



CLOSING SUBMISSIONS OF BLT CONSTRUCTION SERVICES

1. BLT Construction Services sought standing in the Collingwood Judicial Inquiry to try to assist. It wanted its 25 years of experience in construction and design builds to be a resource upon which the Inquiry could draw.¹ Through its Counsel, BLT endeavoured to keep its involvement in the Inquiry focused, by only pursuing relevant lines of inquiry and only asking necessary questions. Where able, Counsel offered procedural assistance to advance the fairness of the hearing. BLT bore the cost of its assistance.

2. BLT's ultimate position has not changed from its Opening Statement. In delivering two innovative, cost-effective, and exceptional recreational structures to the Town of Collingwood, BLT has left the Town with something which will serve community needs for years to come, and which the Town can be proud of.

A. OVERVIEW

3. The following Overview provides important context framing BLT's involvement with the Town of Collingwood. Many of the events detailed below, and which formed the focus of the Inquiry, were not known to BLT when it was first brought in to help the Town.

¹ As reflected in its Application for Standing, BLT hoped to "provide background and invaluable insight into how the [Collingwood] construction contract was awarded and the work involved in its implementation.

4. Unbeknownst to BLT, the early summer of 2012 was a critical point for the Town of Collingwood. After decades of dealing with ageing infrastructure, and recreational centres which did not meet community needs, Collingwood's Town Council was determined to move forward. Notwithstanding the good work done by the Central Park Steering Committee, Council determined that a multi-use recreational facility (with a minimum price tag of \$35 million) was simply not economically feasible. This conclusion was informed by the Town's other financial obligations as well as Council's mandate of fiscal responsibility, affirmed in the most recent election.

5. Alternative options were being discussed and explored, and among these varied options one began to excite several members of Council. A company called Sprung designed innovative, insulated fabric structures which could potentially cover the existing outdoor pool and ice hockey arena in Collingwood, and thereby avoid the cost of building new ones.

6. As Spring turned to Summer, members of Sprung proceeded to meet with members of Council and staff and a plan both emerged and evolved. Some members of Council came to believe that a suitable alternative to the multi-use recreational facility was to cover the existing Centennial pool and to build a new Sprung arena in Central Park. Such a plan would achieve many of the recreational and community hub goals of the multi-use recreational facilities at a fraction of the cost of a single facility.

7. It is only at this point that BLT was approached to become involved; and, as it proceeded to put together a cost-effective alternative for the Town, BLT had no reason to doubt that a transparent process was being followed.

8. BLT was aware that the Town was still considering other options beyond the Sprung facilities.² Members of Sprung suggested that BLT retain Paul Bonwick, and his company Green Leaf, to assist BLT in presenting the Sprung solution as an alternative that the Town could afford, and which could immediately address the longstanding community needs of an additional ice pad, and another swimming pool.

9. Green Leaf was a perfect addition to the Sprung / BLT team. While Sprung created innovative structures, it did not erect them. And while BLT had extensive experience building Sprung structures, they had no prior Municipal procurement experience. At that time, BLT did not have the internal infrastructure to urge Collingwood's Town Council to move forward with a Sprung-by-BLT solution.

10. By contrast, Paul Bonwick had extensive experience in Municipal and Federal politics, he had comprehensive knowledge of Collingwood and the surrounding area, and it was immediately clear to BLT that he could achieve what they could not: persuade Collingwood's Council and secure a contract. Moreover, Mr. Bonwick had a broader vision which was very attractive to BLT. If Sprung, BLT and Green Leaf could deliver an exceptional and cost-efficient product to Collingwood, this could serve as a model for other Towns with similar infrastructure needs.

² *Evidence of Dave Barrow*, Transcript Dated October 3, 2019 at pp. 87-88, 93-94.

