



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

June 27th, 2019

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APPEARANCES

Kate McGrann ) Inquiry Counsel  
John Mather ) Associate Inquiry  
 ) Counsel  
Michael Watson (np) ) Alectra Utilities  
Belinda Bain ) Corporation  
Heather Fisher (np) )  
(No Counsel) ) For Paul Bonwick  
George Marron ) For Sandra Cooper  
(No Counsel) ) For Timothy Fryer  
Frederick Chenoweth ) For Edwin Houghton  
William McDowell ) For Town of Collingwood  
Ryan Breedon )  
Patrick Gajos (np) ) For Collus PowerStream  
 ) Corporation

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1 --- Upon commencing at 9:04 a.m.

2

3 JOHN BROWN, Previously Sworn

4

5 THE HONOURABLE FRANK MARROCCO: Go

6 ahead, Mr. Bonwick.

7

8 (BRIEF PAUSE)

9

10 MR. PAUL BONWICK: Thank you, Your

11 Honour. Excuse me.

12

13 CONTINUED CROSS-EXAMINATION BY MR. PAUL BONWICK:

14 MR. PAUL BONWICK: Mr. Brown, I -- I

15 took the liberty last night to seek clarification for

16 my own purposes on some of the testimony and evidence

17 you provided yesterday. And I was very confused by

18 your justification based on evidence, chief-in-counsel

19 related to the questions of the email between yourself

20 and Mr. Mascarin, and your rationale as to why you

21 directed Mr. Mascarin or the City clerk to split the

22 invoices.

23 If I could bring up -- and it wasn't in

24 the court book yet, it's -- or in the transcripts yet.

25 It was on the live page, so the reference might be a

1 little bit different. When I go to the Judicial  
2 Inquiry transcript, it was page 117, paragraph 16.  
3 Does that help? Just to help Mr. Brown with the  
4 testimony that he provided and evidence that he  
5 provided yesterday.

6

7

(BRIEF PAUSE)

8

9 MR. PAUL BONWICK: So is this in the -  
10 - off the website, or is this in the transcript?

11 THE COURT OPERATOR: Website.

12 MR. PAUL BONWICK: Off the website?  
13 Page 117, line 6 -- line 16, please.

14

15

(BRIEF PAUSE)

16

17 MR. PAUL BONWICK: Okay, that's not  
18 coming up the same as what I had when I was doing my  
19 search.

20 THE HONOURABLE FRANK MARROCCO: What -  
21 - which -- what is the reference you're looking for?

22 MR. PAUL BONWICK: It was specific to  
23 Mr. Brown describing the mayor reviewing invoices  
24 specific to legal, and --

25

THE HONOURABLE FRANK MARROCCO: Can

1 you find that?

2

3

(BRIEF PAUSE)

4

5 MR. PAUL BONWICK: I just had it up on  
6 my computer two (2) seconds ago, but it was...

7

8 THE HONOURABLE FRANK MARROCCO: Well,  
9 is there -- is there another line of questioning, then  
10 we'll come back to that?

11

12 --

13

14 THE HONOURABLE FRANK MARROCCO: All  
15 right.

16

17 MR. PAUL BONWICK: -- leads into...

18

19 THE HONOURABLE FRANK MARROCCO: Why  
20 don't we stand down for a second, see if we can find -  
21 - they'll talk to you and see if we can find exactly  
22 what you're looking -- Mr. Brown, would -- we're going  
23 to adjourn for two (2) or three (3) minutes, here --

24

25 MR. JOHN BROWN: Yeah.

26

27 THE HONOURABLE FRANK MARROCCO: --  
28 until we get this straightened out.

29

30 --- Upon recessing at 9:08 a.m.

31

32 --- Upon resuming at 9:09 a.m.

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: Line 16, please.

3 I've had the privilege of working with and developing  
4 friendships with CAOs over the years, and I took the  
5 liberty of asking for an opinion this morning from one  
6 (1) that I had worked with, describing the situation.

7 And so I'm sitting here, looking at  
8 this. If we could start on line 16, and rather than  
9 read back into the transcript, basically, if I  
10 understood you properly, you were seeking legal advice  
11 from the Town solicitor from your personal email,  
12 asking him to deliver the information to your home  
13 residence and, more specifically, you instructed him  
14 and the City Clerk to split invoicing, or to break  
15 down invoicing according to your testimony, because  
16 the Mayor was vetting -- during her cheque signing,  
17 was vetting invoices specific to lawyers, and it  
18 appeared in your testimony and in the email you did  
19 not want to garner attention to those emails, or to  
20 those invoices.

21 Is that a fair statement?

22 MR. JOHN BROWN: Well, if I could  
23 express it in my words as opposed to --

24 MR. PAUL BONWICK: I'd like you to  
25 stick to what you actually said.



1 MR. JOHN BROWN: Okay. Well --

2 MR. PAUL BONWICK: If you would like  
3 to just read your transcript again.

4 MR. WILLIAM MCDOWELL: Just a second.  
5 There's a lot bound up in that question, number 1.  
6 There are about four (4) questions in there. And  
7 number 2, the witness gets to answer in his own words.  
8 He doesn't just have to read what he said yesterday.

9 THE HONOURABLE FRANK MARROCCO: I -- I  
10 agree, the witness can answer the question as he sees  
11 fit. The answer can't be controlled, but the answer  
12 has to be responsive to the question, and he's been  
13 asked to confirm what he said yesterday, or clar --  
14 confirm Mr. Bonwick's understanding of it.

15 Mr. Brown, your answer to that question  
16 can be in your own words, but you have to answer that  
17 question, not -- not some other -- make some other  
18 statement. You under -- now, just hang on, Mr.  
19 Bonwick.

20 Do you understand? The -- the -- the  
21 answer can be in your own words.

22 MR. JOHN BROWN: Right.

23 THE HONOURABLE FRANK MARROCCO: But  
24 it's an answer to the question that was asked.

25 MR. JOHN BROWN: Okay. So if I could

1 have Mr. Bonwick repeat it and then I will answer it  
2 as best I can.

3

4 CONTINUED BY MR. PAUL BONWICK:

5 MR. PAUL BONWICK: Okay. So it might  
6 help if you re -- read -- or if you read your  
7 transcript from yesterday starting on line 16.

8 MR. JOHN BROWN: Yes. And if we could  
9 scroll up, please, beyond 23. Further up, please.

10

11 (BRIEF PAUSE)

12

13 MR. JOHN BROWN: Yeah, okay.

14 MR. PAUL BONWICK: And so my question  
15 to you, sir, is, you knowingly instructed the Town's  
16 lawyer and the City Clerk, through an email and  
17 through evidence you've provided in testimony, to  
18 break up an invoice for the purpose of not raising --  
19 well, potentially not raising any questions with the  
20 Mayor if in fact she was signing those cheques.

21 Is that a correct assertion?

22 MR. JOHN BROWN: So when I started off  
23 when this -- when this topic came up, I said I wasn't  
24 crystal clear on it, and the answer I gave was the  
25 best of my recollection, so there may be things that

1 can be updated. I didn't say it was crystal clear.

2                   So what I -- so the situation was that  
3 I didn't write an email to Mr. Mascarin from my home  
4 email address. He sent me an email to my address, as  
5 I understand the correspondence, and in responding to  
6 a matter which I believe, and you can ask Mr. Mascarin  
7 to a hundred percent confirm it, I have no problem  
8 with Mr. Mascarin being consulted, my understanding  
9 was that related to a matter which had nothing to do  
10 with Collingwood.

11                   MR. PAUL BONWICK: Could you bring up  
12 that email that we're referring to, please?

13                   MR. JOHN BROWN: And if I could go on.  
14 So -- so in responding to Mr. Mascarin, I told him if  
15 he would send advice that I've asked for to this email  
16 address, being mine, and the reason I had for that was  
17 because I had noticed the Mayor was showing an  
18 interest in the back-up of certain legal cheques.

19                   She signs the cheques, and I thought it  
20 was unusual that she was asking or had asked me  
21 questions about legal bills, and at that point in time  
22 I did not want to say that there were a number of  
23 issues that I thought needed to be looked at and I  
24 wasn't sure whether I had the authority to actually  
25 start asking these questions to a number of people.

1                   So that was the purpose of the legal  
2 advice, can you explain to me the -- explain to me the  
3 right of the CAO to ask for and obtain information. I  
4 want to be very clear on that before I continue asking  
5 questions, because the Mayor seemed to be showing an  
6 interest in -- I don't know why, but she started  
7 showing an interest in that. So that's generally what  
8 -- what I recall.

9                   MR. PAUL BONWICK:     Thank you, Mr.  
10 Brown. Just in terms of your first -- the first  
11 paragraph when you respond to Mr. Mascarin, it states:

12                             "We received your most recent bill  
13                             and Sara and I discussed it. Sara  
14                             will be calling you to clarify some  
15                             matters and to see if you can split  
16                             the bill up so that we do not have a  
17                             single bill for \$11,000, which will  
18                             be -- which will make it notable and  
19                             require explanation."

20                   And, sir, I'm suggesting to you, and  
21 please comment, this is the exact opposite of  
22 transparency. You are not engaging in a manner that  
23 would be open and transparent by using your email,  
24 because if you follow down further you ask that  
25 further emails be sent to your personal email address.

1 MR. JOHN BROWN: Further emails?

2 Sorry --

3 MR. PAUL BONWICK: If you go up a  
4 little bit, please. Sorry, I guess down.

5

6 (BRIEF PAUSE)

7

8 THE HONOURABLE FRANK MARROCCO: Are  
9 they going in the right direction?

10 MR. JOHN BROWN: I don't know.

11 MR. JOHN MATHER: I think we want to  
12 go to the second last email in the chain, so up  
13 chronical -- chronologically. There.

14

15 CONTINUED BY MR. PAUL BONWICK:

16 MR. PAUL BONWICK: Right. So I'll  
17 read the third paragraph to refresh your memory.

18 "Also, I do not recall getting advice  
19 -- advice about the role of the CAO  
20 and the entitlement to information."

21 MR. JOHN BROWN: Right.

22 MR. PAUL BONWICK: That is obviously  
23 specific to your capacity as the Chief Administrative  
24 Officer.

25 MR. JOHN BROWN: Yes.

1 MR. PAUL BONWICK: You go on to say:  
2 -- "entitlement to information. Can  
3 you please resend this to this email  
4 address?"

5 And it's your personal email address.

6 MR. JOHN BROWN: Correct. And I  
7 explained that yesterday.

8 MR. PAUL BONWICK: But your  
9 explanation is completely contrary to what you've got  
10 in your email. You're speaking about advice specific  
11 to your capacity as CAO --

12 MR. JOHN BROWN: Right.

13 MR. PAUL BONWICK: -- and you're  
14 asking to have it sent to your personal email address.

15 MR. JOHN BROWN: Right. And I -- I  
16 admit to that. It's there in the email and I thought  
17 -- well, I attempted to explain why.

18 And if I could just go to the -- to the  
19 \$11,000 bill. My understanding, and I guess maybe you  
20 should ask Sara -- my understanding was that Mr.  
21 Mascarin had put together two (2) -- the cost for two  
22 (2) separate enquiries, or maybe more, and rolled them  
23 together into one (1) bill.

24 So I didn't -- so to the best of my  
25 recollection and subject to Sara's confirmation, I

1 wasn't asking for a bill to be split up so it wasn't -  
2 - I was asking for really the account that was  
3 submitted, as I recall, to be as it was asked for,  
4 which was not for \$11,000, which was -- which was for  
5 smaller amounts. And the reason I did that is clearly  
6 stated, and I -- I thought I explained that yesterday.

7           The Mayor was showing interest in legal  
8 bills and I did not want to have to explain to anybody  
9 the reasons why I was confirming the responsibility  
10 and the authority of the CAO to ask all the questions,  
11 because some of those questions directly involved the  
12 Mayor.

13           MR. PAUL BONWICK: I understand that.  
14 You're saying you're not asking to split it up now but  
15 clearly in your email you did ask to split it up, and  
16 you said because it will make it notable and require  
17 explanations.

18           Now, yesterday you provided testimony  
19 that you had, within your own spending authority,  
20 \$25,000.

21           MR. JOHN BROWN: I believe that was --  
22 that was the level, yeah.

23           MR. PAUL BONWICK: And I'll -- I'll  
24 take that at face value. Then, if I understand you  
25 properly, you had full authority to authorize an

1 \$11,000 expenditure.

2 MR. JOHN BROWN: Yes.

3 MR. PAUL BONWICK: But you made the  
4 decision to instruct the Clerk, as well as legal  
5 counsel, to split that bill to avoid any explanation,  
6 and that is what your email says, sir.

7 And I'm asking you, do you really  
8 believe that is in keeping with the Code of Conduct  
9 for the Town of Collingwood related to transparency?

10 MR. JOHN BROWN: So where does it say  
11 I instructed the Clerk?

12 MR. PAUL BONWICK:

13 "Sara will be calling you to clarify  
14 some matters to see if you can split  
15 the bill."

16 I assume she's taking that direction  
17 from you, sir.

18 MR. JOHN BROWN: I had a convers --  
19 again, as I best recall, I had a conversation with  
20 Sara. It seemed to be, you know, acceptable to Sara  
21 and I -- I asked John if he could do it. I asked Sara  
22 to call him and explain the situation, which I don't  
23 recall. If I had the precise information, I'd tell  
24 you. So I don't recall. And I said if there's any  
25 issue, call me back and let me know.



1                   Nobody called me back. I assumed it  
2 was acceptable to him. And Sara is the Clerk and this  
3 -- the Clerk -- you know, and I encourage all the  
4 staff that I ever work with, if they want to challenge  
5 me, I'm very open to being challenged. In fact I  
6 appreciate it.

7                   So, it was not my understanding that I  
8 was directing anybody to do anything that they didn't  
9 want to do, but rather to see if we could have the  
10 bill outlined -- as I recall, it should have come in,  
11 which was not for 11 but for smaller amounts, and if  
12 that was okay to everybody, that would be fine by me.  
13 And nobody called me back so I presumed that it was.

14                   MR. PAUL BONWICK:    So, Mr. Brown,  
15 would you not have had the opportunity if the bill  
16 have of stood as Mr. Mascarin sent the original copy,  
17 would you not have had the opportunity to explain the  
18 breakout of the bill, should any questions arrive  
19 through the interests of transparency and  
20 accountability?

21                   MR. JOHN BROWN:    Most probably, yes.

22                   MR. PAUL BONWICK:    Do you consider  
23 that a breach of conduct in terms of not using Town  
24 emails providing directions to solicitors that work  
25 for the Town of Collingwood. Not you, sir. The Town

1 of Collingwood, for the purpose of not making an  
2 invoice notable or having to provide explanation for  
3 that invoice?

4 MR. JOHN BROWN: I don't see it the  
5 way you see it. I think it was something that, in  
6 hindsight, I shouldn't have done and wouldn't do  
7 again. And you know, because you know, there is --  
8 the issue -- the issue you're raising is a real one  
9 and if anybody said to me do you think that was wise  
10 to do that, I would say no.

11 What happened was I was responding or  
12 discussing with Mr. Mascarin something not to do with  
13 the Town and whatever, I mean, it was on email.

14 So what I did was I lapsed into  
15 something that should more appropriately be done on  
16 the Town's email and that was it.

17 And there is another issue that I  
18 forgot to mention yesterday, and it also relates to  
19 that, and that is the issue of IT. And as I explained  
20 yesterday, the Town had no control over IT. We  
21 weren't involved in IT and there were two (2)  
22 occasions when senior staff came to me and said the IT  
23 was being read, their emails were being read, and that  
24 was a significant situation so.

25 MR. PAUL BONWICK: I'm confused about

1 what that has to do with the line of questioning in  
2 terms of you using your personal email account.

3 Does the IT office have access to your  
4 personal emails?

5 MR. JOHN BROWN: No, but the IT office  
6 has access to all of the emails in the Town, and those  
7 people do not -- did not work for the Town, they were  
8 contractors.

9 And as I explained yesterday, the whole  
10 issue about the -- the -- what I understand was the  
11 situation with Mr. Mascarin was a legal issue from  
12 another Municipality and that's probably why I used  
13 the word "expunge" as opposed to "delete", because  
14 that was something that I did not want to show up on  
15 the Town's email system, because, frankly, there was  
16 concern that the email system was being accessed by  
17 people in -- in IT or Collus Solutions.

18 That was a --

19 MR. PAUL BONWICK: Yes. Do you have  
20 any --

21 MR. JOHN BROWN: -- concern.

22 MR. PAUL BONWICK: -- evidence? I've  
23 looked through the court book, I've not seen any  
24 evidence of that, sir, other than your allegation.

25 MR. JOHN BROWN: Well, I do, and I'll

1 give it to you now.

2 MR. PAUL BONWICK: Thank you.

3 MR. JOHN BROWN: So Maryanne Nero was  
4 the manager of human resources and she came to me and  
5 she told me that the IT was not secure.

6 So I said like, what's the problem and  
7 she said well, Larry Irwin read my emails and Larry  
8 Irwin, I think he actually responded to her emails  
9 that he read. And so I heard that.

10 And then on a separate occasion, the  
11 fire chief, and there was an issue involving Mr. Irwin  
12 and water, as I best recall, and you might -- swimming  
13 pool -- you might recall that yourself, living here.

14 He said that his emails had been read  
15 and that concerned me a lot.

16 So I said well, --

17 MR. PAUL BONWICK: Sir --

18 MR. JOHN BROWN: If I could finish,  
19 please?

20 So I said I think this is a serious  
21 situation where the Town seems to have an email system  
22 which is compromised. So I asked Mr. Irwin to come  
23 and meet with me.

24 And I said I've heard from various  
25 people that the email system -- emails are being read,

1 is that the case? And I think Mr. Irwin denied it and  
2 said whatever the response was. But I said, you know,  
3 this is a significant situation and I hope it's not  
4 occurring.

5                   And he said -- I think he said it  
6 hadn't occurred or wouldn't occur and I just accepted  
7 him at his word.

8                   But -- so there was another issue. So  
9 the issue was, and I think a very serious one, that  
10 the Town, because of this contractual arrangement with  
11 Collus Solutions, had no power, no control over its  
12 email system and putting that in the context of this  
13 email and what Mr. Mascarin's packages were about was  
14 confidential information that was being sealed by Aird  
15 & Berlis.

16                   MR. PAUL BONWICK: Sir, there is no  
17 mention of personal information in your email. You  
18 clearly state that it's specific to your  
19 responsibilities as CAO.

20                   I'm suggesting you've also stated for  
21 the record that the purpose behind splitting invoices,  
22 as in your words, is to not make it notable and to not  
23 require explanation.

24                   And so sir, I'm suggesting that that is  
25 completely -- completely flies in the face of

1 transparency.

2                   MR. JOHN BROWN:    You know, as you  
3 explain it now in hindsight and under the  
4 circumstances, you -- you have a -- an issue that I  
5 would agree with. I think it was wrong for me to  
6 include in an email about a separate matter from Mr.  
7 Mascarin, information about the Town. I'm very happy  
8 for you to talk to Mr. Mascarin, I'm talk -- I'm happy  
9 for you to talk to Sara and if there's information  
10 different from what I said, I'm very happy to come  
11 back and explain it.

12                   So you do make a point, I acknowledge  
13 the point. It is an email that I shouldn't have sent.  
14 I shouldn't have responded to, I should have just  
15 responded to his original comment, he found the  
16 material, or whatever. And the other matter should  
17 have been on the Town's email system and if it had of  
18 been on the Town's email system, I probably would have  
19 said the same thing and provided to you the same  
20 explanation, under the circumstances of the day.

21                   I was dealing with a situation, really,  
22 that I never, ever could have imagined. The questions  
23 that I had to ask, who I asked them to and why, I  
24 couldn't imagine.

25                   So under those circumstances I thought

1 the best way to do it was to make sure I wasn't making  
2 a big mistake by starting to ask questions about an  
3 issue that, frankly, most people -- was the cause of  
4 this inquiry, actually, to be quite candid.

5                   So it was a significant issue and they  
6 didn't want to get it wrong.

7                   THE HONOURABLE FRANK MARROCCO:    Let me  
8 just -- I think that you've -- the question you've  
9 asked has been actually the proposition you put was  
10 agreed with, but with the explanation that we've  
11 heard. I'm not sure that a repetition of it --

12                   MR. PAUL BONWICK:    Agreed.

13                   THE HONOURABLE FRANK MARROCCO:    --  
14 will be any more productive from -- so, it's up to  
15 you.

16                   MR. PAUL BONWICK:    Thank you.

17

18 CONTINUED BY MR. PAUL BONWICK:

19                   MR. PAUL BONWICK:    Mr. Brown, I'd like  
20 to draw your attention to your conver -- or your  
21 testimony yesterday with regards to the -- using your  
22 language, I believe, co-managers or co-sponsor of a  
23 report from the public utilities, Mr. Firman.

24                   MR. JOHN BROWN:    Right.

25                   MR. PAUL BONWICK:    Could I call up in

1 transcript 2019-05-23, page 36, line 14.

2 This is Mr. Firman's testimony given  
3 under oath. Start reading at line 14 and you'll see  
4 the question and you'll see Mr. Firman's response.

5 THE HONOURABLE FRANK MARROCCO: At  
6 line 14, that's the question. What is --

7

8 CONTINUED BY MR. PAUL BONWICK:

9 MR. PAUL BONWICK: The question is --  
10 the question put to Mr. Firman was: "In your  
11 experience".

12 MR. JOHN BROWN: Okay, fine. Sure.  
13 Okay.

14 MR. PAUL BONWICK: Please scroll down  
15 for --

16 Could I go to page 37, line 18? My  
17 question to Mr. Firman as asking -- going back to  
18 2014, new Council, relatively new CEO moved for --  
19 moved from acting. Could you -- and what I asked him  
20 was:

21 "Could you provide a more detailed  
22 description of how the environment  
23 turned, if the environment turned  
24 and what effect was in terms of your  
25 ability to operate the utility?"



1                   Please go down to Mr. Firman's answer.

2                   You have testified that you felt that  
3 people were reacting poorly to change yesterday, or  
4 were not embracing the change you were proposing.

5                   MR. JOHN BROWN:    We're having  
6 difficulty with it.

7                   MR. PAUL BONWICK:   Excuse me. Can you  
8 give me some reasonable explanation as to why Mr.  
9 Firman would have such strong convictions and be  
10 prepared to share those convictions under oath in  
11 relationship to your approach with him?

12                  MR. JOHN BROWN:    My approach with him?

13                  MR. PAUL BONWICK:    I'm asking can you  
14 share your insight as to why Mr. Firman would share  
15 such strong convictions and such strong opinions under  
16 oath in terms of why he felt you had created a toxic  
17 environment?

18                  MR. JOHN BROWN:    I don't know. I  
19 think that's a question for Mr. Firman. But I would  
20 certainly be willing to give you my perspective on my  
21 relationship with Mr. Firman if that's what you would  
22 like.

23                  THE HONOURABLE FRANK MARROCCO:    I  
24 think what the question was was whether you could --  
25 had an -- if you could explain why Mr. Firman said

1 what he said. And not so much -- that's, I think, the  
2 gist of the -- if you can answer it.

3 MR. JOHN BROWN: Why Mr. Firman said  
4 what he said? Okay, well I would think --

5 THE HONOURABLE FRANK MARROCCO: Have I  
6 captured it, Mr. Bonwick?

7 MR. PAUL BONWICK: Yes.

8 MR. JOHN BROWN: I would -- okay. So,  
9 thank you, Your Worship -- Your Honour. So, I would  
10 think Mr. Firman might be of that opinion because he  
11 was working in Col -- working closely with Collus  
12 Solutions.

13 And that was a particular tight  
14 environment that they worked in. It was -- you know,  
15 they were all together. I think their offices were  
16 co-located and he was constantly mixing with those  
17 people all the time.

