

- 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.

*It is Participate comparable to S. Cooper almost word for word except*

**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:

- ① It is not in the public interest to have open-ended funding.
- ② It is not in the public interest to provide individuals with their lawyer of choice at that lawyer's regular hourly rate.
- ③ 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.
- ④ Attendance of counsel at the hearings should be limited to attending when the client's interests are engaged.
- ⑤ Counsel should be entitled to compensation for their reasonable disbursements. Where appropriate, disbursement rates should be set.
- ⑥ Funding available from third party sources, such as directors' and officers' liability insurance, should be applied first, before public funds are made available.
- ⑦ No fees incurred before the date of Council's decision to hold a public Inquiry should be paid. *Feb 26/18*
- ⑧ No fees related to interlocutory proceedings, appeals, judicial reviews or any other matters (e.g., civil litigation) should be paid by the Town.
- ⑨ 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.

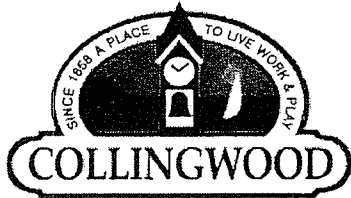
  
Associate Chief Justice Frank N. Marrocco

Applications for Standing & Funding heard on August 14, 2018

Reasons released on August 20, 2018

Town of Collingwood Judicial Inquiry  
97 Hurontario Street, Box 275, Collingwood, ON, L9Y 3Z5  
[info@collingwoodinquiry.ca](mailto:info@collingwoodinquiry.ca)

## TAB C EXHIBITS



*Susan Hines*

**Agenda Item #11.3.**

This Exhibit referred to in the affidavit of SUSAN HINES sworn before me, this 18th day of OCTOBER 2018

*[Signature]*  
COMMISSIONER, ETC



**STAFF REPORT #T2018-06**  
4/30/2018

Amendments: None

**Submitted to:** Council  
**Submitted by:** Fareed Amin, CAO  
Marjory Leonard, Treasurer  
**Subject:** Judicial Inquiry

**PURPOSE**  
This report provides potential cost estimates for the Judicial Inquiry and requests approval for the CAO to take the necessary actions and expend the necessary funds to meet the requirements of the Justice presiding over the Inquiry.

**RECOMMENDATION**  
**THAT** Council authorize the CAO to take the necessary actions to ensure that all requirements of the Justice presiding over the Inquiry are met;  
**THAT** the CAO is authorized to engage legal representation for parties, Members of Council and current Town employees who will be called as witnesses at the Inquiry;  
**THAT** funding for the Inquiry be taken from the Working Capital Reserve Fund;  
**AND FURTHER** That Council approve the Terms of Reference as attached.

**AMENDMENTS**  
None

**1. BACKGROUND**

At the February 26<sup>th</sup>, 2018 regular meeting of Council, resolution 042-2018 calling for a Judicial Inquiry into the 2012 Collus share sale to PowerStream was passed. Staff were directed to forward the resolution to the Chief Justice of the Superior

Court of Justice. During the Inquiry, the Inquiry Judge will be referred to as the "Commissioner".

On April 6, 2018 Chief Justice Smith appointed the Honourable Mr. Justice Frank Marrocco, Associate Chief Justice of the Superior Court of Justice to serve as Commissioner to this Inquiry.

#### **Purpose of a Municipal Public Inquiry**

The Mississauga Corporate Report regarding their Judicial Inquiry provides the following information related to the purpose of a Municipal Public Inquiry:

"Justice Binnie, in the Supreme Court of Canada Decision *Consortium Developments (Clearwater) Ltd. v. Sarnia (City)* defined the purpose of a municipal judicial inquiry as follows:

"the power of an Ontario municipality to authorize a judicial inquiry into matters touching the good government of the municipality, or "any part of its public business", and any alleged misconduct in connection therewith, reaches back to Confederation. Apart from a few amendments to harmonize this power with other legislative changes in the Province, [Section 274 of the Municipal Act, 2001] is substantially unchanged from its predecessor section in 1866. This reflects a recognition through the decades that good government depends in part on the availability of good information. A municipality, like senior levels of government, needs from time to time to get to the bottom of matters and events within its baileywick. The power to authorize a judicial inquiry is an important safeguard of the public interest, and should not be diminished by a restrictive or overly technical interpretation of the legislative requirements for its exercise. At the same time, of course, individuals who played a role in the events being investigated are also entitled to have their rights respected."<sup>1</sup>

Further in her report, Ms. Bench, City Solicitor for Mississauga provided the Council with several points that should be understood. In regard to the Collingwood Inquiry, these points are also relevant. Highlighting of information related to aspects of potential costs have been made by staff and do not form part of the original document.

