



“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

October 18th, 2019

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APPEARANCES

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1 --- Upon commencing at 9:05 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Good
4 morning, everybody.

5

6 ED HOUGHTON, Previously Sworn

7

8 CONTINUED CROSS-EXAMINATION BY MR. FREDERICK
9 CHENOWETH:

10 MR. FREDERICK CHENOWETH: Good
11 morning, Mr. Houghton.

12 MR. ED HOUGHTON: Good morning.

13 MR. FREDERICK CHENOWETH: I'd like to
14 take you to the Council meeting of August 27, 2012.
15 You were obviously in attendance on that occasion.

16 MR. ED HOUGHTON: Yes, I was.

17 MR. FREDERICK CHENOWETH: All right.

18 And can you tell me, was Tom Lloyd of Sprung in
19 attendance on that occasion?

20 MR. ED HOUGHTON: Yes, he was.

21 MR. FREDERICK CHENOWETH: All right.

22 And can you tell me what, if any, presentation did Tom
23 Lloyd of Sprung make to Council on that occasion?

24 MR. ED HOUGHTON: Mr. Lloyd gave a
25 presentation on the attributes of the Spring -- Sprung

1 technology.

2 MR. FREDERICK CHENOWETH: And do I
3 understand that there was also a slide presentation
4 that yourself and Marjory Leonard were involved in
5 that was given at that Council meeting?

6 MR. ED HOUGHTON: Yes.

7 MR. FREDERICK CHENOWETH: And could we
8 go to TOC0206027.

9

10 (BRIEF PAUSE)

11

12 MR. FREDERICK CHENOWETH: And is this
13 the slide presentation that -- that was given on that
14 occasion?

15 MR. ED HOUGHTON: It appears to be.

16 MR. FREDERICK CHENOWETH: Thank you.
17 And can you tell me, was this document circulated at -
18 - sometime prior to the August 27th Council meeting?

19 MR. ED HOUGHTON: Yes. I circulated
20 it to the EMC.

21 MR. FREDERICK CHENOWETH: Yes. Could
22 we look at TOC0207570?

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: I'm not sure
2 that's the document I'm looking for. Let me try
3 another one. How about TOC0205359?

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And this
8 appears to be an email sent by you on Monday the 27th
9 at 2:08 p.m., and you circulated it to Sara Almas,
10 Marjory Leonard, Larry Irwin, and Marta Proctor.

11 And the attachment that's there, is
12 that the slide presentation we just looked at?

13 MR. ED HOUGHTON: Yes, it is.

14 MR. FREDERICK CHENOWETH: All right.
15 And what is -- what is the purpose -- we can read the
16 email. What is the purpose of circulating the slide
17 presentation at that time?

18 MR. ED HOUGHTON: I wanted to make
19 sure that everything in the -- in that slide
20 presentation was accurate. One can imagine with all
21 the duties I had, that this wasn't my single focus, so
22 I needed the eyes of the EMC, which was the intent of
23 having them, to make sure that these things were
24 correct.

25 MR. FREDERICK CHENOWETH: All right.

1 And did you also give some special direction to
2 Marjory Leonard in this email?

3 MR. ED HOUGHTON: Yes, I did.

4 MR. FREDERICK CHENOWETH: All right.
5 And what was the purpose of doing that?

6 MR. ED HOUGHTON: My -- my intent
7 there was that -- my understanding was Marjory was in
8 charge of procurement and finances, and that -- that
9 we were going to be speaking about that in the
10 presentation, so I wanted her to look at it, be
11 comfortable with it, and make sure that -- if she felt
12 there was anything wrong or if there was any
13 inaccuracies.

14 MR. FREDERICK CHENOWETH: All right.
15 Did you both utilize the slide presentation to make
16 your presentation on August 27th?

17 MR. ED HOUGHTON: I believe we did.

18 MR. FREDERICK CHENOWETH: Thank you.
19 And do you have a memory of the matters that Marjory
20 Leonard put before Council on that occasion?

21 MR. ED HOUGHTON: She did talk about
22 the available finances, the cost of the -- the
23 project. She did speak about the procurement portion,
24 and I believe she spoke about debentures.

25 MR. FREDERICK CHENOWETH: Thank you.

1 And did you have occasion -- and when she spoke about
2 debentures, what -- what advice did she give the
3 Council in that respect?

4 MR. ED HOUGHTON: I don't have a
5 specific recollection, but I believe that she gave
6 ranges of -- of what debentures -- costs are and
7 interest rates and what -- what that would mean to --
8 to -- to Collingwood.

9 MR. FREDERICK CHENOWETH: And did you
10 make a presentation on that occasion?

11 MR. ED HOUGHTON: Yes, I did.

12 MR. FREDERICK CHENOWETH: And what did
13 you speak of on that occasion?

14 MR. ED HOUGHTON: I talked about the
15 Central Park -- the Central Park project - the comple
16 -- big project, talked about it only in a positive
17 sense, talked about it that -- and then started
18 talking about what we were doing and how we were
19 trying to ensure that whatever we -- we were doing was
20 -- was in keeping with and sensitive to that Central
21 Park, obviously save and except for moving the pool.

22 But we -- we also talked about the fact
23 that potentially there was an opportunity from an
24 operational perspective to -- to potentially partner
25 with the "Y" or something like that, not -- not having

1 a full appreciation of the disconnect between Council
2 and the "Y" at the time.

3 MR. FREDERICK CHENOWETH: There's some
4 reference in some emails that I've seen through the
5 course of this proceeding that talk about meshing with
6 the steering committee report --

7 MR. ED HOUGHTON: That's correct.

8 MR. FREDERICK CHENOWETH: -- idea.
9 Can you --

10 MR. ED HOUGHTON: That --

11 MR. FREDERICK CHENOWETH: -- explain
12 to me what that concept means?

13 MR. ED HOUGHTON: Yes. Again, the
14 Central Park Steering Committee was trying to create
15 the hub and -- and so -- and they were talking about
16 having an ice pad, potentially a -- a twinned ice pad.

17 So what we -- and what we were trying
18 to do was save as much of the existing assets as
19 possible, so we sited it at the very southeast corner
20 in the ball diamond that was -- was very rarely used
21 save and except for maybe catch prior to a ball game,
22 and we -- we created that so that it could be twinned.

23 We also -- one (1) of the big reasons
24 we went with the Sprung as well was because they told
25 it -- us it would be easily repurposed, so that --

1 that enclosure could either be used in some other
2 aspect, whether it be a tennis bubble or -- or a
3 soccer pitch or whatever, I guess it may be small for
4 soccer, but those kinds of things.

5 It could be sold potentially. We felt
6 that that would be -- if, in fact, the community
7 wanted to move forward with a -- the bigger scheme,
8 that that was an ample opportunity to do that, and --
9 and that -- that we felt that that was probably a
10 bigger opportunity than if you were using obviously
11 bricks and mortar or -- or prefabricated steel. So it
12 could be then completely incorporated into one (1)
13 multi-use facility that -- that looked the same.

14 MR. FREDERICK CHENOWETH: When you
15 sent out your slide presentation at 2:08 on that
16 afternoon, I have a sense there was a -- a response?

17 MR. ED HOUGHTON: Yes. I believe that
18 Marta responded, made a couple little changes.

19 MR. FREDERICK CHENOWETH: Can we look
20 at document TOC0205388.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: And is this
25 the response that you got from Marta Proctor to your

1 2:08 email on that day?

2 MR. ED HOUGHTON: Yes, I believe so.

3 MR. FREDERICK CHENOWETH: Thank you.

4 And did you get any other responses to your email on
5 that day with any corrections or thoughts or -- or
6 pointing out any errors or anything of that nature?

7 MR. ED HOUGHTON: I -- I don't believe
8 so.

9 MR. FREDERICK CHENOWETH: Thank you.
10 And I take it obviously Collingwood Council voted on
11 that occasion?

12 MR. ED HOUGHTON: Yes, they did.

13 MR. FREDERICK CHENOWETH: And I think
14 we know what they voted on that day.

15 Are you able to tell me -- and we can
16 pull it up, if you wish. Could we look at the minutes
17 of the Council meeting, CJ10008064 (sic).

18 COURT OPERATOR: 8064?

19 MR. FREDERICK CHENOWETH: 8068, I'm
20 sorry. I may have said 4. 8068.

21

22 (BRIEF PAUSE)

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: And can we

1 look down at page 3 and 4 of those minutes? Go down
2 further to the vote.

3 And the resolutions that are indicated
4 there -- can you go up a little further, if you would,
5 please? Thank you. Sorry, the other way down, I
6 guess. Can you -- and go a little further down.
7 Further down.

8 Can you tell me -- the resolutions that
9 were passed on that day, are you able to advise as to
10 the vote that was cast with respect to them?

11 MR. ED HOUGHTON: When it came to the
12 -- the new ice pad, the -- the vote was eight (8) to
13 one (1).

14 There was a -- a motion then to defer
15 the existing outdoor pool for ninety (90) days until a
16 professional review could be taken, and Council voted
17 eight (8) one (1) against that, and then Council voted
18 on the pool, and it was seven (7) to two (2).

19 MR. FREDERICK CHENOWETH: Very good.
20 Thank you.

21 Now, could I take you to document
22 number TOC207570?

23

24

(BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: And this
2 appears to be an email from Sandra Cooper on the 30th
3 day of August 2012, just before noon on that day. And
4 the Mayor said:

5 "Deputy Mayor" --

6 This appears to be an email to Marjory
7 Leonard. And the Mayor says:

8 "Deputy Mayor is stopping by my
9 office to review the Sprung
10 agreement. Can you provide them to
11 me, please?"