18 I -- when he started to work with me he  
19 didn't have -- he didn't have any problems working  
20 with me. I just told him that, in working with him,  
21 it had to be a trust -- trusted relationship, there  
22 could be no surprises, it had to be fully transparent,  
23 fully declared, no import of ideas or thoughts from  
24 anybody else and -- and very good communications  
25 between us.

1                   He said that that would be a good idea.  
2 He said he wanted to start afresh. He said he wanted  
3 transparency. And he also said that he wanted it to  
4 be different than working with Mr. Houghton.

5                   And he said that Mr. Houghton -- things  
6 to do with Mr. Houghton -- and his very words were,  
7 Murky. He said, Murky, with respect to working with  
8 Mr. Houghton.

9                   So, on a go-forward basis, Mr. Firman  
10 and I worked very well together. We -- it was -- you  
11 know, everything was fully declared. He got his input  
12 into the terms of reference. We worked cooperatively  
13 together.

14                   And why he said it was a toxic  
15 environment, my thought would be he was hearing from  
16 the people that I explained yesterday, the difficulty  
17 that -- that I was having with.

18                   But as far as Mr. Firman goes, I don't  
19 think there was any toxicity between him and I,  
20 subject to he and continuing to agree with fully --  
21 fully transparency and no surprises between us.

22                   So, my relationship with him, as I  
23 reflect back, was a positive one. I don't see why he  
24 would think -- he would include himself in the toxic  
25 environment because we didn't have a toxic

1 environment.

2                   But if he describes a toxic environment  
3 based on the people that I was asking questions to  
4 together talking about my demands and my requests, I  
5 can understand why he would reflect that way on them.

6

7 CONTINUED BY MR. PAUL BONWICK:

8                   MR. PAUL BONWICK:    So, two (2) points,  
9 sir.

10                  MR. JOHN BROWN:    That's okay.

11                  MR. PAUL BONWICK:    Two (2) --

12                  MR. JOHN BROWN:    Yeah.

13                  MR. PAUL BONWICK:    Two (2) points,  
14 sir. One (1) is Mr. Firman's testimony is completely  
15 and unequivocally opposite to what you've just said.  
16 He spoke very highly of Mr. Houghton.

17                  You read the earlier testimony that had  
18 been provided in terms of the incredibly positive  
19 working relationship that was in play. Mr. Firman,  
20 under his testimony, did not declare anything that  
21 you're -- you're suggesting right now.

22                  I would ask you to go down just to  
23 reflect on your comments, if you could. You can see  
24 on line 11, I think it's in -- that's indicative of  
25 him wanting control and he was working to actually

1 achieve that.

2                   Could you go down a little further,  
3 please. You'll see here my question, sir.

4                   "Could you provide a little more  
5 insight in terms of your working  
6 relationship from the water,  
7 wastewater?

8                   And, again, I'm moving aside the  
9 electricity side because you didn't  
10 work for them. You had a separate  
11 reporting structure that was set up  
12 as a separate utility."

13                   He confirmed that. Could you go down -  
14 - down, please? Do you want to read those?

15

16                   (BRIEF PAUSE)

17

18                   MR. JOHN BROWN: Okay. Can you scroll  
19 up, please?

20

21                   (BRIEF PAUSE)

22

23                   MR. PAUL BONWICK: Keep going down.

24

25                   (BRIEF PAUSE)

1 MR. PAUL BONWICK: So, Mr. Firman was  
2 speaking about water and wastewater when he's  
3 describing the toxic environment, he is not speaking  
4 about hydro. I clearly asked him to set that aside.

5 MR. JOHN BROWN: So, with respect to  
6 water and wastewater, I think Mr. Firman was the only  
7 person I ever dealt directly with. So, if the  
8 inference of that is there was a toxic relationship  
9 between him and I, so I could tell you that what  
10 you've just said does not match my experience of  
11 working with Mr. Firman.

12 MR. PAUL BONWICK: Okay.

13 MR. JOHN BROWN: So, he said whatever  
14 he said to you and to there, but my actual experience  
15 is just as I described it.

16 MR. PAUL BONWICK: Thank you.

17 MR. JOHN BROWN: And so, could I  
18 comment on the -- on the issue of control that you had  
19 there, I was seeking control?

20 MR. PAUL BONWICK: It was Mr. Firman's  
21 comment.

22 MR. JOHN BROWN: Yeah. But just on  
23 that, I mean, it reads --

24 MR. PAUL BONWICK: I didn't ask a  
25 question.

1 MR. JOHN BROWN: -- in control is a  
2 bad thing, but I'd like to qualify that.

3 MR. PAUL BONWICK: Sir, I didn't ask  
4 you any questions about that.

5 THE HONOURABLE FRANK MARROCCO: Well,  
6 why -- why don't you do it this way? Mr. McDowell can  
7 asked you questions about it if -- if he wants to, and  
8 probably better that way, you're responding to his  
9 questions.

10 MR. JOHN BROWN: Perfect.

11

12 CONTINUED BY MR. PAUL BONWICK:

13 MR. PAUL BONWICK: Could I call up  
14 CPS0006609, please?

15

16 (BRIEF PAUSE)

17

18 MR. PAUL BONWICK: While that's coming  
19 up, Mr. Brown, you're aware of the fact that  
20 Collingwood Council, the term 2014 to 2018, appointed  
21 a member from the community at large.

22 That person was Mr. John Worts. Mr.  
23 Worts is a very well respected businessperson,  
24 somewhat of an icon in the business community within  
25 the South Simcoe Region.

1 I'd like to draw your attention to --

2

3 (BRIEF PAUSE)

4

5 MR. PAUL BONWICK: -- page 3. The  
6 paragraph starts with, "Will be very interesting to  
7 watch the public learn."

8

9 (BRIEF PAUSE)

10

11 MR. PAUL BONWICK: Quite a ways down.  
12 Thank you. Down. Right there. Please hold.

13 THE HONOURABLE FRANK MARROCCO: Before  
14 you ask your question, what are we looking at?

15 MR. PAUL BONWICK: We're looking at  
16 the email chain between Mr. Dan --

17 THE HONOURABLE FRANK MARROCCO: All  
18 right.

19 MR. PAUL BONWICK: -- Horchik --

20 THE HONOURABLE FRANK MARROCCO: These  
21 are emails? This is an email chain?

22 MR. PAUL BONWICK: Correct, and a  
23 letter.

24

25 CONTINUED BY MR. PAUL BONWICK:



1 MR. PAUL BONWICK: The letter is  
2 addressed to Her Worship, Mayor Cooper, and members of  
3 Council, and it's part of Mr. Worts's -- he resigned  
4 as the member at large from the Board and subsequently  
5 sent this letter to mayor and Council.

6 What I want to draw your attention to,  
7 Mr. Brown, is the paragraph where it starts:

8 "Shortly after I was appointed, Mr.  
9 Brown asked for a meeting. During  
10 that meeting, he warned me to be  
11 careful no less than three (3)  
12 times.

13 I remember leaving the meeting  
14 feeling that this was rather odd as  
15 he wouldn't explain why. Well,  
16 after getting to know and see the  
17 issues at hand, I realized this  
18 wasn't a warning, it was a threat."

19 Now, Mr. Brown, I'm wondering if you  
20 could comment on why -- why Mr. Worts felt that he had  
21 such a contentious and untrusting relationship with  
22 you.

23 MR. JOHN BROWN: Actually, Mr. Worts  
24 and I were quite friendly. I went to a party in his  
25 house and he brought me dessert to my office, so

1 that's the way our relationship started off, to be  
2 quite candid, and we were friends.

3                   And there was not a problem until when  
4 Mr. Worts came to see me, he was appointed to the  
5 Board. My understanding, he was appointed to the  
6 Board, he was invited by the mayor to apply for the  
7 job to block the candidacy of the deputy mayor on the  
8 Board and Mr. Worts jointed the Bo -- that's my  
9 understanding.

10                   And Mr. Worts jointed the Board. And  
11 because he was friendly with me, he came to my office  
12 and I said, You know, it's -- it's a very challenging  
13 position to be a director, you got to make sure that  
14 you follow all the rules and just be very careful when  
15 you're over there in terms of what you're doing.

16                   I did not explain all of the other  
17 reasons, you know, the issues that I was exploring  
18 because I kept all those confidential, to myself and  
19 to Sara, Marjory, and to the deputy mayor.

20                   But the bottom line was I gave him what  
21 I thought was sound advice, this is a very responsible  
22 position, there's a whole -- very political -- strong  
23 political interface here, there's -- there's kind of a  
24 disconnect growing between the operation of the Board  
25 and the Council and just be careful.

1                   That was advice provided to a friend.  
2   And if it -- if he turned out to reinterpret that as -  
3   - as a threat, that's unfortunate, but that was not  
4   the intent.

5                   MR. PAUL BONWICK:    Sir, moving aside,  
6   I would -- I would suggest your conspiracy theory of -  
7   - does not hold water as it relates to the mayor  
8   putting somebody in place to block a position on the  
9   Board.

10                  Do you not recall the fact that any  
11   Board appointee would -- would require the support of  
12   the majority of Council in order to be appointed to  
13   that Board?

14                  MR. JOHN BROWN:    Correct.

15                  MR. PAUL BONWICK:    So, then the  
16   majority of Council from the term 2014/2018 had  
17   confidence in Mr. Worts to fulfill the  
18   responsibilities of a Board member.  Is that not a  
19   fair statement?

20                  MR. JOHN BROWN:    Yeah, so that -- but  
21   that's not the issue.  The issue was how did you  
22   become a candidate for the Board.  And my  
23   understanding -- and that's what I said.

24                  He became a candidate because I heard  
25   that the mayor invited him to be a candidate.  And

1 you're quite right. Council decided, and they decided  
2 to appoint Mr. Worts, but that's not what I was  
3 saying.

4 MR. PAUL BONWICK: Right.

5

6 (BRIEF PAUSE)

7

8 MR. PAUL BONWICK: Right. Mr. Worts  
9 clearly has a difference of opinion in terms of how  
10 strong your relationship was as he developed -- as the  
11 relationship developed. But I'll move on to --

12 MR. JOHN BROWN: And that was -- I  
13 addressed that yesterday because I said there was a  
14 lot of tension between the Council and the Board  
15 because of this governance system that was not looked  
16 at when this 50 percent option was ever explored.

17 And I think KPMG cautioned in -- in the  
18 options that they did explore that when you got less  
19 than a majority, they cautioned governance was an  
20 issue that should not be overlooked in any choice of  
21 the options.

22 So what happened was governance seemed  
23 to be overlooked. It wasn't examined. It was never  
24 reported to Council. They agree in a system which, in  
25 effect, did not work in the interest of the Town and

1 the opinion of the Council that I work for -- the  
2 second Council.

3 MR. PAUL BONWICK: The second Council  
4 that appointed this man to the committee.

5 MR. JOHN BROWN: Yeah. The second  
6 Council was very stressed with the operation, the  
7 governance system that worked. I think the Board of  
8 Directors themselves were very stressed. And in my  
9 opinion, that was because --

10 MR. PAUL BONWICK: Sir, I'm not asking  
11 you these questions.

12 MR. JOHN BROWN: But I'm trying to  
13 expand on what you're asking me. That was the reason  
14 why there was the tension, because way back, the  
15 options were not properly looked at, and that's why I  
16 stated asking some of the questions.

17 MR. PAUL BONWICK: I'd like to call up  
18 BLG00 -- BLG93\_0001.

19

20 (BRIEF PAUSE)

21

22 MR. PAUL BONWICK: If I could go to  
23 the bottom of this email chain, please. It's an email  
24 chain between --

25 MR. JOHN BROWN: Yeah.

1 MR. PAUL BONWICK: -- Mr. Brown, CAO;  
2 Mr. Mark Rodgers (sic), the consultant --

3 MR. JOHN BROWN: Right.

4 MR. PAUL BONWICK: -- and Ms. Marjory  
5 Leonard, the treasurer.

6 Here's a letter from the treasurer.

7 And I remind you of your testimony yesterday where you  
8 stated clearly that you would not be supportive of  
9 trying to persuade a consultant to go in one direction  
10 or the other. You stated that quite clearly.

11 Here we have an email to the consultant  
12 that was hired, and it states:

13 "John, I have been through the  
14 report twice, and I must say that I  
15 feel the entire direction and tone  
16 of the report have been weakened. I  
17 find the continual disclaimers  
18 throughout to be distracting, and I  
19 feel they are being emphasized  
20 making sure everybody reads and  
21 understands that he was wrong when  
22 he told them otherwise two weeks  
23 ago. In my opinion, it's a major  
24 change in direction. Perhaps he  
25 should put one disclaimer at the

1 front. There are several points  
2 throughout the document that Collus  
3 executive disagree with. The  
4 findings are stated in this report  
5 and represent conclusions that a  
6 reasonable person would draw from  
7 this information."

8 So here you have the treasurer bringing  
9 forward a statement or trying to provide direction to  
10 the consultant in terms of losing disclaimers within  
11 that report.

12 If we could move up, please. A little  
13 further so we can see the email address. Sorry. I  
14 just want to be on the address.

15 Here's one from you following that:

16 "Mark, Marjory read your revised  
17 report and independently of me. You  
18 will note her thoughts and mine are  
19 strongly aligned. She tends to be  
20 very direct. I would imagine at  
21 least some of those who got the  
22 first version would have serious  
23 questions as to the way you handled  
24 the largely subjective opinions  
25 you've received on what and whose

1 evidence who changed your reference  
2 to the new sports facilities."

3 Go down -- or go up further, please.

4 So you can -- thank you. Keep going up. So here we  
5 are. Sorry, no. Sorry. I wanted the GMR:

6 "John, a couple of additional items  
7 are important to have. The Council  
8 resolution that actually approved  
9 the spending of the money on the  
10 community centre. I wanted to  
11 understand the timing here and what  
12 report, if any, went to Council on  
13 this matter. The Town consultants  
14 who prepared the report on solutions  
15 where consultants said they reviewed  
16 Collus' criticisms of the report,  
17 and the consultants entirely  
18 rejected Collus' comments."

19 Keep going down -- or sorry -- up.  
20 Sorry. These are comments being provided by your  
21 consultant.

22 MR. JOHN BROWN: Right.

23 MR. PAUL BONWICK: Sorry. There we  
24 go:

25 "Here's a specific example that I



1 would ask you and Marjory to  
2 consider: the issue of the central  
3 driver behind the 50 percent sale.  
4 In my confidential discussions with  
5 certain persons, they said on a  
6 confidential basis that they  
7 believed the main driver was to get  
8 cash for the community centre. You  
9 and your colleagues agree with this  
10 view; however, no one of the Town  
11 staff is prepared to go on the  
12 record in my report to support this  
13 view. I deliver the report to  
14 Council, and then two (2)  
15 councillors who are directly  
16 involved with the Task Team are  
17 adamant this was not the case. And  
18 now, Collus executive and the Board  
19 members say this was not the case.  
20 While the money ended up being spent  
21 on the community centres, there does  
22 appear to be some passage of time  
23 before the money was spent, although  
24 I'm not clear on what that passage  
25 of time..."

1                   Continue up. Trying to give you a  
2 narrative without going through everything. Your  
3 consultant:

4                   "I disagree. None of the  
5 recommendations or essential  
6 conclusions have changed. What is  
7 different is an acknowledgment that  
8 on some issues the parties have  
9 different interpretations of  
10 events."

11                   I'll go up to the next one. The fact  
12 is -- sorry. It would help maybe if we go the other  
13 direction now. Sorry. Down a little bit. Up a  
14 little bit. Up a little bit. Stop there.

15                   You have -- Mr. Brown, you see your  
16 comments here, and I'll -- you can read them:

17                   "Again, I asked Council to get the  
18 business information necessary for  
19 you to inform them, and you  
20 developed your report largely  
21 without the help of CP staff. You  
22 presented a position and advised  
23 Council. We both agree that the  
24 info from CP staff is predominantly  
25 subjective and causes you to make

1                   few, if any, substantive changes."

2                   Those are your words to him:

3                   "CP staff have every right to put  
4                   their interpretation of events. You  
5                   have given their comments such  
6                   prominence that it gives the  
7                   impression they are somehow  
8                   correcting your position. It is not  
9                   at all clear that you are sticking  
10                  to the initial conclusions in the  
11                  face of their unsubstantial contrary  
12                  opinions."

13                  And your consultant responds:

14                  "I disagree. None of the  
15                  recommendations or essential  
16                  conclusions have changed,  
17                  irrespective of the points that were  
18                  made."

19                  There's mention in here from the  
20                  consultant as well that he continues to try to follow  
21                  the original theme. And so if we go down -- if we  
22                  drop down, yes.

23                  So in this email exchange that's going  
24                  on, it appears from my perspective as I look at this  
25                  that both you and Mrs. Leonard or Ms. Leonard are

1 clearly at odds with Mr. Rodgers (sic), as he's  
2 stating in here he disagrees and that he should not be  
3 removing this -- these disclaimers.

4 Can you explain why you would not let  
5 the consultant simply provide the services and the  
6 opinions in the format that he wanted to rather than  
7 challenge him in terms of the theme that you were  
8 trying to drive.

9 MR. JOHN BROWN: Fine:

10 "Roger, I have asked both Sara and  
11 Dennis to provide their independent  
12 comments to you. Let's see where  
13 their view is and see where we are."

14 So I think I explained yesterday that  
15 when you hire consultants, there's generally a  
16 steering committee that works with them. The  
17 consultants expect to bounce ideas to issue drafts and  
18 to get feedback from the people on the steering  
19 committee. That is right, it's appropriate, and it  
20 happens in virtually every similar project that I've  
21 had.

22 So by virtue of the fact that the  
23 treasurer had some significant thoughts and wanted to  
24 share them with the consultant -- and I happen to be  
25 aligned with some of those thoughts -- they were all

1 provided to the consultant, and he was given every  
2 opportunity to respond, and he did, and he disagreed  
3 with some things, and that is appropriate.

4                   It's the way -- sorry, if I could just  
5 finish -- it's the way things are done.

6                   MR. PAUL BONWICK:     Sir --

7                   MR. JOHN BROWN:     And it --

8                   MR. PAUL BONWICK:     Okay.  Sorry, I  
9 thought you were done.

10                  MR. JOHN BROWN:     It's the way things  
11 are done.  And so there was no sense that I or the  
12 treasurer with me was trying to control anything.  We  
13 were giving our aligned thoughts and the opportunity  
14 for Sara, the clerk who was part of the steering  
15 committee, and Dennis -- I think that was Dennis --  
16 Dennis Sloan I think was his name -- provide their  
17 independent comments to you.

18                  So all of these independent comments  
19 were provided to consultant.  The most important thing  
20 is, as I explained yesterday, the consultant is hired  
21 to give his independent opinion.  His.  Not to reflect  
22 ours.

23                  Part of the process is to understand  
24 and to get feedback and for him to be changed by those  
25 or to reject those.  And Mr. -- Mr. Rodger has

1 appropriately responded to them and discounted a lot  
2 of them and that was absolutely fine.

3 MR. PAUL BONWICK: It seems apparent  
4 that he would do so. Sir, your comments state Mr.  
5 Rodgers as well as the treasurers are not specific to  
6 his recommendations, they're not specific to writings  
7 within the report. They seem to be focused solely on  
8 him qualifying the report in several different ways  
9 specific to disclaimers.

10 That's where you seem to take  
11 exception.

12 MR. JOHN BROWN: No, this was a very -  
13 - this was a very major report, there were lots and  
14 lots of feedback, there were telephone conversations.  
15 This is not the only piece of feedback the consultant  
16 got. This was an ongoing process, there were  
17 meetings, you know, Sara and I and Marjorie had  
18 discussions with him, is this -- as this project  
19 evolved.

20 And the end of the day, the consultant  
21 was hired and paid to deliver his independent,  
22 professional comments and recommendations to Council  
23 and he did that.

24 This is just part of a normal process  
25 of feedback, you know, being suggested, rejected,

1 accepted, with the report being modified, whatever.

2 That's the way it works.

3 MR. PAUL BONWICK: I -- I can't  
4 comment on the phone calls because I'm not privileged  
5 -- privy to those calls. What I am privy to is this  
6 particular document and this particular document,  
7 which is several emails specifically focuses on you  
8 and the treasurer asking the consultant to remove the  
9 disclaimers that he is trying to include in the  
10 report.

11 And you're doing it, you -- I'm using  
12 your language and his responses, so that tactically  
13 people do not recognize as strongly that there are two  
14 differing opinions -- differing opinions on this.

15 MR. JOHN BROWN: So I would suggest  
16 the answer to that is to ask Mr. Rodger whether his  
17 unfettered recommendations were submitted to Council  
18 or not or whether in any way his recommendations were,  
19 I guess, affected by or controlled by or influenced by  
20 the treasurer, in my opinion on this particular  
21 matter, or any of the other comments that he  
22 independently got and sought and reviewed as part of a  
23 normal process.

24 MR. PAUL BONWICK: You spoke yesterday  
25 regarding your concern over the response that you

1 received from Ms. Shuttleworth.

2 I should note that earlier testimony by  
3 Mr. Fryer, by Mr. Houghton, by Ms. Hogg, and others  
4 speak very, very highly about her business acumen,  
5 about her background, about her capabilities, about  
6 the strength of being a team member.

7 I'd like to call up transcript 19-05-  
8 16.

9 As you may be aware, Ms. Shuttleworth  
10 was hired by then CFO Mr. Tim Fryer. Mr. Fryer  
11 established that -- as did Ms. Shuttleworth, that they  
12 had a very competent, very professional, very  
13 respectful relationship.

14 If I could go to -- and we've touched  
15 briefly on Mr. McFadden, the role he played and the  
16 testimony he provided. If I could call up page 12 --  
17 sorry, 159, line 24.

18 You can read here the transcript starts  
19 with Mr. McFadden -- actually. If you could read Mr.  
20 McFadden's comments, they go down line 24, 25 and then  
21 it steps over to page 160 and goes down through there.  
22 So read his comments, please.

23 Can you go down a little further?

24 MR. JOHN BROWN: So Mr. Brown there  
25 had been -- okay. Sorry. Okay.



1 MR. PAUL BONWICK: So in short, what  
2 Mr. McFadden testified to this commission or this  
3 inquiry was that the Board felt that the situation or  
4 the relationship had devolved to the point based on  
5 allegations of bullying, of intimidation, that the  
6 Board went to the extraordinary step of actually  
7 hiring and outside consultant to work with staff in an  
8 attempt to address these matters internally and the  
9 stress that it was causing.

10 Can you give any indication as to why  
11 the Board -- why you feel the Board would feel the  
12 need to hire a third party HR firm to address concerns  
13 from their staff based on your actions?

14 MR. JOHN BROWN: This is news to me, I  
15 didn't know the Board hired some -- well, I -- I  
16 didn't know or wasn't informed that -- that the way I  
17 was asking staff for information was being construed  
18 as bullying or intimidation.

19 I asked -- I asked questions, I have  
20 conceded that I re-asked questions, I persistently  
21 asked questions. I think the lawyer for PowerStream  
22 yesterday said I asked for questions after I had some  
23 of the answers.

24 All of that, I agree to. But for  
25 anybody to say I bullied anybody, you know, I would --

1 I would reject that. I was persistently asked for  
2 questions and I didn't accept somebody telling me they  
3 were busy as being a reasonable excuse for the CAO not  
4 to undertake his responsibilities, as I'd been  
5 advised.

6                   So I don't know, nobody told me there  
7 was an outside lawyer. As I explained yesterday, I  
8 had difficulty with those four (4) people, it seems,  
9 but I didn't have any difficulty with Mr. Bentz when  
10 he said there was difficulty with four (4) people, did  
11 not include himself.

12                   I had lunch with Mr. McFadden, I posed  
13 the question to him. You know, do you feel I just  
14 intimidated you or I -- whatever. He said no,  
15 everything is fine.

