gallinger regarding Sprung dated May 24, 2013, CPS0010743\_00001

<sup>117</sup> Email from Joe Gardhouse to Ed Houghton, May 30, 2013, CPS0010922\_00001

attempting to “deflect”.<sup>118</sup> He conceded that Bonwick was an owner of Green Leaf, and offered that, “again, maybe unfortunate words sent very quickly from somebody who is extremely busy to somebody that I’m hugely frustrated with”.<sup>119</sup>

104. On June 1, 2018, Houghton received a call on his mobile phone from CBC reporter Dave Seglins.<sup>120</sup> Houghton was on a golf course at the time. Their exchange included the following:

Dave Seglins: But was there a facilitator kind of person who helped facilitate the construction company’s relationship with the Town?

Ed Houghton: No, not that I am aware of no. We dealt directly with Sprung when we let the contract and our, our staff look after that but...

Dave Seglins: What about BLT? Was there anybody that worked to help BLT land the deal?

Ed Houghton: BLT was a contractor that installed the Sprung stuff, yeah. No, we just, again, we...under...it would be the same as a normal contract where we did oversight. And I can’t remember if there was an engineer involved and who the engineer was at the time, but I don’t, I actually don’t recollect. I can’t remember.

Dave Seglins: So what was Paul Bonwick’s role?

Ed Houghton: In the Sprung?

Dave Seglins: Yeah.

Ed Houghton: Nothing with me.

Dave Seglins: Nothing?

Ed Houghton: No. I mean, I knew that...I knew that Mr. Bonwick is involved with a lot of things but certainly from Collingwood’s perspective, Collingwood never paid him to do anything or anything like that.

Dave Seglins: What about Green Leaf distribution?

Ed Houghton: Green Leaf Distribution? What about Green Leaf Distribution?

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<sup>118</sup> Evidence of Ed Houghton, October 22, 2019, pp. 269-270

<sup>119</sup> Evidence of Ed Houghton, October 22, 2019, p. 271

<sup>120</sup> “CBC’s Requests of Ed Houghton in 2018”, CJI0011395

Dave Seglins: What role was it in the Sprung/BLT deal?

Ed Houghton: I don't know if Green Leaf's Distribution had anything to do with the Sprung deal ...from the Town's perspective. I don't know.

Dave Seglins: So why were you in communication with Paul Bonwick and Abby Stec of Green Leaf over facilitating the BLT contract?

Ed Houghton: Facilitating it?

Dave Seglins: Yeah.

Ed Houghton: I don't know if that's the correct term at all. I mean certainly one of the things that we were trying to do is to make sure that these, these things were, what do they call it, gold leaf? Or...<sup>121</sup>

105. Houghton conceded that in 2018 when he was contacted by Seglins, he “was avoiding answering his questions, yes.”<sup>122</sup> He accepted that his answer about Bonwick's role was incorrect. In summary, Houghton said that he regretted having this exchange with the CBC.<sup>123</sup>

***K. The Consequences of the Green Leaf/Bonwick Lobbying Efforts***

106. Stec testified that Bonwick was engaged to ensure that the Sprung/BLT proposal was sole sourced. Certainly his connections to Rick Lloyd and Houghton proved useful to BLT as town staff deliberated through the summer. He was able to get BLT and Sprung critical confidential information about the scope of the project. For example, the “scope of work” document which Houghton provided through Stec to BLT allowed realistic budgets to be prepared given the years of inertia at Council on the issue. Among Councillors was a shared sense that the Town could not afford a “bricks and mortar” solution, particularly at the projected cost of \$35 million. Bonwick had a clear channel to speak to Lloyd and Houghton whenever there was a need.

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<sup>121</sup> “CBC's Requests of Ed Houghton in 2018”, CJI0011395

<sup>122</sup> Evidence of Ed Houghton, October 22, 2019, p. 282

<sup>123</sup> Evidence of Ed Houghton, October 22, 2019, p. 283

107. Bonwick had insight into what Council members thought about the recreational facilities needs in real time, largely through his connections to Rick Lloyd. The mobile phone records entered by Commission Counsel demonstrate that Bonwick was in almost daily contact with Houghton and spoke nearly as often with the Deputy Mayor.<sup>124</sup>

108. But for the intervention of Bonwick and Green Leaf, would the Sprung/BLT project have been sole sourced? There is good reason to believe that it would have been. A number of factors suggest this:

- (a) All of the important decision-makers were eager to find a solution for Collingwood's recreational needs.
- (b) Sprung was successful in making early contact with key decision makers at the Town. Mills, the Sprung representative, gave a fairly detailed overview to Houghton of the Sprung possibilities early on. Thereafter Houghton was a devotee to the cause.
- (c) The Deputy Mayor had attended the Federation of Canadian Municipalities conference in Saskatoon from June 1-4, 2012.<sup>125</sup> He met with Sprung representatives in Saskatoon and returned to Collingwood a disciple for the Sprung technology.
- (d) The Deputy Mayor and Houghton each had an aversion to Ameresco, the most obvious competitor to Sprung. The Deputy Mayor seemed to believe that Ameresco's proposal was intimately tied to financing the company offered. Since

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<sup>124</sup> Spreadsheet of Phone Records dated January 2, 2012 – August 31, 2012, CJI0011327

<sup>125</sup> Evidence of Richard Lloyd, October 7, 2019, p. 146

Collingwood did not need financing nothing further was done to assess Ameresco's ability to meet Collingwood's needs.

