

## **TOWN OF COLLINGWOOD JUDICIAL INQUIRY**

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### **CLOSING SUBMISSIONS OF THE TOWN OF COLLINGWOOD: PART 1**

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**PART 1 - OVERVIEW**

1. On July 31, 2012 the Town of Collingwood (“the Town”) sold 50% of the shares in Collus Utility Service Corporation, the parent of Collus (“Collus”), to PowerStream (“the sale”).
2. Collus was the Town’s most valuable asset. Following completion of the sale, significant questions arose regarding how the Town entered into this transaction. Ultimately, Town Council requested this judicial inquiry into the circumstances of the sale.
3. The evidence concerning the sale raises serious concerns:
  - i. The financial information provided to the Strategic Task Team (“STT”) and Council was inaccurate, incomplete and misleading;
  - ii. The Mayor, Council and Town staff failed to understand their obligation to avoid any conflicts of interest;
  - iii. PowerStream was given an improper advantage by receiving confidential information, both directly from Ed Houghton and indirectly through Paul Bonwick; and,
  - iv. Ed Houghton and Paul Bonwick also arranged for Collus and PowerStream to enter into a joint solar vent initiative with International Solar Solutions Inc. (“ISSI”), an entity in which Ed Houghton and Paul Bonwick each had a secret interest. This initiative was in turn presented to the STT and the Town as a reason for preferring PowerStream.
4. As a result of these improprieties, Council selected PowerStream as its strategic partner, rejecting an offer from Hydro One which would have generated more than \$3 million in additional

revenue for the Town. This decision was completely uninformed. None of the Town's advisors explained the significance of this decision to Council.

5. A high-level summary of each of these four improprieties is set out below, followed by detailed submissions on each issue.

**I. Incomplete and Inaccurate Financial Information was Provided to Council**

6. The Town received bids from four potential partners through a Request for Proposals process ("RFP"). The bids consisted of financial and non-financial components. The genesis of the criteria on which the bids would be evaluated is somewhat unclear. Unusually, only 30% of the points to be awarded would consider financial aspects of the bids. 70% of the points would be awarded to non-financial criteria.

7. KPMG performed an analysis of the financial components of the four bids, to allow the STT and Council to compare them.

8. KPMG advised the Town that the PowerStream bid was worth \$15,010,000, and that the Hydro One bid was worth \$15,998,000. Both of these figures were wrong.

9. In fact, using KPMG's own methodology, the PowerStream bid was worth \$14,110,000, and the Hydro One bid was worth \$17,960,000, a difference of \$3,850,000. The Town was never advised of this.

10. Moreover, the Town was never advised that:

- (a) a significant portion of the revenue was available without selling any of the utility;
- and,

- (b) the guaranteed portion of the Hydro One bid – the amount actually paid for the shares – was over \$5 million more than that of the PowerStream bid.

11. Council needed this information to properly evaluate the bids and act in the best interests of the Town. Instead, it was given incomplete, inaccurate and misleading information.

## **II. Failure to Understand Conflict of Interest Obligations**

12. This Inquiry revealed a pervasive and fundamental misunderstanding by former members of Town Council, including the former Mayor, Sandra Cooper, regarding conflict of interest obligations.

13. In the municipal context, Councillors and public officials must not only comply with the *Municipal Conflict of Interest Act* (“MCIA”). Councillors are also bound by their declaration of office as well as the Collingwood Code of Ethics for Members of Council.

14. In addition, elected officials and public servants must comply with the common law concerning conflicts of interest. They must not use their office to promote private interests, either their own or those of relatives or friends. The test is always an objective one: what should a reasonable person have done in similar circumstances?

## **III. PowerStream was Given an Improper Advantage Through Leaked Confidential Information**

15. Town Council ought to have been aware and involved from the moment that anyone, either at the Town or at Collus, first contemplated a transaction.

16. Instead, Ed Houghton, the Chief Executive Officer of Collus and Executive Director of the Town, took it upon himself to begin discussions with the ultimate purchaser, PowerStream, in December 2010. While a valuation was quickly thereafter undertaken by Collus, and substantial

momentum built in favour of the transaction, Council was not involved in consideration of the proposed transaction, or even aware of it, until June 2011.

17. While Houghton operated away from Council's view, he shared important information with Bonwick, the brother of the then Mayor, Sandra Cooper.

18. From the outset, PowerStream had an inside track in the RFP. Houghton advised Brian Bentz, the Chief Executive Officer ("CEO") of PowerStream, in December 2010 that PowerStream would likely be the subject of an RFP, information which was not provided to the other bidders (Horizon, Hydro One, and Veridian) until mid-2011. Houghton then assisted Bonwick in contacting PowerStream for the purposes of securing a contract between Bonwick's company, Compenso Communications ("Compenso"), and PowerStream, to assist with the RFP. Houghton provided a reference for Bonwick.

19. Bonwick was in an irretrievable conflict of interest from the outset of his dealings on behalf of PowerStream. He was both acting as a consultant for one of the proponents in the RFP, and as a close political advisor to his sister, Mayor Cooper.

20. Individuals at the Town and at Collus regularly provided confidential information to Bonwick. This occurred from the outset of the RFP (even before it was announced) and continued to the eve of closing. It is unclear who provided the information. Houghton, Deputy Mayor Rick Lloyd and Mayor Cooper all had close relationships with Bonwick. Bonwick claims to have received confidential information from all three.

21. As a result of Bonwick's improper access to confidential information, PowerStream enjoyed an additional unfair advantage. PowerStream now acknowledges that it should not have had access to the confidential information supplied by Bonwick.

**IV. PowerStream was Given an Improper Advantage Through the Solar Vent Initiative**

22. Houghton and Bonwick became involved in a project to promote the sales of a solar-powered roof vent through ISSI. Houghton promoted the solar vents to Collus and both introduced and promoted the project to PowerStream. As a result of their efforts, Collus and PowerStream joined in a pilot project to sell solar vents in Collingwood – notwithstanding that the RFP was ongoing. This provided PowerStream with another unfair advantage.

23. Bonwick had a financial interest in ISSI. Contemporaneous documents record that Houghton also had a financial interest. Houghton was repeatedly offered an ownership interest in ISSI, or an opportunity to share in its revenues.

24. Bonwick did not disclose his financial interest in ISSI to his consulting client PowerStream. He ought to have done so. Houghton, as a fiduciary of Collus, ought to have disclosed his financial interest in ISSI – whether it was actual or prospective. He did not do so, nor did he make any disclosure to CollusPowerStream once he became CEO of that company.

25. Applying the governing Ontario law of conflict of interest, Houghton had a conflict of interest both in relation to his efforts on behalf of Bonwick in the RFP process and in relation to his dealings with each of Collus and PowerStream surrounding the solar vent project.

26. The solar vent initiative was relied upon by the STT in evaluating the non-financial components of the bids. The fact that PowerStream was already working with Collus was one of

the reasons that PowerStream was considered the best fit. No one ever told the STT or the Town that this had been orchestrated by Bonwick or Houghton for their own interests.

## **PART 2 - SUMMARY OF ISSUES AND EVIDENCE**

### **I. Incomplete and Inaccurate Financial Information Was Provided To Council**

#### **A. *Introduction***

27. Each of the bids comprised three main elements:

- (a) The price the bidder was prepared to pay for 50% of the Collus shares;
- (b) The proposed treatment of any funds which would become available as a result of a recapitalization of Collus; and,
- (c) The proposed treatment of the Town's outstanding shareholder loan.

28. The bidders differed with respect to both the amount of the funds that would be available as a result of recapitalization, and the distribution of those funds following closure.