16                   So -- so yes, these four (4) people  
17 seem to be directly affected. Maybe those people  
18 weren't experienced working in a broad, open, you  
19 know, environment where people ask questions and  
20 challenge positions. Maybe they weren't  
21 professionally experienced. I really don't know what  
22 the reason why, you know, they were concerned with  
23 questions that I really -- as I explained yesterday, I  
24 should never have had to ask in the first place, but  
25 had to.

1 MR. PAUL BONWICK: And I'm going to --

2 MR. JOHN BROWN: So I don't know why.

3 But if anybody -- and as I said yesterday, I showed  
4 some of Ms. Shuttleworth's emails to the HR, the head  
5 of HR in the Town and she told me in her opinion Ms.  
6 Shuttleworth was -- was -- I forget the word. Was  
7 harassing me, was the word. That they were the words  
8 of Ms. Nero.

9 So I don't know. I mean, I moved on  
10 when it was obvious that those people either didn't or  
11 couldn't or whatever meet the information needs that I  
12 had. I moved on. I -- I left them behind, including  
13 Mr. Houghton. And then I went to Mr. McFadden, I went  
14 to Mr. Bentz, and I really didn't have a problem with  
15 either of those two (2).

16 Everything kind of moved fine. I told  
17 them I needed information. Mr. McFadden understood  
18 that and, you know, made inquiries. Mr. Bentz said  
19 yeah, I understand you need the information. And  
20 there wasn't -- there wasn't an issue with those  
21 people.

22 MR. PAUL BONWICK: You certainly have  
23 a different opinion. It's not four people, sir, it  
24 was four people in Collus, it was Mr. Firman, it's the  
25 Mayor, several people have given testimony and it's

1 interesting how it's them that have the problem. But  
2 I'll move aside from that.

3                   You're aware of the fact that, of  
4 course, the Board -- two of the Board members -- two  
5 of the Board members resigned. But let me move on to  
6 your point about going after information.

7                   You stated that when you came -- became  
8 the CAO that you were shocked, I think is the word you  
9 used, shocked that there wasn't a Town file on the  
10 Collus matter.

11                   MR. JOHN BROWN:    Okay.

12                   MR. PAUL BONWICK:    What I find  
13 confusing and you've obviously followed these  
14 proceedings in some detail, you've referenced various  
15 points throughout the proceedings, you obviously are  
16 aware of the fact that Ms. Almas was the City clerk at  
17 the time?

18                   MR. JOHN BROWN:    Correct.

19                   MR. PAUL BONWICK:    You're aware of the  
20 fact that Ms. Almas was privy to several meetings,  
21 Council meetings, in camera meetings, signed documents  
22 on -- through authorization bylaws?

23                   MR. JOHN BROWN:    I wasn't here.

24                   MR. PAUL BONWICK:    Right, but, sir,  
25 you've -- you've followed the testimony. Are you

1 aware of the fact that Ms. Almas, in her capacity as  
2 clerk, would have sat in on all of the municipal  
3 Council meetings? She would have sat in on the in  
4 camera meetings. She would have been involved in the  
5 confirmation bylaw.

6 She would have been involved and has  
7 confirmed she was involved in signing the documents  
8 along with the mayor. Are -- are you familiar with  
9 that process and that, what she would have done?

10 MR. JOHN BROWN: First of all, I  
11 wasn't here. And secondly, I watched some of the  
12 inquiry. I read some of the transcripts in  
13 preparation, having been called. And -- but I am not  
14 completely aware of everything that's happened during  
15 this process.

16 MR. PAUL BONWICK: Okay. Thank you.

17 MR. JOHN BROWN: So, if you're asking  
18 me, was the -- was the -- Sara Almas the clerk, yes,  
19 she was. And did she perform the clerk's  
20 responsibilities? Yes, she did. She's a very good  
21 clerk, actually.

22 MR. PAUL BONWICK: So, then if Ms.  
23 Almas performed her responsibilities, sat in on these  
24 meetings, as we recognize that she did, as was her  
25 testimony, why would the question not go to Ms. Almas,

1 where's your file?

2 MR. JOHN BROWN: The question I asked  
3 Ms. Almas was, Where is the file of this transaction  
4 because this is all starting to get beyond me. This  
5 is all starting to cause me to need to apply myself to  
6 all of the information that relates to this file  
7 because I don't understand what's happening.

8 And the answer I got was, There are no  
9 files here. And I said, Well, you know --

10 MR. PAUL BONWICK: Would you ask the  
11 question, why did you not -- as the city clerk, why  
12 did you not in your capacity as a professional clerk  
13 maintain your own independent file of this  
14 transaction, you were involved with it throughout the  
15 process and public meetings, in camera meetings,  
16 signing documents?

17 Did you not ask the question why would  
18 she not have a file on it?

19 MR. JOHN BROWN: I -- I didn't. The -  
20 - the issue I had was I needed information, material,  
21 to try to figure out what's happening. And I asked  
22 for the file.

23 I didn't start accusing anybody of  
24 anything. I just said, Where can I get the  
25 information if you don't have it. She told me it was

1 in the offices of Collus PowerStream. It was in the -  
2 - the documentation was in the offices of a company  
3 that the Town could not get any information from, so  
4 there was a challenge.

5 So, then I started to say, Can I please  
6 have this.

7 MR. PAUL BONWICK: Once again, you're  
8 not ask -- answering my question.

9 MR. JOHN BROWN: So, your question is  
10 --

11 MR. PAUL BONWICK: My question was, In  
12 her professional capacity as clerk and having been  
13 involved in all of these meetings, in camera and not,  
14 having signed legally binding documents on the --  
15 behalf of the municipality, did you not simply ask Ms.  
16 Almas, why do you not have a file based on your  
17 involvement?

18 I right now don't care about Collus. I  
19 want to know why -- I want to know why you wouldn't  
20 have asked her why she doesn't have a file.

21 MR. JOHN BROWN: So, my -- my  
22 immediate task was to get the information.

23 MR. PAUL BONWICK: Thank you. So,  
24 you're aware of the fact -- or are you aware of the  
25 fact that the then CAO sat in on the Council

1 presentations, both in camera, public meetings, that  
2 she was appointed to the Strategic Task Team, she sat  
3 in on all the meetings of the Strategic Task Team, she  
4 maintained scoring as part of her responsibilities of  
5 the Strategic Task Team, she's given evidence that she  
6 submitted a bylaw in order to facilitate the  
7 transaction?

8 MR. JOHN MATHER: I don't think Ms.  
9 Almas was attend -- in attendance at any of the  
10 meetings of the Strategic Task Team or took minutes of  
11 them.

12 MR. PAUL BONWICK: Oh, not Ms. Almas.  
13 Sorry, I was -- my --

14 THE HONOURABLE FRANK MARROCCO: Ms.  
15 Wingrove.

16

17 CONTINUED BY MR. PAUL BONWICK:

18 MR. PAUL BONWICK: Ms. Wingrove if I  
19 misspoke. Ms. Wingrove, my apologies. Ms. Almas was  
20 not the CAO, Ms. Wingrove.

21 MR. JOHN BROWN: Right, she was.

22 MR. PAUL BONWICK: So, Ms. Wingrove  
23 has confirmed that she participated in all of these  
24 meetings.

25 Do you not find it strange or did you



1 phone up Ms. Wingrove and ask, Ms. Wingrove, did you  
2 leave your file here in relationship to your  
3 responsibilities specific to this transaction?

4 Did you ever call her and ask for that  
5 file?

6 MR. JOHN BROWN: I had coffee Ms.  
7 Wingrove -- mi -- with Ms. Wingrove when I first came  
8 just to get a sense for her -- from her when I was  
9 trying to learn what the issues were here, and I guess  
10 it was before this whole situation ever arose.

11 And -- and so, I didn't say to her,  
12 where is your file. I was told the files that I  
13 needed were in the offices of Collus PowerStream. And  
14 instead of figuring or thinking where else they might  
15 be, I went directly to where I told (sic) they were,  
16 and I asked the question.

17 So, you know, I had enough difficulty  
18 trying to piece together all kinds of information,  
19 some of it correct and some of it incorrect, to try to  
20 develop a picture, and it ended up frustrating people,  
21 as well as me.

22 So, I went the easiest route to get the  
23 file that I needed, which was in the offices of Collus  
24 PowerStream, not the Town.

25 MR. PAUL BONWICK: Mr. Brown, when you

1 gave testimony yesterday, the impression that I  
2 received from you was that you fully expected, based  
3 on the Town being the shareholder, that they would  
4 have a file, a detailed file, that would allow you to  
5 understand the situation entirely. That's what I took  
6 from your testimony yesterday.

7 MR. JOHN BROWN: And that's correct.

8 MR. PAUL BONWICK: And so, what I'm  
9 asking you, sir, is not about Collus.

10 MR. JOHN BROWN: Right.

11 MR. PAUL BONWICK: I'm asking you why  
12 you would not pick up the phone and speak to the  
13 former CAO and ask for this file that you say should  
14 be in the Town's possession.

15 I would think a situation where a CAO  
16 fulfilling the responsibilities would keep a file  
17 based on their involvement. And so, my question again  
18 comes to the point, why would you not call her and ask  
19 for this file that she very well should have  
20 maintained?

21 MR. JOHN BROWN: Because I called  
22 Collus PowerStream and asked them for it.

23

24 (BRIEF PAUSE)

25

1 MR. PAUL BONWICK: May I have one (1)  
2 minute, Your Honour?

3 THE HONOURABLE FRANK MARROCCO: Why  
4 don't we do this? Normally, we take a break around  
5 this time, so why don't I take it now? And you can  
6 read your notes and see if there are any further  
7 questions you want to ask.

8 MR. PAUL BONWICK: All right. Thank  
9 you.

10

11 --- Upon recessing at 10:06 a.m.

12 --- Upon resuming at 10:20 a.m.

13

14 MR. PAUL BONWICK: Your Honour, I --  
15 thank you very much for that consideration. I only  
16 have a few minutes of -- a couple of last topics to  
17 cover off, and I'll -- thank you for that time.

18

19 CONTINUED BY MR. PAUL BONWICK:

20 MR. PAUL BONWICK: Could I call up  
21 document ALE50223, please.

22

23 (BRIEF PAUSE)

24

25 MR. PAUL BONWICK: Your Honour, what

1 we have here -- Mr. Brown, what we have here is an  
2 email from Pam Hogg, dated Thursday, May the 28th,  
3 2015. It's specific to information -- records related  
4 to the sale of shares to PowerStream, as you'll see in  
5 the subject line.

6 Can you go up a little bit, please, so  
7 that Mr. Brown can review this email? A little  
8 further, please? Thank you.

9 It states:

10 "Last week, Ed copied every email  
11 that he had with respect to the  
12 Transaction. We copied every  
13 presentation made to Council, the  
14 public, et cetera, and any and all  
15 documentation that we had with  
16 respect to the sale, and dropped it  
17 off at the Town Hall. The only  
18 thing that Mr. Brown has not  
19 received is copies of the KPMG  
20 invoices, which our CFO, Cindy  
21 Shuttleworth, is putting together  
22 this week when she gets back to  
23 Collingwood."

24 The first email of this string of  
25 emails was from John, following the drop of -- off of

1 all information. My response to him, which was  
2 reviewed for accuracy by our Chair, which is the  
3 second email on this string, was sent along with the  
4 attached documents for his reference.

5 He has already received a hard copy of  
6 all the presentations, and then last email in the  
7 string, in response to that email:

8 "We are at a loss. There is nothing  
9 more that I can have -- that I have  
10 that I can provide Mr. Brown. We do  
11 not have access to any in camera  
12 Council meetings where a lot of the  
13 discussions would have taken place.  
14 Any thoughts or suggestions?"

15 So, Mr. Brown, this email was sent by  
16 Collus. It indicates that -- that you were provided  
17 all the information that they had available to them  
18 short of the in camera minutes and you would know  
19 this. They -- they don't keep records of minutes for  
20 in camera, do they?

21 MR. JOHN BROWN: Some municipalities  
22 do and some don't.

23 MR. PAUL BONWICK: Did this particular  
24 municipality?

25 MR. JOHN BROWN: No, I don't -- well,

1 Sara keeps notes, and I think she -- she keeps notes,  
2 and I think she edits those. Whether she retains  
3 those permanently, you'd have to ask her.

4 MR. PAUL BONWICK: So we see here that  
5 Collus has clearly stated that they've provided you  
6 everything that they have.

7 Did you think to ask Ms. Almas for  
8 copies of her notes related to the in camera meetings?

9 MR. JOHN BROWN: I -- I asked Sara --  
10 okay. So when I didn't have the information, and I  
11 started to make all of these inquiries that are being  
12 focussed on so much, then, you know, Sara and I talked  
13 the whole time. We talked every day, multiple times  
14 every day, as was the case with the treasurer.

15 So there was a free-flow of information  
16 forward and back, and, you know, she was -- I copied  
17 her on all of the memos that -- all emails --  
18 actually, as CAO, not -- not just part of this  
19 project, but all of the things as CAO that I thought  
20 should be in the Town's records, as has always been my  
21 practice. You know, you copy significant things to  
22 the clerk, no matter what it's about, because you want  
23 a record.

24 And that was, in my opinion, a major  
25 failing in this organization, you know, with respect

1 to the corporate records in this particular situation.  
2 So I wanted to make sure that all the information was  
3 there.

4 So she was aware, on an ongoing basis,  
5 and she assisted me in trying to put together this  
6 very complicated picture, and she was very helpful.

7 MR. PAUL BONWICK: So that didn't  
8 answer my question. The evidence before us suggests  
9 that Collus has provided you everything they have. My  
10 question to you, Mr. Brown, was did you ask Ms. Almas  
11 for her notes or minutes from the in camera meetings  
12 specific to this file?

13 MR. JOHN BROWN: I don't recall that  
14 actual question, no.

15 MR. PAUL BONWICK: I'll move on to my  
16 closing points. It appears evident from the news  
17 release -- or not the news release, sorry, the news  
18 coverage that we read out late yesterday afternoon  
19 that you and the mayor had moved to, I think what any  
20 reasonable person would say was not a very  
21 constructive relationship during -- during the tail  
22 end of your time with the 2014/2018 Council.

23 And we've heard representation -- I  
24 guess we've got Mr. Lloyd coming tomorrow, but it  
25 appears as if there was a fractured Council from

1 2014/2015. It certainly appears that the mayor and  
2 deputy mayor were very politically divided,  
3 experiencing, it appeared, a lot of challenges during  
4 that four (4) year period of time.

5                   You referenced yesterday in your  
6 description of activities related to the splitting of  
7 these invoices that -- and I can bring up the  
8 transcript if you require it, but you referenced  
9 yesterday that you kept the deputy mayor well informed  
10 throughout the process while you were doing this.

11                   Did I understand that properly?

12                   MR. JOHN BROWN: Yes, you did.

13                   MR. PAUL BONWICK: Thank you. And so  
14 the Commission is aware of the fact that the deputy  
15 mayor, now mayor of Collingwood, brought forward the  
16 motion for authorization by Council to request the  
17 Judicial Inquiry.

18                   Are you aware of that?

19                   MR. JOHN MATHER: Your Honour, you've  
20 already indicated that we will not be looking into the  
21 reasons behind the formation of the Inquiry.

22                   THE HONOURABLE FRANK MARROCCO: Yeah,  
23 I -- what -- what was the question, Mr. Bonwick?

24                   MR. PAUL BONWICK: I was asking Mr.  
25 Brown if he was aware of the fact that the then-deputy



1 mayor, now mayor, brought forward the motion asking  
2 Council to authorize a request for the Judicial  
3 Inquiry.

4 THE HONOURABLE FRANK MARROCCO: I'll  
5 allow that question, but -- but I -- I don't intend to  
6 get into Council's reasons for -- for passing the  
7 motion, because that -- that's -- really doesn't  
8 matter to me. Once the motion's passed, the court is  
9 obliged to conduct the Inquiry. So all I care about  
10 is that there was a motion passed directing the  
11 Inquiry, so I don't intend to get into the political  
12 reasons that -- that underlie that, but I'll allow you  
13 to ask this question.

14 MR. PAUL BONWICK: It would -- and  
15 thank you, Your Honour. I think it was just kind of a  
16 -- to -- to some degree, yes or no.

17

18 CONTINUED BY MR. PAUL BONWICK:

19 MR. PAUL BONWICK: Were you aware that  
20 the deputy mayor brought forward the motion to  
21 Council?

22 MR. JOHN BROWN: No, I'm not aware of  
23 that.

24 MR. PAUL BONWICK: You were not aware  
25 of that?

1 MR. JOHN BROWN: I'd think I'd recall  
2 that -- no. I might have been aware of it, but right  
3 now, you're asking me, Do you know for a fact that he  
4 brought it forward? I couldn't say absolutely yes.  
5 It doesn't surprise me that he did, but yeah.

6 MR. PAUL BONWICK: Your Honour, I have  
7 no further questions.

8 THE HONOURABLE FRANK MARROCCO: Thank  
9 you --

10 MR. PAUL BONWICK: Okay.

11 THE HONOURABLE FRANK MARROCCO: -- Mr.  
12 Bonwick. Mr. Fryer...?

13

14 (BRIEF PAUSE)

15

16 MR. WILLIAM MCDOWELL: Sorry,  
17 Commissioner, just before Mr. Fryer begins, I -- I'll  
18 have to duck out for something briefly, and I wonder  
19 if Mr. Fryer could give some indication of roughly how  
20 long he intends to be.

21 THE HONOURABLE FRANK MARROCCO: I'm --  
22 I'm -- are you able to do that?

23 MR. TIM FRYER: I'm hoping -- I'm  
24 hoping for less than an hour. I --

25 THE HONOURABLE FRANK MARROCCO: All

1 right.

2 MR. TIM FRYER: -- I had said an hour  
3 and a half yesterday, and I'm hoping for less than an  
4 hour. It -- it does depend on the communication.

5 MR. WILLIAM MCDOWELL: Well, it's --  
6 estimates are unwieldy, but I really appreciate that.

7 MR. TIM FRYER: Thank you, Justice  
8 Marrocco.

9 THE HONOURABLE FRANK MARROCCO: I  
10 mean, it -- it's only -- it's only reasonable for you  
11 to provide him with the information, because he has,  
12 in effect, been the union representative throughout,  
13 and I think he's entitled to that.

14 In any event, thank you for that, Mr.  
15 Fryer, go ahead.

16

17 CROSS-EXAMINATION BY MR. TIM FRYER:

18 MR. TIM FRYER: Mr. Hoffa, yes.

19 Hello, Mr. Brown.

20 MR. JOHN BROWN: Hello.

21 MR. TIM FRYER: As a matter of record,  
22 I am Tim Fryer, representing myself in these  
23 proceedings.

24 MR. JOHN BROWN: Hi.

25 MR. TIM FRYER: First, I wanted to

1 review items from your testimony, mostly during Mr.  
2 Mather's examination, and hopefully, you'll have the  
3 recall -- I can bring up paragraphs if we have to.

4 MR. JOHN BROWN: Sure.

5 MR. TIM FRYER: You stated in regards  
6 to meetings with Mr. McFadden that he expressed  
7 concerns with possible cross-subsidization. Do you  
8 recall that?

9 MR. JOHN BROWN: Yes, I do, and he  
10 did.

11 MR. TIM FRYER: During my examination  
12 and discussion with Mr. McFadden on May 16th -- and if  
13 we could bring up that transcript, that would be  
14 great. It was reviewed with him, and the evidence was  
15 shown, that gave him recall of the allocation  
16 methodology.

17 MR. JOHN BROWN: M-hm.

18 MR. TIM FRYER: So it covers a number  
19 of pages. I'm not going to look at it all but could  
20 if -- if you wanted me to, but I'm going to bring up  
21 page 110 and lines 13 to 23. And I was going to just  
22 say if you -- if you read through that, I just wanted  
23 to clarify with you that you agree with what Mr.  
24 McFadden has -- has agreed to there.

25 MR. JOHN BROWN: Okay.

1 (BRIEF PAUSE)

2

3 MR. TIM FRYER: You follow that okay  
4 and -- and you see that he's -- he said, "Correct."

5 What I was trying to show there was  
6 that that was his recollection after me refreshing his  
7 memory about allocation.

8 MR. JOHN BROWN: I don't know. I -- I  
9 just -- what I said yesterday was what he said to me  
10 and the concerns he shared with me, so what else he  
11 might have said or thought, I can't comment on.

12 MR. TIM FRYER: And I'm going to --

13 MR. JOHN BROWN: Sure.

14 MR. TIM FRYER: -- closing submission  
15 will give me chance to go further --

16 MR. JOHN BROWN: Okay.

17 MR. TIM FRYER: -- but I just wanted  
18 to clarify it with you.

19 So, also in your June 26th transcript,  
20 if we could bring that up, please, and page 15 and  
21 lines 2 to 8, is your recall of Ms. Shuttleworth  
22 providing the 2003 agreement. In -- in evidence with  
23 her, it was shown that I had provided a detailed email  
24 with all service agreements in -- in February 2012 to  
25 her and Mr. Houghton.

1                   So again I'm just verifying that  
2 through you because, if you look at lines 2 to 8, that  
3 was where you were saying that she was not familiar  
4 with the agreement.

5                   MR. JOHN BROWN:     Right.

6                   MR. TIM FRYER:     And -- and I had  
7 clarified with her that she was.

8                   Now I would like to look at lines 23  
9 and 24.

10

11                                   (BRIEF PAUSE)

12

13                   MR. TIM FRYER:     And just to be clear,  
14 you said you checked with the auditor. They never  
15 heard of it. I believe you're referring to the July  
16 31st, 2012, letter of agreement that was signed, not  
17 necessarily the 2003 shared services agreement.

18                                   Is that correct?

19                   MR. JOHN BROWN:     Well, I -- I talked  
20 to the auditor. When I -- when I found the 2003  
21 agreement then, you know, all of the -- all of the  
22 studies and all the rest of it transpired. Then when  
23 we find out about the July 31st -- 31st one, I went to  
24 talk to the auditor and I said, you know, these things  
25 have come in, my understanding would be that you would

1 have these, is that correct, and did you have them.

2                   So I'm not -- I'm not 100 percent sure  
3 but I think she was made aware of the two (2) of them  
4 and I think she said that both of them should have  
5 been, I guess, given to the auditors, but that's --  
6 that's not a hundred percent crystal clear. So what I  
7 would suggest there is that, you know, we may want to  
8 contact the auditor again to see whether she was  
9 including the 2003 one. My sense was that she was,  
10 that there were -- there are two (2) of them and she  
11 should have had those.

12                   MR. TIM FRYER:     In --

13                   MR. JOHN BROWN:    I -- I can't say that  
14 for sure.

15                   MR. TIM FRYER:     In earlier evidence it  
16 was identified that the July 31st, 2012, letter, the  
17 auditor was not aware of.

18                   MR. JOHN BROWN:     Yeah.

19                   MR. TIM FRYER:     But it was also  
20 indicated that the 2003, they were well aware of.  
21 They audited it, like, for ten (10) or twelve (12)  
22 years.

23                   MR. JOHN BROWN:     Okay. Well then  
24 maybe -- maybe we need confirmation from the auditor  
25 that they had that and were satisfied with it, but

1 it's the 31st, 2012, is the one that they said they  
2 didn't have and should have had.

3 MR. TIM FRYER: And that's what I was  
4 looking for, clarification about that particular one,  
5 yes.

6 So on page 18, lines 10 to 15, you were  
7 asked by Mr. Mather if you had talked to anyone other  
8 than Ms. Shuttleworth, and you can see in lines 10 to  
9 15 there, if you just read through them, you do say:

10 "Maybe the Treasurer."

11 MR. JOHN BROWN: Yeah, perhaps, yeah.

12 MR. TIM FRYER: Okay.

13 MR. JOHN BROWN: And maybe you, I  
14 don't know.

15 MR. TIM FRYER: Do you recall our two  
16 (2) meetings around that time frame, later in 2013,  
17 and -- and discussing the shared services agreements?

