



Town of Collingwood Judicial Inquiry

October 30, 2018

REASONS AND DECISION ON TWO APPLICATIONS FOR ADDITIONAL FUNDING RECOMMENDATIONS FOR PAUL BONWICK AND MAYOR SANDRA COOPER

MARROCCO A.C.J.S.C.

INTRODUCTION

1. On February 26, 2018, the Council of the Town of Collingwood voted to request an independent judicial inquiry under s. 274 of the Municipal Act, 2001 to inquire into all aspects of the Town's sale of shares of Collingwood Utility Services Corporation to PowerStream Inc. (defined as the "Transaction" in the Terms of Reference) and into the allocation of the proceeds of that transaction to the construction of the recreational facility at Central Park and Heritage Park in Collingwood.
2. On August 14, 2018, the Inquiry heard applications for recommendations that the Town fund legal expenses for four participants in the Inquiry.
3. On October 29, 2018, two individuals who were granted participation rights at the Inquiry, Paul Bonwick and Mayor Sandra Cooper, brought applications to request amendments to the funding recommendations.
4. Mr. Bonwick asks that I review my recommendation for funding and direct the Town to reconsider its refusal to pay his legal fees.
5. Mayor Cooper asks for a recommendation or a direction to the Town to apply the criteria set out in the Reasons and Decision Concerning Participation and Funding and increase the amount of funding granted for her.

BACKGROUND TO THE APPLICATIONS

6. Mr. Bonwick, in his application for funding, provided an affidavit concerning his personal financial information in support of his request.
7. I recommended that the Town obtain further information concerning the assets and liabilities of his companies prior to deciding whether to provide Mr. Bonwick with funding.
8. Mayor Cooper, also originally supplied an affidavit concerning her personal financial information in support of her funding request.

9. I recommended that the Town favorably consider Mayor Cooper's request for funding, based on my review of her financial information and because she was the Mayor at the relevant times.
10. The materials filed on the latest applications indicate that Mayor Cooper has been offered funding for legal expenses and Mr. Bonwick's application for funding has been declined.

THE LATEST APPLICATIONS

11. In the latest applications, both applicants asked that the Chief Administrative Officer (CAO) for the Town of Collingwood be called as a witness. At the hearing of these applications, Mayor Cooper's counsel withdrew this request. Counsel for Mr. Bonwick did not.

A. The Town's CAO Cannot be Compelled to Testify

12. In his written response to the applications, counsel for the Town of Collingwood submits that the CAO was exercising delegated authority on behalf of the Council for the Town, and by making a statutory power of decision he is not compellable as a witness concerning the exercise of that authority.
13. I agree. No summons will issue for the CAO.
14. Decisions made by a legislative body composed of numerous persons are "unknowable"; the motives for decision-making by members of such bodies are not relevant to the validity of the decision [*Consortium Developments (Clearwater) Ltd v Sarnia (City)*, [1998] 3 SCR 3 (the "Clearwater rule")].
15. Even if I thought that the *Clearwater* rule did not apply to the funding decisions made by the CAO on behalf of the members of Town Council, I would have found that deliberative secrecy/privilege applies and that, as a result, the CAO is not compellable. [See *Cherubini Metal Works Ltd v Nova Scotia (Attorney General)*, 2007 NSCA 37; *Taylor v Ontario (Workplace Safety & Insurance Board)*, 2017 ONSC 1223; *Commission scolaire de Laval v Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8.]
16. In addition, I am satisfied that there is nothing in the material before me that justifies lifting this privilege.

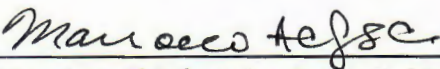
B. Mayor Cooper's Application

17. At the hearing, Mayor Cooper withdrew her application for a further funding recommendation. She did so without prejudice to her right to renew this application and without prejudice to her right to apply to the Town for additional funding in the future.

C. Mr. Bonwick's Application

18. Mr. Bonwick provided no additional affidavit evidence in support of his application because he expected to be able to cross-examine the Town's CAO. Counsel did, however, read from portions of email correspondence with the CAO.

19. During submissions, counsel for the Town advised that during the City of Mississauga Judicial Inquiry, a similar funding issue arose, which was resolved by cross-examination of the person concerned upon a detailed financial affidavit. Counsel for Mr. Bonwick indicated that this was not an acceptable course of action for his client. He did however offer to produce his client for an interview with the CAO.
20. Having regard to the material filed and the submissions made, I decline to make any additional recommendations for funding concerning Mr. Bonwick.


Associate Chief Justice Frank N. Marrocco

Reasons and Decision on Two Applications for Additional Funding Recommendations for Paul Bonwick and Sandra Cooper

Reasons released on October 30, 2018