12 Ms. Leonard, in her testimony the other
13 day, acknowledged that there was a -- a meeting on
14 that day around noon between the Deputy Mayor and the
15 Mayor to review the contract and the payment schedule.
16 She, however, was unable to advise as to whether or
17 not she remained in attendance for that meeting.

18 Are you able to assist at all with
19 respect to what you recall as to whether Marjory
20 Leonard was there on that day?

21 THE HONOURABLE FRANK MARROCCO: Was --
22 was Mr. Houghton there?

23 MR. FREDERICK CHENOWETH: No, he
24 wasn't, Your Honor, but he had other conversations
25 that relate to the matter.

1 THE HONOURABLE FRANK MARROCCO: Oh,
2 okay.

3 MR. FREDERICK CHENOWETH: Thank you.

4

5 CONTINUED BY MR. FREDERICK CHENOWETH:

6 MR. FREDERICK CHENOWETH: If you could
7 advise about that, Mr. Houghton.

8 MR. ED HOUGHTON: Yeah. I was told by
9 Mayor Cooper that she was in attendance.

10 MR. FREDERICK CHENOWETH: Now, I
11 understand that eventually, with respect to the
12 payment schedule, Ron Martin had a discussion with BLT
13 relating to changing the payment schedule.

14 MR. ED HOUGHTON: That's correct.

15 MR. FREDERICK CHENOWETH: And could we
16 turn to TOC0511164?

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: And I take
21 it there was a proposal that was put forward by Paul
22 Waddell on Friday January 25th at 1:28. Could we just
23 scroll up a little bit to get to this proposal. Thank
24 you.

25 Did you come to understand that this

1 was a proposal that was put to Ron Martin as a result
2 of him approaching BLT with respect to the payment
3 schedule?

4 MR. ED HOUGHTON: Yes.

5 MR. FREDERICK CHENOWETH: And I
6 understand that the proposal involved changing the
7 payment schedule from there on in to five (5) equal
8 payments, is that correct?

9 MR. ED HOUGHTON: That's correct.

10 MR. FREDERICK CHENOWETH: And did Ron
11 Martin draw your attendance to this? Let's go back up
12 to the -- scroll up to the next email, thank you.

13 MR. ED HOUGHTON: Yes, he did.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And could we look then at TOC0516952. Could we go
16 down just a little further if we would, please?

17 I note that there's an email from
18 Marjory Leonard January 25th at 2:25. I take it you
19 were -- you and Ron Martin were copied on that email?

20 MR. ED HOUGHTON: Yes.

21 MR. FREDERICK CHENOWETH: And she
22 indicated that she had no problem with the new
23 schedule?

24 MR. ED HOUGHTON: That's correct.

25 MR. FREDERICK CHENOWETH: And I take

1 it you also voiced your view with respect to that
2 matter?

3 MR. ED HOUGHTON: I had no issues
4 either.

5 MR. FREDERICK CHENOWETH: And that's
6 the email above. And so I take it that matter
7 proceeded on the basis of an amended payment schedule,
8 to a large extent, as a result of the efforts of Ron
9 Martin?

10 MR. ED HOUGHTON: That's correct.

11 MR. FREDERICK CHENOWETH: Very good.
12 Thank you.

13 Now, if we could turn for a moment to
14 the matter of the Centennial Pool enhancements, and
15 I'm now talking about the warm water therapy pool.

16 I understand that Council gave a
17 direction to staff on or about October 2nd, 2012. Can
18 we turn to the minutes of that meeting, which are
19 CJI0008102.

20 Could we look at page 4 of those
21 Council minutes, please? And again, they're minutes
22 of an October 1st meeting.

23 I'm looking for a reference, Mr.
24 Houghton, maybe you can assist, with respect to the
25 warm water therapy pool.

1 MR. ED HOUGHTON: You may have to
2 scroll down.

3 MR. FREDERICK CHENOWETH: All right,
4 thank you.

5 MR. ED HOUGHTON: Keep going, I think.

6 THE HONOURABLE FRANK MARROCCO: It
7 says, Mr. Houghton, just above 4:30, where it says
8 number 4:30, is that what you were looking for?

9 MR. ED HOUGHTON: Yes, thank you.

10

11 CONTINUED BY MR. FREDERICK CHENOWETH:

12 MR. FREDERICK CHENOWETH: So there was
13 a direction from Council to staff to prepare a report
14 with respect to including a therapeutic pool within
15 the Centennial Pool development?

16 MR. ED HOUGHTON: That's correct.

17 MR. FREDERICK CHENOWETH: All right.
18 And did staff prepare a report?

19 MR. ED HOUGHTON: Yes.

20 MR. FREDERICK CHENOWETH: And could we
21 look very briefly at that staff report, which is
22 TOC0227087.

23 I note that the staff report indicates
24 that it's from the Executive Management Committee.

25 MR. ED HOUGHTON: That's what it says,

1 yes.

2 MR. FREDERICK CHENOWETH: Right. Can
3 we look at the signature page on this? And can you
4 tell me, just before we leave it, what in essence the
5 staff report said?

6 MR. ED HOUGHTON: I -- I think
7 basically what -- I don't have a complete recollection
8 of the staff report, but I understand that the staff
9 report was answering the -- the request of Council to
10 have a warm water therapy pool installed at -- at the
11 Heritage Park Pool and -- and it had the -- I believe
12 it had the costs in the -- the impact on finances in
13 this report.

14 MR. FREDERICK CHENOWETH: Thank you.
15 Could we look at TOC0227136?

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: Now, this
20 appears to be an email that was sent on the -- on the
21 day indicated, and this is an email that you sent to
22 Marta Proctor?

23 THE HONOURABLE FRANK MARROCCO: This
24 looks like it's October 10th there, Mr. Chenoweth.

25 MR. FREDERICK CHENOWETH: It does. It

1 does. That's correct, Your Honour, thank you.

2

3 CONTINUED BY MR. FREDERICK CHENOWETH:

4 MR. FREDERICK CHENOWETH: And tell me
5 -- you indicate -- you make a suggestion:

6 "I would suggest that you consider
7 that this report comes from you at
8 PRC with input from the EMC and Dave
9 McNalty."

10 Can you tell the Inquiry how those
11 comments arose?

12 MR. ED HOUGHTON: Well, I believe that
13 the -- the main input on this report was from PRC and
14 certainly less from the EMC. And so I was -- I was
15 just saying to me it made sense that the report come
16 from PRC and input from us.

17 And -- and I just suggest a thought.

18 MR. FREDERICK CHENOWETH: Right, and
19 you say just a thought, Ed, correct?

20 MR. ED HOUGHTON: That's correct.

21 MR. FREDERICK CHENOWETH: Thank you.

22 Do you know if -- if the author of the
23 report or the -- the signature page were changed as a
24 result of your suggestion to Marta Proctor on that
25 occasion?

1 MR. ED HOUGHTON: I believe it was.

2 MR. FREDERICK CHENOWETH: Thank you.

3 And can you tell me, is it your understanding that
4 Marta Proctor circulated a draft of that staff report
5 regarding the therapy pool at some time?

6 MR. ED HOUGHTON: That's correct.

7 MR. FREDERICK CHENOWETH: Could we
8 look at TOC0227852.

9 And the draft of that report appeared
10 to have a pretty wide circulation by Marta. And Marta
11 is, in this email, dated the 11th day of October,
12 2012, is forwarding the draft report to a number of
13 individuals.

14 Is there any councillors that she
15 forwards this to at this juncture?

16 MR. ED HOUGHTON: Yes, she forwards it
17 to her two (2) Council reps, Keith Hull and Dale West.
18 And she also forwards it to her Parks, Recreation and
19 Culture advisory committee.

20 MR. FREDERICK CHENOWETH: All right.
21 And did you have any thoughts with respect to this
22 being forwarded to the advisory committee?

23 MR. ED HOUGHTON: At that time, none.
24 Today I do, but --

25 MR. FREDERICK CHENOWETH: What are

1 your thoughts on it today?

2 MR. ED HOUGHTON: Well, at the time I
3 -- again it was -- it was practice, you're bringing
4 the input from those people. I'm a little bit -- I'm
5 not sure about the PR -- PRCAC, but certainly from
6 Councillor Hull and Councillor West, there -- they
7 were appointed as Council representatives. They --
8 they bring the public view to these kinds of things.
9 They bring sometimes a different perspective that gets
10 incorporated into these.

11 And -- and I -- I -- I wouldn't have
12 had an issue because that's what, you know, 7, 8, 9,
13 10 years ago we did.

14 MR. FREDERICK CHENOWETH: Thank you.
15 Now, can you tell me she also appears to have
16 forwarded to -- to a number of members of the public
17 who were on the PRC advisory committee?

18 MR. ED HOUGHTON: That's correct.

19 MR. FREDERICK CHENOWETH: And did you
20 have a thought about her doing that at that time?

21 MR. ED HOUGHTON: I -- I don't think I
22 did. I don't think I had much of an -- I don't think
23 I thought about it.

24 MR. FREDERICK CHENOWETH: Thank you.
25 And I understand that there was eventually a Council

1 resolution with respect to the therapy pool --

2 MR. ED HOUGHTON: That's correct.

3 MR. FREDERICK CHENOWETH: -- that
4 appears to have been at Council meeting that occurred
5 on October 15th, 2012. In that respect, can we look
6 at CJ1 -- or CJI0008104? If we could look at pages 2
7 and 3 of that letter.

8 And just go up a little bit, if you
9 would, please, just a slight bit. Scroll up the other
10 way. Thank you. Sorry, down ever so slightly. Thank
11 you. I just want to see the vote, if we could.

12 MR. ED HOUGHTON: It's -- it --

13 MR. FREDERICK CHENOWETH: Scroll up
14 now. Thank you. Very good. So, I take it that there
15 was a Council resolution to proceed ahead with the
16 therapeutic pool on that occasion?