18 MR. JOHN BROWN: I think I do, yeah.

19 MR. TIM FRYER: And I was trying to  
20 help alleviate some of your concerns because of my  
21 knowledge of the agreements.

22 MR. JOHN BROWN: Yes. I now recall  
23 those. I didn't until you just mentioned it but we  
24 did have two (2) meetings and, yes, you did try to  
25 share as far as you could with me information, but,



1 you know, you outlined to me very clearly that you'd  
2 signed a non-disclosure agreement and there was a  
3 limit to what you could share with me, which was one  
4 of those other frustrations I had because you were my  
5 ultimate last resort to explain all this information  
6 to me, and when I asked you, you said you couldn't  
7 because you were covered by a non-disclosure  
8 agreement.

9 MR. TIM FRYER: So when Mr. Mather was  
10 talking to you about 740 in the Foundation Document --  
11 I don't think we need to call it up, but we will if --  
12 if you'd like.

13 MR. JOHN BROWN: Sure.

14 MR. TIM FRYER: Mr. Mather asked who  
15 the Board was that was referred to and you correctly  
16 stated that it would be the Collingwood Public  
17 Utilities Service Board.

18 Do you recall that?

19 MR. JOHN BROWN: I think so, yeah.  
20 Yeah.

21 MR. TIM FRYER: Okay. Do you recall  
22 that both you and I were on the Board at that point in  
23 time?

24 MR. JOHN BROWN: I recall being on the  
25 Board at that point in time, yeah.

1 MR. TIM FRYER: Okay. Do you recall  
2 that I had recommended to Council that you be on the  
3 Board for greater municipal oversight?

4 MR. JOHN BROWN: Yeah.

5 MR. TIM FRYER: Because that was a  
6 concern of the 2014 new Council, correct?

7 MR. JOHN BROWN: Yes, I remember that.  
8 I remember your recommendation and your concern that  
9 the Town play a greater role, all of which I  
10 supported.

11 MR. TIM FRYER: I supported it as  
12 well, because then Mr. Firman would be reporting to  
13 you since you were on the Board, correct?

14 MR. JOHN BROWN: Correct.

15 MR. TIM FRYER: So if we go to page 81  
16 and down to the bottom paragraph, and we're just going  
17 to look at line 25.

18

19 (BRIEF PAUSE)

20

21 MR. TIM FRYER: You notice that you  
22 say:

23 "It just didn't happen."

24 And then just at the -- at the -- at  
25 the next line on -- on the following page, if we take

1 a look here: "We ran out of time."

2 Do you see that on line 3 there: "We  
3 ran out of time"?

4 MR. JOHN BROWN: Yeah.

5 MR. TIM FRYER: So I wanted to just  
6 review this, and this is just a clarification more  
7 than anything. Collus-PowerStream and now EPCOR are  
8 doing some services still under new agreements.

9 MR. JOHN BROWN: Okay.

10 MR. TIM FRYER: They're doing billing  
11 and customer service at least, and I'm not sure of  
12 anything else, but there are agreements in place,  
13 correct?

14 MR. JOHN BROWN: Well, I -- I -- I  
15 haven't followed any of this since I retired.

16 MR. TIM FRYER: Okay, fair enough. So  
17 now in regard to the notes of the May and August 2015  
18 review meetings with yourself and Ms. Almas and Mr.  
19 Houghton --

20 MR. JOHN BROWN: Right.

21 MR. TIM FRYER: -- you noted that only  
22 the three (3) of you were aware.

23 Do you recall that?

24 MR. JOHN BROWN: Of what?

25 MR. TIM FRYER: Of -- of those

1 meetings and the notes that were taken.

2 MR. JOHN BROWN: Yeah. I -- I -- you  
3 know, again my -- this isn't a crystal clear memory I  
4 have, but I can't think why I would give those to  
5 other people but I don't know. I mean, my  
6 recollection is that they were between Ed, myself, and  
7 Sara, but I could be wrong.

8 MR. TIM FRYER: So I was going to ask  
9 if -- I think you've already answered this. Did  
10 Deputy Mayor Saunderson -- was he aware of them?

11 MR. JOHN BROWN: We briefed the Deputy  
12 Mayor but we didn't kind of give him, you know,  
13 material to read or -- it wasn't that sort of a  
14 relationship, so I don't think so. I don't think so.  
15 You know, perhaps but I don't -- I don't recall that  
16 being part of our process.

17 MR. TIM FRYER: Shouldn't all of  
18 Council have been apprised -- the content of the -- of  
19 the combined information in -- in -- in the notes and  
20 your written notes, should be something that they're  
21 aware of because it appears to me to -- to show that  
22 there were trust concerns.

23 MR. JOHN BROWN: Well, that's -- I  
24 think it's a very -- I think it's a very good  
25 question. The question to me is, you know, why didn't

1 you declare to Council all of these concerns and  
2 issues, and the answer to that is, I was very  
3 uncomfortable doing what I -- what I was -- had to do  
4 and for all the reasons that we've heard.

5           You know, people don't like it, I was  
6 operating blind, I didn't have files. It was an  
7 extremely uncomfortable position I was in and not one  
8 that I enjoyed, and I had to make sure that I had the  
9 legal advice to support me that I was doing it, and I  
10 had to make sure that in all the other things that I  
11 do, I had Council's authority and approval.

12           And that's why I was so concerned,  
13 because, you know, I couldn't declare to the Council  
14 suspicions or concerns or open-ended issues that could  
15 kind of spin out of control, and that's why, you know,  
16 the whole situation with the -- with the -- you know,  
17 the Mayor, you know, asking questions about the back-  
18 up and legal counsel was of such concern to me because  
19 I just wanted to keep it very tightly controlled until  
20 I was comfortable that I actually did have the basis  
21 to raise what are very serious issues and issues that  
22 this Inquiry has been set up to deal with.

23           So I didn't want to go there based on  
24 my background and experience. I absolutely didn't  
25 want to go there. So that's the reason I didn't go to

1 Council, that's the reason why I continued to do all  
2 this, and that's the reason why, you know, I never  
3 ever declared this to be an issue that I thought  
4 should go forward. I took advice from -- I took  
5 advice, experienced advice, and left the matter with  
6 that advice and Council.

7                   So -- so this was -- that's a very good  
8 question.

9                   MR. TIM FRYER:    Okay.  If we can look  
10 at page 73 and line 5.  I think you'll recall this.

11

12                                   (BRIEF PAUSE)

13

14                   MR. TIM FRYER:    I know one of the  
15 members of Council kept asking.  I think we can  
16 declare to everybody --

17                   MR. JOHN BROWN:    That was you.

18                   MR. TIM FRYER:    -- that it was me --

19                   MR. JOHN BROWN:    -- yeah.

20                   MR. TIM FRYER:    -- at the public  
21 meetings.  And it's well documented that a number of  
22 times I asked -- because it is in the Shareholder  
23 Agreement.

24                   MR. JOHN BROWN:    Right.

25                   MR. TIM FRYER:    The business plan is

1 to be produced.

2 MR. JOHN BROWN: And I agreed with all  
3 of your questions. I supported that fully. That  
4 should have been there and wasn't.

5 MR. TIM FRYER: What Mr. Mather was  
6 covering here was paragraph 774, and I was going to  
7 bring it up. And if you recall, this is some of the  
8 points that were raised.

9 And one of them I was going to look at  
10 was point b, which is the:

11 "Collingwood and PowerStream's joint  
12 ownership of Collus PowerStream  
13 restricted the Town's ability to  
14 sell its interest in the company and  
15 potentially made the company less  
16 attractive to buyers."

17 I looked at that because I wanted to  
18 say to you that turned out not to be the case. The  
19 EPCOR transaction was a very good transaction.  
20 Correct?

21 MR. JOHN BROWN: The EPCOR transaction  
22 was a very good transaction. But I think generally  
23 speaking to anticipate that transaction, based on the  
24 agreement that was written, would have been highly  
25 speculative. I think the Town lucked out on that one,

1 to be quite candid, and I think the Town benefited  
2 very significantly from the way Mr. Rodgers (sic)  
3 handled his whole file on this matter.

4                   So it -- we lucked out. We -- we did  
5 well. But -- but looking at that agreement after it  
6 was written, I would have said I think -- well, I did  
7 say I -- I have a major problem that this may very  
8 well have devalued the company because it limited  
9 potential interest.

10                   So you know, competing things up by  
11 competing bids, knowing other people were interested  
12 is one thing. But if you know -- if you know that  
13 somebody's got the first right of refusal, you know,  
14 you're going to have to be very, very, very interested  
15 in that proposition.

16                   And we all know now that EPCOR were  
17 looking for a foothold in the Ontario market, and we  
18 were very lucky to be in that position. Had that not  
19 been the case -- had that not been the case, then I  
20 would argue that that -- that element of the  
21 Shareholders Agreement probably would have -- in my  
22 opinion, it would have devalued the -- and it probably  
23 would have been only attractive to PowerStream.

24                   MR. TIM FRYER: Everything you've  
25 talked about there is hypothetical though.



1 MR. JOHN BROWN: Perhaps.

2 MR. TIM FRYER: I'm talking about the  
3 fact that in the end, it was attractive to somebody,  
4 and it was a very good deal. Correct?

5 MR. JOHN BROWN: That's correct.

6 MR. TIM FRYER: Okay. Thank you. The  
7 valuation was a necessary step for the reasons you  
8 cited yesterday, but it also gave a great deal of the  
9 business plan information because of what has to  
10 cumulate to do the valuation. So there was that  
11 secondary benefit to it. Correct?

12 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

13 MR. TIM FRYER: Pardon?

14 MR. JOHN BROWN: Correct.

15 MR. TIM FRYER: Thank you. So now I'm  
16 going to -- this is regarding your testimony and use  
17 of your home email, and this has already been  
18 discussed this morning.

19 So if we could look at page 117. And I  
20 was going to bring up that you had mentioned about the  
21 concern of the mayor and referred to IT again. And I  
22 was going to ask a specific question: Did you have a  
23 concern with IT?

24 And you have responded to Mr. Bonwick.  
25 And actually what you've said is a major concern to me

1 from the comments you made. This is like -- was  
2 Council informed of the concern about emails being  
3 read?

4 MR. JOHN BROWN: No.

5 MR. TIM FRYER: Frankly, I expect that  
6 Collus PowerStream would be pleased to turn over IT  
7 after that experience. I worked with them for  
8 33 years, and I never had a problem with IT.

9 So the last thing I was going to note  
10 about this is if you look at line 7 and 12, you  
11 refer -- you refer to the deputy mayor at the time and  
12 who's the current mayor, and he was -- this email's  
13 from March 2014. Correct?

14 MR. JOHN BROWN: Which email? Sorry.

15 MR. TIM FRYER: This is the Mascarin  
16 email.

17 MR. JOHN BROWN: And how's that  
18 connected to the deputy mayor?

19 MR. TIM FRYER: The deputy mayor then  
20 was Mr. Lloyd.

21 MR. JOHN BROWN: And -- sorry. I'm --  
22 I'm not understanding the question.

23 MR. TIM FRYER: I'm asking -- you  
24 refer to keeping the deputy mayor updated.

25 MR. JOHN BROWN: Oh, no, no, no.

1 MR. TIM FRYER: So was the deputy  
2 mayor Richard Lloyd?

3 MR. JOHN BROWN: No, no, no. The  
4 deputy mayor was Brian Sanderson.

5 MR. TIM FRYER: This email is  
6 March 2014 though.

7 MR. JOHN BROWN: But that wasn't --  
8 that email wasn't part of any of my discovery. That  
9 email was to do with -- that email -- well, I've  
10 already explained that at length.

11 MR. TIM FRYER: Okay.

12 MR. JOHN BROWN: So the only person --

13 MR. TIM FRYER: Oh --

14 MR. JOHN BROWN: This whole situation,  
15 the only -- the only person at Council that was  
16 informed and -- substantively informed with the whole  
17 evolution of the concerns and the information was the  
18 deputy mayor then, who was -- who was Brian  
19 Saunderson, the current mayor.

20 The former deputy mayor I really didn't  
21 have any relationship with, other than as a member of  
22 Council.

23 MR. TIM FRYER: All I'm saying to you,  
24 sir --

25 MR. JOHN BROWN: Yeah.

1 MR. TIM FRYER: -- is this from  
2 March 2014. You weren't communicating with the mayor.  
3 You weren't communicating with the deputy mayor you're  
4 saying.

5 MR. JOHN BROWN: No, no. I  
6 communicated with the mayor throughout the whole  
7 process, but I did not -- I did not include in my  
8 communications with her these sorts of issues that I'm  
9 talking about now.

10 MR. TIM FRYER: Okay. I think we'll  
11 move on. There's been a great amount of discussion  
12 during these proceedings relative -- confidential  
13 information and the sharing of it.

14 MR. JOHN BROWN: Yes.

15 MR. TIM FRYER: You're aware of that?

16 MR. JOHN BROWN: Yes.

17 MR. TIM FRYER: Thank you. Just for  
18 some review, the CAO is an employee of Council.  
19 Correct?

20 MR. JOHN BROWN: Yes.

21 MR. TIM FRYER: In fact, their only  
22 direct municipal employee. Correct?

23 MR. JOHN BROWN: Yeah. I think the --  
24 I think the clerk reports directly to Council and the  
25 treasurers. But anyway, yes. The CAO reports to

1 Council.

2 MR. TIM FRYER: If CAO -- if the CAO  
3 has a discussion with a councillor and there's the  
4 sharing of confidential information, then it is  
5 incumbent of the CAO to inform through the mayor to  
6 Council. Correct?

7 MR. JOHN BROWN: I would all depend  
8 what the confidential information's about and whether  
9 it was within Council's prerogative or not that  
10 that -- you know, there's no principle behind that.  
11 You have to look at the details and make a judgment.

12 MR. TIM FRYER: I put to you, sir,  
13 that if you don't operate that way, then it could be  
14 perceived as some form of lobbying for support by one  
15 of the parties when it is later revealed.

16 MR. JOHN BROWN: Lobbying for what  
17 purpose?

18 MR. TIM FRYER: Whatever purpose.

19 MR. JOHN BROWN: So the CAO is -- and  
20 the city manager is a very important position, because  
21 in any municipality, as you correctly noted, it's the  
22 ultimate staff person to which Council -- Council, not  
23 the mayor -- Council can rely on to be impartial and  
24 to look after the interest of the whole Council.

25 And as far as I'm concerned, I've

1 always tried to observe that in my long career.

2 MR. TIM FRYER: So when you were  
3 Collingwood CAO, did you ever have confidential  
4 discussions and not report it on a timely basis to  
5 mayor and Council?

6 MR. JOHN BROWN: Confidential  
7 conversations about what?

8 MR. TIM FRYER: I'm asking, were there  
9 any confidential information sharing conversations  
10 with a councillor that wasn't reported to mayor and  
11 Council?

12 MR. JOHN BROWN: So -- so going back  
13 to the role of a CAO, the CAO reports directly to  
14 Council. But the CAO has to be able to deal with all  
15 of the individuals on Council.

16 And, you know, all Council generally  
17 speaking -- I've worked for seven (7) -- at some point  
18 in time, they split. Okay? At some point in time,  
19 it's not horrendous. It's actually what happens, and  
20 you deal with that situation.

21 So for a CAO, you have to negotiate  
22 between people on one side and the other side of  
23 numerous issues and the sides all change. But  
24 generally if there's a split, people start to see  
25 things in similar things, and they lobby and persuade

1 each other. So you get kind of like a mini-party  
2 system which isn't supposed to exist in  
3 municipalities.

4 So the CAO has to somehow work with all  
5 these independent people and at the same time, you  
6 know, represent to Council what hopefully is an  
7 independent and objective approach for Council.

8 But you have to make sure that members  
9 of Council have an opportunity to explain to you and  
10 to meet with you on a confidential basis and share  
11 information with you that you will not make public to  
12 Council. In fact, I met at a number of meetings with  
13 you which observed that very principle.

14 So you have to be able to keep  
15 confidential information. You don't share it with  
16 Council because it's provided to you in a confidential  
17 basis. So that's another element of the CAO's job  
18 that's quite difficult to do.

19 So you want to hear what's going on;  
20 you want to know what the politics are; you want to  
21 try to make sure you're assisting the whole Council  
22 throughout a decision. And the better you're  
23 connected to all those members of Council and  
24 understand their individual positions, the better you  
25 can finesse things at Council and make sure, you know,

1 the rough edges are knocked off and try to get, you  
2 know, decision making.

3 And again, I repeat it, I had a number  
4 of those conversations with you that you wanted kept  
5 confidential.

6 MR. TIM FRYER: So when CAO, did you  
7 ever discuss confidential information with members of  
8 the public?

9 MR. JOHN BROWN: No.

10 MR. TIM FRYER: Okay. Have you ever  
11 discussed confidential information after leaving the  
12 CAO position with anyone?

13 MR. JOHN BROWN: I don't watch Council  
14 meetings anymore. I think I've watched a half of one  
15 since I left. I watched part of this Inquiry 'cause I  
16 thought I might end up here, and I did.

17 And so, municipal politics now, other  
18 than as a private citizen, doesn't interest me. And,  
19 you know, in terms of things that -- happening in the  
20 Town, if I think there's an opportunity for me to  
21 contribute as a member of the public, I will certainly  
22 do that because I believe fully in inclusive  
23 government.

24 I think government -- you know, one (1)  
25 of the problems I think with this town is, that it's



1 being too tight. It has not opened itself up. And  
2 when I did a review of the governance system here, we  
3 had a committee system which makes -- provides a much  
4 greater opportunity for ordinary citizens to interface  
5 with politics and politicians in the public interest.

6 That's what I did. That's what I  
7 believe. And I will continue to do that.

8 MR. TIM FRYER: And you know that I  
9 disagree completely with you about the committee  
10 structure?

11 MR. JOHN BROWN: That's fine. You're  
12 entitled to your opinion. Council prevails. That's -  
13 - that's the way it works.

14 MR. TIM FRYER: So, we're going to  
15 move on to your testimony. You spoke about  
16 difficulties you encountered in understanding the  
17 shared services agreement --

18 MR. JOHN BROWN: Yes.

19 MR. TIM FRYER: -- correct? In 2013,  
20 as you began to inquiry about shared service benefits  
21 and costs, did you review with senior staff at  
22 Gaviller, the external auditors?

23 MR. JOHN BROWN: Sorry, could you  
24 repeat that?

25 MR. TIM FRYER: In 2013 --

1 MR. JOHN BROWN: Thirteen.

2 MR. TIM FRYER: -- when you started to  
3 do your --

4 MR. JOHN BROWN: When I started --

5 MR. TIM FRYER: -- study --

6 MR. JOHN BROWN: Okay.

7 MR. TIM FRYER: -- did you discuss it  
8 with the senior staff at Gavillers (sic)?

9 MR. JOHN BROWN: No. I think I -- I  
10 think Gavillers (sic) came in later on. But I was  
11 made aware of -- I was -- you hear lots of things,  
12 right. I was searching for information hopefully in  
13 the right places. But other people were kind of  
14 feeding me information from their experience and the  
15 side who's been here.

16 So, I had heard that -- I forgot -- I --  
17 - I'm bad at names, so I forget the gentleman's name  
18 from Gavillers (sic) who went to a meeting and  
19 participated at the meeting and I was informed didn't  
20 quite agree with what was happening, didn't think we  
21 needed to share the services, but, no, I -- I don't  
22 recall a meeting.

23 THE HONOURABLE FRANK MARROCCO: Was  
24 that -- was that Mr. Neate?

25 MR. JOHN BROWN: Yes. Okay, Mr.

1 Neate. Thank you, Your Honour. So -- so, the answer  
2 to your question is I talked to Gavillers (sic) and I  
3 asked about the service agreements. And I asked -- I  
4 think I -- yeah, I think I did ask about shared  
5 services. I tried to canvass everybody who might  
6 know, including yourself.

7

8 CONTINUED BY MR. TIM FRYER:

9 MR. TIM FRYER: So, I -- through  
10 document searches, there's no communication between  
11 yourself and -- and Gavillers (sic) that I could --  
12 that's why I wanted to ask that question.

13 MR. JOHN BROWN: A meeting. A meeting  
14 in the office.

15 MR. TIM FRYER: Do you recall in --  
16 early in my 2014 to '18, Council had said no to my  
17 offer to assist the CAO directly?

18 MR. JOHN BROWN: I don't recall that  
19 offhand, no --

20 MR. TIM FRYER: It did.

21 MR. JOHN BROWN: -- right.

22 MR. TIM FRYER: You were very  
23 experienced in shared services. And I'm going to go  
24 on. You were very experienced in shared services  
25 between municipal and utility companies from your

1 previous work, correct?

2 MR. JOHN BROWN: No. No, I wouldn't  
3 say that.

4 MR. TIM FRYER: You're retired. Your  
5 CAO position in Brantford you retired from in what  
6 year?

7 MR. JOHN BROWN: I think the year  
8 before I came here. Well, I came here in 2013 --

9 MR. TIM FRYER: Two -- two thousand --

10 MR. JOHN BROWN: -- perhaps.

11 MR. TIM FRYER: -- and ten or eleven?

12 MR. JOHN BROWN: Yeah, yeah. I don't  
13 track everywhere I go --

14 MR. TIM FRYER: Okay.

15 MR. JOHN BROWN: -- and when I don't  
16 go or whatever.

17 MR. TIM FRYER: The Brantford  
18 structure at the time was all the employees were in  
19 the municipal system and shared services went over to  
20 Brantford's LCD, Brantford Power. Do you --

21 MR. JOHN BROWN: Yeah, that's my --

22 MR. TIM FRYER: -- recall that?

23 MR. JOHN BROWN: That's my  
24 recollection, yeah.

25 MR. TIM FRYER: Okay. So, there was

1 some sort of cost allocation transfer pricing being  
2 done in Brantford, correct? I'm not looking for  
3 details, just --

4 MR. JOHN BROWN: Yeah. And I --

5 MR. TIM FRYER: -- just --

6 MR. JOHN BROWN: -- think I said I  
7 wasn't familiar with their -- their system. So, if  
8 you're telling me that's right, I have no reason to  
9 disbelieve you.

10 MR. TIM FRYER: Yeah. This was the  
11 municipal system?

12 MR. JOHN BROWN: Yeah.

13 MR. TIM FRYER: Okay. So, Brantford  
14 differed from Collingwood's case because the shared  
15 services and direct employees were in Collus which was  
16 conforming to the OEB, correct?

17 MR. JOHN BROWN: Right.

18 MR. TIM FRYER: An in -- integral  
19 difference then was that Collus was an OBCA  
20 corporation, so not governed by the Municipal Act,  
21 correct?

22 MR. JOHN BROWN: Business Corporations  
23 Act.

24 MR. TIM FRYER: During your tenure,  
25 the OEB-ruled Brantford structure did not conform to

1 the OEB's affiliate relationship code and that they  
2 required the municipality to move the employees over  
3 to power, correct?

4 MR. JOHN BROWN: Right. Right. But  
5 they didn't have Collus Solutions.

6 MR. TIM FRYER: Meanwhile, Collus was  
7 always in compliance with the regulator, the external  
8 Town auditor, and the HSG review that was done stated  
9 that they were completely in compliance, correct?

10 MR. JOHN BROWN: Yes. But it has also  
11 been noted I think in Mr. Roger's report that the  
12 existence of Collus Solutions was a very unusual  
13 situation that wasn't replicated anywhere else. I  
14 think he said that. And maybe you can check the  
15 record to make sure I'm not misquoting him.

16 But I think the -- the Collus Solution  
17 construct wasn't -- wasn't -- didn't exist anywhere  
18 else. I know Peterborough there was a reference, but  
19 I think it was unique. That's what --

20 MR. TIM FRYER: Actually, Wasaga has  
21 the same structure.

22 MR. JOHN BROWN: Okay. Well, there  
23 you go.

24 MR. TIM FRYER: A number of utilities  
25 took on the same structure because it was done under a

1 Power Budd (phonetic) model.

2 MR. JOHN BROWN: So, maybe I should  
3 refer to Mr. Rodger's report to see what he said, but  
4 that's -- that was what I took out of it. So, if I'm  
5 wrong, I'm wrong.