- (e) The Deputy Mayor interfered in the staff evaluation of the Sprung/BLT proposal, to ensure that Council approval was more likely.
- (f) Sprung could complete the project by the end of the term of the 2010-2014 Council; this was very attractive to Councillors.
- (g) Lloyd and Houghton each became convinced that the Sprung product was a unique good in the marketplace.

109. In sum, Bonwick did not cause the Sprung/BLT proposal to be sole sourced, but was instead a kind of insurance policy for BLT towards that end.

## **II. Failure to Conduct an Adequate Investigation**

110. Staff drafted and submitted the Staff Report for Council's meeting of August 27, 2012.<sup>126</sup> The Staff Report recommended the purchase of the Sprung structures for both the pool and arena. Council relied upon the advice contained in the Staff Report in deciding to proceed with the Sprung structures.

111. The Inquiry heard considerable evidence concerning the drafting and approval of the Staff Report. The evidence uncovered significant concerns regarding the integrity and accuracy of the Staff Report. In particular:

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<sup>126</sup> Town of Collingwood Staff Report No. EMC 2012-01 dated August 27, 2012, CJI0006146 ("Staff Report")

- (a) Staff failed to adequately research and verify the factual claims in the Staff Report;
- (b) Staff permitted improper interference from Council members concerning the contents and presentation of the Staff Report;
- (c) the Staff Report inaccurately claimed to have been circulated to the Department Heads;
- (d) the Staff Report mischaracterized the involvement of WGD Architects;
- (e) the Staff Report falsely characterized the Sprung structures as LEED Silver equivalent; and,
- (f) the financial information in the Staff Report was inaccurate and misleading.

112. Underlying and contributing to these failings was a perceived fear of reprisal amongst key Town Staff. Sarah Almas and Marta Proctor both testified that they feared there might be repercussions against those who spoke up, in part due to the sudden termination of CAO Wingrove.<sup>127</sup> For example:

- (a) Almas testified that she had concerns about Deputy Mayor Rick Lloyd influencing the content of the Staff Report, but did not object because of a “fear of reprisal”. Almas stated “obviously, I knew who was instrumental in the

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<sup>127</sup> Evidence of Sara Almas, September 12, 2019, p. 96; Evidence of Marta Proctor, September 23, 2019, pp. 90-91

termination of the previous CAO...as a staff member... you had to walk a very fine line on what you're going to object to and why.”<sup>128</sup>

- (b) Proctor testified she was worried she might lose her job and was “walking a fine line”. She understood that “a lot of people were worried about their jobs around [her] and felt like they needed to comply”.<sup>129</sup>

113. In a similar vein, Marjory Leonard testified that, early in her tenure with the Town, she raised a concern on another project that a contract was in contravention of a bylaw and was never invited back to another meeting.<sup>130</sup>

**A. *Staff Failed to Adequately Research and Verify the Factual Claims in the Staff Report***

114. The Inquiry heard evidence regarding a similar investigation, conducted by the Resort Municipality of Whistler in 2015, that resulted in a report which considered a number of potential options for an indoor multi-use sport facility in that community (the “Whistler Study”).<sup>131</sup> Notably, the Whistler Study provided detailed capital and operating costs, along with other advantages and disadvantages, for each of the options under consideration. The goal of such a report is to facilitate an objective evaluation of the options.

115. After being taken through the Whistler Study, Houghton acknowledged that Collingwood did not retain an expert to do this type of comprehensive side by side analysis. As an initial explanation for this failure, he offered that “Council wanted deliverables in this term, and they

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<sup>128</sup> Evidence of Sara Almas, September 12, 2019, pp. 96-98

<sup>129</sup> Evidence of Marta Proctor, September 23, 2019, pp. 170

<sup>130</sup> Evidence of Marjory Leonard, October 15, 2019, pp. 18-19

<sup>131</sup> *Whistler Multi-Use Recreation Facility, Investigative Study*, prepared for the Resort Municipality of Whistler by David Hewko, December 2015, TOC0600353 [“*Whistler Study*”]

were also not big on hiring consultants and things”. He then conceded that he was a party to that decision.<sup>132</sup>