17 MR. ED HOUGHTON: That's correct.

18 MR. FREDERICK CHENOWETH: And was
19 there a price that was set as an upset limit for that
20 task?

21 MR. ED HOUGHTON: There was an upset
22 limit set in the staff report of five hundred and
23 fifty thousand (550,000).

24 MR. FREDERICK CHENOWETH: Can you tell
25 me, what was the vote count with respect to that

1 resolution?

2 MR. ED HOUGHTON: Again, there was a
3 motion to defer for thirty (30) days and try to get
4 comments about working with the YMCA because there was
5 some thoughts of that the YMCA may be -- may be the
6 more appropriate place for a therapeutic pool.

7 That -- that motion to defer was
8 defeated seven (7) to two (2). And then -- and then
9 the original motion to move forward with the
10 therapeutic -- therapeutic pool at Centennial Park was
11 voted on and moved and seconded and approved seven (7)
12 to two (2).

13 MR. FREDERICK CHENOWETH: All right.
14 Now, with whom did the Town contract to install the
15 therapeutic pool?

16 With whom did the Town contract with
17 respect to the installation of the therapeutic pool?

18 MR. ED HOUGHTON: Well, BLT was the --
19 the general contractor onsite. My understanding, they
20 got three (3) prices from therapeu -- therapeutic pool
21 experts to install the pool, and they went with the --
22 the low price.

23 MR. FREDERICK CHENOWETH: And did this
24 become an amendment to the existing September 30th
25 contract with -- with BLT, or do you know?

1 MR. ED HOUGHTON: It would be an extra
2 of two (2) that contracted us --

3 MR. FREDERICK CHENOWETH: Thank you.

4 MR. ED HOUGHTON: -- at least to the
5 project.

6 MR. FREDERICK CHENOWETH: Now, the
7 pool enhancement, I'm interested in -- in
8 understanding how that had occasion to come about. I
9 understand there was a deputation to Collingwood
10 Council by the -- by the Clippers at some juncture?

11 MR. ED HOUGHTON: That's correct.

12 MR. FREDERICK CHENOWETH: Could we
13 turn to CJI0008047?

14

15 (BRIEF PAUSE)

16

17 MR. FREDERICK CHENOWETH: And can we
18 scroll down to see if we can pick up the Clippers'
19 deputation at this meeting? Go slowly, and we'll see
20 if we can pick it up.

21

22 (BRIEF PAUSE)

23

24 MR. FREDERICK CHENOWETH: This would
25 appear to be it. And were you at this -- this

1 meeting, Mr. Houghton?

2 MR. ED HOUGHTON: Yes, I was.

3 MR. FREDERICK CHENOWETH: Can you tell
4 me, in essence, what the wishes were that were
5 expressed by -- expressed by the Clippers on that
6 occasion?

7 MR. ED HOUGHTON: I believe that the
8 Clippers were excited that they were going to have an
9 opportunity -- or potentially have an opportunity for
10 an upgraded pool that they would be able to train
11 their young swimmers. And they -- they, as well,
12 seemed to have an issue with the YMCA from a -- from a
13 training perspective, that they could only get certain
14 specific hours at the YMCA, which I guess is
15 understanding the way they schedule things.

16 So, they had a bit of an issue with
17 that and felt that there was a greater opportunity to
18 have better training hours at this -- the -- at this
19 location at Central Park -- or at Heritage Park.

20 MR. FREDERICK CHENOWETH: Was there
21 eventually a report -- staff report that was drafted
22 with respect to the Centennial pool enhancements?

23 MR. ED HOUGHTON: Yes, there was.

24 MR. FREDERICK CHENOWETH: All right.

25 And just looking quickly at that, is that TOC0516920?

1

2

(BRIEF PAUSE)

3

4

MR. FREDERICK CHENOWETH: And is this
5 a staff report prepared by Marta Proctor with respect
6 to the pool enhancements?

7

MR. ED HOUGHTON: That's what it
8 appears to be, yes.

9

MR. FREDERICK CHENOWETH: All right.
10 And, again, the recommendation with respect to that
11 from staff at that juncture was?

12

MR. ED HOUGHTON: That Council
13 received the information as well as received the
14 proposed pool operating model.

15

MR. FREDERICK CHENOWETH: Thank you.
16 And did Council eventually authorize the work for the
17 pool enhancement to proceed?

18

MR. ED HOUGHTON: That's correct.

19

MR. FREDERICK CHENOWETH: And can you
20 tell me, in terms of the contracting of that work,
21 with whom was the pool enhancement contracted?

22

MR. ED HOUGHTON: It was in addition
23 to the -- the scope of work at Central -- at Heritage
24 Park with BLT.

25

MR. FREDERICK CHENOWETH: And can you

1 tell me, was it regarded as a contract change, or do
2 you know?

3 MR. ED HOUGHTON: I -- I don't
4 recollect specifically how they did that.

5 MR. FREDERICK CHENOWETH: But, in any
6 event, that change was approved by Council, was it?

7 MR. ED HOUGHTON: That is correct.
8 And there was -- there was also a donat -- a large
9 donation given to the project by an anonymous Clipper
10 person.

11 MR. FREDERICK CHENOWETH: All right.
12 I understand that, at some juncture, the Town was
13 notified that there had been -- been some vandalism at
14 the Centennial pool?

15 MR. ED HOUGHTON: That's correct.

16 MR. FREDERICK CHENOWETH: And was that
17 sometime in July of 2013, or do you know?

18 MR. ED HOUGHTON: Yes, I think so.

19 MR. FREDERICK CHENOWETH: Thank you.
20 And did -- I'm going to refer you if I could, please,
21 to document number TOC0345937. And if we could go
22 down a little bit on that document, please. Scroll
23 down. And scroll down a little further.

24 It may be that Ron's original email is
25 there, and it is. There's an email from Ron Martin on

1 July 22nd. And he says:

2 "As a result of recent vandalism at
3 the pool, I have been asked to
4 comment on why there is no aluminum
5 shield on the building as originally
6 presented to Council."

7 And I take it there was a response by
8 Dave Barrow to that request for information from Ron
9 Martin?

10 MR. ED HOUGHTON: That's correct.

11 MR. FREDERICK CHENOWETH: Could we
12 scroll up and have a look at that, please? Thank you.
13 And we have the response from Dave Barrow with respect
14 to that requested information.

15 And you've had occasion to review this
16 and you're familiar with it?

17 MR. ED HOUGHTON: That's correct.

18 MR. FREDERICK CHENOWETH: All right.

19 And could we go up to the next email? And this
20 appears to be an email from Ron Martin to Houghton and
21 Leonard and Irwin on the 22nd of July, 2013:

22 "Before I send this response to
23 Council, do you all agree with
24 Dave's comments?"

25 Is the request from Ron Martin. And

1 did you have occasion to -- to respond to that email?

2 MR. ED HOUGHTON: I didn't respond to
3 this email. What I did was I responded to Mr. Barrow
4 and said what my recollection of the -- the discussion
5 was. There's a couple things that he had said in his
6 that I didn't, quite frankly, agree with and I didn't
7 -- I just offered up what I felt was what had
8 happened.

9 If you could go up to my -- we did have
10 -- and as I've already indicated, we did have an
11 indication about the Sprung Shield, the group was much
12 larger and what I meant was there was -- I believe the
13 Deputy Mayor was there. I believe that there was
14 other folks from -- from Sprung that were there as
15 well, and that -- that we had discussed that the
16 membrane was very robust. Anyone wanting to cut into
17 it would certainly have to work at it.

18 We -- as I noted here, the -- that you
19 know -- and this was a comment that was made, if
20 anybody wished to break into it, there's -- there's
21 other easier ways of gaining access.

22 And -- and that there was a discussion
23 about the cost, which was somewhat substantial. We --
24 what I really didn't do as good a job on this one was
25 the fact that the Sprung folks had told us that they

1 only install 5 percent -- or in 5 percent of their
2 buildings have they ever installed the Sprung Shield,
3 and if it's not in a high vandalism area, then it's
4 not money well-spent. I --

5 MR. FREDERICK CHENOWETH: Go ahead.

6 MR. ED HOUGHTON: I was going to just
7 say that in the report I cut and paste -- cut and
8 pasted one of the -- the pieces of information.
9 Actually, I didn't do it, because I didn't know how to
10 do it at the time, but we did it, my staff, I take
11 responsibility for it, put -- put a -- a piece in that
12 actually did say Sprung Shield.

13 But in -- in reviewing the transcript I
14 never once mentioned Sprung Shield, not that I -- not
15 that I've seen anyway.

16 MR. FREDERICK CHENOWETH: All right.

17 And --

18 THE HONOURABLE FRANK MARROCCO: Excuse
19 me, Mr. Chenoweth. What was the cost of the shield
20 approximately? Do you remember?

21 MR. ED HOUGHTON: My -- my
22 understanding was at the time it was substantial and
23 I'm thinking they said somewhere between two fifty
24 (250) and three hundred and fifty thousand (350,000).
25 And when they said -- again, the comment was made this

1 isn't downtown Detroit, it really was okay, let's move
2 on, next topic.

3 THE HONOURABLE FRANK MARROCCO: All
4 right, thank you.

5

6 CONTINUED BY MR. FREDERICK CHENOWETH:

7 MR. FREDERICK CHENOWETH: And I take
8 it you obviously wrote directly to Mr. Barrow at this
9 time?

10 MR. ED HOUGHTON: Yes, I -- I'm no
11 longer the -- the acting chief administrative officer.
12 I felt that I just owed it to him to say here's what
13 I'm thinking, you've been asked by the Town of
14 Collingwood now for your input. I'm just -- I just
15 sent it to him saying here's what -- here's what I
16 recollect. I didn't say change it or whatever, I just
17 -- and then I say I'm hoping that you remember my
18 points and you can revise your comments since this is
19 going to be an issue.