11. It was from this position of mutual benefit that the relationship between BLT and Green Leaf was formed. It was always understood that Green Leaf would only be paid if the contract was secured, and that any payment would come out of BLT's own, reduced, profit margin. For BLT, this was an investment in future business growth, delivering Sprung solutions to Municipalities in need.³

12. BLT remained at the ready as Abby Stec and Paul Bonwick engaged with the head of the Town's staff - Collingwood's CAO Ed Houghton - to determine exactly what Collingwood's recreational needs were so that the Sprung solution could be properly crafted and priced. Once complete, the Sprung facilities were presented to Town Council via a staff report, and oral deputations were made. BLT understood that it was being awarded a sole source contract because of the truly unique nature of the Sprung structures and BLT's expertise in erecting them. Throughout, BLT remained singularly accountable to the Town to ensure all its needs were met, on schedule and on budget.

13. After the contract was signed, BLT got to work and proceeded to put together a comprehensive program to ensure that the Town understood exactly what Collingwood was getting. BLT took its role as steward of the Town's interest seriously, providing numerous upgrades to the finished products, not required by the contract, and at its own expense. BLT also worked with the Town to ensure that various stakeholders' interests and needs could be incorporated into the end product.

³ *Evidence of Dave Barrow*, Transcript Dated October 3, 2019 at pp. 264-267.

14. And in the end, BLT delivered. A common theme in the evidence of the Inquiry was how fantastic the facilities are, and how well they serve the community. Indeed, the facilities continue to host tours from other Municipalities. BLT was (and continues to be) an excellent partner for Town of Collingwood - and has left behind two innovative, fiscally responsible structures which will well-serve the community of Collingwood for years to come.

B. DISCRETE ISSUES

15. Having provided the above Overview, BLT will now address in greater detail some of the discrete issues that arose in the Inquiry.

1) BLT's Payment to Green Leaf

16. There can be no doubt at the conclusion of the evidence of the Inquiry that the Town of Collingwood **did not pay any additional costs** as a result of BLT's retention of their intermediary, Green Leaf. As ably explained by Dave Barrow, BLT concluded its July 26, 2012 meeting with Paul Bonwick with the understanding that Green Leaf would earn a percentage fee if Green Leaf was successful in securing a contract. While the exact amount of the compensation was not finalized, BLT understood that it would be comparable to a real estate commission, and knew that if Green Leaf's commission was too high, it could simply walk from the deal. Ultimately Green Leaf's agreed-upon fee was 6.5%.

17. The manner in which this fee was paid to Green Leaf out of BLT's profits was equally, ably explained by Mr. Barrow, but also intimated by Ms. Stec, and corroborated by the evidence of Mr. Bonwick. When pricing the Collingwood structures Mr. Barrow estimated the costs of materials and services on a line-by-line basis. BLT then added a margin to that estimate to

account for profit and internal expenses. While BLT's standard margin would have been between 15 and 18 percent, in the case of Collingwood, a **reduced** 7 - 8 percent margin was added **specifically to account** for the anticipated fee of Green Leaf. In the end, Collingwood likely paid less than BLT's standard margin.

18. There were some questions posed about the meaning of a part of the Intermediary Contract drafted without the benefit of legal input. It was clear from the evidence that the only money paid to Green Leaf was the 6.5% commission which BLT paid.

19. Furthermore, Dave Barrow gave a credible, helpful and compelling explanation for why it structured Green Leaf's compensation in this manner. A contingency fee meant that Green Leaf was only paid if they were successful in securing the contract. Moreover, from BLT's perspective, Green Leaf could secure business in a market that they had never previously worked in, and which was otherwise unavailable to them: providing Sprung recreational facilities to Municipalities.

2) BLT'S Relationship with Green Leaf

20. BLT and Green Leaf left their July 26, 2012 meeting with an understanding of what Green Leaf's role would be. The ultimate goal was to assist BLT in securing the contract. Abby Stec would act as the communication liaison between BLT and the representative of the Town, its CAO. Paul Bonwick would be engaged in lobbying efforts to persuade members of Council, and others, that a Sprung-by-BLT was the right solution to meet the Town's needs.