29. KPMG was responsible for preparing a financial evaluation of the bids. The intention was to allow the STT and Council to evaluate the bids on an apples to apples basis.<sup>1</sup> John Rockx, a Partner at KPMG, agreed that the STT and Council relied on KPMG's expertise.<sup>2</sup>

30. This analysis was particularly important in this case, because the STT was recommending to Council that the second-highest offer be accepted for strategic reasons. Council needed to understand the differences between the highest (Hydro One) and second highest (PowerStream)

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<sup>1</sup> Evidence of John Rockx, June 17, 2019, p. 21-22

<sup>2</sup> Evidence of John Rockx, June 17, 2019, p. 130-131



offers in order to understand what was being left on the table if the PowerStream offer was accepted, and whether this was in the best interests of the Town.<sup>3</sup>

31. The Inquiry has heard a considerable amount of evidence concerning what financial information was provided to Council and the STT. It is clear that:

- (a) The financial analysis relied upon by the STT was materially inaccurate; and,
- (b) The information provided to Council was misleading, inaccurate and incomplete.

***B. Errors in the Financial Analysis Prepared by KPMG***

32. Rockx prepared three financial analyses of the four bids: on November 25, 2011, November 30, 2011, and December 2, 2011.<sup>4</sup>

33. All three analyses contain significant errors. It is sufficient to review the final version of the analysis, entered at KPM0001914. In particular, it is clear that Rockx both overstated the PowerStream bid and understated the Hydro One bid, suggesting that the bids were much closer than they actually were.

34. First, Rockx calculated that PowerStream would provide the Town with \$15,010,000, calculated as follows:<sup>5</sup>

|   |
|---|
| <p>\$15.010 million in cash</p> <p>(\$8.0 million + \$5.5 million + \$1.71 million</p> <p>less \$0.2 million dividend reduction for estimated</p> <p>additional net working capital adjustment)</p> |
|---|

<sup>3</sup> Evidence of John Rockx, June 17, 2019, p. 133-135

<sup>4</sup> Foundation Document Part 1: The 2012 Sale of Collus Shares ("FD1"), paras. 403, 414 and 427

<sup>5</sup> Comparison of Proposals – Financial Considerations Spreadsheet, KPM0001914, cells E37-E40

35. Rockx was evaluating PowerStream's bid as follows:

|   |            |
|---|------------|
| Amount paid for shares:                 | 8,000,000  |
| Recapitalization dividend paid to Town: | 5,500,000  |
| Repayment of shareholder loan:          | 1,710,000  |
| Less net working capital adjustment:    | (200,000)  |
| Total:                                  | 15,010,000 |

36. The "net working capital adjustment" was raised by John Glicksman, the Chief Financial Officer ("CFO") of PowerStream, on behalf of PowerStream. Essentially, this was a proposed adjustment, post-recapitalization, to ensure that Collus' working capital matched the deemed working capital in the Ontario Energy Board's ("OEB") rate base calculations.<sup>6</sup>

37. Although the true working capital adjustment could only be determined at closing, based on the actual financial position of the corporation, the financial analysis was based on Collus' 2010 financial statements.<sup>7</sup> Based on those figures, PowerStream had calculated this adjustment as \$1.1 million.<sup>8</sup>

38. Rockx did not deduct the full \$1.1 million from the PowerStream bid, but only \$0.2 million. He agreed in cross-examination that the full amount of the working capital adjustment should have been deducted from the PowerStream bid, meaning that the total PowerStream bid was in the range of \$14 million.<sup>9</sup>

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<sup>6</sup> Evidence of John Glicksman, June 4, 2019, p. 40-52; Evidence of John Rockx, June 17, 2019, p. 137-138; Email exchange between John Glicksman and John Rockx dated November 27-28, 2011, ALE0001072

<sup>7</sup> Evidence of John Rockx, June 17, 2019, p. 137

<sup>8</sup> Evidence of John Glicksman, June 4, 2019, p. 40-52; Email exchange between John Glicksman and John Rockx dated November 27-28, 2011, ALE0001072

<sup>9</sup> Evidence of John Rockx, June 17, 2019, p. 137-139

39. In fact, the actual evaluation of PowerStream's bid, using Rockx' methodology, should have been:

|   |             |
|---|-------------|
| Amount paid for shares:                 | 8,000,000   |
| Recapitalization dividend paid to Town: | 5,500,000   |
| Repayment of shareholder loan:          | 1,710,000   |
| Less net working capital adjustment:    | (1,100,000) |
| Total:                                  | 14,110,000  |

40. In addition to overstating the PowerStream bid, Rockx significantly understated the Hydro One bid. Rockx analysed the Hydro One bid as follows:<sup>10</sup>

\$15.998 million in cash  
 (\$13.6 million + \$3.2 million + \$1.71 million  
 less \$1.412 million reg liabilities less \$1.1 million  
 estimated NWC shortfall from deemed NWC)

41. Rockx was evaluating Hydro One's bid as follows:

|   |             |
|---|-------------|
| Amount paid for shares:                 | 13,600,000  |
| Recapitalization dividend paid to Town: | 3,200,000   |
| Repayment of shareholder loan:          | 1,710,000   |
| Less regulatory liabilities:            | (1,412,000) |
| Less net working capital adjustment:    | (1,100,000) |
| Total:                                  | 15,998,000  |

<sup>10</sup> Comparison of Proposals – Financial Considerations Spreadsheet, KPM0001914, cells D37-D40

42. Rockx testified that, although his spreadsheet deducts \$1.1 million as an “estimated NWC shortfall from deemed NWC,” this was in fact intended to reflect the difference in new debt (which would in turn be reflected in the recapitalization payment) between the Hydro One and PowerStream bids.<sup>11</sup> The idea is that although the bidders had assumed different amounts of new debt, the actual amount of possible new debt would be the same regardless of the successful bidder, since this was governed by the OEB. This adjustment was intended to equalize the assumptions of Hydro One and PowerStream.

43. While this adjustment is reasonable, Rockx conceded that the actual amount should have only been \$550,000, and not \$1.1 million, because Hydro One was proposing to split the recapitalization dividend between itself and the Town.<sup>12</sup>

44. Rockx did not actually include an adjustment for the net working capital shortfall on the Hydro One side. He eventually agreed that, if this adjustment was made to the Hydro One bid, only 50% of the adjustment would be made, because Hydro One and the Town would be splitting the recapitalization dividend.<sup>13</sup>

45. Having said this, there is no evidence that this adjustment *should* have been made from the Hydro One bid. Rockx agreed that there was no legal requirement for a utility to maintain actual working capital in the amount deemed by the OEB. In fact, Collus itself had historically operated with less actual working capital than the deemed amount.<sup>14</sup>

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<sup>11</sup> Evidence of John Rockx, June 17, 2019, p. 141-142

<sup>12</sup> Evidence of John Rockx, June 17, 2019, p. 142

<sup>13</sup> Evidence of John Rockx, June 17, 2019, p. 147-148

<sup>14</sup> Evidence of John Rockx, June 17, 2019, p. 148-152

46. Hydro One was provided with the same financial statements as PowerStream, and certainly had the sophistication to calculate Collus' rate base and working capital. It did not suggest that any such adjustment should be made.<sup>15</sup> In fact, Kristina Gaspar, then of Hydro One, testified that she had no idea what this adjustment referred to.<sup>16</sup>

47. Although Rockx wrote to Rick Stevens, of Hydro One, requesting clarification of certain aspect of the Hydro One bid (discussed in more detail below), he did not mention any working capital adjustment with Hydro One.<sup>17</sup> In fact, although Rockx testified that this was a topic he wanted to discuss with Hydro One, there is no evidence that he ever actually raised it with them.<sup>18</sup>

48. Given that Hydro One was content to distribute all of the new debt by way of dividend, it would be inappropriate to make the same net working capital adjustment proposed by PowerStream to the Hydro One bid.