20 And with the sensitivities that have
21 been going around with, you know, adding to the
22 therapy pool and now adding to the -- to the -- the 12
23 metre, 6 lane pool, all those kinds of things and the
24 issues, there was sensitivities and -- so I just felt
25 that I could give him the benefit of my memory, which

1 is pretty good that, you know, he could use it, and he
2 -- and he did.

3 MR. FREDERICK CHENOWETH: So he
4 responded?

5 MR. ED HOUGHTON: He responded. He
6 said there was many -- like, many other people --

7 MR. FREDERICK CHENOWETH: Just before
8 you continue, could we look at the document or look at
9 the response, and I'd ask us to pull up CJI0006198.

10 Could you go down a little further so
11 we can see the full Dave Barrow email? And it looks
12 like Dave Barrow responds directly to Ron Martin.

13 MR. ED HOUGHTON: Yes, and -- and
14 where he said roughly seven (7) or eight (8) other
15 City staff members, that's not what I meant. I just
16 meant that there was -- there was a greater number of
17 people there, I think there was only one (1) other
18 person, which might potentially -- well, maybe two
19 (2), Dave McNalty, potentially Dennis Seymour and the
20 Deputy Mayor. But there -- as well as the Sprung
21 folks.

22 MR. FREDERICK CHENOWETH: Did you have
23 any view as to whether this correspondence by Dave
24 Barrow was more in keeping with your memory of events
25 on that occasion?

1 MR. ED HOUGHTON: I don't know if I
2 was ever copied on this.

3 MR. FREDERICK CHENOWETH: Oh, I'm
4 sorry. All right.

5 Did you become aware that -- that Dave
6 Barrow had responded? I take it you -- you learned of
7 that in the very least in the Foundation Document?

8 MR. ED HOUGHTON: I -- I found out in
9 the Foundation Document.

10 MR. FREDERICK CHENOWETH: And having
11 looked at this document, do you feel that it's more
12 representative of what occurred at the meeting that
13 you recalled in relation to the Sprung Shield?

14 MR. ED HOUGHTON: Again, the seven (7)
15 or eight (8) other City staff members is not correct.
16 The aluminum shield being a topic was correct.

17 At the time there was consensus and I
18 never said that, I -- I don't think I did. But there
19 was not a high vandalism area, which is correct.

20 I think it -- it really did twig him
21 when he -- when he thought about it further because
22 there was a discussion about you could just walk to a
23 -- to the door and break the glass, or other ways of
24 getting in.

25 It -- the other thing that was actually

1 discussed that day is that it's difficult to -- I
2 mean, you can put the Sprung Shield around and
3 somebody had -- had also said that you'd have to pick
4 your spot if you wanted to break through too, because
5 typically you're either going to be breaking into a --
6 a bleacher or some other thing that might be inside,
7 but irrespective of that, I just -- it was just a
8 memory that just came into my mind right now about
9 that discussion.

10 Yeah, the majority of this was -- was
11 what we -- we had talked about. The only real issue I
12 would have is the roughly seven (7) or eight (8) other
13 City staff members, because that's -- that's not
14 correct, but...

15 MR. FREDERICK CHENOWETH: Do you have
16 -- are you able to assist the Inquiry with respect to
17 when you believe the discussion about Sprung Shield
18 occurred?

19 MR. ED HOUGHTON: Oh, yes, I believe
20 it happened on the 27th of August.

21 MR. FREDERICK CHENOWETH: 27th of
22 August --

23 MR. ED HOUGHTON: Of July.

24 MR. FREDERICK CHENOWETH: All right,
25 thank you. And I think that meeting and who was at it

1 are before the Inquiry at this time.

2 And if we could move from that exchange
3 of correspondence to the question of LEED's silver
4 certification.

5 And can you tell me what did you
6 understand was the LEED's opportunity that existed in
7 the Sprung structure?

8 MR. ED HOUGHTON: My understanding is
9 how they portrayed this to us, was that the enclosure
10 itself gives you a great opportunity to have this as a
11 LEED silver building, certified building.

12 I understood them to say was a few
13 things. The -- the R-30 insulation, the -- the air
14 infiltration they say that there's virtually no other
15 building that is that air-tight. So the exchange of
16 air would help from an energy perspective.

17 They talked about the interior membrane
18 and its reflectivity, if that's the right word, and
19 the ability to reduce the numbers of lights that would
20 be required to be on.

21 The -- they talked about the fact that
22 aluminum in a -- and I don't know this, I've just been
23 told, aluminum has a -- more number than steel.

24 MR. FREDERICK CHENOWETH: In terms of
25 LEED's points, I take it?

1 MR. ED HOUGHTON: That's -- that's
2 what I understood.

3 That because of the nature of the
4 construction the -- the least amount of construction
5 waste provides a point as well.

6 Now, I did hear the other day, because
7 of the distance and I never heard that before, but --
8 but that was what was my understanding.

9 MR. FREDERICK CHENOWETH: Can you tell
10 me -- can you tell me how -- sorry, I don't want to
11 cut off your -- your answer. Have you told me your
12 understanding?

13 MR. ED HOUGHTON: I was just going to
14 say that I think I've told you my understanding, yes.
15 I was just going to add to -- to the fact that -- that
16 this was for the enclosure. It had nothing to do with
17 anything that we were putting inside the building.

18 And again, we had just -- the community
19 had just gone through getting a LEED Gold for the
20 library, which was expensive, as we've all now heard
21 again, and -- and it's costly to continue to monitor
22 and operate.

23 I mean, there's obviously -- there must
24 be benefits in the sense of energy consumption, et
25 cetera.

1 But irrespective of all of that, there
2 was no desire for us to go through that. We just were
3 excited about the fact that the enclosure itself gets
4 you a long way on the path of having a LEED type
5 building. And -- and so that's what we were excited
6 about.

7 MR. FREDERICK CHENOWETH: Thank you.
8 Now, you've told me about your understanding. Where
9 would you have -- where would you have come to that
10 understanding, or how would you have come to that
11 understanding?

12 MR. ED HOUGHTON: I think that -- I
13 think that the Sprung people have a -- a mantra and
14 it's -- it's about all of the -- the things that they
15 believe are important in their buildings, because
16 every time you see them, they talk about the LEED,
17 they talk about, you know, 12,000 buildings in 93
18 countries.

19 I mean, every time you'd see them, any
20 time they send you an email that's basically what they
21 say. So I think they have a mantra that's -- so every
22 time we have a discussion it was -- we -- we learned
23 about that.

24 MR. FREDERICK CHENOWETH: There seems
25 to have been a number of meetings that occurred with -

1 - with Sprung. We know of a July 27th you just
2 mentioned, we know of August 3rd.

3 Can you tell me whether that was the
4 kind of thing that would have been discussed at those
5 meetings?

6 MR. ED HOUGHTON: Yeah, I mean, I
7 think -- I think once we had the -- the understanding,
8 which we probably got very much near the beginning,
9 you know, we always had a -- there was always a
10 comment about the LEED.

11 Even when I took it to -- to explain
12 the technology at one (1) of the staff department head
13 meetings, I was explaining the fact that -- that this
14 thing, from an enclosure perspective. I even -- I
15 think I believe I said that we're not looking at
16 certifying it, we're not looking at doing the things
17 that would be required inside the building to get to a
18 certification, but it was -- it was kind of exciting
19 to know that the enclosure could be like that.

20 And then -- and I talked about the
21 other options for the buildings, plural, at -- at the
22 -- at Central Park for the ice pad in that same
23 department head meeting.

24 MR. FREDERICK CHENOWETH: Could we
25 just look very briefly at TOC0210569? And I

1 understand this to have been something that was
2 forwarded in an email by Tom Lloyd?

3 MR. ED HOUGHTON: Yes.

4 MR. FREDERICK CHENOWETH: All right.

5 And could we look at page 2 of that document?

6 And the second last bullet in that
7 respect indicates LEED credits and certification, the
8 most environmentally friendly pre-engineered structure
9 available.

10 Is this in keeping with -- with what
11 you heard on an ongoing basis and what the EMC heard
12 on an ongoing basis --

13 MR. ED HOUGHTON: That's correct.

14 MR. FREDERICK CHENOWETH: -- from
15 Sprung?

16 MR. ED HOUGHTON: Correct.

17 MR. FREDERICK CHENOWETH: Thank you.

18 Now, turning to phone records which have been produced
19 through the course of -- of this Inquiry, the phone
20 records appear to indicate ongoing contacts,
21 substantial contacts, with Mr. Bonwick from April to
22 August of -- of 2012.

23 Is that -- is that the case?

24 MR. ED HOUGHTON: Yes.

25 MR. FREDERICK CHENOWETH: All right.

1 And can you tell me, during that period of time, did
2 Mr. Bonwick continue to have a position with
3 PowerStream?

4 MR. ED HOUGHTON: Mr. Bonwick was
5 still under contract with PowerStream until, I
6 believe, the end of the year.

7 MR. FREDERICK CHENOWETH: All right.
8 And I take it that you were kind of straddling between
9 Collus and Collus PowerStream at that time?

10 MR. ED HOUGHTON: That's correct.

11 MR. FREDERICK CHENOWETH: All right.

12 And did Mr. Bonwick's position with PowerStream and
13 later Collus PowerStream, did that occasion contacts
14 between yourself and Mr. Bonwick? And I'm thinking of
15 phone contacts now.

16 MR. ED HOUGHTON: I'm sorry, I lost
17 your question there.

18 MR. FREDERICK CHENOWETH: Did that
19 lead to phone contacts between yourself and Mr.
20 Bonwick?

21 MR. ED HOUGHTON: Yes, it did.

22 MR. FREDERICK CHENOWETH: All right.

23 And can you tell me, on what kind of issues, what kind
24 of Collus/Collus PowerStream issues would have led to
25 contact between -- telephone contact between yourself

1 and Mr. Bonwick in that period of time that I've
2 described?