6 MR. TIM FRYER: So, it is apparent  
7 that during your analysis of the shared service  
8 agreements, that there was little weight provided to  
9 the adhere -- for the fact that there was adherence to  
10 regulations and being fully compliant with all  
11 regulators and el -- and evaluators.

12 Consultants also even had limited use  
13 for input from Gavillers (sic), correct?

14 MR. JOHN BROWN: I did not look -- I  
15 did not look to do an examination of Collus or Collus  
16 Solutions. I was just seeking for information.  
17 Everything else flowed from consultants' reports  
18 because they were the experts that I hired to get the  
19 information, the quality, professional information  
20 that Council needed.

21 So, for you to pursue my judgment is  
22 really -- I -- I think maybe if you referred to what  
23 the consultant said, I could better respond to that as  
24 opposed to what I thought.

25 MR. TIM FRYER: Okay. So, I wanted to

1 look up some specifics, so I wanted to bring up  
2 ALE0040924.0001. And you'll have to bring this up  
3 native. No, not that native. It's a large file. And  
4 we're going to go to page 60.

5 I'll just explain that it's the  
6 financial statement, and it's the related party  
7 transaction note. And I wanted to bring it up just to  
8 review it because it's actual evidence that the  
9 auditor approved the process.

10 So, if you just could get most of the  
11 page on. Yeah, you'll have to... Just a little  
12 smaller. And, yeah, that -- that's great because  
13 you're catching the paragraph which I was going to...

14

15 I think what I was going to do was have  
16 Mr. Brown read the paragraph to just confirm of what  
17 I'm saying.

18 MR. JOHN BROWN: Do you want me to  
19 read out loud?

20 MR. TIM FRYER: Yeah.

21 MR. JOHN BROWN: I did that before.

22 MR. TIM FRYER: Can you read it okay  
23 or -- or does it need to be bigger?

24 MR. JOHN BROWN: I can read it. But,  
25 I mean, do you want me to read this?



1 MR. TIM FRYER: Yeah.

2 MR. JOHN BROWN: Okay.

3

4 (BRIEF PAUSE)

5

6 MR. JOHN BROWN: Okay, so.

7 MR. TIM FRYER: So, again, I was just  
8 providing that as evidence that we were in compliance.  
9 And the Collingwood -- Town of Collingwood statements  
10 themselves would have the same details because this is  
11 a related party transaction and that note would have  
12 to be on the Town financial statements, as well?

13 MR. JOHN BROWN: Yeah.

14 MR. TIM FRYER: Okay. So, before we  
15 go to the next item, I'm just going to jump to page 3  
16 of this document, which is the table of contents. And  
17 the reason I do this is this is the annual report that  
18 came in in 2014 for -- that you referred to yesterday  
19 when -- and -- and responded to Mr. Chenoweth's  
20 questions.

21 And you referred to the fact that this  
22 AR, in your opinion, wasn't a business plan. And when  
23 you look at the outline of it, it's not. So, I just  
24 was going to get you to recall that. If you -- if you  
25 look at that, you're just confirming that you were

1 correct, that this is not really a business plan, this  
2 is an annual report?

3 MR. JOHN BROWN: That was my opinion,  
4 yeah, because there are things in business plans, and  
5 I think Mr. Rodger noted what they might be, that I  
6 didn't see in this document that I would think should  
7 be part of a business plan.

8 This whole question of this growth  
9 strategy that -- you know, we talked about that, I  
10 guess, at length yesterday, you know, that there was  
11 no position, adopted position, on a growth strategy by  
12 the Town. And the Town owns the hydro.

13 So, how they could develop a strategy  
14 in the absence of the know -- Town knowing and  
15 agreeing to it, I don't know. But the point is I  
16 would imagine there would be some metric, some  
17 business metric in a business plan if that was in fact  
18 the case, and they would be talking about whatever --  
19 the other utilities that were going, what their target  
20 was, what their hope for a three (3) or five (5) year  
21 --

22 MR. TIM FRYER: M-hm.

23 MR. JOHN BROWN: So, all those things  
24 would be things in a business plan. I think -- I  
25 think you and I have a similar view of what business

1 plans might be.

2 MR. TIM FRYER: I was going to ask, do  
3 you need a drink of water at all because I know you've  
4 been talking --

5 MR. JOHN BROWN: Okay, I'll take one  
6 (1).

7 MR. TIM FRYER: I couldn't find a  
8 document. I -- I did some search requests that was  
9 the business plan account -- or annual report that  
10 Collus did prior to the strategic partnerships.

11 I was thinking that you probably would  
12 have looked at one (1) because those were part of  
13 Council minutes from when the annual presentation was  
14 done.

15 MR. JOHN BROWN: I don't recall.

16 MR. TIM FRYER: Those had business  
17 plan because they had three (3) year forecasts --

18 MR. JOHN BROWN: Okay.

19 MR. TIM FRYER: -- and -- and other  
20 financial performance measure details, again, as per  
21 the requirements of the shareholder's direction, so it  
22 was conforming to the shareholder's direction?

23 MR. JOHN BROWN: Yeah, and I know you  
24 were particularly disappointed that we didn't get what  
25 your definition, and perhaps mine, might be of a

1 business plan and I thought that was a shortcoming  
2 that you rightly kept plugging all the time.

3 MR. TIM FRYER: Okay.

4 MR. JOHN BROWN: And I supported that.

5 MR. TIM FRYER: So I'm going to bring  
6 up EHH0000117.0001. This is page 5 we're going to  
7 look at.

8 So this is -- this is providing  
9 detailed information of Collus PowerStream after the  
10 Beacon report was released.

11 MR. JOHN BROWN: Okay.

12 MR. TIM FRYER: And -- and of the --  
13 the bolded parts are of -- parts of the HSG review  
14 that was done.

15 So this is also in that kind of later  
16 2013 time frame that -- that we were talking about  
17 yesterday.

18 So the very first paragraph, I was  
19 going to ask you, actually, if you'd read that out.

20 MR. JOHN BROWN: Read it out loud?

21 MR. TIM FRYER: Yes, please.

22 MR. JOHN BROWN: Okay. The  
23 methodology to develop for Collus PowerStream  
24 Solutions Corporation to distribute its costs among  
25 the businesses it serves is cost base consistent with

1 the OEB precedent and regulatory practice and is  
2 transparent and efficient. In addition, the  
3 methodology com -- asset user face is cost based and  
4 the allocation of those costs reflect cost causation  
5 and therefore reasonable and appropriate.

6 MR. TIM FRYER: So -- and I'm just  
7 going to confirm with you, this states that it's cost-  
8 based and it's because of allocation reflecting  
9 causation, correct?

10 MR. JOHN BROWN: That's what it says.

11 MR. TIM FRYER: Okay. And I don't  
12 want to go over every detail of the HSG report, I can  
13 -- I can deal with that in closing submissions.

14 But if we look at the -- at the last  
15 part of the second last paragraph on this page. So --  
16 so just the last sentence. And it says that we're in  
17 compliance with the affiliate relationships code, and  
18 that was just to confirm with you that that is stated  
19 in the report, correct?

20 MR. JOHN BROWN: Correct.

21 MR. TIM FRYER: So you also spoke of  
22 the consultant not being able to complete a value for  
23 money analysis because of bundled costs. Remember  
24 that?

25 MR. JOHN BROWN: That's what he --

1 that's what he told me.

2 MR. TIM FRYER: Okay. The OEB  
3 conforming agreement utilizes abundant methodology and  
4 is noted the Collingwood Public Utility Service Board  
5 Agreement needs to match the same terms as to the --  
6 as to the conforming OEB one on the Collus Power side.

7 Do you recall that being told to you?

8 Okay.

9 Before moving on, I -- I'm just going  
10 to ask, do you recall reviewing the HSG report?

11 MR. JOHN BROWN: I -- I wasn't aware  
12 of the HSG report, that's another one of those things,  
13 my understanding was that was undertaken by Collus  
14 Solutions and I don't think that was available to the  
15 Town. I -- I don't think it was approved by Council.  
16 You can help me. Because the original 2003 agreement,  
17 my understanding was that if the -- it was going to be  
18 brought to Council, I haven't got it in front of me,  
19 but maybe if we could bring it up. But you know the -  
20 - what I understood was this agreement was going to be  
21 I guess reviewed and updated and brought back to  
22 Council and any changes approved by Council.

23 So again, my understanding was it  
24 started off as a cost-based system, according to Derek  
25 Ali and -- and Beacon 22 and it ended up being, you

1 know, distributing costs and HS -- whatever --

2 MR. TIM FRYER: G.

3 MR. JOHN BROWN: -- G, did this report  
4 and they allocated costs, but I note that I think it  
5 was Mr. Ali said in his report that that was fine for  
6 utilities, but you know, did not -- did not reflect or  
7 was not appropriate for water.

8 And of course, what Collus Solutions  
9 were doing, they were planning to cross water and --  
10 and IT and hydro and I think the consultant concluded,  
11 all of the consultants concluded that -- that the  
12 system -- that the agreement should be dropped and we  
13 should make significant changes, including water --  
14 waste water coming back to the Town, all those sorts  
15 of things.

16 MR. TIM FRYER: I was trying to talk  
17 specifically about the HSG report.

18 MR. JOHN BROWN: Yes, so I wasn't  
19 aware of it.

20 MR. TIM FRYER: The HSG report was --  
21 was done because the July 31st, 2012 letter said  
22 within a year there would be a review by a third party  
23 and it would establish a methodology to move forward  
24 with.

25 So what I asked you was did you read

1 the HSG report?

2 MR. JOHN BROWN: I read it, but I  
3 guess the question I would have back for clarification  
4 was, was that a report submitted to Council and  
5 approved by Council as the appropriate billing  
6 structure?

7 MR. TIM FRYER: The evidence has shown  
8 that there was a challenge getting it to Council,  
9 because of yourself.

10 MR. JOHN BROWN: No, I -- I wasn't  
11 aware of it. I don't know what challenge I would  
12 present to something that was anticipated. And if  
13 there was a challenge with me that you understood,  
14 nobody communicated that to me, including you.

15 MR. TIM FRYER: If -- if it was going  
16 to get to Council, it would have to be Collus  
17 PowerStream that would initiate the process, correct?

18 MR. JOHN BROWN: Whatever.

19 MR. TIM FRYER: That's -- that's who  
20 initiated the report.

21 I was going to submit to you, since  
22 you've read it, if you had reviewed that early in your  
23 tenure, that would have been very beneficial to have,  
24 correct?

25 MR. JOHN BROWN: Had -- had I been



1 made aware of it and perhaps that's something you  
2 could have shared with me when we met or whatever.

3 MR. TIM FRYER: I wasn't aware of the  
4 HSG report because I had left.

5 So I'm going to move to TOC0516647.  
6 These are the meeting notes that we saw and you spoke  
7 to yesterday in regards to the May 4th and August  
8 31st, 2015 meetings between yourself and Mr. Houghton  
9 and Ms. Almas. And I wanted to review these with you  
10 because, in my opinion, based on -- on previous  
11 evidence, this -- this really does put the whole trust  
12 issue into question amongst the partners.

13 So the second last bullet, if -- I call  
14 it "bullet" because there is a kind of a little dash  
15 to the side there, so if we just go down, the second  
16 last bullet, it says -- and we can read it there.

17 I had told John to ask people that were  
18 directly involved, your note says apparently he was,  
19 Ed can interpret the letter to be binding or not  
20 binding, and then told John to ask your share partner,  
21 your note below, if we just scroll a little bit, is  
22 you asked Ron Clark and he advised Ed that this was a  
23 binding agreement when they were signing it and Ed  
24 said that that's -- has -- what he wanted, correct?

25 MR. JOHN BROWN: Right.

1 MR. TIM FRYER: Could you --

2 MR. JOHN BROWN: Right.

3 MR. TIM FRYER: Thank you.

4 So do you recall a meeting when you  
5 asked me to attend with Sara when you informed me of  
6 the July 31st, 2012 agreement and asked me if I was  
7 aware of it and I told you I did not know about it,  
8 even though I was at the -- at the utility then,  
9 correct?

10 MR. JOHN BROWN: I don't remember the  
11 meeting specifically, but I have no reason to doubt  
12 that it didn't happen that way you say.

13 MR. TIM FRYER: Sara couldn't recall  
14 either, so that's fine. It is a long time ago.

15 MR. JOHN BROWN: I remember a meeting  
16 with you, but I -- I don't remember exactly as you've  
17 set it up.

18 MR. TIM FRYER: Well, you did say  
19 yesterday, and quite rightly so, Council was quite  
20 upset.

21 MR. JOHN BROWN: Yes.

22 MR. TIM FRYER: You gave me some  
23 foreknowledge of it --

24 MR. JOHN BROWN: Yes, that's good.

25 MR. TIM FRYER: -- asking if I knew

1 about it and I had explained no, even though I was at  
2 the utility at the time.

3 MR. JOHN BROWN: Sure, okay. This was  
4 I searching for information.

5 MR. TIM FRYER: Yes.

6 So the third last bullet, and we don't  
7 have to read the whole thing. This is the one where  
8 it actually refers to including a return on equity  
9 premium.

10 And I just wanted to review that with  
11 you because -- and get your recall of -- of that.

12 Do you recall, and you may not, there's  
13 actually a return on equity built into the process  
14 that the OEB undertakes in rate setting on the -- on  
15 the power side. You may not recall that.

16 MR. JOHN BROWN: Is it 9 percent, is  
17 that what it is?

18 MR. TIM FRYER: It is. In -- in the  
19 calculations through the rates.

20 So it -- it has it without having a  
21 return on equity clause in the agreement because the  
22 OEB does it through the rate setting process. But the  
23 reason I bring it up is because it's been identified  
24 in the evidence through other witnesses the amended  
25 shared service agreement was going to have a premium.

1                   And what I was going to say to you  
2 about that is since it's not built into the power  
3 agreement, it can't be in the public utilities  
4 agreement without a lot of difficulty with the OEB  
5 agreement, because the -- they're supposed to be  
6 matching if it's -- if it's an affiliate.

7                   And I'm -- I'm just running that by you  
8 to see if you recall that because of your background  
9 with Brantford.

10                   MR. JOHN BROWN:    No, I guess in  
11 Brantford my -- my role wasn't involved in the  
12 technical matters that -- that you're talking about.

13                   It was more to make sure that everybody  
14 was informed about everything and Council was advised  
15 wherever, in my judgment, Council needed to be advised  
16 of anything that was happening which was quite  
17 different than what happened here.

18                   MR. TIM FRYER:    So if we go to page 3  
19 and -- and the fourth bullet, if I've got this marked  
20 right. You note there, you see that you say "Why were  
21 docs confidential?"

22                   MR. JOHN BROWN:    Yes.

23                   MR. TIM FRYER:    So again from your  
24 background, the Shared Services Agreement is part of  
25 the cost to service process, which is a public

1 process. So the Shared Services Agreement is a public  
2 document.

3 MR. JOHN BROWN: Yes.

4 MR. TIM FRYER: You agree?

5 MR. JOHN BROWN: In my opinion, yes.  
6 But my understanding was that that document was never  
7 made public since its inception --

8 MR. TIM FRYER: Yeah.

9 MR. JOHN BROWN: -- since it was  
10 signed. I always said, why isn't this public? And I  
11 was told because it's confidential.

12 MR. TIM FRYER: Yeah. So your  
13 question to Mr. Houghton led to his incorrect response  
14 because it did suggest that it was -- it was not  
15 public, and it is.

16 MR. JOHN BROWN: Yeah.

17 MR. TIM FRYER: That led to your note  
18 about significant change and the misinterpretation on  
19 cost. And that's why I had referred you to the HSG in  
20 reading that paragraph because you were explaining  
21 here that the fee was based on -- it used to be a cost  
22 basis, and then it went to an allocation basis.

23 Well, it actually was part of a cost  
24 allocation process. We can -- we can bring up the HSG  
25 paragraph again if you would like but --

1 MR. JOHN BROWN: No. I can already  
2 tell you -- the way I set this meeting up with Sara  
3 was the -- really the author of the final minutes, so  
4 there was no dispute.

5 So whatever Sara ended up putting in  
6 the final memo, this was my thinking notes on the  
7 draft that I got. These were just my thinking notes.  
8 I am surprised they showed up. But anyway, they're  
9 just thinking notes.

10 And -- and so whatever -- whatever Ed  
11 said in the recollection of Sara is what's included in  
12 the final notes. So -- so whatever it is, that's what  
13 he said.

14 MR. TIM FRYER: So if we just scroll  
15 down, it says -- just right there is fine. Do you see  
16 the line just close to the bottom that says:

17 "John said that he showed Gavillers  
18 the 2003 Shared Services Agreement."

19 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

20 MR. TIM FRYER: So it looks -- there a  
21 little disjoint here. So it says:

22 "Ed said not that Gavillers were  
23 also aware of the 2003 agreement."

24 And your note says, were they? So it  
25 says that you showed it to them, and then your notes

1 says, were they?

2 MR. JOHN BROWN: So anyway going back  
3 to your earlier question to me, I was not quite clear  
4 on the 2003 one. So it would -- it would appear here  
5 the Gavillers (sic) did see the 2003 one. So I  
6 answered my own question. That was just a thinking  
7 note to me.

8 MR. TIM FRYER: Okay. Actually to me,  
9 it's the opposite. It looks to me like you didn't  
10 show them the 2003 agreement, and that confirms that  
11 it would have been the July 31st that you were talking  
12 about earlier.

13 MR. JOHN BROWN: Maybe we ask  
14 Gavillers (sic). I don't -- I mean, I've -- I've  
15 answered, right?

16 MR. TIM FRYER: Fair enough. So if we  
17 go to page 4, and it says: "Ed said that Tim  
18 resigned/retired." I retired. I don't know why the  
19 word "resigned" was put in there. And then further in  
20 that, it says: "You ran out of time."

21 So you're aware the evidence shows all  
22 parties knew this Shared Services Agreement would be  
23 updated and decided to complete the closing first  
24 before doing that. Correct?

25 MR. JOHN BROWN: Yes. That was what,

1 I guess, that side letter did.

2 MR. TIM FRYER: It's also been noted  
3 in the evidence that Tim Fryer was not involved in  
4 anything to do with the Shared Services or the Collus  
5 Power side in those last six (6) months before my  
6 retirement.

7 MR. JOHN BROWN: You're making a  
8 statement?

9 MR. TIM FRYER: Fair enough. Yeah.  
10 So it's well documented, as we just talked about, that  
11 all parties were positively engaged in the 2013  
12 process to complete an updated Shared Services  
13 Agreement.

14 The HSG review was used to give a third  
15 party objective view, but it appeared that you didn't  
16 support Council's goal of completing that agreement.

17 MR. JOHN BROWN: No. Are you asking  
18 me that?

19 MR. TIM FRYER: I'm asking you, it  
20 appears that you didn't support. But your -- I'm  
21 asking for a yes or no.

22 MR. JOHN BROWN: What -- I didn't  
23 support what? Sorry.

24 MR. TIM FRYER: Their goal to have a  
25 new Shared Services Agreement.



1 MR. JOHN BROWN: No. In fact, there  
2 was a whole process established with PowerStream with  
3 respect to developing a new and updated arrangement  
4 between the Town and PowerStream.

5 MR. TIM FRYER: So it appears that the  
6 penultimate issue was you and Mr. Houghton were at  
7 odds with each other from the start of your tenure.  
8 Correct?

9 MR. JOHN BROWN: Correct.

10 MR. TIM FRYER: I can bring up  
11 Mr. McFadden's testimony where he actually speaks  
12 quite candidly that it was so, but I'm going to move  
13 along.

14 MR. JOHN BROWN: That may be his  
15 opinion, but it wasn't mine.

16 MR. TIM FRYER: You testified a major  
17 issue for you was that Ed Houghton would not disclose  
18 his actual compensation information to you. Correct?

19 MR. JOHN BROWN: That was a  
20 significant issue for me. And not only did he not  
21 disclose his, none of the people, including your  
22 salary, wasn't disclosed, and Marcus Firman's salary  
23 wasn't disclosed.

24 And so, in my opinion, that was a whole  
25 body of costs that were distributed that could be -- I

1 mean, I don't know. Maybe you were making a million  
2 dollars a year, and those costs were distributed. I  
3 don't think that was fair value.

4 But unless I knew what you were  
5 making -- I mean, you knew what was everybody was  
6 making. How could we make a judgment on whether we're  
7 getting value for money or not?

8 MR. TIM FRYER: You will recall that  
9 this is information you asked for me both prior to  
10 being on Council and during Council. Correct?

11 MR. JOHN BROWN: I was trying to --  
12 you were kind of my ultimate opportunity to get  
13 information, and I hoped that you could provide the  
14 information which was so difficult otherwise to  
15 obtain.

16 You told me that when you left you  
17 could not help me -- give me information because you  
18 signed a non-disclosure agreement. You offered to  
19 come in and share some information with me. But to be  
20 quite candid, that information wasn't helpful in  
21 completing the information I thought was necessary.

22 So you made an attempt to do it, but by  
23 virtue of the non-disclosure agreement which you  
24 signed, it was not possible. So that's what happened.

25 MR. TIM FRYER: Okay. So you did ask

1 me, sir, and I would submit to you that as well, I  
2 told you I would -- could only disclose my own salary,  
3 which was a hundred and 50 thousand dollars. I was  
4 very up front about that.

5 MR. JOHN BROWN: I wasn't interested  
6 in your particular salary or anybody's particular  
7 salary. I wanted to know the burden of salaries that  
8 were being spread over the organization so that we  
9 could eventually find out whether the costs we were  
10 paying for water and wastewater services as well as  
11 for the whole IT function were reasonable and fair.  
12 That was my job.

13 MR. TIM FRYER: And everything became  
14 more difficult after the strategic partnership  
15 agreement was entered into because it involved another  
16 party. Right? All that documentation had been tabled  
17 with the -- with the Town every year in the annual  
18 report.

19 But when the new entity existed --  
20 Collus PowerStream -- it became very difficult to get  
21 that information. Correct?

22 MR. JOHN BROWN: So when the annual  
23 report was delivered every year, it's my understanding  
24 that -- you know, that you generally took into account  
25 the distributed costs, but the details were never

1 disclosed, and that was a concern to the treasurer.

2 She wanted to know the details.

3                   Mr. Houghton's salary, your salary,  
4 Ms. Shuttleworth's salary -- you know, whatever the --  
5 all those -- all those are elements of cost that the  
6 taxpayers, the ratepayers all have to pay. And we had  
7 no basis from you -- 'cause you were the treasurer --  
8 or anybody else that assured us that we were getting  
9 value for money by the way these costs were formulated  
10 and billed to the Town.

11                   And consistent with Council's direction  
12 to me in terms of doing a value for money audit, which  
13 was approved by Council and was approved by the  
14 CPSUB -- and, you know, you would have been aware of,  
15 and Collus PowerStream would have been aware of.

16                   In its wisdom, Council decided that was  
17 a good idea, and we went forward, and we did that.  
18 And we found out -- or the consultant found out that  
19 he could not make a comment on that.

20                   So that left us with, I guess, the same  
21 situation, which was that we did not know whether we  
22 were or were not getting value for the money that you  
23 were billing us.

24                   MR. TIM FRYER:    Again, you're talking  
25 about Collus PowerStream, and I was never at Collus

1 PowerStream as the CFO --

2 MR. JOHN BROWN: Well, Solutions as  
3 well because Collus Solutions was billing us from  
4 2003, my understanding is.