21. It was clear from the evidence that at no point did Paul Bonwick share with BLT that he was the brother of the mayor. As testified to by Mr. Bonwick, this was a deliberate decision to ensure

that BLT in no way was left to think that they would gain some advantage via Mr. Bonwick's familial ties. Indeed, Dave Barrow testified that he was surprised to learn of their relationship, first raised during a discussion about Tom Lloyd and Deputy Mayor Rick Lloyd being unrelated.

22. Questions were raised during the Inquiry about whether Green Leaf provided the services outlined in the contract (specifically, at section 2 of the agreement). Such questions overlook the fact that the Intermediary Contract was not drafted with only Collingwood in mind; it was to be the document that governed BLT and Green Leaf's relationship on a going-forward basis, as it sought to provide Sprung solutions to many other Municipalities. BLT would note here, parenthetically, that as a result of the intervention of the CBC and the Ontario Provincial Police, these future plans were put on hold.

23. Equally, questions were raised about the Non-Disclosure Agreement [NDA] which BLT and Green Leaf mutually signed following the July 26, 2012 meeting. Some suggestion was made that this agreement was meant to shield the Town of Collingwood from ever finding out about Green Leaf's role in the BLT contract. Such a suggestion is contradicted by the evidence and by common sense. Both Mr. Barrow and Mr. Bonwick testified that the clear purpose of the NDA was to protect the parties from improper information sharing. The agreement was standard, and used by Mr. Bonwick in all of his business dealings. But more importantly, BLT remained ever-aware that Green Leaf was dealing with the highest member of the Town of Collingwood's staff, its CAO. Any notion that BLT was keeping Collingwood in the dark regarding Green Leaf's involvement, when Green Leaf was corresponding regularly with the Town's CAO, is divorced from the facts.

3) BLT's Perspective on the Procurement Process

24. Much of the Inquiry focussed on whether an appropriate process was followed by Collingwood Council and Staff in the procurement of the Sprung facilities. As alluded to in the Overview, much of the procurement history of the Town, and decisions that were made, occurred long before BLT was asked to present an alternative solution for Collingwood. Equally, the manner by which Town staff arrived at its conclusion, to recommend the Sprung solution to Council, was not something BLT was privy to. Ultimately, the appropriateness of the process followed by the Town will be adjudged with the benefit of much-hindsight, and the input of the invaluable expert evidence heard in Part 3 of the Inquiry. However, while such questions are beyond the scope of BLT's interest, BLT can briefly provide its perspective on the process that it perceived in this case.

25. From BLT's perspective, it was apparent in the Summer of 2012 that members of Council were looking for an alternative to the single recreational facility advocated for by certain segments of the Town. Many recognized that a multi-use recreational facility, while an attractive idea, was cost-prohibitive. The Town had, over many years, identified that its most pressing needs were to expand "ice and water" - its ice rink facilities beyond the Eddie Bush arena, and its swimming facilities which included only one indoor pool in 2012. BLT and Sprung understood that they were presenting an alternative to what had been the primary plan.

26. BLT had demonstrated contact with the Town, both through its intermediary, and by attending meetings with Council and staff. This allowed the specifications of the facilities, and the Town's main recreation requirements to be identified. Once complete, BLT was able to

provide budgets for the facilities, as well as a schedule within which they could be built. This allowed staff and Council to have an accurate picture of what a true alternative to the single facility model looked like. That Council so readily accepted BLT's proposal, in no small degree, can be seen as a product of the fact that Council was eager to meet the needs of the community immediately rather than risk continued study of a building they could not afford.

27. And as is consistent with BLT's experience with other design-build projects, the processes initiated during procurement continued after the contract was signed. The project benefitted from the excellent working relationship between BLT's Project Manager, Paul Waddell, and the Town's Deputy Chief Building Official, Ron Martin, a comprehensive program was put in place which outlined in exhaustive detail exactly what the Town would be receiving. This relationship also created space to allow for the payment schedule to be restructured, which BLT agreed to adjust in a manner favourable to the Town.