116. Staff did not complete a detailed analysis like the Whistler Report. In particular, Staff did virtually no investigation into the merits of the Sprung product. Staff admitted that the source of this information came from Sprung itself.<sup>133</sup>

117. Staff acknowledged that the research underlying the Staff Report was deficient. Sara Almas testified that, in retrospect, she felt that her name should not be on the report. She testified that, at the time, she had believed that the team had “undertaken a comprehensive review process,” but that she later learned that this was not the case.<sup>134</sup>

118. Similarly, Marjory Leonard testified that, in retrospect, she should have voiced opposition and withdrawn from the process of writing the Staff Report.<sup>135</sup>

119. Unfortunately, the evidence is clear that the flawed process Staff used in drafting the Staff Report resulted in significant errors in the content of the report. The information Council relied upon in making its decision to proceed with the Sprung structures was inaccurate and misleading.

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<sup>132</sup> Evidence of Ed Houghton, October 22, 2019 p. 206

<sup>133</sup> Evidence of Dave McNalty, September 24, 2019, pp. 219-220, pp. 230-232; Evidence of Dave McNalty, September 26, 2019, pp. 24-25; Evidence of Marjory Leonard, October 15, 2019, p. 198-200

<sup>134</sup> Evidence of Sara Almas, September 12, 2019, pp. 244-245

<sup>135</sup> Evidence of Marjory Leonard, October 16, 2019, pp. 147-148

**B. *Staff Permitted Improper Interference from Council Members Concerning the Staff Report***

120. One of the notable concerns regarding the drafting of the Staff Report was the involvement of Rick Lloyd. Throughout the drafting process, Lloyd was provided with copies of drafts and other information not made available to Council.

121. Lloyd, who was acknowledged as a champion of the Sprung concept, made suggestions to the wording of the report, asking for a “positive spin.”<sup>136</sup>

122. In general, political involvement and interference with the drafting of staff reports can call into question the neutrality of the advice and recommendations given to Council. In this case, given the flawed final product (discussed more fully below), it is difficult to avoid the conclusion that Lloyd’s involvement had a direct and detrimental impact on the quality and objectivity of the Staff Report.

**C. *The Staff Report Inaccurately Claimed to Have Been Circulated to the Department Heads***

123. The Staff Report provided that:

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.<sup>137</sup>

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<sup>136</sup> Email from Rick Lloyd to Ed Houghton dated August 19, 2012, TOC0517810

<sup>137</sup> Staff Report, CJ0006146, p. 6

124. This is simply false. Sara Almas confirmed that the draft report was not circulated to department heads on August 23, 2012.<sup>138</sup> In fact, there is no evidence that the draft report was ever circulated to department heads.

125. It appears that the inclusion of this language was an oversight. Almas testified that this was standard language for all reports.<sup>139</sup> Having said this, Councillors reading the Staff Report would presumably assume that this statement was true, and might reasonably take comfort that the report had received input from all Department Heads.

***D. The Staff Report Mischaracterized the Involvement of WGD Architects***

126. The Staff Report noted that the Town had received estimates for the cost of a Pre Engineered Steel building from WGD Architects.<sup>140</sup> The mischaracterization of those estimates is addressed further below.

127. In the “Discussion” section of the Staff Report, staff set out the reasons why there would be no advantage from a tendering process (supporting the recommendation to proceed with a sole source purchase). The Staff Report provided:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane 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.

128. The implication is that both parties were attempting to provide “competitive” quotes, such that there was no need to take this to market.

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<sup>138</sup> Evidence of Sara Almas, September 12, 2019, pp. 242-243

<sup>139</sup> Evidence of Sara Almas, September 12, 2019, p. 243

<sup>140</sup> Staff Report, CJ0006146, p. 4

129. This is completely false. In fact, when Richard Dabrus of WGD saw the Staff Report, he was so concerned about this characterization that he wrote Marta Proctor to complain.<sup>141</sup> Dabrus testified and explained that, in fact, he was professionally obliged to provide impartial advice.<sup>142</sup> Dabrus was clear that WGD did not represent manufacturers or specific products. Had WGD known that Staff were also speaking to Sprung and BLT for the purposes of creating a comparison, it would have “put the brakes on things.”<sup>143</sup>

130. Marjory Leonard, who drafted this language in an email sent on August 24, 2012,<sup>144</sup> testified that “competition” was the wrong word.<sup>145</sup> She testified that she had been directed to write this by Houghton, and that she had felt that objecting would be futile.<sup>146</sup>

131. This mischaracterization of WGD’s involvement goes to the heart of Staff’s recommendation that the Town proceed with a sole source transaction.

