



Town of Collingwood Judicial Inquiry

August 20, 2018

REASONS AND DECISION CONCERNING PARTICIPATION AND FUNDING

MARROCCO A.C.J.S.C.:

BACKGROUND

1. On February 26, 2018, the Council of the Town of Collingwood voted to request an independent judicial inquiry under s. 274 of the *Municipal Act, 2001* to inquire into all aspects of the Town's sale of shares of Collingwood Utility Services Corporation to PowerStream Inc. (defined as the "Transaction" in the Terms of Reference) and into the allocation of the proceeds of that transaction to the construction of the recreational facility at Central Park and Heritage Park in Collingwood.
2. The Terms of Reference are found on the Inquiry's website located at: www.CollingwoodInquiry.ca. The operative terms are as follows:

NOW THEREFORE, the Council of the Town of Collingwood does hereby resolve that:

the Terms of Reference of the Inquiry shall be to inquire into all aspects of the Transaction, including the history, the price at which the shares were sold and the impact on the Ratepayers of the Town of Collingwood, as it relates to the good government of the Municipality, or the conduct of its public business, and to make any recommendations that the Commissioner may deem appropriate and in the public interest as a result of the Inquiry.

AND IT IS FURTHER RESOLVED that pursuant to s. 274 of the *Municipal Act, 2001*, and s.33 of the *Public Inquiries Act*, the Commissioner, in conducting the Inquiry into the Transaction to which the Town of Collingwood is a party, is empowered to ask any question or cause an investigation into any matter which the Commissioner may consider necessary, incidental or ancillary to a complete understanding of the Transaction. In particular, the Commissioner may inquire into:

- i) Was there adequate Town Council oversight over the Transaction?
- ii) Was Town Council's delegation of authority in relation to the Transaction appropriate?

- iii) Did Town Council receive sufficient independent professional advice prior to delegating its authority to conduct the RFP negotiate or finalize the Transaction?
- iv) Were the criteria developed to assess the proposals received during the RFP process appropriate and did the criteria serve the interests of the Ratepayers of Collingwood?

And, for the purpose of providing fair notice to the Town of Collingwood and those individuals who may be required to attend and give evidence, and without infringing on the Commissioner's authority in conducting the Inquiry in accordance with the Resolution and the Commissioner's statutory authority, it is anticipated that the Inquiry may include:

1. An investigation and inquiry into all relevant circumstances pertaining to the Transaction referred to in the recitals to the Resolution, including the relevant facts pertaining to the Transaction, the basis of and reasons for making the recommendations for entering into the Transaction, and the basis of the decisions taken in respect of the Transaction;
2. An investigation and inquiry into the relationships, if any, between the existing and former elected and administrative representatives of the Town of Collingwood, Collingwood Utility Services Corporation and PowerStream Inc.; and,
3. A two-stage process consisting of a document review and public hearings as follows:

Document Review

- (a) To obtain, bearing in mind cost and the principles of proportionality, all documents necessary to understand the following:
 - i. the sequence of events leading to the Transaction, including the Request for Proposal process commissioned by the Town of Collingwood;
 - ii. the nature and extent of the delegation of authority by Council to those who negotiated on behalf of the Town of Collingwood in relation to the RFP process and Transaction;
 - iii. any subsequent contracts entered between or among the Town of Collingwood and PowerStream, Collus PowerStream and any other Collus company;
 - iv. Any fee or benefit of any kind paid, or conferred, by or on behalf of PowerStream to any person in relation to the Transaction;
 - v. The commercial relationship between PowerStream, Collus PowerStream and any other Collus entity and the Town of

Collingwood prior to 2017 and in particular, any agreement entered into between or among any of these parties;

- vi. The salaries, benefits and emoluments of any kind paid in relation to the Transaction to any employee of Collus PowerStream and any other Collus company;
- vii. The allocation of the proceeds of the transaction to the construction of the recreational facility at Central Park and Heritage Park;
- viii. The payment of any fee or benefit of any kind on behalf of any person of the entity involved in the creation or construction of the recreational facility at Central Park and Heritage Park;

Public Hearings

- (b) To conduct public hearings into the matters designated in accordance with the principles of fairness, thoroughness, efficiency and accessibility.