5 MR. TIM FRYER: And I've explained to  
6 you that up until the strategic partnership, it's in  
7 the evidence that all that information went through.  
8 Do you recall that the treasurer, Marjory Leonard --

9 MR. JOHN BROWN: M-hm.

10 MR. TIM FRYER: -- was actually an  
11 employee of Gavillers (sic) at one time, and she  
12 performed audits on the public utilities and Collus  
13 Power at the time back before 2012.

14 MR. JOHN BROWN: Yeah. But she  
15 wouldn't be transferring that information to the Town.  
16 My understanding is that you can't transfer  
17 information.

18 MR. TIM FRYER: No. But she has the  
19 knowledge in her head at the breakdown.

20 MR. JOHN BROWN: Maybe.

21 MR. TIM FRYER: I met with her  
22 regularly and updated her. It's afterwards. You're  
23 confusing -- and you're totally correct. It was very  
24 difficult with the new entity to get that  
25 information -- Collus PowerStream.

1 MR. JOHN BROWN: I would say it was  
2 even more difficult with the new entity.

3 MR. TIM FRYER: Yeah.

4 MR. JOHN BROWN: I think it was  
5 difficult with the existing entity.

6 MR. TIM FRYER: I'll leave that for  
7 closing submission as well because there's financial  
8 statements; there's annual reports; there's reviews  
9 that take care of all of that.

10 So plain and simply, it was a case of  
11 Collingwood's top two (2) civil servants were not  
12 successful in maintaining a good commercial  
13 relationship between the shareholders. Correct?

14 MR. JOHN BROWN: Incorrect.

15 MR. TIM FRYER: One major instance was  
16 the CAO and the CEO not ensuring 2014 to '18 Council's  
17 additional municipal shareholder representation was  
18 instituted. This was critically important to the  
19 commercial relationship between the shareholders and  
20 the Collus PowerStream Board. Correct?

21 MR. JOHN BROWN: Incorrect.

22 MR. TIM FRYER: One (1) major instance  
23 was the CAO and the CEO not ensuring 2014 to '18  
24 Council's additional municipal shareholder  
25 representation was instituted. This was critically

1 important to the commercial relationship between the  
2 shareholders and the Collus PowerStream Board,  
3 correct?

4 MR. JOHN BROWN: I think you're making  
5 a statement. I really don't want to comment on that.

6 MR. TIM FRYER: You commented before  
7 about the importance of the deputy mayor --

8 MR. JOHN BROWN: But you're developing  
9 your statement.

10 THE HONOURABLE FRANK MARROCCO: He --  
11 Mr. -- Mr. Fryer can make a statement to you and ask  
12 you whether you agree with it or not.

13 MR. JOHN BROWN: Okay.

14 THE HONOURABLE FRANK MARROCCO: That -  
15 - that's legitimate. If it's -- if it's just a  
16 statement --

17 MR. JOHN BROWN: Okay.

18 THE HONOURABLE FRANK MARROCCO: --  
19 with no question attached, then there's nothing --

20 MR. JOHN BROWN: Okay.

21 THE HONOURABLE FRANK MARROCCO: -- for  
22 you to respond to.

23 MR. JOHN BROWN: Thank you, Your  
24 Honour.

25

1 CONTINUED BY MR. TIM FRYER:

2 MR. TIM FRYER: So, again, this was a  
3 critically important step to the commercial  
4 relationship between the shareholders and the Collus  
5 PowerStream Board?

6 MR. JOHN BROWN: Whi -- which was?

7 MR. TIM FRYER: Having the deputy  
8 mayor appointed as an additional representative onto  
9 the Board in 2014 because, again, I was recommending  
10 more municipal oversight?

11 MR. JOHN BROWN: Right. I -- I think  
12 I could -- I could say that all of the suggestions you  
13 made with respect to increasing representation on the  
14 Board and getting more information about the hydro  
15 company, all of that I supported. They were good  
16 ideas and I supported every one (1) of them.

17 And we talked about it. We actually  
18 talked about it, I think, in -- in confidence. So, you  
19 had my full support in all of the things you tried to  
20 achieve there.

21 MR. TIM FRYER: Do you recall during  
22 the striking committee meeting January -- actually,  
23 December 2014, I stipulated to Mayor Cooper that I  
24 would support her being reappointed as long as Deputy  
25 Mayor Saunderson got the next appointment, which was



1 coming up shortly?

2 MR. JOHN BROWN: That -- that -- I  
3 can't remember -- I can't remember that offhand right  
4 now, but that would be consistent with what you would  
5 want and what I would think was a good idea.

6 MR. TIM FRYER: Okay. I'm going to  
7 bring up CPS0005104.

8

9 (BRIEF PAUSE)

10

11 MR. TIM FRYER: This is a note from  
12 Mayor Cooper to Mr. Houghton. And if you'd just read  
13 through it.

14

15 (BRIEF PAUSE)

16

17 MR. TIM FRYER: So, this is the mayor  
18 making the CEO, Mr. Houghton, aware of the fact that  
19 the municipality wanted that other representative,  
20 correct?

21 So, do you record -- re -- recall that  
22 Mayor Cooper supported the Council motion for the  
23 commi -- the -- when the committees were struck in --  
24 in December?

25 And then she and another councillor

1 changed their previous support for the September vote  
2 for Mr. Worts or Mr. Saunderson, a vote that really  
3 shouldn't have happened because the municipality asked  
4 for that spot to be filled by the deputy mayor,  
5 correct?

6 MR. JOHN BROWN: That -- that sounds  
7 correct. I can't remember it very clearly, but it  
8 sounds consistent.

9 MR. TIM FRYER: Do you remember that  
10 the in camera situation was four (4)/four (4) vote?

11 MR. JOHN BROWN: (NO AUDIBLE  
12 RESPONSE).

13 MR. TIM FRYER: It was, and we had to  
14 do a tiebreaker. So, would you agree -- agree it  
15 would have been extremely beneficial if Deputy Mayor  
16 Saunderson had been on the Collus PowerStream Board  
17 early on in this process?

18 MR. JOHN BROWN: Absolutely.

19 MR. TIM FRYER: Mr. Houghton also  
20 identified in his testimony support for that, as well.  
21 So, I'm going to move on then. I -- I had a couple  
22 other comments, but I'm going to get through this.

23 So, TLC0516664.

24

25

(BRIEF PAUSE)

1 MR. TIM FRYER: Your Honour, I  
2 probably have ten (10) to fifteen (15) minutes.

3 THE HONOURABLE FRANK MARROCCO: Well,  
4 I'll take ten (10) minutes now, and you can take a  
5 look.

6 MR. TIM FRYER: Okay.

7

8 --- Upon recessing at 11:24 a.m.

9 --- Upon resuming at 11:34 a.m.

10

11 CONTINUED BY MR. TIM FRYER:

12 MR. TIM FRYER: Okay, if -- if we  
13 could bring up TOC0516664.

14

15 (BRIEF PAUSE)

16

17 MR. TIM FRYER: So this is an email  
18 from yourself to me at 8:44 in the evening on Friday,  
19 June 3rd, 2016. Do you recall it, or would you like  
20 to read it?

21 MR. JOHN BROWN: Yeah, I rememb -- I  
22 would like to read it, please.

23

24 (BRIEF PAUSE)

25

1 MR. JOHN BROWN: Can we scroll up,  
2 please?

3

4 (BRIEF PAUSE)

5

6 MR. JOHN BROWN: Sure. I remember it.

7 MR. TIM FRYER: Okay. So if we just  
8 go to the top, and I believe that's your handwriting.  
9 And it says, "Tim Fryer situation"?

10 MR. JOHN BROWN: Yeah.

11 MR. TIM FRYER: Do you recall what you  
12 meant with that note?

13 MR. JOHN BROWN: No, just -- your  
14 file, your note, your email, whatever.

15 MR. TIM FRYER: So I'm a Councilor,  
16 then.

17 MR. JOHN BROWN: Yes.

18 MR. TIM FRYER: Do you deem this to be  
19 an appropriate email from a time sent and a content  
20 basis? You're copying staff as well?

21 MR. JOHN BROWN: As I explained  
22 earlier on, all of my communications, I -- I mean, not  
23 all of them, but, you know, most of the significant  
24 ones I sent to Sara, so that was just standard. It  
25 wasn't peculiar to you. It was just insignificant

1 emails. I would send them to Sara.

2                   This is a significant matter, the whole  
3 fact that, you know, that -- huge difficulty trying to  
4 get information has been talked about a lot. And, you  
5 know, you had been at that company, had all the  
6 information, and a -- and I couldn't get good  
7 information anywhere else.

8                   And I thought it very unusual that --  
9 that we would have an NDA for a, you know, a -- a CFO  
10 of a hydro company. I mean, I can think of NDAs being  
11 appropriate in all kinds of situations, but I have no  
12 idea why an NDA would be necessary as part of a  
13 retirement of a CFO, and particularly one that -- for  
14 which information otherwise was not readily available.

15                   So -- so that's -- that's the reason I  
16 wrote it, and -- and it was copied to Sara. I've  
17 explained that. And the time of the -- of the  
18 evening, yeah. I -- I think I probably should have  
19 not sent that at 8:44 p.m., but this was a pretty  
20 hectic -- a pretty hectic job while I was here. I  
21 mean, this file that we're on right now was one (1)  
22 part of a very large package of activity that I was  
23 responsible to manage, and -- and if I had to work at  
24 night time, then I, you know, didn't mind doing that,  
25 but I apologize if I interfered with your private

1 time. So that was not appropriate, the timing.

2                   Otherwise, you know, I guess it's just  
3 saying it's very unfortunate. So I -- as a response  
4 to that, I think you took the matter to Council, and  
5 you explained to Council that -- that there was a, I  
6 guess, a comment from me about the NDA, and then there  
7 was another memo. I don't know if you're going to  
8 bring that up or not.

9                   MR. TIM FRYER:     Actually, this one  
10 refers to the two (2) in camera sessions that I went  
11 to --

12                   MR. JOHN BROWN:     Yeah.

13                   MR. TIM FRYER:     -- and had to bring up  
14 the fact that you had communicated with me --

15                   MR. JOHN BROWN:     Yes.

16                   MR. TIM FRYER:     -- and this is the  
17 third one that I ignored.

18                   MR. JOHN BROWN:     Yes. Okay.

19                   MR. TIM FRYER:     So earlier, you  
20 testified when I had questioned you that you wouldn't  
21 provide information to anyone after your employment  
22 contract ended.

23                   MR. JOHN BROWN:     I wouldn't imply  
24 anybody --

25                   MR. TIM FRYER:     Confidential

1 information. We -- we talked about that, and you  
2 said, No.

3 MR. JOHN BROWN: After my employment  
4 ended?

5 MR. TIM FRYER: As a CAO, you wouldn't  
6 share it with somebody, correct?

7 MR. JOHN BROWN: I don't know that I'd  
8 have -- I wouldn't have it.

9 MR. TIM FRYER: I asked you about this  
10 earlier, and you said you wouldn't.

11 MR. JOHN BROWN: Yeah, well, I wasn't  
12 -- how I could I -- anyway, I said I wouldn't. Okay.  
13 That's fine.

14 MR. TIM FRYER: So the content of this  
15 email is essentially asking me to justify adhering to  
16 my fiduciary responsibilities that I was under as a  
17 former officer of an OBCA corporation, correct?

18 MR. JOHN BROWN: Yeah.

19 MR. TIM FRYER: Okay. Again, it's the  
20 same basis that you cited for not being able to  
21 disclose things to people in your CAO role or after  
22 you've left CAO, when I asked you before?

23 MR. JOHN BROWN: Okay.

24 MR. TIM FRYER: So at this particular  
25 time, this is 2016, Council was well aware, because

1 I'd had to go to in camera sessions and confirm, that  
2 I had fiduciary responsibility to my former employer,  
3 and Council had advised me not to participate directly  
4 with you.

5 MR. JOHN BROWN: So it advised you  
6 directly not to participate with me?

7 MR. TIM FRYER: Yes. The two (2) in  
8 camera sessions, that was what was reviewed.

9 MR. JOHN BROWN: They told you, in my  
10 presence, not to talk to me?

11 MR. TIM FRYER: Yes.

12 MR. JOHN BROWN: I don't recall that.

13 MR. TIM FRYER: So I also had  
14 explained to them that I would be able to provide  
15 detailed information once the EPCOR sale was  
16 completed.

17 Do you recall that?

18 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

19 MR. TIM FRYER: The other main concern  
20 I had about speaking about anything is if something  
21 happened and the Transaction didn't work out, I didn't  
22 want to be blamed. So I wasn't saying anything to  
23 anybody, even though I had concerns about was -- was  
24 being -- or transpired through those -- those  
25 particular months. But --



1 MR. JOHN BROWN: So the --

2 MR. TIM FRYER: -- I -- I'm -- I'm  
3 going to -- I'm going to move on from that.

4 So -- so regarding the last sentence in  
5 the first paragraph, it says, "We can consult on water  
6 issues."

7 Now, that's a peculiar statement, and -  
8 - and the reason for that is, I'd been very open to  
9 Council about Collingwood Public Utilities Service  
10 Board matters, because that was a service board of the  
11 municipality, and I provided CFO services to them, so  
12 therefore the Town would be entitled to most anything  
13 I was aware of. An example is the New Tec agreement.  
14 So you're saying, "Now we can talk about water  
15 issues," but I'd been very open about water issues.

16 MR. JOHN BROWN: And so the question  
17 is?

18 MR. TIM FRYER: I -- I'm just saying,  
19 correct? Asking you, is that correct or not?

20 MR. JOHN BROWN: Yeah. I met with you  
21 on the New Tec situation, which was a very complicated  
22 file, and yeah, you had -- actually, my understanding  
23 is you actually wanted to be involved on the  
24 negotiations. You asked Council for that, and they  
25 refused.

1 MR. TIM FRYER: Yeah. Exactly.

2 MR. JOHN BROWN: Right.

3 MR. TIM FRYER: So now we're going to  
4 look at TOC0500 --

5 THE HONOURABLE FRANK MARROCCO: Just -  
6 - just -- Mr. Fryer, I thought what your question was  
7 was that you were taking issue with the word "now,"  
8 and you were saying that you had provided information  
9 -- you're asking the witness to agree with you that  
10 you had provided information about water and -- to the  
11 extent that you were able to do that.

12 MR. TIM FRYER: Sir --

13 THE HONOURABLE FRANK MARROCCO: Always  
14 done that, that it wasn't something that was now  
15 available. Was that the gist of it?

16 MR. TIM FRYER: There was -- that's  
17 correct, and I do believe Mr. Brown responded --

18 THE HONOURABLE FRANK MARROCCO: So you  
19 can ask -- you can ask --

20 MR. TIM FRYER: -- correct.

21 THE HONOURABLE FRANK MARROCCO: -- Mr.  
22 -- you can ask Mr. Brown if -- if he agrees that you  
23 had always provided information about water issues,  
24 because -- you -- you can ask a question like that, if  
25 you want.

1 MR. TIM FRYER: I -- I do -- I --

2 THE HONOURABLE FRANK MARROCCO: You  
3 don't have to, but --

4 MR. TIM FRYER: -- I do believe Mr.  
5 Brown responded the -- like acceptable to me.

6 THE HONOURABLE FRANK MARROCCO: All  
7 right.

8 MR. TIM FRYER: Thank you.

9

10 CONTINUED BY MR. TIM FRYER:

11 MR. TIM FRYER: So -- so again,  
12 TOC0500723. And this is an email chain from Marjory  
13 Leonard. And it's communicating with PowerStream. So  
14 this is early in 2016. Do we see a date there? Yeah.  
15 So it's kind of the early part of 2016. And there are  
16 other emails around this. I -- I had -- I had done a  
17 search on any emails about the -- about the shared  
18 services agreement, and this is one (1) I'll bring up.

19 So we could just scroll through it so  
20 you can see. It's -- it's communication with Marjory  
21 and yourself, and -- and representatives from  
22 PowerStream.

23 What I wanted to review with you is --  
24 and confirm with you is that it looks like matters  
25 were being sorted out by staff, as they should be, in

1 regards to the service -- shared services agreements,  
2 back in April of 2016, correct?

3 MR. JOHN BROWN: Yeah.

4 MR. TIM FRYER: So your email to me  
5 about consulting with you appears to be completely  
6 disjointed with the matters, because it's in June  
7 2016, and -- and staff were already well in -- in the  
8 ways to working things out.

9 MR. JOHN BROWN: I -- I can't recall  
10 right now what information dif -- I specifically was  
11 searching from you.

12 MR. GEORGE MARRON: Your Honour, I'm  
13 having some trouble hearing many of the answers --

14 MR. JOHN BROWN: Okay, sorry.

15 MR. GEORGE MARRON: -- by the witness.

16 MR. JOHN BROWN: Sorry.

17 MR. GEORGE MARRON: If you'd speak up  
18 --

19 MR. JOHN BROWN: Yeah, I -- I --

20 MR. GEORGE MARRON: -- and/or speak  
21 into the microphone.

22 MR. JOHN BROWN: -- I -- I can't do  
23 the connect -- you know, it doesn't come to -- it  
24 doesn't come to mind. My voice is -- sorry.

25

1 CONTINUED BY MR. TIM FRYER:

2 MR. TIM FRYER: So in your evidence,  
3 you noted that you had met with co-Chairs McFadden and  
4 Bentz to negotiate the new shared services terms,  
5 correct?

6 MR. JOHN BROWN: No, I didn't meet  
7 with Mr. McFadden to negotiate anything. The only  
8 meetings I had were -- were with Mr. Bentz, and they  
9 started off as kind of -- it was a committee, but it  
10 was just slow. And then I -- I met with Mr. Bentz a  
11 number of times, and our lawyer was instructed to  
12 pursue with PowerStream's lawyers drafts and the  
13 number of -- many drafts, I guess, were prepared of  
14 what might be a -- a new arrangement to replace the  
15 shared services agreement.

16 And -- and that was ongoing. Yeah.  
17 And then --

18 MR. TIM FRYER: Sorry, I should have --

19 MR. JOHN BROWN: -- and then, sorry,  
20 and then the finance -- the finance people were set up  
21 to communicate with each other in terms of how we  
22 would do -- we agreed on a true open billing, and if  
23 there was a -- if there was a need for -- if there was  
24 any dispute, and there would be an independent party  
25 who would -- I mean, all those sorts of things were

1 all under discussion and negotiation between their  
2 respective lawyers. And this is --

3 MR. TIM FRYER: I --

4 MR. JOHN BROWN: -- this is a  
5 connection between the treasurers.

6 MR. TIM FRYER: Sorry, I should have  
7 been more a little clearer. I wasn't saying you were  
8 meeting with them both at the same time. I just meant  
9 that you'd had --

10 MR. JOHN BROWN: Oh, I see.

11 MR. TIM FRYER: -- discussions with  
12 both of them --

13 MR. JOHN BROWN: Yes, you're correct.

14 MR. TIM FRYER: -- through the course  
15 of time.

16 MR. JOHN BROWN: Yeah, you're correct.

17 MR. TIM FRYER: And you testified as  
18 well that Deputy Mayor Saunderson had been part of the  
19 negotiations?

20 MR. JOHN BROWN: He started off being  
21 part of the negotiations and then I just did it  
22 directly with Mr. Bentz and the lawyers and tried to  
23 coordinate all the other activities necessary.

24 MR. TIM FRYER: So, I'm -- I'm also  
25 going to -- in regards to requesting assistance, I'm

1 going to bring up an instance that was allowed by  
2 Council for me to do, and I'm going to ask you if you  
3 recall. So I'm going to ask for BLG0000268\_0001. And  
4 I'm going to ask you if you recall that I would have  
5 provided detailed information by email through you to  
6 Mr. Rodger during the enquiry that he was performing  
7 to do his report.

8 Do you recall that?

9 MR. JOHN BROWN: May I read it,  
10 please?

11 MR. TIM FRYER: This is a lengthy  
12 email, so we can just scroll through it and just see  
13 if you remember that I was -- and Council had approved  
14 me to do that as part of the process for Mr. Rodger to  
15 get background.

16 MR. JOHN BROWN: Fine.

17 MR. TIM FRYER: Do you recall when  
18 Council approved me, dealing with Mr. Rodger?

19 MR. JOHN BROWN: I don't actually.

20 MR. TIM FRYER: Okay. That's --  
21 that's fair enough. It is -- it is a long time ago.

22 So again I was trying to assist Mr.  
23 Rodger in his difficult task of trying to delve  
24 through it all, and -- and there are a number of  
25 emails actually, but this one kind of was one that I

1 could grab and not have to go through them all.

2 So -- so I'm going -- I'm going to move  
3 on then, and I'm going to bring up TFF0000011.

4

5 (BRIEF PAUSE)

6

7 MR. TIM FRYER: And this is a page  
8 from the Distribution System Plan that Collus-  
9 PowerStream had put out. They actually had sent it to  
10 Coun -- to Town of Collingwood for review prior to  
11 them submitting it.

12 So I just wanted to go down to the --  
13 the -- the last full paragraph. There's a full  
14 paragraph there, and the second last statement. It  
15 starts on the left-hand side. It says:

16 "In 2016 it was determined by Town  
17 staff that submission of the annual  
18 report document as an information  
19 item without presentation was  
20 sufficient for their consultan --  
21 consultation needs."

22 You see that it reads that?

23 MR. JOHN BROWN: Yeah.

24 MR. TIM FRYER: Do you recall I  
25 requested a number of times more direct interaction



1 between Collus -- Council and -- and the Board during  
2 the strained situation?

3 MR. JOHN BROWN: Absolutely, yeah.

4 MR. TIM FRYER: But based on this  
5 note, it appears instead you wanted to -- it stay more  
6 internal and the only -- the Council reps were  
7 interacting and I didn't believe that that was a  
8 healthy situation.

9 MR. JOHN BROWN: So -- sorry, where  
10 do you get me in this -- in this correspondence?  
11 Where am I --

12 MR. TIM FRYER: Well, it says:  
13 "In 2016 it was determined by Town  
14 staff."

15 So you're the CAO. I'm assuming the  
16 CAO is aware of this.

17 MR. JOHN BROWN: I have no  
18 recollection of that. I don't agree with that. I  
19 think your suggestion -- as I said before, I think I  
20 supported all of your suggestions with respect to  
21 increasing the participation and interaction between  
22 Council and the Board were -- were solid ones, and I  
23 agreed with them.

24 So I can't explain why, you know -- why  
25 this appears to be -- you're interpreting that to be

1 me talking or saying things contrary to the approach  
2 which I've agreed a number of times. All of your  
3 suggestions were good. I supported them all.

4 MR. TIM FRYER: But again, we reviewed  
5 this document and actually you had asked me to provide  
6 comment. I provided comment to -- and I pointed out  
7 some of these statements. Okay, leave with that.

8 So I want to go on to TOC0479305.

9

10 (BRIEF PAUSE)

11

12 MR. TIM FRYER: And this is from June  
13 23rd, 2015, and it's Ms. Shuttleworth's email chain  
14 notifying Council and the Public Utilities Board,  
15 except you're not copied of it, of errors in the  
16 Beacon Report. Did I...

17 So this -- this, as you can see, says -  
18 - I actually said the 23rd. It's -- it's showing June  
19 22nd, and it starts off with:

20 "Much info is not for me, the CFO."

21 So she sent this to Council and to the  
22 Public Utilities Board but, as I said, did not copy  
23 you, you're a member of it, and it is about errors in  
24 the -- in the Beacon report.

25 MR. JOHN BROWN: Derek Slide -- Derek

1 Ali was from the BMA report.

2 MR. TIM FRYER: Oh, I'm sorry. It's -  
3 - it's -- it wasn't Beacon. It was the BMA report,  
4 okay.

5 MR. JOHN BROWN: So it's the BMA  
6 report then, right, by Derek Ali?

7 MR. TIM FRYER: Thank you. M-hm.

8 MR. JOHN BROWN: So this is something  
9 I didn't get and I don't know anything about.

10 MR. TIM FRYER: Okay. That's what I  
11 was going to ask --

12 MR. JOHN BROWN: Re --

13 THE HONOURABLE FRANK MARROCCO: Just --

14 MR. TIM FRYER: -- if you were aware--

15 MR. JOHN BROWN: Yep, yep, yep, sorry.

16

17 CONTINUED BY MR. TIM FRYER:

18 MR. TIM FRYER: I was going to ask if  
19 you were aware of this email coming, which outlines a  
20 variety of concerns with inaccuracies in the report.