***E. The Staff Report Falsely Characterized the Sprung Structures as LEED Silver Equivalent***

132. The Staff Report provided:

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 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

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<sup>141</sup> Email from Richard Dabrus to Marta Proctor dated September 7, 2012, TOC0211206

<sup>142</sup> Evidence of Richard Dabrus, October 4, 2019, pp. 109-111

<sup>143</sup> Evidence of Richard Dabrus, October 4, 2019, p. 112

<sup>144</sup> Email from Marjory Leonard to Ed Houghton, Larry Irwin, Sara Almas and Dave McNalty dated August 24, 2012, TOC0204034

<sup>145</sup> Evidence of Marjory Leonard, October 15, 2019, p. 220

<sup>146</sup> Evidence of Marjory Leonard, October 15, 2019, pp. 221-222

must be modified to meet the requirements leading to additional engineering costs and custom components.<sup>147</sup>

133. The suggestion is that the Sprung structure, as built, would be ‘LEED equivalent’ or ‘LEED shadow’; that is, that it would be the energy equivalent of a building with LEED Silver certification.

134. McNalty testified that he believed that the Sprung buildings, as built, were LEED Silver equivalent.<sup>148</sup> He testified that he had been told this by someone at Sprung.<sup>149</sup>

135. This is simply not true. Barrow testified that, as built, the structures would not even qualify for LEED Certified, the lowest level of LEED certification.<sup>150</sup> As Dabrus explained, LEED certification encompasses many aspects of building design, not merely insulation.<sup>151</sup>

136. This error is important in two respects. First, by suggesting that the structures would be LEED equivalent, the Staff Report makes the structures more attractive to any Councillors concerned with the environmental impact of potential Town projects.

137. Second, and more importantly, because he believed that the Sprung structure was LEED equivalent, McNalty increased the cost of the Pre-Engineered Steel structure to make it also LEED equivalent, in order to compare “apples to apples.” The impact of this error is addressed in the next section.

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<sup>147</sup> Staff Report, CJI0006146, p. 4

<sup>148</sup> Evidence of Dave McNalty, September 30, 2019, p. 192

<sup>149</sup> Evidence of Dave McNalty, September 30, 2019, p. 193

<sup>150</sup> Evidence of David Barrow, October 3, 2019, pp. 274-275

<sup>151</sup> Evidence of Richard Dabrus, October 4, 2019, p. 76

***F. The Financial Information in the Staff Report was Inaccurate and Misleading***

138. Most importantly, the financial information in the Staff Report – the estimated costs of the Sprung structure and a Pre-Engineered Steel structure – was inaccurate and misleading. The cumulative effect of these errors was to overstate the costs of a Pre-Engineered Steel structure and understate the costs of a Sprung structure. Obviously, this supported Staff’s recommendation to proceed with a Sprung structure, and therefore compounded the concerns with the Staff Report described above.

139. The Staff Report estimated the cost of a Pre-Engineered Steel structure at \$11,100,000 – 12,300,000, stating that this was based upon “estimates provided by WGD”.<sup>152</sup> In fact, WGD had estimated the cost of a Pre-Engineered Steel building at \$7,632,124.29.<sup>153</sup>

140. McNalty prepared a document showing how Staff reached the \$12,300,000 figure contained in the Staff Report.<sup>154</sup> Starting with the WGD estimate of \$7,632,124.29, McNalty added \$1,150,000 in “Recommended Upgrades” intended to make the building LEED Silver equivalent. As explained above, this adjustment was made based on the mistaken belief that the Sprung structure would be LEED equivalent. McNalty admitted in cross-examination that, if the Sprung structures are not LEED equivalent, there would be no basis to make this adjustment.<sup>155</sup>

141. Next, McNalty removed a 5% “Construction Contingency” and a 5% “Design Contingency” which had been built into the WGD figures. Later, these would be added back in as 10% contingencies on the cost of a Pre-Engineered Steel structure.<sup>156</sup> No contingencies

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<sup>152</sup> Staff Report, CJI0006146, p. 4

<sup>153</sup> “Central Park New Arena Options” WGD Report dated August 2012, TOC0201266, p. 10

<sup>154</sup> “Central Park Pre-Eng Steel Arena - WGD Architects - Developed Project Costs - EMC 2012-01”, TOC0218073

<sup>155</sup> Evidence of Dave McNalty, September 30, 2019, pp. 191-193

<sup>156</sup> Evidence of Dave McNalty, September 26, 2019, pp. 114-115

whatsoever would be added to the cost of a Sprung structure, despite evidence from several witnesses that contingencies would be standard in any construction project of this size.<sup>157</sup>