49. Having said this, Rockx was correct in noting that, if PowerStream retained more capital in the corporation than Hydro One by reason of the net working capital adjustment, the corporation would retain a higher value.<sup>19</sup> One would have expected that this issue would be flagged for the STT and Council, to allow them to evaluate the different approaches, including (in particular) whether the Town preferred to have cash in hand to use for other purposes, or to leave it in the corporation.

50. Lastly, Rockx erred by deducting \$1,410,000 from the Hydro One bid for "net regulatory liabilities."

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<sup>15</sup> Evidence of John Rockx, June 17, 2019, p. 148-149, 153

<sup>16</sup> Evidence of Kristina Gaspar, May 29, 2019, p. 148

<sup>17</sup> Email from John Rockx to Rick Stevens dated November 27, 2011, CPS0002678

<sup>18</sup> Evidence of John Rockx, June 17, 2019, p. 153-154

<sup>19</sup> Evidence of John Rockx, June 17, 2019, p. 155-156

51. This issue arose because, on Hydro One's bid, it was assumed that the "[n]et balance of regulatory assets and liabilities will not have material value."<sup>20</sup> This in turn prompted Rockx' email to Stevens, which asked:

1. Hydro One has offered \$13.6 million for a 50% share / equity interest in Collus Power. Can you confirm / clarify whether this share offer anticipates the inclusion of all long-term liabilities (i.e. employee future benefits, the long-term net regulatory liability, Town note payable and Ontario Infrastructure debt) without any adjustment?
2. Hydro One has also indicated the following assumptions were built into its pricing structure – a 2011 rate base of \$17.9 million and an immaterial net balance of regulatory assets and liabilities. Can you comment on the quantification of, and the impact of, these assumptions on the proposed pricing structure<sup>21</sup>

52. Stevens provided a detailed response to Rockx' questions:

Hydro One is pleased to respond to your request for clarification as follows:

1) The \$13.6 million proposed price for 50% of the shares of Collus Power assumes the following:

- Recapitalization of Collus Power to 60/40 debt/equity, which would result in an estimated \$8.1 million of new debt
- Repayment of the \$1.7 million promissory note from the Town
- Dividend to shareholders of approximately \$6.4 million (\$3.2 million to each of the Town and Hydro One)

Based on the proposed price (\$13.6 million), recapitalization and promissory note repayment (\$1.7 million) and dividend (\$3.2 million), the Town would receive total cash proceeds of approximately \$18.5 million.

The proposal includes the assumption of the estimated pro rata share of assets and liabilities, based in part on the detail provided in the 2010 audited financial statements. The proposal includes the following long-term liabilities:

- Employee future benefits
- Net regulatory liability

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<sup>20</sup> Letter from Laura Formusa to Dean Muncaster, November 16, 2011, CJI0007005, p. 3

<sup>21</sup> Email from John Rockx to Rick Stevens, November 27, 2011, CPS0002678

- Ontario infrastructure debt of \$2.7 million as at Dec. 31, 2011, alternatively this debt could be refinanced with third party debt as part of the overall recapitalization
- 2) The proposal is based on a variety of factors and assumptions including, but not limited to, estimates for rate base and assets and liabilities (including regulatory assets and liabilities) on closing, etc. based on the review of due diligence materials received to date by Hydro One and its advisors, including Collus Power's 2010 Financial Statements. Changes in any of these variables, assumptions or estimates may impact the proposed price positively or negatively.

We hope these responses adequately clarify our response. We would be pleased to elaborate further on any matter contained in our proposal and clarification.<sup>22</sup>

53. This response makes it clear that Hydro One had taken into account the existing regulatory liabilities, and that there would be no deduction from the purchase price for them. This was confirmed by Gaspar, who testified that there should be no such deduction.<sup>23</sup>

54. Rockx agreed that, if Hydro One had in fact taken into account the pre-existing regulatory liabilities (as stated by Stevens, and confirmed by Gaspar), then there should not have been a \$1.4 million deduction.<sup>24</sup>

55. A proper evaluation of Hydro One's bid, correcting Rockx' errors, is:

|   |            |
|---|------------|
| Amount paid for shares:   | 13,600,000 |
| Recapitalization dividend paid to Town:                                 | 3,200,000  |
| Repayment of shareholder loan:  | 1,710,000  |
| Less adjustment to equalize recapitalization dividend with PowerStream: | (550,000)  |
| Less regulatory liabilities:  | 0          |
| Less net working capital adjustment:                                    | 0          |

<sup>22</sup> Rick Stevens email to John Rockx, copy to Ed Houghton, November 29, 2011, CJI0007011

<sup>23</sup> Evidence of Kristina Gaspar, May 29, 2019, p. 155-157

<sup>24</sup> Evidence of John Rockx, June 17, 2019, p. 169

|        |            |
|--------|------------|
| Total: | 17,960,000 |
|--------|------------|

56. Rockx had suggested to Houghton that he provide Hydro One with his summary of their offer to ensure that they agreed with these adjustments. Had he done so, he presumably would have uncovered the errors in his analysis. Amazingly, Houghton instructed Rockx **not** to follow up with Hydro One.<sup>25</sup>

57. Although Rockx' analysis suggested that the Hydro One bid was \$988,000 higher than the PowerStream bid, Hydro One actually offered \$3,850,000 more than PowerStream. This difference – nearly \$3 million – was obviously material and may well have impacted the Town's decision.

***C. Information Provided to Council***

58. As noted above, the STT relied upon KPMG's inaccurate information in evaluating the bids. The information provided to Council was even worse, as it was inaccurate, incomplete and misleading.

59. The only occasion when Council was provided with information regarding all four bids was the December 5, 2011 meeting.<sup>26</sup> The only information provided was contained in the following slide:<sup>27</sup>



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<sup>25</sup> FD1, para. 421

<sup>26</sup> Evidence of Kevin Lloyd, June 28, 2019, p. 55-56

<sup>27</sup> Evidence of Kevin Lloyd, June 28, 2019, p. 56



### Proposal Evaluations:

| Business Issue                          | Horizon   | Hydro One   | PowerStream  | Veridian   |
|---|---|---|--|--|
| Binding/Non-Binding                     | Non-Binding   | Non-Binding   | Non-Binding  | Non-Binding  |
| Shares                                  | 50%   | 50% or less   | 50%  | 50%  |
| Unassumed Liabilities                   | unconfirmed   | unconfirmed   | confirmed  | unconfirmed  |
| Recapitalization                        | 60%/40% Debt to Equity<br>\$2.65 M to Town<br>\$2.65 M to Horizon | 60%/40% Debt to Equity<br>\$3.2 M to Town<br>\$3.2 M to Hydro One | 60%/40% Debt to Equity<br>\$5.3 M to Town<br>\$0.0 to PowerStream  | 60%/40% Debt to Equity<br>\$2.65 M to Town<br>\$2.65 M to Veridian |
| Promissory Note                         | \$1.71 M payout   | \$1.71 M payout   | \$1.71 M payout<br>Town's option                                   | \$1.71 M payout  |
| Governance                              | 50% Town<br>50% Horizon<br>Majority Independent                   | 20% Town<br>20% Hydro One<br>60% Independent                      | 50% Town<br>50% PowerStream<br>Majority Independent<br>2 Co-Chairs | 50% Town<br>50% Veridian<br>100% Independent                       |
| <b>Total cash consideration to Town</b> | <b>\$11.86 million in cash</b>                                    | <b>\$15.998 million in cash</b>                                   | <b>\$15.010 million in cash</b>                                    | <b>\$10.86 million in cash</b>                                     |

60. As described above, this simultaneously overstates the PowerStream bid and understates the Hydro One bid. Although this slide suggests a difference of \$988,000 between the two bids, the Hydro One bid was actually \$3,850,000 higher than PowerStream's. This information was never provided to Council.