3 MR. ED HOUGHTON: Well, even just with
4 the Collus Power and Collus PowerStre -- or the
5 PowerStream transaction there was a number of moving
6 parts.

7 Like, one (1) of the things that we
8 were doing was we were moving towards the launch of
9 the new Collus PowerStream, which was going to be,
10 like, in the third week of August at the Mayor's golf
11 tournament.

12 But getting -- getting to that point
13 was there was quite a discussion because PowerStream
14 and Mr. Bonwick wanted to have a really splashy
15 launch.

16 They talked to having our trucks come
17 down in parades down to the town hall and tents and
18 all those kinds of things. And we didn't want to do
19 any of that kind of stuff. We were not -- we did not
20 want to do the splashy stuff. We didn't want to do
21 any of that.

22 We -- they were going to, you know,
23 have -- spend money in a different way. So, there was
24 a budget that was cut. And that budget was -- and I
25 may -- going by memory, fifty thousand dollars

1 (\$50,000), or something like that, to actually do the
2 Collus PowerStream launch.

3 And what Collus Power staff wanted was
4 let's not do that, let's just give the money to -- the
5 money that is earmarked for doing this in the budget
6 to do it, let's give it to the hospital, the
7 Collingwood and General Marine (sic) Hospital. That
8 took quite a bit of a discussion.

9 The other things that we were talking
10 about was our new logo. We had to -- we had to design
11 the logo and have the logo approved. We had to -- we
12 had to talk about the -- how -- how are -- how are we
13 going to start branding this and what would be the
14 branding and all of those and getting our vehicles
15 done.

16 And then, during this period of time,
17 we were also going through the -- the OEB approval.
18 And so, in that, the OEB approval, there was quite a
19 few different steps. You have the interrogatories.

20 And -- and when the interrogatories
21 come in, you have to respond to the interrogatories.
22 And -- and so, there was numbers of those kinds of
23 things that were happening.

24 So, there was -- there were -- and
25 then, also, which was very, very big on Mr. Bonwick's

1 agenda, was future consolidation, having meetings with
2 potentially Centre Wellington, which I believe they --
3 they may have had, Innisfil; trying to talk to the
4 CHEC Group to see about is there an opportunity, is --
5 is there an opportunity to meet with Wasaga Beach and
6 have a conversation with them and see if there's an
7 opportunity to grow and what -- and -- and you can
8 grow in a whole bunch of different ways.

9 It's not cutting them a cheque, but if
10 -- if -- the whole concept at one (1) point in time
11 was to become like PowerStream north. And that would
12 be -- and that could include everything from Barrie,
13 which was part of PowerStream, Collingwood, Wasaga
14 Beach, Midland, Penetang. They already had Penetang.

15 So, there was an opportunity to have,
16 like, a call -- or, like, a PowerStream north, and
17 Collingwood would -- would be part of that. And that
18 was the opportunity to have -- have, you know, a
19 greater dividend to the municipality, greater
20 opportunities for the customer.

21 And I'm a long way away from your
22 question, I know.

23 MR. FREDERICK CHENOWETH: Well, no.
24 You're giving me an answer, and I appreciate.

25 MR. ED HOUGHTON: So --

1 MR. FREDERICK CHENOWETH: Go ahead.

2 MR. ED HOUGHTON: So, there was --
3 there was many moving parts. That was an extremely
4 busy time. And, again, trying to focus on all of that
5 and doing all of those things, at the same time, we
6 had to get the -- the contracts signed.

7 The deal closed -- not the contract
8 signed, but the deal closed on the 31st of July.

9 MR. FREDERICK CHENOWETH: Yes.

10 MR. ED HOUGHTON: So, there was also,
11 you know, these other things that needed to get done
12 leading up to that, making sure that we had that. And
13 -- and we're also then trying to -- I was trying to --
14 because one (1) of the things that we were supposed to
15 do was have the shared services agreement complete
16 before that happened.

17 So, there was many discussions about
18 the shared service agreement, which was even the
19 reason I was over working now as the acting CAO as
20 being seconded to be part of the shared services.

21 So, there was -- there was many, many
22 things that was going on. And Mr. Bonwick was
23 supposed to be that liaison, or whatever, between
24 Collus Power and PowerStream at the time.

25 And so, I relied on him. Staff relied

1 on him. And so, there's many contacts. And, in
2 fairness, Mr. Bonwick's not the kind of guy that
3 writes three (3) things down and has a meeting with
4 you.

5 The second it comes to his mind, he
6 makes a phone call.

7 MR. FREDERICK CHENOWETH: Got it.

8 MR. ED HOUGHTON: And those phone
9 calls could either be thirty (30) seconds or twenty
10 (20) minutes, but that's the nature.

11 MR. FREDERICK CHENOWETH: Thank you.
12 You've told us of the Collus/Collus PowerStream issues
13 that would have had yourself and Mr. Bonwick in
14 telephone conversations.

15 Were there issues aside of
16 Collus/Collus PowerStream that would have occasioned
17 telephone calls during the period April to August of
18 2012 between yourself and Mr. Bonwick?

19 MR. ED HOUGHTON: Yes. There was --
20 there was -- again, we've talked about the Mt. View
21 Hotel. The Mt. View Hotel during this period of time
22 a deal was struck to purchase. There was the due
23 diligence during that period of time. There was the
24 closing of that.

25 There was the meetings, potentially

1 talking, making sure that the ministry were onboard
2 with all of that. There was -- there was de -- these
3 was issues with Raglan Street and getting servicing
4 down Raglan Street to the Di Poce property.

5 There was the self-servicing issue that
6 were going on. There was -- oh, and I think the other
7 -- the other project that Mr. Bonwick was involved
8 with was the -- the corner of Hume and Hurontario
9 which is now being developed but had been an ongoing
10 issue with -- that was owned by -- Mr. Assaf and Mr.
11 Strandholt was involved with that, so.

12 And -- and then even from a personal
13 perspective, I was part of the Osprey Snow Hawks and -
14 - and so there was interactions, not that you care
15 about the Osprey Snow Hawks.

16 MR. FREDERICK CHENOWETH: You've given
17 us quite a litany of -- of things that would have led
18 to phone calls between yourself and Mr. Bonwick. I
19 thank you for that.

20 With respect to Deputy Mayor Lloyd in
21 or about the -- the same period, was there occasion to
22 have frequent calls with Deputy Mayor Lloyd?

23 MR. ED HOUGHTON: Yeah. I mean, there
24 always was opportunity with -- well, there was always
25 opportunity with both Mr. Bonwick and Mr. -- and

1 Deputy Mayor Lloyd.

2 But with -- from this perspective,
3 obviously Rick was very much intrigued and excited and
4 involved with -- with the project that we were just
5 talking about, the recreation facilities.

6 But, also, as our chair of Public
7 Works, he would -- he would call often about different
8 things. But because there was significant noise going
9 on about -- about the recreation facilities and
10 whether we -- whether Council was going down the wrong
11 path, there was -- you know, the -- there always is
12 that sort of vocal, I'll say, minority of people,
13 that, you know, Rick would hear something, he'd call
14 me, he would tell or we'd discuss it, those kinds of
15 things.

16 So, yeah, there was -- I mean, I -- I
17 don't know if -- if things stepped up during that
18 period of time, but certainly we -- we spoke often.

19 MR. FREDERICK CHENOWETH: Thank you.
20 Moving now to other matters. And thank you very much
21 for that.

22 I recall yesterday that there was some
23 questions from Mr. Mather to Mr. John Scott with
24 respect to metadata and the name Ed that had arisen
25 with respect to metadata. I want to see if we can get

1 to the bottom of that.

2 And do you recall that you and I would
3 have been at my home in Collingwood on the evening of
4 October 7th to work on matters related to this
5 Inquiry?

6 MR. ED HOUGHTON: Yes, every night.

7 MR. FREDERICK CHENOWETH: Thank you.

8 And do you recall that -- that we received a call from
9 John Scott on that evening?

10 MR. ED HOUGHTON: Yeah, first, you --
11 first, you texted him. And then he called, yes.

12 MR. FREDERICK CHENOWETH: Then you.
13 And was there an interaction -- first of all, you were
14 -- you were there for that phone call?

15 MR. ED HOUGHTON: Yes, I was.

16 MR. FREDERICK CHENOWETH: All right.

17 And was there an interaction in which Mr. Scott
18 expressed some sentiments with respect to his ability
19 to -- to format the report he was preparing?

20 MR. ED HOUGHTON: You had asked -- you
21 had asked him if -- if you were going to see the
22 report. He explained that he had sent it -- or tried
23 to send it the day before, that either his brother or
24 brother-in-law had to come help him because he kind of
25 lost it and that he -- he was not very good at these

1 things.

2 And -- but he said, But I did send it
3 to you this morning. And you said, Okay, well, we can
4 look for that, could you send us another copy now and
5 -- and can you send it, which he did.

6 MR. FREDERICK CHENOWETH: And he did
7 that, you say?

8 MR. ED HOUGHTON: He sent both. Like,
9 he had -- yeah, he had sent -- you -- you had found it
10 in the morning -- or that he had sent in the morning.
11 And, as well, he sent it again.

12 MR. FREDERICK CHENOWETH: And --

13 THE HONOURABLE FRANK MARROCCO: So --
14 so, you had both copies? So, you had both emails?

15 MR. ED HOUGHTON: Mr. Bon -- or Mr.
16 Chenoweth has both copies, yes.

17 THE HONOURABLE FRANK MARROCCO: The
18 email sent in the morning --

19 MR. ED HOUGHTON: Yeah.

20 THE HONOURABLE FRANK MARROCCO: -- and
21 the email that was requested?

22 MR. ED HOUGHTON: Yeah.

23 THE HONOURABLE FRANK MARROCCO: You
24 ended up with bo -- both of them were found?

25 MR. ED HOUGHTON: Both of them have

1 been found.