INQUIRY PROCESS

3. The Inquiry will be divided into three parts. Part I will deal with the sequence of events leading to the transaction, the corporate relationships and the impact of the Town's 50% share sale of Collingwood Utility Services Corporation to PowerStream Inc.
4. Part II will consider the sequence of events leading to the allocation of the proceeds, the payment of fees or benefits and the impact of the recreational facility construction.
5. Part III will consider broader policy and good governance issues arising from the findings related to both transactions.

CALL FOR APPLICATIONS FOR PARTICIPATION (STANDING) AND FUNDING RECOMMENDATIONS

6. The Inquiry published a Call for Applications for Participation at the Inquiry's Public Hearings (Standing) in relevant newspapers and via radio advertising. The Inquiry website also posted the Call for Applications. The notice invited applications from any person or group:
 - (a) with a substantial and direct interest in the subject matter of the Inquiry;
 - (b) who is likely to be notified of a possible finding of misconduct;
 - (c) whose participation would further the conduct of the Inquiry; or,
 - (d) whose participation would contribute to the openness and fairness of the Inquiry.
7. Persons or groups of persons wishing to participate were asked to submit a completed application form, electronically or in writing, to the Inquiry offices no later than 4:00 pm on July 20, 2018. In some cases, additional correspondence or information was

requested from applicants to participate concerning their interest and the nature of participation sought.

8. In addition, the Inquiry identified several persons as having presumptive interests in the subject matter of the Inquiry:
 - Corporation of the Town of Collingwood;
 - Mayor Sandra Cooper;
 - Alectra Utilities Corporation (as the successor corporation to PowerStream Inc.);
 - Collus PowerStream Corp.; and
 - Paul Bonwick.
9. For purposes of efficiency and expediency, the Inquiry adopted an expedited process for these people, in which they were not required to make formal applications for standing. Rather, they were asked to confirm whether they wanted standing and, if so, to advise of the level of participation sought. They were also asked to identify the issues believed to substantially and directly affect them and provide a brief statement indicating how their participation would enhance the Inquiry's work, taking note of the Terms of Reference. The identification of a presumptive interest did not automatically allow for participation in all phases of the Inquiry. The Inquiry reserved the right to set appropriate limits on participation rights for those with presumptive interests.
10. Applicants requesting recommendations for funding were asked to provide personal financial information. This personal financial information was received on a confidential basis because it is desirable to have complete financial disclosure to assess the funding applications and to avoid the indiscriminate disclosure of personal financial information.
11. Some personal financial information was delivered to the Inquiry immediately before the commencement of the hearing and could not be fully reviewed until after the hearing ended. Having now had the opportunity to review all personal financial information and to deliberate, I have decided that confidentiality should be maintained over the personal financial information provided. It may be that participants seeking funding will be asked to provide similar information directly to the Town, but I leave that matter for the Town to address in making its decisions around funding.
12. The Participation (Standing) Hearing, including the submissions on the funding applications, was open to the public and took place on August 14, 2018, in the Council Chambers, located at 97 Hurontario Street, 2nd Floor of the Town Hall.

Principles Applied to the Determination of Participation

13. In addressing the question of participation, I have applied the following principles:
 - The participation of those with a substantial and direct interest will assist the Inquiry in being thorough and complete.
 - There is a benefit to having a variety of perspectives available to the Inquiry.

- Applicants will be granted the right to participate only on those portions of the Inquiry that relate to their particular interest or perspective.
 - Inquiry counsel are present and will participate throughout the Inquiry. They represent the public interest. Their role is not adversarial or partisan.
 - Witnesses may have counsel present during their evidence.
 - Where participants have the same interest, they will be expected to cooperate with Inquiry counsel to avoid the unnecessary expense of prolonged proceedings.
 - Where participants have standing in specific areas, they will stay within the permitted areas.
14. Participation carries with it the obligation to assist the Inquiry in carrying out its mandate. Participants who are not discharging this obligation, or otherwise complying with the Inquiry's procedures, may very well find their participation curtailed.