61. Moreover, it does not appear that anyone explained to Council that the recapitalization dividend, unlike the share price, was subject to significant adjustment at closing based upon the actual financial position of the corporation.

62. This last point is important. Since the amount that the Town would receive for the shares was fixed in each of the bids, it was important that Council understand the breakdown of bids, so that they could evaluate the relative financial risk associated with each.

63. This information was never provided. Indeed, Kevin Lloyd, called at the request of Houghton for the purpose of confirming that Council understood the bids, testified that he

understood that PowerStream was offering \$8 million for the Collus shares by subtracting \$5.3 million and \$1.71 million from the total amount PowerStream was reportedly offering.<sup>28</sup>

64. Importantly, it appears that Council was never told that Hydro One had offered \$13.6 million, rather than \$8 million, for the Town’s shares of Collus.<sup>29</sup> Lloyd testified that he did not think this mattered because Council was “looking at total figures” – relying, in particular, on the assumption that there was only a \$900,000 difference between the bids.<sup>30</sup> Of course, those total figures were wrong, as explained in detail above.

65. Actual recapitalization dividends were significantly lower than estimated by either bidder as a result of the financial position of Collus at closing. This had a much more significant impact to the PowerStream transaction than to that proposed by Hydro One. This is evident by looking at the actual amounts received by the Town.

66. As a result of the transaction with PowerStream, the Town received:

|                                   |                         |
|-----------------------------------|-------------------------|
| Cash for shares from PowerStream: | 8,000,000 <sup>31</sup> |
| Recapitalization dividends:       | 4,598,389 <sup>32</sup> |
| Repayment of promissory note:     | 1,710,170 <sup>33</sup> |
| Total:                            | 14,308,559              |

67. Assuming that the same amount of recapitalization funding would have been available had Hydro One been the successful bidder, and assuming that Hydro One elected to maintain the same

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<sup>28</sup> Evidence of Kevin Lloyd, June 28, 2019, p. 56-57

<sup>29</sup> Evidence of Kevin Lloyd, June 28, 2019, p. 58-59

<sup>30</sup> Evidence of Kevin Lloyd, June 28, 2019, p. 59-60

<sup>31</sup> FD1, para. 640 (excluding bank charges)

<sup>32</sup> FD1, para. 646

<sup>33</sup> FD1, para. 655

level of working capital as PowerStream (despite their different approaches described above), the Town would have received significantly more revenue:

|                                   |            |
|-----------------------------------|------------|
| Cash for shares from Hydro One:   | 13,600,000 |
| Recapitalization dividends (50%): | 2,299,195  |
| Repayment of promissory note:     | 1,710,170  |
| Total:                            | 17,609,365 |

68. Had the Town selected Hydro One as a strategic partner, it would have received at least \$3,300,806 in additional revenue from this transaction. Assuming Hydro One decided to maintain Collus' net working capital at historical levels, as suggested by its bid and the evidence of Gaspar, this amount would have been even higher.

69. Council should have been told that the different bids contained different levels of financial risk, and that the guaranteed amount of revenue from the Hydro One bid was more than \$5 million higher than the PowerStream bid. It was not.

70. Similarly, while Council was advised that the total revenue from this transaction would come from different sources, it does not appear that anyone ever explained to Council that both the recapitalization dividend and repayment of the promissory note were available to it regardless of whether it elected to proceed with any transaction. Indeed, the staff report recommending this transaction simply stated that the Town would receive “cash and other considerations valued at approximately \$15M”.<sup>34</sup>

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<sup>34</sup> Staff Report CAO 2012-01 dated January 23, 2012, ALE0001644, p. 4

71. Since directing Collus either to repay the promissory note or take on additional debt to issue a recapitalization dividend would devalue the corporation by the amounts paid to the Town, those aspects of the transaction are essentially neutral for the Town. The true net benefit of this transaction was the money paid by the successful bidder for the shares.

72. Kim Wingrove, Chief Administrative Officer for the Town from September 2009 - April, 2012, conceded in cross-examination that not only was this never explained to Council, but that the material which was provided to Council – including the staff report which she drafted – were misleading. She testified that, although this was “absolutely” critical information for Council to decide whether or not it should approve the sale, Council was not provided with this information.<sup>35</sup>

## **II. Failure to Understand Conflict of Interest Obligations**

### **A. *Legal Aspects of Conflicts of Interest***

73. Mayor Cooper, Councillor Chadwick and others seemed to have thought that the *MCIA* provided an exhaustive description of conduct which amounted to a conflict of interest, assuming that as long as they complied with the *MCIA*, there could be no suggestion of impropriety. In its negotiations with Bonwick, PowerStream focused on the *MCIA* as well.

74. The Mayor and Council had obligations beyond the legislation. Each member of Council swore or affirmed a declaration of office in which they were required to solemnly promise and declare that:

1. I will truly, faithfully and impartially exercise this office to the best of my knowledge and ability.

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<sup>35</sup> Evidence of Kimberly Wingrove, May 17, 2019, p. 343-346

2. I have not received and will not receive any payment or reward, or promise thereof, for the exercise of this office in a biased, corrupt or in any other improper manner.<sup>36</sup>

75. Members of Council were also bound to comply with the Code of Ethics for Member of Council (“the Code”) which required that:

They are also expected to carry out their duties in a fair, impartial, transparent, and professional manner.<sup>37</sup>

76. The Code also required members of Council to protect confidentiality. They were bound to refrain from using confidential information to the benefit of others. The Code provided that:

In their decision making process, Members of Council are sometimes privy to information which may be confidential or controversial such as, but not limited to “In Camera” meetings. It is imperative that they:

- Not use confidential information for their personal advantage,
- Not use confidential information to cause detriment or benefit to others,
- Respect the status of confidential (personnel, legal, property acquisition) information until the matter ceases to be confidential as determined by Council,
- Understand that they enjoy the same access rights to municipal information as any other member of the community, unless it is specifically relevant to a matter before the Council and
- Only release confidential information according to the provisions of the Municipal Freedom of Information and Protection of Individual Privacy Act.<sup>38</sup>

77. Members of Council were also bound by the common law. In the Mississauga Judicial Inquiry, Commissioner Cunningham reviewed the leading cases, many of them longstanding authority, in the course of his initial ruling on conflict of interest:

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<sup>36</sup> Declaration of Office, TOC0555939

<sup>37</sup> Code of Ethics, December 6, 2010, TOC0534828

<sup>38</sup> Code of Ethics, December 6, 2010, TOC0534828

As long ago as 1904, in *L'Abbe v. Blind River (Village)* 1904 Carswell ONT. 87, (DIV.Ct.), Boyd J., writing for the Divisional Court, stated at paragraph 11:

The High Court of Parliament was not only a legislative but a judicial body. It combined legislative capacity and judicial power; and it would seem that the analogy of cases as to judges and magistrates strongly applies to the fiduciary conduct of municipal councillors. The member of a Council stands as trustee for the local community, and he is not so to vote or deal as to gain or appear to gain private advantage out of matters over which he, as one of the Council, has supervision for the benefit of the public. The councillor should not be able to invoke the political or legislative character of his act to secure immunity from control, if the taint of personal interest sufficiently appears therein.