- "By its requesting resolution, Council has the ability to control the scope of the inquiry. The resolution must be carefully constituted as it will establish the terms of reference and mandate of the Commissioner. If the resolution is too vague, it may be struck out by the Courts for lack of sufficient particularity.
- Potential parties will be notified based on the terms of reference.
- A public inquiry is a public investigation, carried out in the public eye and is not a trial. A public inquiry seeks to explain why something occurred and not

<sup>1</sup> Mississauga Corporate Report, October 13, 2009, Judicial Inquiry, Mary Ellen Bench, City Solicitor, p. 3.

- to determine guilt or liability. Unlike a court, it is not an adversarial proceeding.
- The findings of a judicial inquiry are not binding in subsequent court proceedings and there are no legal consequences attached to them.
  - At the end of an inquiry, the Commissioner will report his/her factual findings, make observations and issue recommendations that may include legislative, policy or procedural changes to be implemented to address the specific concerns identified through the inquiry.
  - The conduct and the rules of procedure to be followed on an inquiry is under the control and direction of the Commissioner.
  - The Commissioner will determine which issues are to be reviewed and investigated within the parameters set by the terms of reference. Ancillary issues may come up during the inquiry not originally anticipated. The Commissioner's decisions in this respect will impact on the cost and length of the inquiry.
  - The costs of the Commissioner will be paid by the Federal Government as a Justice of the Superior Court, however the Commissioner will likely engage legal counsel and possibly other persons to assist in the investigation or inquiry, and these costs plus any incidental expenses will be paid by the municipality.
  - Council should authorize outside legal counsel to be retained to represent the municipality in the conduct of a judicial inquiry to ensure there is no perception of bias and to assure the integrity of the process in the public eye.
  - Council must also give consideration to paying for the costs of legal counsel for the parties to the proceedings or for members of Council or staff called upon to provide testimony.
  - It is very difficult to estimate the potential costs of an inquiry due to the unknowns that will impact the hearing length, any potential delays in receiving documents and materials, unknown forensic audit and investigative needs, determination of the parties and witnesses, the potential for legal challenges and many other issues that can arise.
  - A time limit cannot be established by the municipality for an inquiry. The Act requires the Commissioner to report the results of the inquiry to Council "as soon as practicable".
  - Any person who has substantial or direct interest in the subject matter of an inquiry is entitled to apply for standing. Where the Commissioner grants full standing, that person can call evidence and cross-examine witnesses, and also must agree to abide by the Rules of Procedure established by the Commissioner. Standing may be granted for the entire proceeding or only for part of it, and it may have lesser rights attached to it, as determined by the Commissioner.
  - Legal counsel acting for parties at a judicial inquiry play a different role than in a courtroom and will be expected to assist the inquiry and ensure that all relevant and helpful evidence is brought forward."<sup>2</sup>

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<sup>2</sup> Ibid, pgs. 4 - 5

**2. INPUT FROM OTHER SOURCES**

The *Mississauga Corporate Report, October 13, 2009, Judicial Inquiry*, prepared by the Mississauga City Solicitor, Mary Ellen Bench provided significant background information into the purpose and potential costs of a judicial inquiry.

**3. APPLICABLE POLICY OR LEGISLATION**

*Municipal Act, 2001, Section 274*  
*Public Inquiries Act, 2009, Section 33*

**4. ANALYSIS**

Terms of Reference (Appendix A)

The terms of reference for the Inquiry are a key element since they define what is to be inquired into and the scope of the Municipality's interest. The CAO has prepared the terms of reference and discussed them with the Commissioner and Commission Counsel.

Costing Estimates

As Ms. Bench has stated, the costs of a judicial inquiry are difficult to estimate and rely on the duration of the Inquiry. We have been provided with a list of potential cost types we may incur during the process. CAO Amin has had several meetings with Court staff and Justice Marrocco to discuss the requirements of the Justice.

Our costing assumptions are based on a nine (9) month inquiry however, after the documentary phase is complete we will have a better idea of the costs and timelines.

1. Commission Counsel

The role of Commission Counsel is to investigate and lead evidence in a thorough, impartial and balanced manner. From previous inquiries, the presiding Justices have stated that the duty of the Commission Counsel is to ensure that all issues related to the public interest are brought to the Commissioner's attention. Justice Marrocco has chosen his Commission Counsel.