2 THE HONOURABLE FRANK MARROCCO: Okay.

3 Thank you.

4

5 CONTINUED BY MR. FREDERICK CHENOWETH:

6 MR. FREDERICK CHENOWETH: All right.

7 And was there also an issue with respect to Mr.

8 Scott's CV?

9 MR. ED HOUGHTON: Yes.

10 MR. FREDERICK CHENOWETH: And can you

11 tell me what occurred in that respect when you and I

12 were at my home preparing for the Inquiry?

13 MR. ED HOUGHTON: Well, stepping back,

14 we -- we did -- you did find the -- the email from

15 10:56. And then again, he -- Mr. Scott sent the

16 second copy, as you had suggested, to -- to have it

17 sent, and send it to me so that I -- it wouldn't be

18 lost.

19 And -- and so, when you looked at it --

20 MR. FREDERICK CHENOWETH: I sent it to

21 you?

22 MR. ED HOUGHTON: You sent --

23 THE HONOURABLE FRANK MARROCCO: Excuse

24 me, can I -- I'd like to hear the witness's answer

25 about this. And I -- I really don't want the

1 testimony interrupted.

2

3 CONTINUED BY MR. FREDERICK CHENOWETH:

4 MR. FREDERICK CHENOWETH: Thank you.

5 MR. ED HOUGHTON: Yes. So, let me --
6 let me just step back a bit. The -- the call that we
7 had -- or that you had, and I was -- just happened to
8 be there, you had said, John, I was -- I was hoping to
9 have seen this.

10 And you explained that he had had
11 difficulties the day before, but he thought he had
12 sent it in the morning. And you said, Very good, can
13 you send it right now, Mr. Houghton is here, can you
14 send it to him because, in fairness, you and Mr. Scott
15 are not the -- the most computer literate.

16 And -- and so, when we -- when you --
17 we looked at the information, you said, What am I
18 going to do with this, because it was just basically
19 the information in the body of the -- of an email, and
20 this isn't going to be accepted by Inquiry counsel as
21 a professional opinion.

22 And you said, I don't have time for
23 this -- four (4) letter word -- at this point in time
24 and my -- my back office is busy right now doing other
25 things, can we just put a cover page on this, cut and

1 paste the information in.

2 I can -- I can do that. If that's
3 okay, I can do that. You said, Do not change any of
4 the words. No, I just cut and paste. So, I did that
5 actually sitting at your table.

6 And -- and then you said, There's no
7 CV. We need to have his credentials. You said, Can
8 you call Mr. Scott and find out where the CV is. So,
9 I called and said, Hello, Mr. Scott, I'm calling on
10 behalf of Mr. Chenoweth, he was wondering where the CV
11 -- your CV is.

12 And he had said it's been forwarded --
13 it was forwarded earlier, okay. So, we got the CV,
14 cut and paste it, like, didn't -- didn't take any
15 words out, just pasted it into the document.

16 THE HONOURABLE FRANK MARROCCO: How
17 did you get the CV?

18 MR. ED HOUGHTON: Pardon me?

19 THE HONOURABLE FRANK MARROCCO: How
20 did you get the CV?

21 MR. ED HOUGHTON: The CV had been
22 originally emailed to Mr. Brian Dempsey, and so we got
23 it from Mr. Dempsey.

24 THE HONOURABLE FRANK MARROCCO: Okay.
25 And you cut and pasted. Did Mr. De -- how did Mr.

1 Dempsey get it to you?

2 MR. ED HOUGHTON: I -- Mr. Scott told
3 me that he had sent it to Mr. Dempsey. I should start
4 and say I've never met Mr. Scott before in my life.
5 I've never heard of him until now.

6 We -- we were trying to find an expert
7 to be able to talk about design build. We don't have
8 -- like, the back office wasn't available -- I'm
9 virtually the back office.

10 So, in any event, I called Mr. Dempsey.
11 Mr. Dempsey said I'll send it to you. I got it, put
12 it into the document.

13 THE HONOURABLE FRANK MARROCCO: Mr. --
14 Mr. Dempsey sent you an email?

15 MR. ED HOUGHTON: Yes, he did.

16 THE HONOURABLE FRANK MARROCCO: And so
17 you -- what did you do -- how did you get the
18 information from the email into the document?

19 MR. ED HOUGHTON: You just cut and
20 paste.

21 THE HONOURABLE FRANK MARROCCO: All
22 right. Okay. I -- I -- I suspected that's what you
23 were going to say but I just wanted you to say it, so
24 --

25 MR. ED HOUGHTON: Yeah.

1 THE HONOURABLE FRANK MARROCCO: --
2 that I know how you say that happened.

3 MR. ED HOUGHTON: Yes. So I just --
4 so I did -- what -- what I did was I looked at what
5 the OEB la -- the lady from the OEB had done, pretty
6 much the same title page. I put his -- the CV in and
7 then I put his comments in.

8 I drove home. I was actually literally
9 in my driveway, and Fred called and said that we had -
10 - I'd just had a conversation with -- with Mr. Scott
11 going -- and had -- they had discussed the -- the nine
12 (9) bullets, and there was just -- can't actually --
13 well, you had the conversation with him. I can't
14 remember what you said to me though.

15

16 CONTINUED BY MR. FREDERICK CHENOWETH:

17 MR. FREDERICK CHENOWETH: As a result
18 of the conversation that I had with you on that
19 occasion, did I -- did I tell you that I'd had a
20 conversation with Mr. Scott?

21 MR. ED HOUGHTON: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.

23 THE HONOURABLE FRANK MARROCCO: Maybe
24 we could come at it this way. As a result of the
25 conversation you had with Mr. Chenoweth, did you do

1 something?

2 MR. ED HOUGHTON: The -- the only
3 thing I did was I think there was two (2) -- two (2)
4 sentences removed based on a conversation that Mr.
5 Chenoweth and Mr. Scott had, not -- I did -- I wasn't
6 a party to it.

7 THE HONOURABLE FRANK MARROCCO:
8 Sentences were removed from what?

9 MR. ED HOUGHTON: One (1) of the
10 bullets, because I think -- I don't recollect the
11 reason or the rationale for it. Do you? No.

12 Whatever -- they were -- I -- I believe
13 they -- there was just two (2) sentences removed. And
14 you'll see, when you compare the two (2) of them,
15 there's two (2) sentences removed.

16 MR. WILLIAM MCDOWELL: So,
17 Commissioner, can I just intervene? This is a bit odd
18 obviously. But --

19 THE HONOURABLE FRANK MARROCCO: It --
20 yes, it is. Yes, I agree with that. It is a bit odd.

21 MR. WILLIAM MCDOWELL: But I think we
22 have to have all of this correspondence produced. I
23 mean, we effectively --

24 THE HONOURABLE FRANK MARROCCO: I --
25 I'll hear you on that.

1 MR. WILLIAM MCDOWELL: Okay.

2 THE HONOURABLE FRANK MARROCCO: I'll
3 hear you on that. I want to hear Mr. Hought -- I want
4 to just -- I want to --

5 MR. WILLIAM MCDOWELL: Fair enough.

6 THE HONOURABLE FRANK MARROCCO: --
7 just continue getting Mr. Houghton's explanation for
8 this so that we know exactly what it is, and then I'm
9 happy to hear about the production of the documents,
10 but I would like Mr. Houghton to have the opportunity
11 to finish the narrative.

12 MR. WILLIAM MCDOWELL: I apologize,
13 Commissioner. Go ahead.

14 THE HONOURABLE FRANK MARROCCO: So --
15 all right. So you were saying there were some
16 sentences removed from -- removed from what?

17 MR. ED HOUGHTON: I re -- I -- I
18 believe there was a --

19

20 CONTINUED BY MR. FREDERICK CHENOWETH:

21 MR. FREDERICK CHENOWETH: Do you
22 remember a paragraph number?

23 MR. ED HOUGHTON: I believe it was
24 like number 4 maybe. And it had -- my recollection,
25 it had -- and I -- I don't remember, I just remember I

1 --

2 THE HONOURABLE FRANK MARROCCO: I -- I
3 think my question was --

4 MR. ED HOUGHTON: Sorry.

5 THE HONOURABLE FRANK MARROCCO: --
6 removed from what?

7 MR. ED HOUGHTON: Mr. -- Mr. Scott had
8 provided his sort of introductory comments, nine (9)
9 bullets, and then a very -- a couple of sentences at
10 the -- at the very end.

11 In one (1) of those bullets, I believe,
12 if I recollect correctly, it had -- it -- there was
13 something in one (1) of the bullets that had nothing
14 to do with the -- the design build part of it, and so
15 if we -- if -- if -- I believe that when Mr. Chenoweth
16 and Mr. Scott were talking about -- you know, we're
17 asking you to be an expert witness on design build, we
18 can't go into areas that you're not -- you're not an
19 expert on.

20 So what I was acting as is just sort of
21 the back office because we didn't have anybody else to
22 do it, and I didn't change a word. I didn't -- and
23 quite frankly, I hadn't even read it. I just cut and
24 paste, cut and paste. It wasn't --

25 THE HONOURABLE FRANK MARROCCO: Well -

1 - well, I --

2 MR. ED HOUGHTON: It --

3 THE HONOURABLE FRANK MARROCCO: --
4 thought you did -- you did say that you did change --
5 I thought you said you removed something.

6 MR. ED HOUGHTON: Only under direction
7 by Mr. Scott to remove those two (2) things, via Mr.
8 Chenoweth's direction, yes.