Principles Applied to the Determination of Funding Recommendations

15. Rule 41 of the Inquiry's Rules of Procedure address funding issues. It provides:
- Counsel will be retained at the expense of the witness and people with standing. The terms of reference do not grant the Judge jurisdiction to order the Town of Collingwood to provide funding for legal counsel. However, requests for funding may be made to the Judge at the hearing on standing and the Judge may make recommendations to the Town of Collingwood.
16. In the course of submissions on funding, applicants' counsel referred me to a report to Town Council from Staff dated April 30, 2018, which provides cost estimates for the Town's funding of "Counsel for Parties, Council Members and Staff". It reads:
- Legal Counsel retained to represent the Town cannot represent the interests of individual employees or Members of Council. The Commissioner cannot order the Town to provide funding however, in order to ensure that all parties, staff and Council Members are treated in a fair and unbiased manner, the Town should consider funding these costs. Staff can only guess at the potential costs and are assuming these costs would be similar to the costs for Town counsel: \$240,000.
17. To determine my recommendations for funding, I considered whether each applicant had:
- demonstrated an inability to participate in the Inquiry without funding for representation;
 - a unique perspective that will not be presented to the Inquiry if the applicant does not participate;

- an established record of concern for and demonstrated commitment to the interest the applicant seeks to represent;
- any special experience or expertise which the applicant may provide in respect of the Inquiry's mandate; and
- a proposal as to the use of the funds and how the funds will be accounted for.

THE APPLICATIONS FOR PARTICIPATION (STANDING)

18. For the purposes of this Inquiry, the right to participate may include:
- consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to the participant's interest; and
 - the opportunity to make closing submissions, either orally, in writing or both.
19. I turn to the individual applications for participation. I will address each of the applicants in alphabetical order. Where applicants included a request for a recommendation for funding along with the request to participate, I have addressed the requests at the same time.

Alectra Utilities Corporation (represented by Mr. Michael Watson and Ms. Belinda Bain)

20. Alectra Utilities Corporation is the successor corporation to PowerStream Inc., which was the purchaser of 50% of the shares of Collingwood Utility Services Corporation from the Town of Collingwood. As one of the two primary parties concerned with the transaction, Alectra is likely to be directly affected and as a purchaser of the shares, it can provide substantial documentation and context into the transaction.
21. Alectra has identified the portions of the Terms of Reference in which it has an interest. These are sections 1, 2, 3 (a) (i), (iii), (iv), (v) and (vi), which relate to the 50% share sale transaction that will fall into Part I of the Inquiry.
22. Alectra also identified the portions of the Terms of Reference in which it does not have a direct interest, which are found at Questions (i) through (iv) and the issues described in sections 3 (a) (vii) and (viii) in the Terms of Reference.
23. I grant Alectra the right to participate in Part I of the Inquiry, specifically those aspects of the Inquiry dealing with the issues described by sections 1, 2, 3 (a) (i), (iii), (iv), (v) and (vi) of the Terms of Reference, to the extent that they concern Alectra's interests and perspective. Alectra may participate in the following ways:

- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
- consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
- a seat at counsel table;
- the opportunity to suggest witnesses to be called by Inquiry counsel;
- the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Alectra’s interests; and
- the opportunity to make closing submissions, either orally, in writing or both.

24. Alectra did not apply for funding.

Paul Bonwick (represented by Mr. David O’Connor)

25. Mr. Bonwick of Compenso Communications Inc. has identified an interest in the Inquiry arising from his ownership of a company known as Green Leaf Distribution Inc., which provided consulting services to corporate entities involved in the Town purchase of recreational facilities in 2012. Mr. Bonwick also submits that he has unique involvement and detailed knowledge relating to the 50% share sale of Collingwood Utility Services Corporation to PowerStream in 2012.
26. Mr. Bonwick seeks to further the conduct of the Inquiry and states that his participation would contribute to the openness and fairness of the Inquiry. Mr. Bonwick also identified a genuine reputational interest in the Inquiry.
27. The material provided connects Mr. Bonwick and his companies, Compenso and Greenleaf, to aspects of Part I and Part II of the Inquiry, and the issues described in sections 3(a) (i), (ii), (iii), (iv), (vii) and (viii) of the Terms of Reference.
28. I grant Mr. Bonwick the right to participate in these portions of the Terms of Reference, to the extent that they concern his interest and perspective. He may participate in the following ways:
- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mr. Bonwick’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.

29. Mr. Bonwick also applied for funding and provided an affidavit concerning his personal financial information in support of his request.
30. Aspects of Mr. Bonwick's available personal financial information support a recommendation for funding. However, he has not provided details of the assets and liabilities of his companies. We recommend that the Town obtain this information prior to deciding whether to provide Mr. Bonwick with funding.