21 MR. JOHN BROWN: So if that's the  
22 question, the answer is no. This is the first time  
23 I've seen it. But anyway, I think the process take  
24 care -- takes care of everybody's comments, and I  
25 previously explained that, where the consultants are

1 happy to receive comments and consider people's errors  
2 and omissions and judgments, and then the consultant  
3 takes this into account and does a final report and  
4 explains why they recommended what they recommended  
5 and talks about, you know, what other people thought  
6 were wrong but they don't accept. So this -- this  
7 would be part of the normal process.

8 MR. TIM FRYER: But you're saying you  
9 weren't aware of this particular email?

10 MR. JOHN BROWN: No. This is the  
11 first --

12 MR. TIM FRYER: I --

13 MR. JOHN BROWN: -- I've seen it and--

14 MR. TIM FRYER: The reason I asked was  
15 because the Deputy Mayor is copied on it and I knew  
16 you had said that you were communicating regularly,  
17 the Deputy Mayor and yourself, so I figured he would  
18 have shared that with you.

19 MR. JOHN BROWN: No, no, no. Sorry, I  
20 -- I think I need to qualify, you know, the  
21 relationship I had with the Deputy Mayor in these  
22 matters.

23 We talked about, I guess, the  
24 explorations I had and the concerns with the  
25 information that I couldn't get. We did not discuss

1 any other items in detail. You know, we did not  
2 discuss things like this or any other files. This was  
3 kind of my explorations and the conclusions, the  
4 difficulties I was experiencing. It didn't include  
5 matters like this coming up for discussion between I  
6 and the Deputy Mayor.

7 MR. TIM FRYER: So in your opinion  
8 then, the consultant wouldn't have been apprised about  
9 this?

10 MR. JOHN BROWN: I don't -- it's from  
11 Cindy Shuttleworth and she sent it to those people, so  
12 if she sent it -- didn't send it to the consultants,  
13 well she didn't send it to consultants, but I would  
14 think that -- you know, we heard yesterday, you know,  
15 the -- pages and pages and pages and pages of reports  
16 that all kinds of people, including Collus-  
17 PowerStream, that she was involved, and her comments  
18 would have somehow or other found their way into those  
19 documents.

20 MR. TIM FRYER: There's important  
21 information in it, but again I -- I'll be dealing with  
22 that in closing submissions.

23 So I'm going to go on to TOC0479301,  
24 and I bring this one up for transparency, because  
25 these particular three (3) that I'm bringing up came

1 from a late document search that came in this morning,  
2 and I just want to make sure everybody has a chance to  
3 look at them.

4

5 (BRIEF PAUSE)

6

7 MR. TIM FRYER: Did I say the number?

8

9 (BRIEF PAUSE)

10

11 MR. TIM FRYER: And what I want to  
12 show here is that again it's a -- it's a email from  
13 Ms. Shuttleworth. In this case she just communicates  
14 with the Mayor and -- and Kevin Lloyd, and I know you  
15 wouldn't have seen it because of just what we talked  
16 about at the other one.

17 But what I'm pointing to here is,  
18 there's a real communication problem going on at this  
19 point in time, isn't there?

20 MR. JOHN BROWN: I think the  
21 communication problem in the Town went way, way, way  
22 beyond this. I think it was a corporate difficulty in  
23 communications, and I'd really like to answer the  
24 question about control that I was asked earlier on.

25 MR. TIM FRYER: So if we could look

1 finally at TOC0479255.

2

3

(BRIEF PAUSE)

4

5 COURT OPERATOR: Repeat the number,  
6 please.

7

MR. TIM FRYER: 479255.

8

9

(BRIEF PAUSE)

10

11

MR. TIM FRYER: So again it's Ms.

12

Shuttleworth. I'm not going to go into the detail of

13

it. What I want to do is scroll down to the bottom to

14

show the initiating email, and the reason I wanted to

15

do that is because it's coming from the Deputy Clerk

16

and it's dated June 22nd.

17

THE HONOURABLE FRANK MARROCCO: 19th.

18

MR. TIM FRYER: June 19th, I'm sorry.

19

The subject says June 22nd. That's -- thank you, Your

20

Honour.

21

22

CONTINUED BY MR. TIM FRYER:

23

MR. TIM FRYER: So, I wanted to show

24

this because this is Friday June 19th at two o'clock

25

in the afternoon. And what it's doing is it's

1 notifying of a special Council meeting, so it's three  
2 (3) days notice. And it specifies it is notice to the  
3 Collingwood Public Utilities Service Board, too.

4 Do you see that, correct?

5 MR. JOHN BROWN: That's what it says.

6 MR. TIM FRYER: Okay. So, you would  
7 agree this is a very, very important meeting with the  
8 -- with the BMA study coming to the... So -- but  
9 it's given three (3) days notice, and two (2) of those  
10 are non-working days for municipal staff, correct?

11 MR. JOHN BROWN: Don't work Saturdays  
12 and Sundays, no.

13 MR. TIM FRYER: So, this appears again  
14 to show that you followed a process as you had with  
15 the BLG report even though your lawyer and -- and your  
16 consultant, Mr. Roger, advised otherwise and provided  
17 minimal time, correct?

18 MR. JOHN BROWN: Where does this memo  
19 reference me?

20 MR. TIM FRYER: This meeting's called.  
21 You're the CAO.

22 MR. JOHN BROWN: I don't call  
23 meetings. The clerk calls the meetings.

24 MR. TIM FRYER: Again, who's  
25 responsible?



1 MR. JOHN BROWN: The clerk calls the  
2 meeting.

3 MR. TIM FRYER: The clerk's  
4 responsible to the CAO?

5 MR. JOHN BROWN: The clerk does not  
6 take direction from the CAO as to when to call Council  
7 meetings. There's quite an involved process in  
8 calling Council meetings. There's a notice  
9 requirement which the clerk observes.

10 There is always the consideration of  
11 what is the special meeting. And, of course, the  
12 point that you make is, is there an opportunity to --  
13 for members of Council to be properly informed.

14 I never give direction to the clerk to  
15 set up any meeting at any time and I'm not referenced  
16 in that, and I'm not even copied on it. But please  
17 don't assume that that was at my direction, or any  
18 other meetings that were arranged were at my  
19 direction.

20 MR. TIM FRYER: So, when you talked  
21 about the BLG report going to Council --

22 MR. JOHN BROWN: Right.

23 MR. TIM FRYER: -- you talked about a  
24 meeting between yourself and Ms. Almas and Ms. Leonard  
25 deciding to ignore the advice of the lawyer, Mark

1 Roger, and go ahead and issue the report before Collus  
2 PowerStream saw it?

3 MR. JOHN BROWN: That's a totally  
4 different matter. And I thought I explained the logic  
5 behind that.

6 MR. TIM FRYER: Okay. So -- so, we'll  
7 move on. I think just one (1) final question then.  
8 Do you agree that the actions that you put forward are  
9 the actions of a cooperative partner?

10 MR. JOHN BROWN: Me personally? I --  
11 I think -- I think I had an extremely difficult job  
12 here to do that would challenge anybody. And -- and,  
13 as I look back on it, now being retired, I think I  
14 survived perhaps a most difficult job of my career.

15 MR. TIM FRYER: So, I'll take that as  
16 a no. Thank you, Justice Marrocco. And those are my  
17 questions.

18 THE HONOURABLE FRANK MARROCCO: Mr.  
19 McDowell?

20

21 CROSS-EXAMINATION BY MR. WILLIAM MCDOWELL:

22 MR. WILLIAM MCDOWELL: Well, why don't  
23 we pick up where Mr. Fryer left off? Could we have a  
24 look at TOC600294?

25

1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: And this is a  
4 long chain, but can we go to page 12? Actually,  
5 that's not very helpful. Page 11. So, this appears  
6 to be an inquiry sent by Michael Switzer (phonetic).  
7 And Michael Switzer worked in --

8 MR. JOHN BROWN: Yeah.

9 MR. WILLIAM MCDOWELL: -- finance at  
10 the Town. Is that right?

11 MR. JOHN BROWN: Correct.

12 MR. WILLIAM MCDOWELL: And he asks a  
13 series of questions. If we scroll down towards page  
14 11... Keep going. Stopping there.

15 "I've been directed by the treasurer  
16 to determine how the charges from  
17 Solutions to -- to CPUSB were  
18 determined."

19 Then he asks for backup. Do you  
20 remember this --

21 MR. JOHN BROWN: Yeah.

22 MR. WILLIAM MCDOWELL: -- exchange?

23 MR. JOHN BROWN: Yeah.

24 MR. WILLIAM MCDOWELL: Okay. Then --  
25 then let -- let's scroll up. Let's go to page 6. Oh,

1 boy, this is hard to read.

2 THE HONOURABLE FRANK MARROCCO:

3 Perhaps you -- have you got a hard -- is there a hard  
4 co -- maybe we could print out a copy or something.

5 MR. WILLIAM MCDOWELL: I do. It's a  
6 little -- it's a little clearer, Commissioner. Do you  
7 want to take a couple of minutes and do that?

8 THE HONOURABLE FRANK MARROCCO: I -- I  
9 -- this is useless, so we'll print this out and  
10 everybody will have --

11 MR. WILLIAM MCDOWELL: Yeah. I guess  
12 the alternative --

13 THE HONOURABLE FRANK MARROCCO:  
14 Otherwise, nobody can follow what you're saying.

15 MR. WILLIAM MCDOWELL: Yeah. Well, I  
16 find if you lean about 4 inches away, you could maybe  
17 get it, but -- but why don't we make the copies?

18 THE HONOURABLE FRANK MARROCCO: I have  
19 a solution to that. We'll print this.

20 MR. WILLIAM MCDOWELL: All right.

21

22 --- Upon recessing at 12:00 p.m.

23 --- Upon resuming at 12:09 p.m.

24

25 THE HONOURABLE FRANK MARROCCO: Go

1 ahead, Mr. McDowell.

2

3 CONTINUED BY MR. WILLIAM MCDOWELL:

4 MR. WILLIAM MCDOWELL: It's a bit  
5 better, Commissioner. So if we turn to page 7 in the  
6 hard copy, and you might as well follow along the  
7 Court Operator just for the heck of it, if anyone can  
8 read this at home.

9 So you become involved in these  
10 exchanges. Mr. Switzer (phonetic) gets you involved  
11 and I won't review your message to Ms. Shuttleworth,  
12 but Ms. Shuttleworth says at the top of page 7:

13 "Our understanding is that a  
14 director of Collus PowerStream, an  
15 OBCA corporation, is entitled to  
16 receive corporate information as set  
17 out in the OBCA and corporate  
18 information necessary for the  
19 director to meet their duty of  
20 care."

21 Then moving down:

22 "We question whether you, as a  
23 director, are entitled to receive  
24 the information that you have  
25 requested, as it is personal

1 information about identifiable  
2 employees of Collus PowerStream. In  
3 our view, you are not entitled to  
4 that information under the OBCA and  
5 you probably do not need that  
6 information to make any decision  
7 that would be in the best interests  
8 of the corporation."

9 Do you see that?

10 MR. JOHN BROWN: Yes.

11 MR. WILLIAM MCDOWELL: Right. So what  
12 you're asking is frankly it's not -- and tell me if  
13 I'm wrong about this -- you're not asking a qua  
14 (phonetic) director of the corporation, you're asking  
15 as the CAO of the Town how are these costs allocated.  
16 Is that right?

17 MR. JOHN BROWN: Yeah, that's what I  
18 was hoping to get information that I would know and  
19 understand the cost. Yes.

20 MR. WILLIAM MCDOWELL: So when Mr.  
21 Fryer is asking you about cooperative partners and all  
22 the rest of it, is this the level of cooperation you  
23 expected as the CAO of the Town?

24 MR. JOHN BROWN: No. Frankly, as the  
25 CAO of the Town, I expected -- everywhere else I've

1 been you ask for information and somebody gives it to  
2 you. There is no issue, you just get information.  
3 Here it just became incredibly difficult, people  
4 didn't want to give me the information, it would seem.

5 MR. WILLIAM MCDOWELL: Right, and then  
6 just so the Commissioner has the reference. On page 5  
7 you make the point that you -- you say:

8 "Cindy, you have omitted the  
9 important fact that I am the Town of  
10 Collingwood CAO and that the Town  
11 has a treasurer and that we both,  
12 with a fiduciary responsibility to  
13 the Town", and you say, "As the CAO  
14 I am entitled to all corporate  
15 records and information relating to  
16 the Town's business."

17 And that was your expectation, I take  
18 it?

19 MR. JOHN BROWN: Yeah, that was my  
20 expectation and my understanding from the legal advice  
21 that I got.

22 MR. WILLIAM MCDOWELL: Right.

23 So then if we keep going up, Ms.  
24 Shuttleworth says, effectively, we have all the  
25 materials, and then she says:

1 "Please forward any further  
2 correspondence to the Board about  
3 Collus PowerStream Solution  
4 transitions, which if you are  
5 authorized by the Board to obtain, I  
6 will gladly supply."

7 And this is more of the same. I mean,  
8 you shouldn't be dealing with the Board of Directors  
9 to get this information, should you?

10 MR. JOHN BROWN: It was a surprise  
11 when I was told that.

12 MR. WILLIAM MCDOWELL: Okay. And then  
13 Ms. Leonard says, we go up to page 4, this is in  
14 answer to we have all the information:

15 "Cindy, I beg to differ. We have  
16 been unable to find invoices or  
17 backup materials for virtually the  
18 entire fiscal 2012 or charges from  
19 Solutions to the Town for shared  
20 salaries. The figures we compiled  
21 were from your journal entries."

22 And she makes the valid point she  
23 wasn't there at a certain point.

24 And then there's a back and forth, if  
25 you keep going up about -- whether the Town has the



1 records.

2 Then at page 2 Ms. Shuttleworth says:

3 "Before I arrived it was journal  
4 entries. Print them, they are your  
5 invoices."

6 So if I can just ask you about that,  
7 did -- when Solutions is allocating costs to the Town,  
8 would it have been your expectation that the only  
9 record for this would be the journal entries made by  
10 Collus in its own books?

11 MR. JOHN BROWN: No, I don't think so.  
12 And I remember this very memo and discussing it with  
13 the treasurer and she -- I don't know if "insulted" is  
14 the right word, but she, you know, took great concern  
15 that this was what she was told she should be  
16 satisfied with. The treasurer was very uncomfortable  
17 with getting this correspondence.

18 MR. WILLIAM MCDOWELL: All right.

19 And then you see the entry August 4th,  
20 2016, 12:38 p.m. Ms. Leonard says:

21 "Cindy, as a Solutions employee you  
22 were providing a contracted service  
23 to the CPUSB, you were in the unique  
24 position of determining what  
25 Solutions should charge to the CPUSB

1 and then making payment from the  
2 CPUSB to Solutions. As a  
3 professional, would you consider the  
4 journal entry as being sufficient  
5 backup for that payment?"

6 And then there's some back and forth  
7 where Ms. Shuttleworth says:

8 "You have the budgets, the minutes  
9 with variance explanations and the  
10 approval of the charges by the  
11 Board."

12 And just for completeness, above that:

13 "Cindy this response does not answer  
14 my question. As a professional,  
15 would you consider the journal entry  
16 as being sufficient backup for that  
17 payment?"

18 And so this goes to your point  
19 yesterday, is it the case that others working in the  
20 Town had similar friction with people at Collus --  
21 PowerStream Collus?

22 MR. JOHN BROWN: Yes. And I think the  
23 treasurer was -- this shows the treasurer had  
24 significant issues, you know, similar to mine.

25 MR. WILLIAM MCDOWELL: Right.

1                   And then if I could take you to another  
2 document, which I think is TOC600293. If we just  
3 scroll down this one, this is February 2017. Do you  
4 remember this letter?

5                   MR. JOHN BROWN:     Maybe this is the  
6 letter that I've been searching for.

7                   MR. WILLIAM MCDOWELL:   Keep scrolling.

8                   MR. JOHN BROWN:     Yes. Yes, I recall  
9 this memo, or letter.

10                  MR. WILLIAM MCDOWELL:   And is this, in  
11 a more formal bit of correspondence, Ms. Leonard  
12 pursuing the same issues with -- with Ms.  
13 Shuttleworth?

14                  MR. JOHN BROWN:     Yes, I think so.  
15 With the same level of success.

16                  MR. WILLIAM MCDOWELL:   That level of  
17 success being?

18                  MR. JOHN BROWN:     Zero.

19                  MR. WILLIAM MCDOWELL:   Okay. Now,  
20 just a few other points. If we go to the transcript  
21 of May 13th, 2013, page 67, and just to set this up  
22 briefly, Mr. Chenoweth was suggesting that -- in  
23 looking at the way that Collus PowerStream was  
24 allocating costs in the shared service agreements, you  
25 should have simply gone to the Ontario -- the Ontario

1 Energy Board. Do you recall this?

2 MR. JOHN BROWN: Okay.

3 MR. WILLIAM MCDOWELL: And then we're  
4 at page 67. If we just go up a little bit, actually  
5 keep going up. Okay, hang on. Keep going. Right.

6 So I would ask you to read this page  
7 and then the following page.

8 Just tell the operator when you're  
9 ready to --

10 MR. JOHN BROWN: Yes, you can move up,  
11 please.

12 MR. FREDERICK CHENOWETH: And move  
13 them not too quickly, I'd like an opportunity to read  
14 them as well.

15 MR. WILLIAM MCDOWELL: I think I'll  
16 have to go up a little bit earlier in the transcript.

17 Keep going up. Going up. Keep going  
18 up.

19

20 (BRIEF PAUSE)

21

22 MR. WILLIAM MCDOWELL: Okay. Now,  
23 let's just look at this exchange particularly. It  
24 ended with:

25 "All right. So I think you've

1 confirmed to me that once every five  
2 years, there would be a pretty  
3 in-depth analysis of the affiliate  
4 relationships and whether or not all  
5 of the Ark (phonetic) rules --"

6 And that's the affiliate relationship  
7 rules were complied with. And keep going down. Ms.  
8 Chaplin says:

9 "I think it'd be more accurate to  
10 say that each time an LDC comes in -  
11 -"

12 That's to the OEB:

13 "-- to have its rates re-based,  
14 which was roughly every five years.  
15 It could be longer."

16 Keep going up:

17 "Affiliate Shared Services  
18 Agreements will be reviewed  
19 primarily from the perspective of  
20 what the impact should be on rates.  
21 It's not reviewed from the  
22 perspective of seeking to determine  
23 if the LDC is out of compliance.  
24 Evidence may come to light that  
25 suggest that, but a rate review

1 process is not a compliance  
2 proceeding. They are treated very  
3 differently."

4 And keep going down. And then  
5 Mr. Chenoweth says, well, okay, if the evidence comes  
6 out, the OEB will do something, and Ms. Chaplin  
7 confirms that.

8 And I guess my only question is if you  
9 had the information from the OEB, as described as  
10 Ms. Chaplin, would that have answered the inquiries  
11 that you were making about the allocation of cost?

12 MR. JOHN BROWN: Yeah. I can't  
13 really -- I can't really say that it would. I think  
14 my -- my inquiries were -- were way beyond that 'cause  
15 it included IT. And so I can't actually say that that  
16 would have satisfied it.

17 MR. WILLIAM MCDOWELL: Okay. And can  
18 I just ask you: Did you expect -- in seeking answers  
19 as to the particular costs that were allocated by  
20 Collus PowerStream to its strategic partner, the Town,  
21 did you expect that you'd have to go to the regulator  
22 to get this information anyway?

23 MR. JOHN BROWN: Like I said  
24 yesterday, I -- I went to the consultant that we paid  
25 to do work for us and asked them for information.

1                   And, you know, I mean, I just compare a  
2 consulting company to the private sector. If you're  
3 hiring a company, I can't imagine that company, you  
4 know, making it difficult for you to get information  
5 about what you're paying it.

6                   MR. WILLIAM MCDOWELL: All right. And  
7 could we turn up CPS7764.

8

9                   (BRIEF PAUSE)

10

11                   MR. WILLIAM MCDOWELL: Okay. Now, we  
12 spent a lot of time on this. I don't intend to. But  
13 if we keep scrolling up -- going down. Oh -- sorry --  
14 keep going up. Sorry. Keep going up.

15

16                   (BRIEF PAUSE)

17

18                   MR. WILLIAM MCDOWELL: Did you ever  
19 get -- my only question is: Did you ever get a clear  
20 sense of the history that led to the July 31st, 2012  
21 letter being executed?

22                   MR. JOHN BROWN: Did I get a clear  
23 history? I guess it depends. But when I got the  
24 letter -- when I got the letter from Mr. -- Mr. Bentz,  
25 I was surprised because it seemed -- it just seemed

1 that I -- we should have had that letter, or it should  
2 have been known and understood by the Town before  
3 that. And -- and the letter -- I was surprised the  
4 letter, you know, wasn't included in the review.

5 But -- but -- can I go back to rethink?  
6 Can you just send me the question again? I'm kind  
7 of --

8 MR. WILLIAM MCDOWELL: Well, I think  
9 let me move on to another one --

10 MR. JOHN BROWN: Okay. Right.

11 MR. WILLIAM MCDOWELL: -- because I  
12 think we're going to go over some old ground here.

13 MR. JOHN BROWN: Okay.

14 MR. WILLIAM MCDOWELL: So John asked  
15 Ed if he was aware of the July 31st, 2012 letter. Ed  
16 said he had not remembered the letter. However, when  
17 Brian Bentz distributed the letter in March this year  
18 that he then recalled being aware of it.

19 MR. JOHN BROWN: Okay.

20 MR. WILLIAM MCDOWELL: That's what he  
21 told you.

22 MR. JOHN BROWN: That's what he told  
23 me. But I had talked to Ron Clark before that, and  
24 Ron Clark told me that there was a letter and that he  
25 was aware of it.



1                   And he told he that he was concerned  
2 about it, and he talked to Ed about it, and he told me  
3 he even wrote a note on it -- in lawyer's terms,  
4 whatever a "note" is -- he wrote a note on it.

5                   And -- and he told me that he kind of  
6 cautioned Ed, and he asked Ed, are you sure you want  
7 to proceed with -- there's some -- because it's --  
8 it's binding --

9                   MR. WILLIAM MCDOWELL:    Right.

10                  MR. JOHN BROWN:     -- or it might be  
11 binding, or it will be binding.  And Ron Clark told me  
12 that Ed's response was, I want it to be binding.  
13 Leave it the way it is.

14                  MR. WILLIAM MCDOWELL:   All right.  And  
15 then could we turn up TLC516647.

16

17                                       (BRIEF PAUSE)

18

19                  MR. FREDERICK CHENOWETH:   Your Honour,  
20 I just have some concerns about that evidence.  This  
21 is -- wasn't brought out from Mr. Clark.  This  
22 gentleman's now telling us about a -- something he  
23 learned from Mr. Clark.

24                  THE HONOURABLE FRANK MARROCCO:    I  
25 don't see how they ask Mr. Clark about an exchange

1 between himself and --

2 MR. FREDERICK CHENOWETH: Mr. Brown.

3 THE HONOURABLE FRANK MARROCCO: --

4 Mr. Houghton. He's giving Mr. Houghton legal advice.

5 There would have been an objection that it was

6 privileged.

7 But it turns out that advice may have

8 been disclosed to Mr. Brown, in which case it's not

9 privileged. Carry on with the question.