142. Next, McNalty added costs of \$995,037.02, reflecting the costs of constructing a second floor mezzanine/lounge. He testified that he estimated this cost based on the cost estimates provided by Sprung.<sup>158</sup> There are two issues with McNalty's methodology: first, he has included in these costs optional costs, such as an \$83,602.50 elevator, not included in the corresponding Sprung structure estimate<sup>159</sup>; and second, Dabrus testified at length that many of the assumptions underlying these costs were flawed.<sup>160</sup>

143. Finally, McNalty added site costs of \$1,164,281, taken from the WGD Report. These costs were not added to the cost of the Sprung structure, despite the fact that the site costs would be the same, regardless of the structure chosen or the type of contact selected.<sup>161</sup>

144. Compounding these discrepancies, the Staff Report goes on to state that a second-floor lounge would add \$1,000,000 to cost of the Pre-Engineered Steel structure, despite the fact that these costs were already included in the calculations described above.<sup>162</sup> McNalty testified that this was an error in the Staff Report.<sup>163</sup>

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<sup>157</sup> Evidence of Dave McNalty, September 26, 2019, pp. 195-194; Evidence of Richard Dabrus, October 4, 2019, pp. 97-98

<sup>158</sup> Evidence of Dave McNalty, September 26, 2019, p. 147

<sup>159</sup> Evidence of Dave McNalty, September 30, 2019, pp. 196-197

<sup>160</sup> Evidence of Richard Dabrus, October 4, 2019, pp. 83-92

<sup>161</sup> Evidence of Richard Dabrus, October 4, 2019, p. 78

<sup>162</sup> Evidence of Dave McNalty, September 26, 2019, pp. 227-229

<sup>163</sup> Evidence of Dave McNalty, September 30, 2019, pp. 203-204

145. The effect of these errors was to significantly overstate the cost of the Pre-Engineered Steel building, and to significantly understate the cost of the Sprung structure, presumably to make the Sprung structure more attractive to Council.

### **III. The Cost of the Facilities to the Town**

146. The inevitable effect of the push to a sole source contract with BLT was to increase the cost of the Facilities.

147. It is first necessary to understand the compensation due to Green Leaf and Bonwick which was fixed by a curious mechanism. Green Leaf and BLT negotiated an intermediary contract.<sup>164</sup> The contract was only executed on August 27, 2012, i.e. the day that Council approved the Sprung/BLT deal. Stec testified that it was executed prior to the Council meeting.<sup>165</sup>

148. By paragraph 5 of that agreement, the parties agreed as follows:

- (a) 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.
- (b) Compensation is due to Green Leaf upon signing the of the [sic] contract between BLT and the third party and BLT receiving their first draw from the third party.
- (c) Compensation is not to be paid to Green Leaf by way of direct or re-directed deposit or advanced by the third party, it is to be paid by BLT from BLT. [...]

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<sup>164</sup> Intermediary Contract between BLT and Green Leaf dated August 27, 2012, CJI0007627

<sup>165</sup> Evidence of Abigail Stec, September 11, 2019, p. 139, p. 146, p. 232

149. Barrow of BLT testified that he did not understand the meaning of paragraph 5(a).<sup>166</sup> Neither BLT nor Green Leaf specified a fee. Barrow had the impression that Green Leaf would charge a fee much as a real estate agent would, namely a percentage of the price the Town ultimately agreed to pay.<sup>167</sup> Green Leaf did not specify that percentage until Bonwick directed Stec on August 21<sup>st</sup> to insert the 6.5% increase for each line item in the proposed BLT budget which was sent to Houghton.<sup>168</sup>

150. Barrow acknowledges that Green Leaf did not introduce BLT to anyone in connection with the Collingwood construction deals that BLT wasn't already speaking to, either directly or through Sprung.<sup>169</sup>

151. BLT recorded its payment to Bonwick as "construction management fees".<sup>170</sup> Barrow could not explain why that was done.<sup>171</sup>

152. It may be inferred from the evidence of Barrow that BLT was content to pay Green Leaf and Bonwick a "floating fee" depending upon the ultimate price agreed to by the Town. He testified that Bonwick and Green Leaf "obviously did something" because BLT won the contract.<sup>172</sup> BLT didn't inquire about what Bonwick did to perform the contract given his ultimate result. Unfortunately, tying Bonwick's compensation to the amount paid to BLT provided him with an incentive to ensure that the Sprung/BLT projects cost the Town as much as possible.

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<sup>166</sup> Evidence of David Barrow, October 3, 2019, pp. 142-143

<sup>167</sup> Evidence of David Barrow, October 3, 2019, pp. 284-285

<sup>168</sup> Evidence of Abigail Stec, September 11, 2019, pp. 124-126

<sup>169</sup> Evidence of David Barrow, October 3, 2019, p. 198

<sup>170</sup> Cost Entries by Job Collingwood Arena, September 24, 2018, CJI0007624, p 2; Cost Entries by Job Collingwood Pool, September 24, 2018, CJI0007625, p 2

<sup>171</sup> Evidence of David Barrow, October 3, 2019, pp. 207-208

<sup>172</sup> Evidence of David Barrow, October 3, 2019, p. 117

153. While Bonwick's activities may not have caused the water and ice project to be sole sourced, they nevertheless cost the municipality. Because it was a sole source contract, BLT acted as a price setter. As the budgets forwarded to Stec on August 21 and 22, 2012 demonstrate, BLT, as the sole bidder, enjoyed considerable latitude in establishing the price it would seek to have the Town pay.