Ian Chadwick

31. Mr. Chadwick was a member of the Town's council from 2010-2014, during the events described in the Terms of Reference. He participated in several of the decisions and has documented the process on-line. He identified interests in common with other members of Council. He is willing to testify if called upon.
32. Mr. Chadwick seeks to be able to provide the Inquiry with a comprehensive timeline of events and activities.
33. Mr. Chadwick will be permitted to participate by providing a written comprehensive timeline of events and activities.
34. Mr. Chadwick did not apply for funding.

Collus PowerStream Corp. (represented by Mr. George Vegh and Ms. Julie Parla)

35. Collus PowerStream Corp. seeks standing to participate on the basis that it is the successor to Collingwood Utility Services Corporation, the entity that was the subject of the share-purchase transaction. Collus PowerStream has relevant documents and information concerning the Transaction, and relevant communications with Town Council members. Collus PowerStream has also identified an interest in being allowed to participate to ensure the accuracy of information concerning the share sale.
36. Collus PowerStream has established a substantial and direct interest in Part I of the Inquiry and I grant it the right to participate in Part I with respect to the issues described by sections 1, 2, 3 (a) (i), (ii), (iii), (iv), (v) and (vi) of the Terms of Reference, to the extent that they concern Collus PowerStream's interests and perspective. It may participate in the following ways:
 - consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Collus PowerStream's interest; and
 - the opportunity to make closing submissions, either orally, in writing or both.

37. Collus PowerStream made no request for funding.

Mayor Sandra Cooper (represented by Mr. George Marron)

38. Mayor Cooper was the Mayor of Collingwood during the share sale transaction and the recreational facility purchase decision. Mayor Cooper has a substantial and direct interest in the subject matter of the Inquiry and an ability to further the conduct of the Inquiry.

39. I find that Mayor Cooper has a right to participate in the subject matter of the Inquiry in relation to the issues to be considered in Parts I and II of the Inquiry, to the extent that they concern her interests and perspective. In her role as the head of Council, Mayor Cooper's interests and ability to participate relate to sections 1, 2 and 3 of the Terms of Reference, and the questions outlined in the first part of Council's resolution. She may participate in the following ways:

- consistent with Rules 17 and 18 of the Inquiry's Rules of Procedure, access to documents collected by the Inquiry;
- consistent with the Inquiry's Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
- a seat at counsel table;
- the opportunity to suggest witnesses to be called by Inquiry counsel;
- the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mayor Cooper's interests; and
- the opportunity to make closing submissions, either orally, in writing or both.

40. Mayor Cooper has also applied for funding and provided an affidavit concerning her personal financial information in support of her request.

41. I recommend that the Town favorably consider the Mayor's request for funding, based on my review of her financial information and because she was the Mayor at the relevant times.

Councillor Tim Fryer (represented by Mr. Raivo Uukkivi and Ms. Adrianna Pilkington)

42. Councillor Fryer is a member of Council for the Town of Collingwood.

43. Mr Fryer has a substantial and direct interest in the subject matters of the Inquiry, arising from his long-time employment at Collingwood Utility Services Corporation and his role as its Chief Financial Officer at the time of the transaction.

44. Councillor Fryer has identified an interest in financial and public accountability, including an interest in the oversight of utility operations. Councillor Fryer has identified this issue as being important to the scope of the Inquiry.

45. I grant Councillor Fryer the right to participate in Part I of the Inquiry with respect to the issues described by sections 1, 2, 3 (a) (i), (ii), (iii), (iv), (v) and (vi) of the Terms of

Reference, up to September 2012 and to the extent that they concern his interests and perspective. He may participate in the following ways:

- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
- consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
- a seat at counsel table;
- the opportunity to suggest witnesses to be called by Inquiry counsel;
- the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Councillor Fryer’s interests; and
- the opportunity to make closing submissions, either orally, in writing or both.

46. Councillor Fryer has also applied for funding and provided an affidavit concerning his personal financial information.
47. I recommend that the Town favorably consider Mr. Fryer’s request for funding based on my review of his financial information.