The important words I take from that paragraph are “deal”, “gain”, and “or “appear to gain”. Members of City Council entrusted by those to elect them to act in the public interest. Optics are important. In other words, members of the municipal council must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility. Suffice to say that members of Council (**and staff**) are not to use their office to promote private interests, whether their own or those of relatives or friends. They must be unbiased in the exercise of their duties. That is not only the common law, but the common sense standard by which the conduct of municipal representatives ought to be judged. [*Emphasis added*]<sup>39</sup>

78. Commissioner Cunningham emphasized that in evaluating allegations of conflict of interest or impropriety “it must always be an objective test: what should a reasonable person have done in similar circumstances?”<sup>40</sup> This standard applies equally to Councillors but also to officials.

79. In his final report, Commissioner Cunningham emphasized that he was saying nothing new in his description of conflicts of interest. Indeed, it had been recognized by previous commissions of inquiry, including the municipal inquiry conducted by Commissioner Denise Bellamy into

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<sup>39</sup> *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure, Infrastructure* (2011), The Honourable J. Douglas Cunningham, Commissioner (“*Mississauga Judicial Inquiry Report*”), Brief of Authorities of the Town of Collingwood (“Town BOA”), **Tab 1**, Appendix J, p. 8-9

<sup>40</sup> *Mississauga Judicial Inquiry Report*, Town BOA, **Tab 1**, Appendix J, p.10

computer leasing within the City of Toronto.<sup>41</sup> Further, Commissioner W.D. Parker, when acting as Commissioner in the Stevens Inquiry, used the following definition to describe conflicts of interest, which might be real or apparent:

A **real** conflict of interest has three prerequisites:

- (1) The existence of private interest;
- (2) That is known to the public office holder;
- (3) It has a nexus with his or her public duties and responsibilities that is sufficient to influence the exercise of those duties and responsibilities.<sup>42</sup>

80. Commissioner Cunningham endorsed this definition. He added that:

An **apparent** conflict of interest arises when a reasonably well informed person could reasonably conclude, as a result of the surrounding circumstances, that the public official must have known about the connection of his or her involvement with the matter of private interest.<sup>43</sup>

81. When viewed with these definitions in mind, a number of the activities of Mayor Cooper in relation to Bonwick are troubling. She continued to receive advice from Bonwick throughout the RFP period, notwithstanding his consulting role for PowerStream.

82. Ian Chadwick, then a Town Councillor, performed work for Compensio at the direction of Bonwick while the RFP was underway. Chadwick knew that this work was being supplied to PowerStream, and the payment for it came indirectly from PowerStream. Chadwick voted to approve PowerStream as the successful proponent in the RFP in January 2012 at a time when he was owed money for his Compensio/PowerStream work and when he was actively seeking further

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<sup>41</sup> *Mississauga Judicial Inquiry Report*, Town BOA, **Tab 1**, p. 148; *Toronto Computer Leasing Inquiry Report Volume 2: Good Government* (2005), The Honourable Madam Justice Denise E. Bellamy, Commissioner, Town BOA, **Tab 2**, p. 38-43

<sup>42</sup> *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens* (1987), The Honourable W.D. Parker, Commissioner, Town BOA, **Tab 3**, p. 25

<sup>43</sup> *Mississauga Judicial Inquiry Report*, Town BOA, **Tab 1**, p. 148

work from PowerStream. In doing so, Chadwick acted in a real conflict of interest. His involvement is discussed in further detail below.

83. Some of the activities of Houghton amount to clear conflicts of interest. Houghton was offered a financial stake in ISSI. He actively promoted the solar vent project to his employer, Collus, without disclosing any prospective or actual financial interest available to him. He and his spouse received \$18,000.00 from Bonwick in close proximity to Bonwick's receipt of approximately twice that amount from ISSI. Houghton also promoted the solar vent project to PowerStream and indeed as a member of the STT regarding PowerStream's enthusiasm to work with Collus in the project as a serious "litmus test" in the RFP evaluation.

84. Even if Houghton did not have an interest in ISSI, he acknowledged in his evidence that he was repeatedly offered a stake in the company. A reasonable observer would conclude that this might influence Houghton's attitude about the solar vent initiative. Whether Houghton received payment in relation to his involvement with ISSI or not, the continued offer of a substantial piece of the company amounts to a real conflict of interest.

85. Houghton emphasized in his evidence that everything he did in relation to the RFP was motivated by what was best for Collingwood. Bonwick gave similar testimony. While it is clear that both have made considerable efforts on behalf of the citizens of Collingwood over the years, similar submissions have been made in other proceedings, notably the Mississauga Inquiry. Commissioner Cunningham accepted that the Mayor in that instance may have been motivated by the public interest and that "does not end the conflict of interest analysis, nor does it take into



account questions surrounding apparent conflict.” In the face of a clear conflict of interest “it is no answer for the Mayor to say this was done for the benefit of the City of Mississauga.”<sup>44</sup>

**B. The Ian Chadwick Example**

**(i) Background**

86. Ian Chadwick was a member of Town Council for three consecutive terms between 2003 and 2014.<sup>45</sup> During his final term (2010 to 2014), Councillor Chadwick also worked for Paul Bonwick’s company, Compenso.

87. Chadwick repeatedly testified that he did not believe his work for Bonwick created a conflict of interest in relation to his involvement in the Collus RFP as a Town Councillor.

88. However, there is no dispute that:

- (a) Chadwick invoiced Bonwick at a rate of \$700 per month for work he did in August, September, October, November and December of 2011;<sup>46</sup>
- (b) Due to his ongoing work for Bonwick, Councillor Chadwick declared a pecuniary interest and recused himself from a portion of a December 5, 2011 Council Meeting relating to the Collus RFP;<sup>47</sup>
- (c) Despite declaring a pecuniary interest at the December meeting, Chadwick attended and participated in two Council Meetings relating to the Collus RFP the

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<sup>44</sup> *Mississauga Judicial Inquiry Report, Tab 1*, p. 153-154

<sup>45</sup> Evidence of Ian Chadwick, May 3, 2019, p. 6

<sup>46</sup> Invoice from Ian Chadwick dated August 12, 2011 CJI0000704; Invoice from Ian Chadwick dated September 2, 2011, CJI0000729; Invoice from Ian Chadwick dated October 7, 2011, CJI0000724; Email exchange between Paul Bonwick and Ian Chadwick dated October 28, 2011, CJI0000607; Invoice from Ian Chadwick dated October 28, 2011, CJI0000725; Invoice from Ian Chadwick dated November 25, 2011, CJI0000721; Invoice from Ian Chadwick dated December 30, 2011, CJI0000090.0004

<sup>47</sup> Minutes from December 5, 2011 Council Meeting, TOC0517646

following month. At one of those meetings, Chadwick voted to enact a by-law authorizing the 50% share sale of Collus to PowerStream;<sup>48</sup>

- (d) At the time of this vote, Chadwick was owed money in relation to his work for Bonwick on behalf of PowerStream, and was actively trying to solicit more work from Bonwick;<sup>49</sup>
- (e) Following the January vote, Chadwick resumed working for Bonwick at a rate of \$700 per month in February of 2012;<sup>50</sup> and,
- (f) Chadwick continued to regularly work for Bonwick until April 2014.<sup>51</sup>

89. Chadwick was wearing two hats with respect to his involvement in the Collus RFP. In his role as Town Councillor, he was receiving updates and information about the RFP process and was exercising voting power on behalf of the Town. At the same time, he was being paid to do work that he believed was being prepared for the benefit of one of the RFP bidders.