154. Bonwick's \$750,000 fee was another fixed cost which BLT had to pay; indeed, it was the second largest fixed cost after the cost of the Sprung structures themselves. There is reason to be skeptical about BLT's claim that Bonwick's fee simply came out of the profit margin which BLT would otherwise have charged.<sup>173</sup> BLT provided no evidence to substantiate Barrow's claim that it had unilaterally reduced its own margin by 6.5%, such as showing its internal projections or costing on other projects.<sup>174</sup> Indeed, BLT charged a margin of nearly 30% on the Sprung structure for the pool.<sup>175</sup> Moreover, BLT's actual margin on this project cannot be calculated, as the costing information produced to the Inquiry clearly includes non-project costs, such as dividends to Barrow<sup>176</sup> and BLT's legal expenses relating to the OPP investigation.<sup>177</sup>

155. Moreover, as Leonard observed, the Town was deprived of the opportunity to negotiate a better price with BLT. She explained this in the following exchange with Bonwick:

Mr. Bonwick: [...] In cross-examination, you said that would have caused you significant concern at the time had you known what the fee was.

And so my question to you is: If the contractor is telling you it didn't cost you any more money, the agreement is made between two private

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<sup>173</sup> Evidence of David Barrow, October 3, 2019, pp. 285-286

<sup>174</sup> Evidence of David Barrow, October 3, 2019, pp. 290-291

<sup>175</sup> Evidence of David Barrow, October 3, 2019, pp. 286-287

<sup>176</sup> Evidence of David Barrow, October 3, 2019, pp. 295-296

<sup>177</sup> Evidence of Paul Bonwick, October 24, 2019, p. 79

entities, I don't understand why you would take exception to a side contract that really does not affect the coffers of the Town of Collingwood.

Ms. Leonard: 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 [...] We'd be squeezing his margins even further.<sup>178</sup>

156. Leonard further offered, "I have no idea why there was no further negotiation."<sup>179</sup>

157. Houghton maintained that it was his understanding at the time that it was not possible to negotiate further in a procurement.<sup>180</sup> He said it was his belief that, in a procurement, the price was the price.<sup>181</sup> This is simply not true, nor is it credible that a public servant with Houghton's experience could have believed it was impossible to negotiate the price. Indeed, the procurement by-law which creates the opportunity to sole source expressly refers to negotiation:

6.7 Notwithstanding any other requirement of this By-Law, circumstances may arise where competitive tendering is undesirable and a proposed procurement excluded from the requirement to obtain competitive bids, or where **direct negotiations are appropriate**, provided that such measures are not taken for the purpose of avoiding competition, discriminating against any Supplier, or circumventing any requirement of this By-Law. Such Circumstances include the following:

[...]

b) Conditions may dictate the conduct of **negotiations for the acquisition of Goods and/or Services**, provided that the Clerk has received either verbal or written authorization prior to the start of **negotiations** with any Supplier. **Negotiations** may be authorized when any of the following conditions apply: [...]

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<sup>178</sup> Evidence of Marjory Leonard, October 16, 2019, pp. 71-72

<sup>179</sup> Evidence of Marjory Leonard, October 16, 2019, p. 75.

<sup>180</sup> Evidence of Ed Houghton, October 22, 2019, p. 82, p. 232

<sup>181</sup> Evidence of Ed Houghton, October 22, 2019, p. 232

- b. Where there is only one known source for the Goods or Services (sole source);

[...]

- e. When a single source is being recommended because it is more cost effective or beneficial for the Town;

[...]

- g. A Time-Sensitive situation as defined in section 1 of this By-Law<sup>182</sup>

158. The reason that the purchasing bylaw defaults to public tender is to ensure that the Town obtains the most favourable price. The actions of Houghton and Bonwick prevented this.