Edwin Houghton (represented by Mr. Fred Chenoweth)

48. Mr. Houghton seeks to participate because of his extensive involvement with the share sale transaction, given his prior role as Chief Executive Officer of Collingwood Utility Services Corporation. He also seeks to participate because of his involvement with the Town of Collingwood recreational facility transaction, at the time of which Mr. Houghton was the Town’s acting Chief Administrative Officer. In those capacities, he had direct personal involvement in both transactions.
49. Mr. Houghton cites his substantial and direct involvement, issues of fairness and his ability to assist the Inquiry in its work.
50. The material provided establishes that Mr. Houghton has a substantial and direct interest in the issues that will be addressed during Part I and Part II of the Inquiry, and the issues described in sections 3(a) (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of the Terms of Reference.
51. I grant Mr. Houghton the right to participate for those portions of the Inquiry, to the extent that they concern his interests and perspective. He may participate in the following ways:
 - consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;

- the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to Mr. Houghton’s interests; and
 - the opportunity to make closing submissions, either orally, in writing or both.
52. Mr. Houghton applied for funding and provided an affidavit with some general information about his financial situation. Mr. Houghton did not provide details concerning his financial situation. His counsel did indicate that Mr. Houghton may have access to an alternative source of funding. As a result, I recommend that the Town’s consideration of funding for Mr. Houghton be made after production of this information to the Town and with the provision that the Town consider whether funding from other sources could be applied first.

Town of Collingwood (represented by Mr. Will McDowell and Mr. Ryan Breedon)

53. The Corporation of the Town of Collingwood will be directly and substantially affected by all aspects of the Inquiry. The Town called for the Inquiry and the Terms of Reference involve Town transactions, entities and elected representatives. The Town is financially responsible for the costs of the Inquiry. Finally, the recommendations that are requested from the Inquiry relate to the good governance of the Town.
54. I grant the Corporation of the Town of Collingwood the right to participate in the Inquiry in the following ways for Parts I, II and III of the Inquiry, to the extent that its interests and perspective are concerned:
- consistent with Rules 17 and 18 of the Inquiry’s Rules of Procedure, access to documents collected by the Inquiry;
 - consistent with the Inquiry’s Rules of Procedure, advance notice of documents proposed to be entered and statements of anticipated evidence;
 - a seat at counsel table;
 - the opportunity to suggest witnesses to be called by Inquiry counsel;
 - the opportunity to cross-examine witnesses on matters that bear on the subject matter of the Inquiry and are relevant to the Town’s interests;
 - the opportunity to make closing submissions, either orally, in writing or both; and
 - the opportunity to make submissions on any interlocutory applications of other participants.

GENERAL RECOMMENDATIONS AS TO FUNDING PRINCIPLES FOR THE TOWN OF COLLINGWOOD

55. As with other public inquiries, there is a necessary balance between providing funding for counsel to ensure the process is fair and using public funds prudently.

56. In making these recommendations for funding, I suggest that the Town of Collingwood act in accordance with principles that have guided other inquiries:
- It is not in the public interest to have open-ended funding.
 - It is not in the public interest to provide individuals with their lawyer of choice at that lawyer's regular hourly rate.
 - The Town should establish compensation for counsel for the purposes of this Inquiry, which should include reasonable time for preparation by counsel as well as for attendance at the hearings. Limits should be set on preparation time.
 - Attendance of counsel at the hearings should be limited to attending when the client's interests are engaged.
 - Counsel should be entitled to compensation for their reasonable disbursements. Where appropriate, disbursement rates should be set.
 - Funding available from third party sources, such as directors' and officers' liability insurance, should be applied first, before public funds are made available.
 - No fees incurred before the date of Council's decision to hold a public Inquiry should be paid.
 - No fees related to interlocutory proceedings, appeals, judicial reviews or any other matters (*e.g.*, civil litigation) should be paid by the Town.
 - Accounts should be subject to review by an independent third party.

CONCLUSION

57. Persons who have been granted rights of participation are required to file a plan setting out how they will identify, locate and produce the documents that have any bearing on the subject matter of the Inquiry. They must do so within 15 days of this decision. By the same date, they may also provide any suggestions for amendment to the Inquiry's Rules of Procedure.
58. I thank counsel for their submissions and assistance in this stage of the Inquiry.


Associate Chief Justice Frank N. Marrocco

Applications for Standing & Funding heard on August 14, 2018

Reasons released on August 20, 2018

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