90. Councillor Chadwick's belief that this situation did not create a conflict of interest was misinformed and incorrect.

91. As set out below, this Inquiry should find that Councillor Chadwick was in a conflict of interest with respect to his involvement with the Collus RFP and should have recused himself from

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<sup>48</sup> Minutes from January 16, 2012 Council Meeting, CJI0009079; Minutes from January 23, 2012 Council Meeting, CJI0008080

<sup>49</sup> Email from Ian Chadwick to Paul Bonwick dated December 30, 2011, CJI0000090; Email from Ian Chadwick to Paul Bonwick dated January 4, 2012, CJI0000119; Email exchange between Paul Bonwick and Ian Chadwick dated January 23, 2012, CJI0000576

<sup>50</sup> Email exchange between Ian Chadwick and Paul Bonwick dated February 5, 2012, CJI0000236

<sup>51</sup> Email from Ian Chadwick to Paul Bonwick dated April 25, 2014, CJI0000081

any and all Council Meetings, discussions and votes regarding the Collus RFP from August of 2011 through to the close of the transaction in July of 2012.

**(ii) The Nature of Councillor Chadwick's Work for Paul Bonwick**

92. In March of 2011, Chadwick agreed to do some work for Bonwick. Chadwick described the work as helping to “create and present a workshop for First Nations Chiefs and the staff in New Brunswick on a media relations...”.<sup>52</sup>

93. Later, in August of 2011, Chadwick accepted additional work from Bonwick. Chadwick described this work as “look[ing] at publicly accessible news stories, editorials, blogs, social media ... as to what was being said about the energy sector”.<sup>53</sup>

94. After scanning the internet, Chadwick would attach any relevant online links to a brief covering email addressed to Bonwick once per week.<sup>54</sup> No summaries or analysis of the articles was provided. Chadwick testified that it took him between four and seven hours per week to put together the news clippings.<sup>55</sup>

95. He was paid \$700 per month for this service.<sup>56</sup>

96. Chadwick understood that this work was being done to keep Bonwick's clients, PowerStream and Blackstone Energy, informed about changes in the energy industry.<sup>57</sup> Chadwick

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<sup>52</sup> Evidence of Ian Chadwick, May 1, 2019, p. 148

<sup>53</sup> Evidence of Ian Chadwick, May 1, 2019, p. 148

<sup>54</sup> Evidence of Ian Chadwick, May 3, 2019, p. 47

<sup>55</sup> Evidence of Ian Chadwick, May 1, 2019, p. 151-152

<sup>56</sup> Evidence of Ian Chadwick, May 3, 2019, p. 101

<sup>57</sup> Evidence of Ian Chadwick, May 1, 2019, p. 150-151

understood that Bonwick was doing consulting and public relations work for PowerStream and Blackstone Energy.<sup>58</sup>

**(iii) The Timing of Councillor Chadwick's Work for Paul Bonwick**

97. Councillor Chadwick began providing the news clipping service to Bonwick in the summer of 2011, approximately 3 months after he became aware of the contemplated sale of some, or all, of Collus at a Council Meeting.<sup>59</sup>

98. On August 31, 2011 Compenso sent invoice 731 to PowerStream. The invoice included a \$2,000 charge for blog and media monitoring for July and August of 2011 at a rate of \$1,000 per month. Beside the charge was the note "to be discussed".<sup>60</sup>

99. A second version of the invoice contained handwritten notes from Glicksman.<sup>61</sup> The handwriting, as transcribed in FD1, states:<sup>62</sup>

|  |  |
|--|--|
| 1. I suggest we're not comfortable with it                             | Ian Chadwick<br>does contract work for him<br>journalist by profession   |
| 2. Use this service until the RFP (Oct 5)                              | sits on Collingwood Town Council<br>Views himself as a sounding board on Council   |
| 3. Continue to employ him creates a conflict [ <i>illegible word</i> ] | he sold his UPS store [ <i>illegible word</i> ]<br>reputation rests on council of being negative on the M&A opportunity<br>Eric to recommend to him to keep a pulse of the region<br>This would put him in a conflict position |

<sup>58</sup> Evidence of Ian Chadwick, May 1, 2019, p. 155-156

<sup>59</sup> Evidence of Ian Chadwick, May 1, 2019, p. 139-141

<sup>60</sup> Invoice from Compenso Communications Inc. dated September 1, 2011, ALE0000259

<sup>61</sup> Affidavit of John Glicksman, sworn June 3, 2019 ("Glicksman Affidavit"), para 15

<sup>62</sup> Invoice from Compenso Communications Inc. dated September 1, 2011 with annotations, ALE0000270; FD1, para 262

100. Glicksman's evidence was that he told Bonwick that PowerStream was not comfortable paying for the blog and media monitoring services because there were conflict of interest concerns and the work was outside of the scope of Bonwick's retainer.<sup>63</sup> Glicksman stated that:

... I felt that PowerStream should not be paying for services provided by Mr. Chadwick, who served as a councillor for a municipality with whom PowerStream might soon interact in the context of an RFP. I felt that PowerStream paying for Mr. Chadwick's services would raise conflict of interest issues.<sup>64</sup>

101. Bonwick testified that, although he remembered speaking to Glicksman about the invoice, he did not remember speaking with Glicksman about the conflict of interest concerns.<sup>65</sup>

102. Chadwick denied that the information in this handwritten note was brought to his attention.<sup>66</sup> Bonwick echoed this evidence.<sup>67</sup>

103. Bonwick testified that, following this discussion, he no longer provided Councillor Chadwick's work product to PowerStream, but did not tell Chadwick this.<sup>68</sup>

104. After providing the news clipping service to Bonwick in August and September of 2011, Chadwick attended a Council Meeting on October 3, 2011 where an update was provided to Council regarding the Collus RFP timeline.<sup>69</sup>

105. There is no dispute that, by this time, Chadwick was aware that PowerStream was one of the clients that he was preparing news clippings for.

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<sup>63</sup> Glicksman Affidavit, paras 15-17

<sup>64</sup> Glicksman Affidavit, para 16

<sup>65</sup> Evidence of Paul Bonwick, June 13, 2019, p. 151-155

<sup>66</sup> Evidence of Ian Chadwick, May 3, 2019, p. 113

<sup>67</sup> Evidence of Paul Bonwick, June 13, 2019, p. 156-157

<sup>68</sup> Evidence of Paul Bonwick, June 13, 2019, p. 156-157

<sup>69</sup> Evidence of Ian Chadwick, May 1, 2019, p. 160-162; Strategic Partnership Update to Council Presentation dated October 3, 2011, ALE0005133.0003

106. There is also no dispute that, by this time, Chadwick was aware that PowerStream was a “fairly aggressive” and “outgoing” company in the Local Distribution Company (“LDC”) industry. Chadwick also realized that, due to his work for Bonwick, he would probably have to “stand aside from the table” in the future. However, Chadwick did not consider recusing himself from the October 3, 2011 meeting.<sup>70</sup>

107. Councillor Chadwick continued working for Bonwick throughout October, November and December of 2011.<sup>71</sup>

108. On December 5, 2011 Chadwick attended a Council Meeting which included an *in camera* discussion regarding the Collus RFP. Due to his ongoing work for Bonwick, Councillor Chadwick recused himself from the portion of the meeting dealing with the Collus RFP.