#### IV. Ed Houghton's Expert - John Scott

159. During Part 2 of the Inquiry, Houghton sought and was granted leave to call an expert. The evidence of the expert was intended to address a number of issues, notably having to do with design-build contracts. In particular, the expert's evidence was intended to address testimony from a Town employee, Ron Martin, who had expressed some concerns about the contract the Town entered into with BLT; among other things, he thought that the payment schedule favoured the interests of BLT (for example, by requiring a 25% payment upon execution of the contract).<sup>183</sup>

160. The expert, John Scott, attended on October 17, 2019 and was qualified to give opinion evidence. In broad terms, he testified that Martin was wrong in his understanding of the practices surrounding design-build contracts. Martin had expressed concern about the payment schedule; Scott held the view that there was always risk to a contractor, even when dealing with

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<sup>182</sup> Town of Collingwood By-law No. 2006-42, A By-Law to Provide for the Purchase of Goods and Services, April 10, 2006, TOC0517154

<sup>183</sup> Evidence of Ron Martin, September 13, 2019, pp. 36-37, pp. 160-161

government or municipal clients.<sup>184</sup> Scott offered a dramatic example of the federal government renegeing on the Pearson Airport deal.<sup>185</sup> As well, he observed that the expensive equipment had to be purchased for the recreational facilities in the case of the Town of Collingwood.<sup>186</sup>

161. Martin also found the absence of a construction bond in the BLT contract unusual.<sup>187</sup> Scott poured cold water on this concern, opining that many contractors would not want to bid on jobs requiring a bond because of the considerable expense involved.<sup>188</sup> As well, the insurers who underwrote construction bonds did not always respond adequately when things went wrong. Once again, he relied upon the Pearson deal and the inaction of the insurers following its cancellation.<sup>189</sup>

162. Scott was evidently quite experienced in the construction industry and gave confident, if at times aggressive, evidence. But it raised some odd points. He had never testified as an expert before.<sup>190</sup> Although he lived in another part of the province he had come to testify because Brian Dempsey, a Collingwood builder, had suggested that his evidence was needed.<sup>191</sup> He denied that anyone had assisted him in drafting his report or that he provided anyone with a draft of the report.<sup>192</sup> He said that he had not had any conversations with Houghton.<sup>193</sup> He said that he had

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<sup>184</sup> Evidence of John Scott, October 17, 2019, pp. 118-119

<sup>185</sup> Evidence of John Scott, October 17, 2019, pp. 80-81, p. 117

<sup>186</sup> Evidence of John Scott, October 17, 2019, pp. 92-93

<sup>187</sup> Evidence of Ron Martin, September 13, 2019, pp. 33-34, pp. 197-198

<sup>188</sup> Evidence of John Scott, October 17, 2019, pp. 92-93; John Scott, *The Attributes of Design Build & Construction Project Leadership* Report Prepared for the Collingwood Inquiry, EHH0000187 at p. 3

<sup>189</sup> Evidence of John Scott, October 17, 2019, pp. 80-81

<sup>190</sup> Evidence of John Scott, October 17, 2019, pp. 66-67

<sup>191</sup> Evidence of John Scott, October 17, 2019, p. 163, p. 193

<sup>192</sup> Evidence of John Scott, October 17, 2019, p. 159

<sup>193</sup> Evidence of John Scott, October 17, 2019, pp. 159-160

simply reviewed the BLT / Collingwood CCDC contract together with the transcript of Martin's testimony.<sup>194</sup>

163. However, the metadata associated with Scott's report indicated that the last author of the expert opinion was someone named "Ed".

164. After Scott's testimony, Houghton resumed his evidence and, through answers to questions from his own counsel, shed some further light on how the Scott report came to be written. He and his counsel, Fred Chenoweth, had worked collaboratively on the Inquiry proceedings. He said that he had made minor changes to the content of the expert report based on discussions among Chenoweth, Scott and himself. He explained his involvement by noting that Chenoweth and Scott had no particular expertise in editing documents: "So what I was acting as is just sort of a back office because we didn't have anybody else to do it, and I didn't change a word."<sup>195</sup>

165. The Commissioner ruled that there had been a waiver of privilege over communications among Houghton, counsel, the expert and Dempsey. He directed that all of the correspondence and documents among this group be produced.<sup>196</sup>

166. These materials, when they were produced, raised several troubling issues.

167. Contrary to Scott's evidence, he had in fact provided a draft report to Houghton, and there had been discussions between Houghton and Scott.<sup>197</sup> Further, Houghton had removed a substantive portion of Scott's report, where Scott discussed sole sourcing.<sup>198</sup>

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<sup>194</sup> Evidence of John Scott, October 17, 2019, pp. 121-122

<sup>195</sup> Evidence of Ed Houghton, October 18, 2019, p. 58

<sup>196</sup> Evidence of Ed Houghton, October 18, 2019, pp. 65-67

168. In fact, Houghton had provided a memorandum to Scott setting out questions and, effectively, answers for Scott to address in his opinion.<sup>199</sup> He then removed the sole sourcing portion of Scott's report, notwithstanding that the expert had been asked explicitly to deal with this issue. Houghton agreed that the content deleted from the report "highlight[ed] steps the Town did not take before it signed the contract with BLT".<sup>200</sup>