9 THE HONOURABLE FRANK MARROCCO: So --
10 all right. And that was from one (1) of the bullets?

11 MR. ED HOUGHTON: One (1) of the
12 bullets, yeah.

13 THE HONOURABLE FRANK MARROCCO: Right.
14 And it was one (1) sentence, two (2) sentences --

15 MR. ED HOUGHTON: I believe it was --

16 THE HONOURABLE FRANK MARROCCO: --
17 three (3) sentences?

18 MR. ED HOUGHTON: I believe it was two
19 (2) sentences. It might have only been one (1), but I
20 --

21 THE HONOURABLE FRANK MARROCCO: And it
22 had -- like the sentences you removed had nothing to
23 do with --

24 MR. ED HOUGHTON: Design build.

25 THE HONOURABLE FRANK MARROCCO: -- the

1 substance of -- with design build.

2 MR. ED HOUGHTON: That's -- that's --
3 that was my --

4 THE HONOURABLE FRANK MARROCCO: What
5 did -- what did they have to do with?

6 MR. ED HOUGHTON: Maybe -- it might
7 have been -- it might have been even sole sourcing,
8 something like that.

9 THE HONOURABLE FRANK MARROCCO: So you
10 removed sentences from the report that had to do with
11 sole sourcing, two (2) or three (3) sent -- one (1) or
12 two (2) or three (3) --

13 MR. ED HOUGHTON: One (1) or --

14 THE HONOURABLE FRANK MARROCCO: --
15 sentences.

16 MR. ED HOUGHTON: -- two (2)
17 sentences, yeah.

18 THE HONOURABLE FRANK MARROCCO: One
19 (1) or two (2) sentences.

20 MR. ED HOUGHTON: Because it didn't --
21 it didn't have anything to do with the design build
22 part of it, like the -- the design build concept of
23 it.

24 THE HONOURABLE FRANK MARROCCO: Was
25 anything else removed from the report?

1 MR. ED HOUGHTON: Not -- not a
2 sentence --

3 THE HONOURABLE FRANK MARROCCO: Were
4 any other --

5 MR. ED HOUGHTON: -- a word --

6 THE HONOURABLE FRANK MARROCCO: --
7 were any other changes made to the em -- the content
8 of the email that was sent by Mr. Scott other than the
9 removal of those one (1) or two (2) sentences?

10 MR. ED HOUGHTON: Not at all. And it
11 was -- it was under the direction and the discussion
12 from Mr. Scott to Mr. Chenoweth.

13 THE HONOURABLE FRANK MARROCCO: I have
14 that. I -- I have your testimony on that.

15 I'm sorry, Mr. Chenoweth, you were
16 asking questions.

17 MR. FREDERICK CHENOWETH: I'm quite
18 content, Your Honour.

19

20 CONTINUED BY MR. FREDERICK CHENOWETH:

21 MR. FREDERICK CHENOWETH: As a result
22 of -- of -- as a result of that phone call and -- did
23 you, sometime later that evening, forward the Scott
24 report to me?

25 MR. ED HOUGHTON: I did.

1 MR. FREDERICK CHENOWETH: All right.

2 And did the Scott report, when you forwarded it to me,
3 have a -- a header page or a face page on it?

4 MR. ED HOUGHTON: It had the -- the
5 page -- yes, the header page that you -- everybody has
6 seen, yes.

7 MR. FREDERICK CHENOWETH: All right.
8 And is that header page something that -- that you
9 created?

10 MR. ED HOUGHTON: I did.

11 MR. FREDERICK CHENOWETH: Thank you.
12 And you say you forwarded it to me.

13 MR. ED HOUGHTON: I did.

14 MR. FREDERICK CHENOWETH: Thank you.
15 Did you also forward it to Mr. Scott?

16 MR. ED HOUGHTON: Under your
17 instructions, yes.

18 MR. FREDERICK CHENOWETH: Thank you.
19 And did you -- are you aware of whether that was a
20 document that was actually served on the participants
21 in this Inquiry?

22 MR. ED HOUGHTON: Yes.

23 MR. FREDERICK CHENOWETH: Thank you.

24 THE HONOURABLE FRANK MARROCCO: I -- I
25 think -- and I apologize for interrupting your direct

1 examination.

2 Mr. McDowell...?

3 MR. WILLIAM MCDOWELL: Well, when you
4 effectively ha -- and I say this with great respect to
5 Mr. Chenoweth, when -- when you effectively have Mr.
6 Chenoweth testifying as well as the witness, it's a
7 pretty clear example of waiver of privilege.

8 So I think just to clear the air, we
9 need this correspondence produced just to see what was
10 removed and whether it had any bearing on the
11 substance of the -- of the expert's testimony.

12 The other thing obviously is that the
13 report is supposed to be the report of the expert, and
14 we heard the expert yesterday and that's all fine, but
15 I -- I think it's important to see just what came out
16 of the report.

17 THE HONOURABLE FRANK MARROCCO: Let me
18 -- let me deal with the document production first.

19 What's your position producing all of
20 the emails to which reference -- and any other
21 documents that have to do with this?

22 MR. FREDERICK CHENOWETH: I have -- I
23 have no trouble producing any of the emails that Mr.
24 Houghton has referred to.

25 THE HONOURABLE FRANK MARROCCO: And

1 are -- are there any other documents other than emails
2 that relate to the testimony that Mr. Houghton has
3 just given about the changes that were made in Mr.
4 Scott's report? Because I want those documents
5 produced as well.

6 MR. FREDERICK CHENOWETH: Well, I
7 can't think of any.

8 THE HONOURABLE FRANK MARROCCO: All
9 right. And -- and if you do, I'm -- I'm -- I'm sure
10 you'll let us know.

11 Are there any other documents other
12 than the emails, Mr. Houghton, that you're aware of?

13 MR. ED HOUGHTON: Not -- no. I -- I
14 only got involved on that October the 7th and the
15 report was completed on October the 7th. I had not
16 been involved with Mr. Scott then or since.

17 THE HONOURABLE FRANK MARROCCO: I'm --

18 MR. ED HOUGHTON: Actually --

19 THE HONOURABLE FRANK MARROCCO: I'm
20 only interested in the documents --

21 MR. ED HOUGHTON: Yeah.

22 THE HONOURABLE FRANK MARROCCO: --
23 that pertain to the alterations, changes, however you
24 want to describe it. I'm not trying to attach a
25 pejorative word to the change at this particular

1 moment. I am just interested in documents that relate
2 to the changes in the report.

3 MR. ED HOUGHTON: The documents --
4 only in the changes, okay.

5 THE HONOURABLE FRANK MARROCCO: And --
6 and those are emails, from what I've been told.

7 Are there any other documents?

8 MR. ED HOUGHTON: What -- what I have,
9 Your Honour, is the email that Mr. Chenoweth sent me.
10 I have the email that -- that -- which was the same
11 thing that Mr. Scott sent me. I have -- I then have
12 the email that I sent the documents back to Mr.

13 Chenoweth and Mr. Scott. Is that what you'd like?

14 THE HONOURABLE FRANK MARROCCO: I'd
15 like those -- I'm ordering those documents produced.

16 MR. ED HOUGHTON: Okay. Absolutely.

17 MS. KATE MCGRANN: If I may jump in
18 with a -- a quick clarification. I think we're
19 looking for those documents along with all of the
20 metadata associated with them, just so --

21 THE HONOURABLE FRANK MARROCCO: Yes,
22 and the metadata associated with the documents. And
23 you want them in a PST format?

24 MS. KATE MCGRANN: Yes, and we can
25 speak offline with Mr. Chenoweth to help clarify that,

1 and just also so it's clear, there is reference to
2 correspondence with Mr. Dempsey. I think that that's
3 also included in what you're asking for.

4 THE HONOURABLE FRANK MARROCCO: There
5 was -- there was an -- was --

6 MR. ED HOUGHTON: Dempsey. Dempsey.
7 Yes. I can send that as --

8 THE HONOURABLE FRANK MARROCCO: I'm -
9 - I'm ordering the production of that -- those.
10 Were they emails?

11 MR. ED HOUGHTON: It was an email,
12 yes.

13 THE HONOURABLE FRANK MARROCCO: I'm
14 ordering -- there were no other documents passed
15 between Mr. Dempsey and yourself?

16 MR. ED HOUGHTON: No, absolutely not.
17 It was only to get the CV.

18 THE HONOURABLE FRANK MARROCCO: I'm
19 ordering the production of those emails as well.

20 MR. ED HOUGHTON: What -- I don't know
21 what metadata is.

22 MS. KATE MCGRANN: We can help you
23 understand that. And, Your Honour, just while my
24 microphone is still on, so we don't have to do this
25 again, I think our request would be any documents

1 related to any drafts of the report, any discussions
2 about the drafts and anything that went towards the
3 final report.

4 THE HONOURABLE FRANK MARROCCO: Are
5 there multiple drafts of the report?

6 MR. ED HOUGHTON: No. Just the
7 original one (1) and then just what I had on my
8 computer, but there was -- there was no -- no
9 documents produced, only the one (1) document
10 produced.

11 THE HONOURABLE FRANK MARROCCO: All
12 right. So then I'll -- if I order production of any
13 drafts of the report, I -- I -- I'm not imposing a
14 burden I need to consider. So I'll order production
15 of any drafts of the report as well.

16 We'll -- we'll take a short break.
17 Give everybody a chance to digest all this, and then
18 Mr. Chenoweth then we'll return to direct examination.

19 MR. FREDERICK CHENOWETH: I can tell
20 you, Your Honour, that I don't have any further
21 questions of this witness.

22 THE HONOURABLE FRANK MARROCCO: Well,
23 thank you for that. That's very helpful, and we'll
24 take the morning break now.

25 MR. FREDERICK CHENOWETH: Thank you

1 very much.