109. The Minutes of the meeting indicated that Chadwick “declared a pecuniary interest...as he provides consulting services for electricity sector clients.” The Minutes also indicated that Councillor Chadwick would not be participating in the *in camera* discussion until it was “known whether his client has submitted an RFP for the COLLUS Partnership discussion.”<sup>72</sup>

110. Chadwick testified that he did not know that PowerStream (referred to as “his client” in the December 5, 2011 Minutes) had submitted a bid at the time of the December 5, 2011 meeting.<sup>73</sup> He testified that he “didn’t think to ask”.<sup>74</sup>

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<sup>70</sup> Evidence of Ian Chadwick, May 1, 2019, p.162-163

<sup>71</sup> Invoice from Ian Chadwick dated October 7, 2011, CJI0000724; Invoice from Ian Chadwick dated November 25, 2011, CJI0000721; Invoice from Ian Chadwick dated December 30, 2011, CJI0000090.0004

<sup>72</sup> Minutes from December 5, 2011 Council Meeting, TOC0517646

<sup>73</sup> Evidence of Ian Chadwick, May 1, 2019, p. 176-177

<sup>74</sup> Evidence of Ian Chadwick, May 1, 2019, p. 177-178

111. On December 30, 2011 approximately three and half weeks after declaring a pecuniary interest, Chadwick sent Bonwick an email expressing an interest in doing more work for him in 2012. The email stated, in part:

Here's the invoice for December, too. Thanks for the work. It was much appreciated. Hope I can do more work with you in 2012.

I will have something for you about social media in January, too. Have you considered making a presentation at AMO in Ottawa, this August?<sup>75</sup>

112. Councillor Chadwick then followed-up with Bonwick on January 4, 2012 again asking for more work:

Didn't get any response from you. Just wanted to know if you got the last files I sent. Any other work I could help with?<sup>76</sup>

113. In December of 2011 and January of 2012, Chadwick's only sources of income were the money he was receiving from Bonwick and his council salary (which was approximately \$18,000 a year).<sup>77</sup>

114. Despite having previously declared a pecuniary interest at the December 5, 2011 meeting, Chadwick attended a council meeting on January 16, 2012 in which Council received a negotiation update from Aird & Berlis with respect to the Collus strategic partnership.

115. Councillor Chadwick did not recuse himself from the portion of the meeting pertaining to the Collus RFP. His explanation for this was that, on his reading of the *MCIA*, he no longer had a

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<sup>75</sup> Email from Ian Chadwick to Paul Bonwick dated December 30, 2011, CJI0000090

<sup>76</sup> Email from Ian Chadwick to Paul Bonwick dated January 4, 2012, CJI0000119

<sup>77</sup> Evidence of Ian Chadwick, May 1, 2019, p. 183

direct or indirect pecuniary interest because he was “no longer working for anybody who had any sort of interest”.<sup>78</sup>

116. Chadwick’s reasoning seems to be that, although he worked for Bonwick from August to December of 2011, and again from February 2012 to April 2014, he did not work for Bonwick for the month of January 2012 (although he was still owed money for his work at that time and was actively seeking further work). He did not seek any advice to help him determine whether he was in a conflict of interest while he was still owed money in January of 2012.<sup>79</sup>

117. Approximately one week later, on January 23, 2012, Chadwick attended another council meeting during which the Collus RFP was discussed. The meeting started at 5:00 p.m.<sup>80</sup>

118. Seven minutes before the meeting was scheduled to begin, Chadwick sent an email to Bonwick saying “I’m at council right now. Can we chat tomorrow? Have a 10:30 meeting, then a 6:30 pm too.”<sup>81</sup> Presumably, this was in response to an effort by Bonwick to contact Chadwick prior to the meeting.

119. At 5:11 p.m., Bonwick responded saying “Okay.. I was going to ask if you could speak to Industry trend and leading the way. You likely know more about the industry than others at table.”<sup>82</sup> Bonwick testified that, by this time, he was aware that Chadwick had previously declared a pecuniary interest at the December 5, 2011 Council Meeting.<sup>83</sup>

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<sup>78</sup> Evidence of Ian Chadwick, May 1, 2019, p. 184-185

<sup>79</sup> Evidence of Ian Chadwick, May 1, 2019, p. 186, 196-199

<sup>80</sup> Minutes from January 23, 2012 Council Meeting, CJI0008080

<sup>81</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23, 2012, CJI0000576

<sup>82</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23, 2012, CJI0000576

<sup>83</sup> Evidence of Paul Bonwick, June 13, 2019, p. 204



120. At approximately 5:49 p.m., Councillor Chadwick made the following statement at the council meeting:

Thank you, Your Worship, back last year when this was first brought up to us it was about the time the provincial election was being announced at that time I was tracking the political wins finding out the different political parties would be saying about Ontario's energy situation on a number of different levels one of the things that came up from every single party was every party wanted to consolidate the energy source-services in the province they each had a different number in a different direction it was very clear that there was going to be some sort of consolidation no matter who won within the next few years and that would involve reducing the number of LDCs in the province to a considerably smaller number and at that point it looked fairly prudent to anybody who was tracking this, there was going to be legislation that would force the situation. It made sense for us to be looking for strategic partners before we were put in the position of having to take one that way we would be able to get a better partner and a better situation. I'm pleased to see this process went through this way we found a partner that is able to work with us rather than having one dictated to us by the province and one that will help us in the future growth for this community.<sup>84</sup>

121. Chadwick's statement addressed both of the issues Bonwick asked him to raise. However, Chadwick testified that he did not recall if he received Bonwick's email before making this statement but denied that Bonwick's email would have impacted him even if he had received it.<sup>85</sup>

122. Similarly, Chadwick also testified that the prospect of obtaining additional work from PowerStream was not something he considered when deciding whether to speak or what to say at the January 23, 2012 meeting.<sup>86</sup>

123. All council members, including Chadwick, voted in favour of the proposed sale.<sup>87</sup>

124. In his testimony, Chadwick described the vote on January 23, 2012 as a vote to "approve a Council decision that had already been made". He explained that, if the vote had been to approve

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<sup>84</sup> Transcribed notes from January 23, 2012 Council Meeting, CJI0009241, p. 11

<sup>85</sup> Evidence of Ian Chadwick, May 1, 2019, p. 189

<sup>86</sup> Evidence of Ian Chadwick, May 1, 2019, p. 190-191

<sup>87</sup> Minutes from January 23, 2012 Council Meeting, CJI0008080

the sale specifically, he would have declared a conflict of interest, but did not do so as he felt this was “a different kind of vote”.<sup>88</sup>

125. In the Minutes from January 23, 2012, the vote is described as follows:

**THAT By-law 2012-011**, being a by-law to authorize the entering into and execution of a Share Purchase Agreement respecting the sale of the shares of the Town of Collingwood (the "Town") in Collingwood Utility Services Corp. ("CUS") to PowerStream Inc., a Shareholders Agreement in respect of CUS and related matters.<sup>89</sup>

126. On the evening of January 23, 2012, after the vote authorizing the sale to PowerStream, Chadwick emailed Bonwick and said:

Still want to chat this week? Would like to drop by and pick up the final cheque, too. Been a lean month for me, income wise.<sup>90</sup>

127. Bonwick responded that night saying:

Yes we should meet ... would like to discuss growth strategy as well. They are interest in expansion that requires monitoring. Tomorrow afternoon works for my office<sup>91</sup>

128. A meeting was set up between Bonwick and Councillor Chadwick for January 25, 2012.

129. On January 28, 2012 Chadwick followed up with Bonwick and asked “How did your meeting with PowerStream go? Are they interested in further work?”<sup>92</sup>

130. Bonwick replied:

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<sup>88</sup> Evidence of Ian Chadwick, May 1, 2019, p. 193-194

<sup>89</sup> Minutes from January 23, 2012 Council Meeting, CJI0008080

<sup>90</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23-28, 2012, CJI0000580