169. Houghton explained his actions by saying that he did not understand that the expert was there to assist the Court; he had understood Scott to be "our expert".<sup>201</sup>

170. In *Moore v. Getahun*, the Court of Appeal for Ontario confirmed the propriety of a lawyer reviewing draft expert reports and consulting with experts during the report drafting process.<sup>202</sup> However, the expert's duty to provide fair, objective and non-partisan opinion to the Court must remain paramount to protect the reliability of expert evidence. The Court in *Getahun* explained various safeguards that operate to protect the independence of experts while still allowing for the benefits of consultation with counsel, emphasizing that the ethical and professional standards of the legal profession forbid counsel from engaging in practices likely to interfere with the independence and objectivity of expert witnesses in any way.<sup>203</sup>

171. Houghton is a participant in the Inquiry. He is not a lawyer bound by the ethical and professional standards of the legal profession, with an understanding of the requirements of

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<sup>197</sup> Evidence of Ed Houghton, October 18, 2019, pp. 52-53

<sup>198</sup> Evidence of Ed Houghton, October 22, 2019, pp. 172-176

<sup>199</sup> "Discussion with Design-Build Expert" Memorandum, EHH0000192.0003

<sup>200</sup> Evidence of Ed Houghton, October 22, 2019, pp. 175-176

<sup>201</sup> Evidence of Ed Houghton, October 22, 2019, p. 180

<sup>202</sup> *Moore v. Getahun*, 2015 ONCA 55, online:

<https://www.canlii.org/en/on/onca/doc/2015/2015onca55/2015onca55.html?autocompleteStr=2015%20ONCA%2055&autocompletePos=1>

<sup>203</sup> *Moore v. Getahun*, 2015 ONCA 55 at para 57

expert independence. He demonstrated a fundamental lack of understanding that, as an expert, Scott's primary duty was to the Inquiry. It was inappropriate for Houghton to have prepared the memorandum on which Scott's report was based. The memorandum was suggestive of answers to include in the report and, as such, called the independence and impartiality of the report into question.

172. It was also improper for Houghton to have personally revised Scott's draft report. The edits included the removal of a substantive point about sole sourcing, the topic at the very heart of Part 2 of the Inquiry. This further detracted from the reliability of Scott's opinion.

173. As such, regrettably, very little weight can be given to the evidence of Scott. He was not forthright about the input of Chenoweth and Houghton in the preparation of his report, in particular about the important matter which Houghton deleted from its content.

### **PART 3 - CONCLUSION**

174. In the spring of 2012, the Town had significant cash on hand from the 50% share sale of Collus to Powerstream.

175. The Town also had a longstanding shortage of available "ice time" for minor hockey and skating and a municipal pool which was inadequate to allow the local swim club to host regional competitions. A local group, the Friends of Central Park Committee, had done extensive work and proposed the construction of a permanent "bricks and mortar" recreation complex.

176. It is understandable that, in this scenario, members of Council would be keen to jump on Sprung's offer to provide a quick, and ostensibly affordable, solution to the "water and ice" shortage in Collingwood.

177. Unfortunately, leading up to Council's approval of the construction of two Sprung structures on August 27, 2012, the Town ignored its own processes, conducted virtually no due diligence, and made a sole source deal with Sprung and BLT with no justification.

178. In summary, the evidence in Part 2 of the Inquiry revealed that:

- i. Sprung and BLT were given an improper advantage with respect to the construction of the Facilities through the involvement and influence of Rick Lloyd, Paul Bonwick and Ed Houghton; and,
- ii. The recommendations of Town Staff in the Staff Report regarding the Facilities were inadequately researched, inaccurate and misleading.

179. As with the Collus/PowerStream sale, cronyism played a major role. With Ed Houghton's knowledge and approval, Paul Bonwick inserted himself into the relationship between the Town and Sprung/BLT and ensured that nothing could push the sole source deal off track. Paul Bonwick's involvement likely substantially inflated the costs of the Facilities for the Town. Ed Houghton and Paul Bonwick then attempted to conceal Bonwick's involvement.

180. Town witnesses also testified about feeling inhibited from expressing concerns about the Sprung/BLT project. Evidently, the recent termination of the CAO, Kim Wingrove, had contributed to a feeling of perceived vulnerability amongst other senior employees. Town staff were understandably hesitant to raise questions about the sole source deal in these circumstances.

181. Given the lack of diligence, only time will tell whether the Sprung structures were a sensible solution. Regardless, the flawed process and concealed involvement of Paul Bonwick,

with the blessing of Ed Houghton, compromised the Town's interests and further contributed to the erosion of public trust.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of January, 2020.

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**Schedule “A”**

***List of Authorities***

1. *Moore v. Getahun*, 2015 ONCA 55.