2

3 --- Upon recessing at 10:22 a.m.

4 --- Upon resuming at 11:03 a.m.

5

6 THE HONOURABLE FRANK MARROCCO: I
7 think the -- we're -- we're now at the point where Mr.
8 Houghton's about to be cross-examined. And -- and I
9 think before we do that we should clarify all of the
10 information and the details surrounding the -- the
11 report just -- just to clear -- hopefully, just to
12 clear the air, but...

13 So, I've already made the production
14 orders. And what I'll do is I'll -- I'll give you the
15 orders after we adjourn here. And then we'll come
16 back Monday morning at ten o'clock. And by then,
17 we'll see where we're at in terms of production of --
18 or the -- the returns.

19 You'll give the information to us.
20 And, obviously, unless we're dealing wi -- wi -- and
21 we'll make the disclosure. We'll make the appropriate
22 disclosure so that all the participants are on an
23 equal footing.

24 I think that's the -- the fair way to
25 do it. I think the other way, you're being cross-

1 examined with this uncertainty around the report and
2 what was put in and what was taken out. I think it's
3 better and I think it's fair if we clarify all that,
4 and then proceed with the cross-examination.

5 If anything in the Order appears to be
6 privileged, or you think is privileged, then give it
7 up, but -- but seal it. Put it in a sealed enveloped.
8 Then -- and then if there's any question about that --
9 there may not be.

10 It may be that there -- there's nothing
11 in there that would properly be the subject of a
12 claim, but if somebody thought there was, then put it
13 in a sealed envelope and we'll know that that's what
14 it's about, clear?

15 Anybody want to raise anything before I
16 --

17 MR. WILLIAM MCDOWELL: The only
18 question that I guess emerges from this is whether
19 there's any reason to think one might have to recall
20 the expert Mr. Scott.

21 THE HONOURABLE FRANK MARROCCO: We --
22 we might have to. I -- I think until we all -- you
23 know, Mr. Houghton answered the questions. He's given
24 us his --

25 MR. WILLIAM MCDOWELL: Yes.

1 THE HONOURABLE FRANK MARROCCO: He's
2 explained what happened from his perspective. And
3 once we get a chance to get all the material back and
4 take a look at it, then if somebody thinks the expert
5 needs to be recalled, they can raise that at that
6 time.

7 And I'll decide whether I want to
8 recall the expert or not. It -- it may not be
9 necessary. It very well may not be nec -- but we
10 can't -- we can't really do that now.

11 MR. WILLIAM MCDOWELL: No, no. I
12 mean, I --

13 THE HONOURABLE FRANK MARROCCO: Well,
14 actually, you probably weren't suggesting that. But -
15 - but I am open to recalling the expert, if
16 circumstances require it.

17 MR. WILLIAM MCDOWELL: Right. I mean,
18 Commissioner, it may -- it may well be simply a matter
19 for submissions as to the weight to be attached to the
20 expert's report. And I -- and if I had to guess,
21 that's probably where it goes.

22 But I just wanted to raise that
23 possibility because that occurred to me during the
24 break.

25 THE HONOURABLE FRANK MARROCCO: First

1 of all, that very well may -- it may be the most
2 appropriate way to deal with this, is by way of
3 submissions. But -- but until we get the return and
4 everybody understands exactly in a very granular way
5 what we're talking about, I can't ask anybody to take
6 a position on it. I can't take a position on it
7 myself.

8 So, hopefully, we'll get all that
9 cleared up in the returns to the production orders.
10 Everybody will know where we stand and I can hear what
11 you have to say on Monday morning about it.

12 MR. WILLIAM MCDOWELL: Thank you,
13 Commissioner.

14 MR. FREDERICK CHENOWETH: Just two (2)
15 things. I take it you're talking about adjourning the
16 Inquiry at this time until Monday morning?

17 THE HONOURABLE FRANK MARROCCO: Well,
18 I think -- I think that's -- if Mr. Houghton's going
19 to -- yes, to -- to answer your question. Mr.
20 Houghton's going to be cross-examined and he's going
21 to -- he's going to give testimony.

22 While he's giving testimony, this -- we
23 -- we've done nothing to -- to run down any of this.
24 I think the fair way to do it is to let's take a look
25 at it all, everybody knows what we're talking about,

1 and let's let him be cross-examined.

2 MR. FREDERICK CHENOWETH: And just a -
3 - just a sense of timing on the Orders. When might we
4 anticipate those, Your Honour?

5 THE HONOURABLE FRANK MARROCCO: I
6 didn't want to serve them with the Hear -- Hearing
7 going on. I don't like it when people do that, but
8 they're signed. And we'll give them to you right now,
9 as soon as we adjourn --

10 MR. FREDERICK CHENOWETH: Thank you.

11 THE HONOURABLE FRANK MARROCCO: -- so
12 you can see what they say.

13 MR. WILLIAM MCDOWELL: The other
14 point, I guess, is that, unfortunately, I think you
15 have to give the witness the normal direction even in
16 these unusual circumstances, about conferring with
17 anybody about his evidence.

18 THE HONOURABLE FRANK MARROCCO: Well,
19 I don't know about conferring with anybody. But, Mr.
20 Houghton, you're under cross-examination. People
21 under cross-examination should not discuss the
22 evidence they've given with anyone, so that's the
23 position -- that's the position you're in.

24 It's not -- you're in the same position
25 as every other witness would be in who was subject to

1 cross-examination.

2 MR. ED HOUGHTON: I understand that,
3 Your -- Your Honour. Can I just make a comment?

4 THE HONOURABLE FRANK MARROCCO: Yes.

5 MR. ED HOUGHTON: I can guarantee you
6 all we were trying to do was get that information to
7 you folks for your consideration. I did not change
8 any words at all without any -- without just those two
9 (2) sentence without direction.

10 I didn't -- I in no way, shape, or form
11 did any of that. There was no influence on my part.
12 And, quite frankly, I've been sort of the secretary in
13 the back office for a long time because I can't afford
14 anything else right at this point in time, so.

15 THE HONOURABLE FRANK MARROCCO: I
16 appreciate that. And, you know, we're just trying to
17 clarify --

18 MR. ED HOUGHTON: I --

19 THE HONOURABLE FRANK MARROCCO: -- so
20 that there's no confusion later on -- or out there
21 about this. And that prob -- I think the most prudent
22 thing to do is clarify it. And --

23 MR. ED HOUGHTON: I accept that. And
24 I -- I just wanted you to know that.

25 THE HONOURABLE FRANK MARROCCO: No, I

1 -- I appreciate your comment, I do. I do appreciate
2 it. But I think that's -- I think that's the best way
3 to -- way to do it. And, quite frankly, your comments
4 just now reinforce to my mind the wisdom of doing
5 that.

6 Anything else? All right. Monday ten
7 o'clock.

8

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

10 --- Upon resuming at 11:23 a.m.

11

12 THE HONOURABLE FRANK MARROCCO: You
13 have asked me to come back in.

14 MR. WILLIAM MCDOWELL: Right, and my -
15 - my fault. Mr. Houghton asked me when things broke
16 up whether or not he could speak to Mr. Chenoweth
17 about these things, and I thought that probably we
18 should get some direction from you, Commissioner.

19 The practical problem is that Mr.
20 Houghton has or will get in hand an Order which says
21 he must do certain things, and I can see he might need
22 some advice as to how to comply with it, so I just
23 thought that in the spirit of keeping the air clear,
24 we'd probably get some direction from you.

25 THE HONOURABLE FRANK MARROCCO: Well,

1 it's my Order and I -- the Rules of Professional
2 Conduct, of course, bind Mr. Chenoweth, but I think I
3 can relieve against it a bit.

4 Anybody have any -- is -- is there a
5 prob -- what -- can you tell me what the difficulty
6 is?

7 MR. WILLIAM MCDOWELL: Well, what was
8 raised with Commission counsel and with me was, is he
9 entitled to get advice from Mr. Chenoweth about this,
10 and frankly, I think he probably can but I didn't want
11 to give him legal advice.

12 THE HONOURABLE FRANK MARROCCO: All
13 right.

14 MR. WILLIAM MCDOWELL: So --

15 THE HONOURABLE FRANK MARROCCO: My --
16 I'm -- I'm curious -- you can say anything, Mr.
17 Chenoweth, but I think to answer Mr. Houghton's
18 question, I would say that he -- I'm prepared to amend
19 the Order.

20 You can talk to Mr. Chenoweth for the
21 purpose of ensuring that you comply with the Order,
22 and you can talk to him for the purpose of ensuring
23 that he complies with the Order in the event that he
24 needs some assistance of a technical nature.

25 Is that -- that's about -- beyond that,

1 Mr. Chenoweth is governed by the Rules of Professional
2 Conduct. You're about to be cross-examined and the
3 rules provide that he can't talk to you about your
4 evidence unless I relieve against it, and I'm not
5 doing that, but you can talk for the purpose of
6 ensuring compliance with the Order.

7 MR. FREDERICK CHENOWETH: I think
8 that's helpful, Your Honour. Thank you.

9 THE HONOURABLE FRANK MARROCCO: All
10 right.

11 MR. WILLIAM MCDOWELL: Thank you,
12 Commissioner.

13 THE HONOURABLE FRANK MARROCCO:
14 Anybody else got anything? Well, thank you.

15 MR. ED HOUGHTON: Just thank you from
16 my perspective. I -- I asked Mr. Mc -- McDowell so
17 that I didn't ask Mr. Chenoweth because I didn't want
18 to do something again that was --

19 THE HONOURABLE FRANK MARROCCO: No.
20 It's helpful that you raised it.

21 MR. ED HOUGHTON: Thank you.

22

23 --- Upon adjourning at 11:26 a.m.

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Certified Correct,

Wendy Woodworth, Ms.

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