10 MR. WILLIAM MCDOWELL: Okay. Thanks.

11

12 CONTINUED BY MR. WILLIAM MCDOWELL:

13 MR. WILLIAM MCDOWELL: If we could

14 just scroll down, this one...

15

16 (BRIEF PAUSE)

17

18 MR. WILLIAM MCDOWELL: So this is the

19 one with your notes on it. And again just to confirm,

20 you weren't seeking corrections to the memo. These

21 were your editorial comments for your own use.

22 MR. JOHN BROWN: These are my thinking

23 notes, yeah.

24 MR. WILLIAM MCDOWELL: Right. And

25 this is your note, just while we're there. I think it

1 says:

2 "Ask Ron Clark --"

3 And that is a little "and":

4 "-- and he advised Ed that it was  
5 binding, and Ed stated that's what  
6 he wanted."

7 That's what you've just testified  
8 about?

9 MR. JOHN BROWN: Yes.

10 MR. WILLIAM MCDOWELL: Okay. Keep  
11 scrolling down. So I wanted to ask you about this.  
12 John asked how did the sale of half the utility ever  
13 happen, and then we have the recording by Ms. Almas of  
14 what Mr. Houghton said:

15 "It was a challenge from the mayor  
16 at inauguration to all departments  
17 to better themselves and investigate  
18 opportunities for efficiencies."

19 The next paragraph:

20 "Spoke with Council, and they hired  
21 KPMG to investigate options."

22 Is that when Mr. Houghton told you that  
23 Council -- that he had spoken with Council and Council  
24 had hired KPMG to investigate options?

25 MR. JOHN BROWN: So as I carefully

1 expand a number of times, Sara wrote these.

2 MR. WILLIAM MCDOWELL: Yes.

3 MR. JOHN BROWN: And there was no  
4 doubt that that is Sara's recollection of what he  
5 said, unless the -- any other version of it exists  
6 that it was updated.

7 So what I'm saying here is what  
8 Mr. Houghton said according -- not to me but to Sara.

9 MR. WILLIAM MCDOWELL: Right. Now, a  
10 couple of times you testify about -- you've spoken  
11 about the issue of control.

12 MR. JOHN BROWN: Yes.

13 MR. WILLIAM MCDOWELL: And this is the  
14 context of the evidence given by Mr. Firman in part.  
15 There's something that you wanted to say about  
16 control. Could you just tell us what that is?

17 MR. JOHN BROWN: Well, the inference  
18 was the control -- me wanting to control was a bad  
19 thing, I think.

20 MR. WILLIAM MCDOWELL: Right.

21 MR. JOHN BROWN: I think most people  
22 thought, oh, this guy's controlling; he wants me to  
23 report to him. And you know, control -- if you look  
24 at organizations, control needs to be in place.  
25 Otherwise, you have chaos.

1 MR. WILLIAM MCDOWELL: Right.

2 MR. JOHN BROWN: So whatever the  
3 organization -- all organizations that exist are in  
4 some ways controlled, and the controlling process is  
5 generally, you know, contemporary corporate  
6 management. You seek to control the functions by  
7 knowing and understanding what's happening.

8 And then you issue various controls to  
9 make sure that you get where you need to be, and  
10 that's where it is. If you're a municipality that  
11 you're dealing with, you need to do. If you're a  
12 company, you're making money. And you're doing --  
13 making the most money you can.

14 So it's all to do with corporate  
15 management and the success of corporate management.  
16 So did I seek to control Mr. -- Mr. Firman? Yes, I  
17 did. I wanted to -- I wanted -- he was a wastewater  
18 and water -- they were the Town's responsibilities.  
19 They couldn't delegate that to a Board. They had a  
20 Board, but they couldn't delegate the  
21 responsibilities.

22 You know, we -- you don't have to go  
23 to, you know, major risky situations that have  
24 happened in municipalities, but water and wastewater  
25 are about as vital, you know, a service as any

1 municipality can be responsible for.

2                   And yes, I did seek to get control. I  
3 wanted to know what was going on. I know he reported  
4 to the Board. I had an objection with that, but I  
5 want him -- I wanted him to have, you know, a tight  
6 relationship where me -- was I was kept informed with  
7 what was happening.

8                   And, you know, that was with respect  
9 to, you know, all of the issues related to was --  
10 related to water and wastewater. I've never been in a  
11 municipality where water and wastewater were ever  
12 handled otherwise than through the municipal process  
13 which, of course, is one (1) of effecting control to  
14 make sure that the Town is protected, that the  
15 drinking water and wastewater system is effe -- yeah,  
16 control is excellent.

17                   So -- so, my whole -- my whole  
18 difficulty here was I came into an organization that I  
19 would judge to be pretty chaotic, I mean, pretty  
20 chaotic, you know.

21                   You had the mayor and you had the  
22 Council and you had staff, and there was a whole  
23 mixture of understanding of who was responsible for  
24 whatever.

25                   When I came here, one (1) of the jobs

1 that was given as a priority was to develop that  
2 business centre across the street which had Parks and  
3 Recreation in it.

4                   So, I'm working away on that. And then  
5 I find out that the only councillor -- the only --  
6 only one (1) councillor was really pushing it, and  
7 there was no approval from Council, and it was  
8 involving money and relocating staff.

9                   And I'm figuring, like, how can I ever  
10 end up with a project at the -- which was -- which was  
11 only really supported by -- well, he was the advocate  
12 of it, but I guess he had support.

13                   But, you know, my sense was how could I  
14 ever end up doing something when there's no Council  
15 author -- it never made it to Council. It never got  
16 approved. And --

17                   MR. WILLIAM MCDOWELL:    Okay --

18                   MR. JOHN BROWN:     So, anyway, that was  
19 the whole issue; it just didn't make any sense.

20                   MR. WILLIAM MCDOWELL:    I mean, we --  
21 we kind of have to pick our rabbit holes here to --

22                   MR. JOHN BROWN:     Okay.

23                   MR. WILLIAM MCDOWELL:    So -- but just  
24 while we're on this issue of control --

25                   MR. JOHN BROWN:     Yeah.

1 MR. WILLIAM MCDOWELL: -- Mr.  
2 Houghton, we've heard evidence here, even though he  
3 was an executive director at the Town, was not paid by  
4 the Town. He was paid by Collus, correct?

5 MR. JOHN BROWN: Correct.

6 MR. WILLIAM MCDOWELL: Right. And  
7 KPMG was in a -- doing an organizational review to  
8 look at this?

9 MR. JOHN BROWN: Until it was stopped  
10 by, I guess --

11 MR. WILLIAM MCDOWELL: Right.

12 MR. JOHN BROWN: -- the mayor and the  
13 deputy mayor, I think, and Council.

14 MR. WILLIAM MCDOWELL: I think it's in  
15 the Foundation Document, but KPMG had expressed  
16 concern about that phenomenon of --

17 MR. JOHN BROWN: They did.

18 MR. WILLIAM MCDOWELL: -- employees of  
19 the municipality being paid by somebody else?

20 MR. JOHN BROWN: Right.

21 MR. WILLIAM MCDOWELL: Right.

22

23 (BRIEF PAUSE)

24

25 MR. WILLIAM MCDOWELL: Just a moment.



1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: Those are my  
4 questions, Commissioner.

5 THE HONOURABLE FRANK MARROCCO: Any  
6 concluding examination?

7 MR. TIM FRYER: Ye -- yes, Your  
8 Honour.

9

10 RE-DIRECT-EXAMINATION BY MR. JOHN MATHER:

11 MR. JOHN MATHER: If we could pull up  
12 ALE50223.

13

14 (BRIEF PAUSE)

15

16 MR. JOHN MATHER: Then if we could  
17 scroll down. Keep going. Scroll. And then stop  
18 right -- scroll up a bit. Right there. That's  
19 perfect.

20 So, Mr. Brown, you may recall that Ms.  
21 Bain asked you several questions about this email  
22 chain between you and Ms. Hogg --

23 MR. JOHN BROWN: Yes.

24 MR. JOHN MATHER: -- and your request  
25 for information. Do you recall that?

1 MR. JOHN BROWN: Yes, I do.

2 MR. JOHN MATHER: Now, one (1) of the  
3 questions that Ms. Bain asked was how -- why -- or how  
4 you expected Ms. Hogg to answer the questions in this  
5 email given that her position was an executive  
6 assistant.

7 She also suggested to you that it was  
8 not appropriate for someone in your position to ask  
9 Ms. Hogg for that type of information. Do you recall  
10 those questions?

11 MR. JOHN BROWN: I do.

12 MR. JOHN MATHER: So, if we could  
13 scroll down to the bottom of the email chain. Right  
14 to the very bottom. So, we see first in the first  
15 email that the inquiry -- your initial inquiry that --  
16 that led to this email chain was originally directed  
17 to Mr. Houghton?

18 MR. JOHN BROWN: Correct.

19 MR. JOHN MATHER: And if we scroll up.  
20 And Ms. Hogg then responds. And let's go to the  
21 beginning of Ms. Hogg's response. She then responds  
22 to your email to Mr. Houghton saying:

23 "John, Ed has forwarded your email  
24 to me to respond."

25 Did this comment from Ms. Hogg affect

1 why your subsequent was -- response was addressed to  
2 Ms. Hogg?

3 MR. JOHN BROWN: It would have been,  
4 yes.

5 MR. JOHN MATHER: And if we can scroll  
6 up to the top, to your response to Ms. Hogg. Sorry,  
7 going down. In the way this document has been  
8 produced we can't see who your response to Ms. Hogg  
9 was to because we don't see the line of recipients,  
10 whether it was copied to anyone.

11 Do you recall if your response was  
12 copied to the individuals who were on the initial  
13 email chain?

14 MR. JOHN BROWN: I think I would have  
15 definitely copied it to Ed, who the original went to.  
16 And, at that point in time, I noticed when I started  
17 asking questions, you know, when I sent an email, then  
18 what happened was they started sending emails to  
19 everybody, Brian Bentz and the Boar -- they started  
20 sending these great big copies of my emails.

21 I -- I read that as intimidation, to be  
22 quite candid, that anything I asked him was going to  
23 go to everybody, including the Board. So, it could  
24 very well be based on that that this was copied to the  
25 whole Board. I mean, I don't know.

1                   But I would think I would copy it to Ed  
2 if I originally went to him, and then he referred me  
3 to Pam. And so, anyway, I can't see it, but, you  
4 know, do you know who I -- can I say who --

5                   MR. JOHN MATHER:    I -- I just wanted  
6 to get --

7                   MR. JOHN BROWN:    Yeah.

8                   MR. JOHN MATHER:    -- a sense of your  
9 recollection.

10                  MR. JOHN BROWN:    So, definitely Ed.  
11 And it could possibly have gone to a wide range of  
12 people.

13                  MR. JOHN MATHER:    And so, Ms. Bain  
14 also asked you some questions yesterday about your  
15 concerns about the shotgun clause, including -- she  
16 asked whether or not you spoke with Ron Clark, at Aird  
17 & Berlis, about it.

18                  You indicated in your answer that you  
19 had not known that Mr. Clark was acting for the Town  
20 as a result of some information you say you received  
21 from Leo Longo. Do you recall that questioning?

22                  MR. JOHN BROWN:    Yeah. I think I do,  
23 yeah.

24                  MR. JOHN MATHER:    Okay. So, if we  
25 could pull up ARB513.

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: And this is an email  
4 dated April 7th, 2015. We looked at it in -- in our  
5 initial examination, and that's between you and Leo  
6 Longo. And it's discussing, among other things, a  
7 memorandum that Mr. Clark had prepared regarding the  
8 July 31st, 2012, letter.

9 If we could scroll down to later in the  
10 email, near the bottom. Mr. Longo writes -- sorry, we  
11 just passed it there. There's a paragraph that  
12 begins, "Recognize that." Do you see that?

13 MR. JOHN BROWN: Yes.

14 MR. JOHN MATHER: So, Mr. Longo  
15 writes:

16 "Recognize that there are discrete  
17 buy/sell provisions in the  
18 shareholders' agreement between the  
19 parties that it would allow either  
20 PowerStream or the Town to put the  
21 other party to their election to  
22 either buy or sell their shares to  
23 the other at -- at fixed prices."

24 So, it appears in this email that Mr.  
25 Longo is at least discussing with you the shotgun

1 provision. Does this refresh your memory at all about  
2 whether or not you had conversations with Mr. Clark  
3 about the shotgun provision?

4 MR. JOHN BROWN: Yeah. I actually  
5 went to meet with Mr. Clark to try and get as good an  
6 understanding of the agreement as he could give me,  
7 which was my original intent.

8 And I can't say a hundred percent, I  
9 remember asking him the question, what his answer was,  
10 but I'm sure I would have covered that during my  
11 conversation with him, which was a discovery type  
12 conversation.

13 MR. JOHN MATHER: Mr. Bonwick asked  
14 you some questions yesterday about when BLG was  
15 retained. And he suggested to you that the Town  
16 retained -- or you actually retained BLG in 2016.

17 If we could pull up paragraph 775 of  
18 the Foundation Document.

19

20 (BRIEF PAUSE)

21

22 MR. JOHN MATHER: So, this paragraph  
23 of the Foundation Document indicates that BLG was  
24 retained on October 5th, 2015. Do you have any basis  
25 to disagree with what's suggested in this paragraph of

1 the Foundation Document?

2 MR. JOHN BROWN: No.

3 MR. JOHN MATHER: Sorry, you just have  
4 to --

5 MR. JOHN BROWN: No. No.

6 MR. JOHN MATHER: And then, finally,  
7 Mr. Bonwick was asking you today about whether or not  
8 you phoned Ms. Wingrove and asked if -- if she had  
9 maintained a file in respect of the transaction given  
10 that she was CAO for part of the transaction.

11 Do you recall that?

12 MR. JOHN BROWN: I do.

13 MR. JOHN MATHER: We know from the  
14 documents that when the transaction closed on July  
15 31st, 2012, at that point in time, Mr. Houghton was  
16 the acting CAO of the Town.

17 In your conversations with Mr. Houghton  
18 about the share sale transaction did you ever ask him  
19 whether he had maintained a file for the Town and with  
20 respect of the -- in respect of the transaction?

21 MR. JOHN BROWN: No.

22 MR. JOHN MATHER: Those are my  
23 questions.

24 THE HONOURABLE FRANK MARROCCO: Thank  
25 you. Thank you, Mr. Brown. That --

1 MR. JOHN BROWN: Your Honour.

2 THE HONOURABLE FRANK MARROCCO: --  
3 completes your testimony. And thank you for your  
4 cooperation.

5 MR. JOHN BROWN: Thank you.

6

7 (WITNESS STANDS DOWN)

8

9 THE HONOURABLE FRANK MARROCCO: We  
10 have one (1) witness left before we complete part 1.  
11 That is Mr. Lloyd. He is not available until tomorrow  
12 morning. And so, we have nothing further that we can  
13 constructively do today.

14 And so, we will adjourn until tomorrow  
15 at 9 -- 9:00 a.m. And hopefully Mr. Lloyd's testimony  
16 is restricted, as we discussed previously, so I don't  
17 anticipate that will take a long time.

18 Sorry, Mr. Bonwick.

19 MR. PAUL BONWICK: Thank you, Your  
20 Honour. And I'm very respectful that you've provided  
21 a ruling on Mr. Lloyd. But I wanted to appeal to you  
22 subsequent to hearing Mr. Brown's testimony, when you  
23 provided the ruling restricting Mr. Lloyd to speak to  
24 his interpretation of events based on presentations we  
25 had not heard, at that time, from Mr. Brown.



1                   As I stated earlier, it is my opinion  
2 that the commission would be well served if Mr. Lloyd  
3 was able to share his perspective, recognizing he has  
4 the unique -- he's in the unique position of having  
5 served for eight (8) years from the start of this  
6 transaction to the 2018 year.

7                   He was not on the Board of Collus, nor  
8 on the Public Utility Commission. He was --  
9 participated in the in camera meetings as well as the  
10 public meetings, and so I think he has -- it's our --  
11 potentially, our only opportunity to ask for testimony  
12 related to some of the comments or assertions that Mr.  
13 Brown has said. And I think that's in keeping with  
14 the concerns that were raised when Mr. Brown was  
15 brought in.

16                   So, I would ask that, for the benefit  
17 of the commission and the participants, that we be  
18 allowed to inquiry based on Mr. Lloyd's interpretation  
19 of some of the events that Mr. Brown has identified.

20                   THE HONOURABLE FRANK MARROCCO: I -- I  
21 will not revisit that ruling. We've interviewed Mr.  
22 Lloyd. I'm satisfied that we can hear him on the one  
23 (1) issue. Beyond that, I'm -- I'm not satisfied his  
24 evidence is helpful. Is there anything further?

25                   MR. WILLIAM MCDOWELL: Commissioner, I

1 --

2 THE HONOURABLE FRANK MARROCCO: I  
3 noticed you were moving, Mr. McDowell, so I --

4 MR. WILLIAM MCDOWELL: I -- I won't be  
5 here tomorrow, so Mr. Breedon will act as shop steward  
6 in my absence.

7 THE HONOURABLE FRANK MARROCCO: All  
8 right. Thank you for that warning.

9 MR. WILLIAM MCDOWELL: Thank you.

10 THE HONOURABLE FRANK MARROCCO: We'll  
11 adjourn until tomorrow.

12

13 --- Upon adjourning at 12:41 p.m.

14

15 Certified Correct,

16

17

18

19 \_\_\_\_\_

20 Wendy Woodworth, Ms.

21

22

23

24

25

<p>§</p> <p><b>\$11,000</b></p> <p>12:17</p> <p>14:19</p> <p>15:4 16:1</p> <p><b>\$25,000</b></p> <p>15:20</p> <hr/> <p>1</p> <hr/> <p><b>1</b> 8:6 9:5</p> <p>14:23</p> <p>28:14</p> <p>59:1</p> <p>88:24</p> <p>99:6,12</p> <p>118:22</p> <p>120:16</p> <p>125:21</p> <p>131:18</p> <p>146:7</p> <p>166:13,25</p> <p>167:6</p> <p>170:2</p> <p>176:10</p> <p>177:23</p> <p><b>10</b> 71:21</p> <p>72:6,8</p> <p>123:2,4</p> <p><b>10:06</b> 59:11</p> <p><b>10:20</b> 59:12</p> <p><b>100</b> 71:2</p> <p><b>11</b> 17:11</p> <p>28:24</p> <p>147:5,14</p> <p><b>11:24</b> 123:8</p> <p><b>11:34</b> 123:9</p> <p><b>110</b> 68:21</p> <p><b>117</b> 6:2,13</p> <p>81:19</p> <p><b>12</b> 48:16</p> <p>71:21</p> <p>82:10</p> <p>147:4</p> <p><b>12:00</b></p> <p>148:22</p> <p><b>12:09</b></p>	<p>148:23</p> <p><b>12:38</b></p> <p>153:20</p> <p><b>12:41</b></p> <p>178:13</p> <p><b>13</b> 68:21</p> <p><b>13th</b> 155:21</p> <p><b>14</b> 24:1,3,6</p> <p><b>146</b> 3:8</p> <p><b>15</b> 69:20</p> <p>72:6,9</p> <p>123:2</p> <p><b>159</b> 48:17</p> <p><b>16</b> 6:2,13</p> <p>8:2,8</p> <p>10:7 48:8</p> <p><b>160</b> 48:21</p> <p><b>169</b> 3:9</p> <p><b>16th</b> 68:12</p> <p><b>178</b> 3:18</p> <p><b>18</b> 24:16</p> <p>72:6</p> <p>91:16</p> <p>118:16,23</p> <p><b>19-05</b> 48:7</p> <p><b>19th</b></p> <p>143:17,18</p> <p>,24</p> <hr/> <p>2</p> <hr/> <p><b>2</b> 7:6,19</p> <p>9:7</p> <p>14:21,22</p> <p>18:21</p> <p>28:8,11,1</p> <p>3 41:14</p> <p>51:15</p> <p>69:21</p> <p>70:2</p> <p>71:3,10</p> <p>72:16,24</p> <p>118:11</p> <p>126:10</p> <p>128:7</p> <p>144:9</p>	<p>153:2</p> <p><b>2003</b> 69:22</p> <p>70:17,20</p> <p>71:9,20</p> <p>102:16</p> <p>110:18,23</p> <p>111:4,5,1</p> <p>0 117:4</p> <p><b>2012</b> 69:24</p> <p>70:16</p> <p>71:16</p> <p>72:1</p> <p>103:21</p> <p>106:6</p> <p>117:13</p> <p>152:18</p> <p>159:20</p> <p>160:15</p> <p>173:8</p> <p>175:15</p> <p><b>2013</b> 72:16</p> <p>89:19,25</p> <p>92:8</p> <p>100:16</p> <p>112:11</p> <p>155:21</p> <p><b>2014</b> 24:18</p> <p>31:20</p> <p>74:6</p> <p>82:13</p> <p>83:6 84:2</p> <p>91:16</p> <p>97:18</p> <p>118:16,23</p> <p>120:9,23</p> <p><b>2014/2015</b></p> <p>64:1</p> <p><b>2014/2018</b></p> <p>35:16</p> <p>63:22</p> <p><b>2015</b> 60:3</p> <p>75:17</p> <p>105:8</p> <p>138:13</p> <p>173:4</p> <p>174:24</p> <p><b>2016</b> 123:19</p> <p>127:25</p>	<p>131:14,15</p> <p>132:2,7</p> <p>136:16</p> <p>137:13</p> <p>153:20</p> <p>174:16</p> <p><b>2017</b> 155:3</p> <p><b>2018</b> 31:20</p> <p>177:6</p> <p><b>2019</b> 1:23</p> <p><b>2019-05-23</b></p> <p>24:1</p> <p><b>22</b> 102:25</p> <p><b>22nd</b> 138:19</p> <p>143:16,19</p> <p><b>23</b> 10:9</p> <p>68:21</p> <p>70:8</p> <p><b>23rd</b></p> <p>138:13,18</p> <p><b>24</b> 48:17,20</p> <p>70:9</p> <p><b>25</b> 48:20</p> <p>74:17</p> <p><b>26th</b> 69:19</p> <p><b>27th</b> 1:23</p> <p><b>28th</b> 60:2</p> <hr/> <p>3</p> <hr/> <p><b>3</b> 7:19 32:5</p> <p>33:11</p> <p>75:2,22</p> <p>97:15</p> <p>98:20</p> <p>99:17</p> <p>108:18</p> <p>141:25</p> <p>144:2,9</p> <p><b>31st</b></p> <p>70:16,23</p> <p>71:16</p> <p>72:1</p> <p>103:21</p> <p>105:8</p> <p>106:6</p>	<p>111:11</p> <p>159:20</p> <p>160:15</p> <p>173:8</p> <p>175:15</p> <p><b>33</b> 82:8</p> <p><b>36</b> 24:1</p> <p><b>37</b> 24:16</p> <p><b>392</b> 4:3</p> <p><b>393</b> 4:4</p> <p><b>394</b> 4:5</p> <p><b>395</b> 4:6</p> <p><b>396</b> 4:7</p> <p><b>397</b> 4:8</p> <p><b>398</b> 4:9</p> <p><b>399</b> 4:10</p> <p><b>3rd</b> 123:19</p> <hr/> <p>4</p> <hr/> <p><b>4</b> 3:3 9:6</p> <p>50:8,10,1</p> <p>6 64:4</p> <p>111:17</p> <p>122:10</p> <p>148:16</p> <p>152:13</p> <p><b>4) /four</b></p> <p>122:10</p> <p><b>400</b> 4:11</p> <p><b>401</b> 4:12</p> <p><b>402</b> 4:13</p> <p><b>479255</b></p> <p>143:7</p> <p><b>4th</b> 105:7</p> <p>153:19</p> <hr/> <p>5</p> <hr/> <p><b>5</b> 3:6 78:10</p> <p>98:20</p> <p>100:6</p> <p>151:6</p> <p><b>50</b> 36:16</p> <p>41:3</p>
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