Billing rates and the length of the Inquiry will determine the actual expenditures. There will be two components to the estimate – time for investigative work and time for the hearing phase. Overall, staff are basing the cost estimate on the results of the Mississauga Inquiry.

Estimated investigative work – 320hrs x \$500/hr	<b>\$160,000.</b>
Estimated hearing work – 320hrs x \$500/hr	<b>\$160,000.</b>

2. Investigative Staff/Policy Staff

The Commissioner and the Commission Counsel require a Junior Counsel and a law clerk to assist with summarizing evidence for the Commissioner, pre-interviewing witnesses, summarizing witness statements etc. Staff estimate the cost of a Junior Counsel as

Estimated investigative work – 320hrs x \$200/hr	\$64,000.
Estimated hearing work – 320hrs x \$200/hr	\$64,000.
Estimated cost for a law clerk based on a nine (9) month contract would be 1,560 hrs x \$85/hr	\$132,600.

3. Administration Staff

The Commissioner will require administrative support during the Inquiry. Staff estimate that this position would be required for approximately nine (9) months and would cost \$75,000.

4. Additional Staffing Requirements

- a) Communications staff will be sourced from an outside firm on an as needed basis. The estimated cost for this service is \$70,000.
- b) IT staff and assistance will be provided by the Town's IT department. This assistance is estimated to cost \$25,000.
- c) Court reporter/transcriptionist to record inquiry proceedings. Staff are estimating the cost of these services on 320 hours hearing time. Rates for this service are estimated at \$85/hr for an estimated cost of: \$27,200.

There is also a per page charge in the range of \$6 per page for transcription services. Assuming the hearings generate 500 pages the cost would be \$3,000.

- d) Commissioner incidental expenses estimated at \$25,000.

5. Physical Resource Requirements

- a) Office Space  
Staff have sourced suitable office space in the downtown core. The minimum term on the lease is one year at \$22.50 gross lease rate per sq. ft. The rate includes taxes, insurance and maintenance. Utility costs will be in addition to the lease rate. Minimal redecoration is required. Estimated one year commitment for the space \$32,000.
- b) Office Furniture  
Staff estimate the cost to furnish the space at \$30,000.
- c) Computer Equipment  
This item includes laptops, printers, servers, cabling, routers, wireless hubs, telephones, conference phone, boardroom TV/HD screen, and other peripherals



including software, document management software and virus protection. The estimated cost is **\$60,000.**

d) Office Supplies  
Staff estimate the cost of office supplies for five (5) workstations at **\$5,000.**

e) Venue(s) for Hearings  
Through discussions with Justice Marrocco, the CAO feels that the Council Chambers will be satisfactory for the public hearing phase.

f) Security Staff  
Security staff may be required to escort witnesses to and from the hearings and provide security at the hearings themselves. Staff estimate this services could be provided by paid duty police officers. The cost estimate is based on Estimated hearing work – 320hrs x \$71/hr **\$22,720.**

**6. Other Costs**

a) Counsel Representing the Town

The role of the Municipality in the Inquiry is to:

- ensure that all information in Town files is made available to the Commissioner;
- ensure that the Commissioner is aware of internal administrative procedures that may be relevant to the Inquiry; and,
- respond to any requests from the Commissioner or the Commission Counsel for assistance.

In previous inquiries the cities all had internal legal departments and staff recommended that outside legal counsel be retained to represent their interests at the public inquiry.

The Town has association with several legal firms that can fulfill this need. The estimate, based on the Mississauga report is 75% of Commission Counsel **\$240,000.**

b) Counsel for Parties, Council Members and Staff

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.**

**5. EFFECT ON TOWN FINANCES**

This report has been prepared to provide Council and the residents of Collingwood with a background of the purpose of a judicial inquiry and the types of costs and associated estimates that may be encountered.

The total cost of the Judicial Inquiry, based on the information and requirements of the Commissioner, at this time, is estimated at \$1.4-1.6 million. There are sufficient funds in the Working Capital Reserve Fund to cover the items noted in the staff report.

**6. APPENDICES & OTHER RESOURCES**

<i>Appendix A</i>	<i>Terms of Reference</i>
<i>Appendix B</i>	<i>Section 274 of the Municipal Act, 2001</i>
<i>Appendix C</i>	<i>Section 33 of the Public Inquiries Act, 2009</i>

**SIGNATURES**

Prepared by:		Department Head
<i>Marjory Leonard, Treasurer</i>		<i>Fareed Amin, CAO</i>
Town of Collingwood		Town of Collingwood