28. As the project unfolded and evolved, BLT's services consistently proved responsive. Even when stakeholders fundamentally changed the design of the swimming facility to add a second pool, BLT was able to meet the Town's need with no negative impact on the timeline for delivery. And, the design build model allowed the Town to ensure they had a single point of contact who retained responsibility over the successful completion of the project, and did not act as a bar to employing local contractors, and putting sub-contracts out to tender where appropriate.

29. In sum, the process that BLT perceived was one which attempted to capture the momentum created from a pivot - a pivot away from a single-facility model that the Town had apparently considered many times over many years and never built, with significant impact to

the residents of Collingwood. The process BLT employed as the sole-source, design-build contractor was one characterized by accountability and driven by BLT's efforts to ensure the Town's diverse and evolving needs were met, and its expectations were exceeded.

4) The Final Product

30. It was a common feature in the evidence at the Inquiry how fantastic the Sprung structures are, and how well they serve the community. This evidence was never elicited by BLT. Ms. Abigail Stec indicated in her evidence:

I think the facilities are incredible. I am -- I was and still am very -- very happy that the -- community was -- was able to secure these facilities. I was there the day the pool opened, when the first kids jumped in, and I thought it was amazing.⁴

31. Similarly, Ms. Sara Almas, the Town Clerk, testified:

[O]ur Accessibility Advisory Committee held their Advisory Committee meeting in the observation room at the pool facility and also conducted a ribbon-cutting ceremony because they changed the family change room into a universal change room for all accessibility needs. During that meeting in which members of Council were present, an individual walked into the observation room and excused himself to everybody for interrupting the meeting but wanted to congratulate the members of Council for putting up such a fabulous facility. It's -- it is a very unique facility and I encourage people to go and see it, to see what a Sprung structure is.⁵

32. These sentiments were echoed by others. As reflected in the evidence, these results just don't happen - they are the product of the hard work and commitment of all parties, on both the builder and consumer side, to ensure that the end result is nothing short of excellent.

⁴ Evidence of Abigail Stec, Transcript Date Sept. 11, 2019 at p. 290.

⁵ Evidence of Sara Almas, Transcript Date Sept. 12, 2019 at pp. 236-237.

33. It was most unfortunate that less than a week before the commencement of Phase 2 of the Inquiry, curious attempts were made to present a different picture of these facilities. One could muse at length about the timing and the content of Mr. Mel Milanovich's correspondence with BLT. Someone suspicious of mind might even think about whether Mr. Milanovich is the true author of such correspondence. Luckily, and as a result of the wisdom of Commissioner Marrocco, we need not engage in such speculation. What we know from the admissible evidence is that the buildings, like all others, have undergone maintenance, and that BLT has always offered to help when asked, even where they bore no obligation to do so.

C. CONCLUSION

34. In summation, BLT sought standing so it could assist the Inquiry. It attempted to do this in several ways. It helped by participating fully and early in the information gathering phase. Through Counsel, BLT also assisted in bringing Sprung - based in Alberta - into the fold of the Inquiry, so that the manufacturer of the facilities could help explain the history, nature and uniqueness of the Sprung structures. Equally, BLT was able to explain its involvement in the contract, its relationship with Green Leaf and Mr. Bonwick, and the process engaged in the erection of the structures. One could argue that BLT contributed essential bricks and mortar to the Inquiry's terms of reference.

35. For its part, BLT monitored Part 3 of the Inquiry, including the invaluable expertise of the witnesses called to testify, and the answers to the questions asked. This monitoring may assist

BLT in future contract negotiations with Municipalities and other public institutions who may have specific processes in place.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 10th day of January, 2020

A handwritten signature in blue ink, appearing to be 'W. Trudell & E. Neubauer', written over a horizontal line.

Per William Trudell & Eric Neubauer
Counsel for BLT Construction Services