<sup>91</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23-28, 2012, CJI0000580

<sup>92</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23-28, 2012, CJI0000580

Yes...they want me to present a six month plan including monitoring from Provincial government. Please keep going until we chat. Are you going to rally tomorrow?<sup>93</sup>

131. When it was put to Chadwick that the statement “please keep going” suggested that Bonwick believed that Chadwick had been doing work throughout the intervening period, Chadwick responded “I can’t speak for Mr. Bonwick, but I certainly sent him a final invoice and he gave me a final cheque for it, so.”<sup>94</sup>

132. Chadwick testified that, if he had still been doing work for PowerStream through Compenso in the month of January 2012, he would have declared a conflict of interest.<sup>95</sup>

133. Councillor Chadwick resumed providing news clipping services for Paul Bonwick in February 2012, the month following the vote.<sup>96</sup>

134. More than one year later, in March of 2013, Councillor Chadwick emailed Bonwick and asked him to remove his name from the Compenso website. Bonwick confirmed that he would do so.<sup>97</sup> At this time, Chadwick was still providing the news clipping service to Paul Bonwick.<sup>98</sup>

135. When asked about this email exchange, Chadwick explained that, at the time, there had been a considerable amount of attention on local blogs and social media about his relationship with Paul Bonwick, which he described as “abusive and nasty”. Chadwick had therefore asked Bonwick to take his name down but only the link had been removed, leaving his contact

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<sup>93</sup> Email exchange between Paul Bonwick and Ian Chadwick dated January 23-28, 2012, CJI0000580

<sup>94</sup> Evidence of Ian Chadwick, May 1, 2019, p. 222

<sup>95</sup> Evidence of Ian Chadwick, May 1, 2019, p. 228

<sup>96</sup> Email exchange between Ian Chadwick and Paul Bonwick dated February 5, 2012, CJI0000236; Evidence of Ian Chadwick, May 1, 2019, p. 200-201

<sup>97</sup> Email exchange between Paul Bonwick and Ian Chadwick dated March 1-2, 2013, CJI0000695

<sup>98</sup> Invoice from Ian Chadwick dated March 29, 2013, CJI0000717

information still available to anyone who went to the URL. He therefore sent Bonwick an email asking for the page to be taken down as opposed to just the link.<sup>99</sup>

136. Chadwick continued to work for Bonwick until April 2014 when Bonwick made the decision to stop the work.<sup>100</sup>

**(iv) Ian Chadwick’s Evidence Regarding Conflicts of Interest**

137. In his evidence, Chadwick acknowledged that, as a Town Councillor, he had a duty to truly, faithfully and impartially exercise his duties.<sup>101</sup>

138. When asked whether he believed that his obligation to identify and appropriately address conflicts of interest began and ended with the text of the *MCIA*, Chadwick responded affirmatively:

Yes. The law is the law. The law supersedes everything else, supersedes everything else, supersedes Code of Conduct, Code of Ethics. It is the law and that's the law of the land. It is not up to Council to determine or any individual councillor to determine whether or not there are other shades of that law.<sup>102</sup>

139. In cross-examination, Chadwick initially agreed that the Code he signed as a Councillor created additional legal obligations on him but then added that he did not believe that the Code could “supersede” the *MCIA*.<sup>103</sup>

140. Later, Chadwick testified that it was hard for him to say whether the Code created legal obligations because he was “not a lawyer”. However, he accepted that the Code created moral and ethical obligations.<sup>104</sup>

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<sup>99</sup> Evidence of Ian Chadwick, May 1, 2019, p. 202-203

<sup>100</sup> Evidence of Ian Chadwick, May 1, 2019, p. 201, 203

<sup>101</sup> Evidence of Ian Chadwick, May 1, 2019, p. 215

<sup>102</sup> Evidence of Ian Chadwick, May 1, 2019, p. 195-196 see also p. 212

<sup>103</sup> Evidence of Ian Chadwick, May 1, 2019, p. 219-220

141. Chadwick maintained that he did not believe he was in a conflict of interest with respect to his involvement in the Collus transaction as “I had no personal gain, I was not employed by anybody”.<sup>105</sup>

142. Chadwick testified that he relied on section 2 of the *MCIA*, in concluding that he did not have a conflict of interest because the wording in section 2(b) connoted a present tense with respect to employment.<sup>106</sup>

143. However, this section, read in its entirety, states:

**Indirect pecuniary interest**

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body, that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.5.0. 1990, c. M.50, s. 2.<sup>107</sup>

144. Chadwick also testified that he believed an exception to the *MCIA* applied because:

...there are exceptions for – for areas where there’s a – general interest in such a thing as a utility, and I believe that those applied.<sup>108</sup>

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<sup>104</sup> Evidence of Ian Chadwick, May 1, 2019, p. 221

<sup>105</sup> Evidence of Ian Chadwick, May 1, 2019, p. 220

<sup>106</sup> Evidence of Ian Chadwick, May 1, 2019, p. 194-195, 213-214

<sup>107</sup> *Municipal Conflict of Interest Act*, RSO 1990, c M.50, ALE0050204

<sup>108</sup> Evidence of Ian Chadwick, May 1, 2019, p. 194-195; see also p. 212-213

145. In response to a line of questioning about his failure to obtain advice with respect to his relationship with PowerStream, Chadwick stated:

In general, having a person on Town staff who could provide advice about the Municipal Conflict of Interest Act is always beneficial, but to be clear -- to clarify your point, I never dealt with PowerStream. I never dealt directly with PowerStream. I dealt with Mr. Bonwick, whose client was PowerStream.

...And my interest would only be indirect, not direct.<sup>109</sup>

146. Even at the conclusion of his testimony, Chadwick demonstrated little insight into the issues with his conduct. He maintained that the process undertaken in relation to the sale was “correct” and “appropriate” and confirmed that he was comfortable with it.<sup>110</sup>

147. Chadwick’s evidence demonstrates a fundamental misunderstanding about the source and contents of his obligation, as a Town Councillor, to identify and address conflicts of interest.

148. Between August of 2011 and April of 2014, Chadwick had a clear financial interest in the Collus RFP as a result of his work for Bonwick. He should have recused himself from any and all Council activities relating to the Collus RFP during this time. Councillor Chadwick’s participation in the January 23, 2012 vote is particularly concerning. He should not have voted.

### **III. PowerStream was Given an Improper Advantage Through Leaked Confidential Information**

#### **A. *Houghton and Bonwick Engage with PowerStream***

149. In November 2010, Houghton began his efforts to see whether there would be interest in the market to purchase Collus. On December 3, 2010, he met with Bentz at the Sunset Grill to discuss in an exploratory way whether PowerStream would be interested in participating in some

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<sup>109</sup> Evidence of Ian Chadwick, May 1, 2019, p. 198

<sup>110</sup> Evidence of Ian Chadwick, May 3, 2019, p. 29-30

kind of process to purchase the utility. He came away from the meeting favourably impressed by Bentz and his attitude towards a disposition of the Collingwood utility.<sup>111</sup>

150. According to Houghton, he and Bonwick had, in mid-2010, been having discussions concerning the LDC industry. Bonwick was keen to discuss “the change in the electricity industry”. He asked who, in the opinion of Houghton, was “the sort of mover and shaker, the one that’s making things happen, the one that’s been aggregating more often than anybody”.<sup>112</sup>

151. Houghton immediately provided the name of Brian Bentz. According to Houghton, he implored Bonwick that – whatever dealings he had with Bentz – they should not involve Collingwood or its utility. Bonwick said that he understood.<sup>113</sup>

152. Sometime in January, Houghton told Bonwick about the possibility of the sale of the Collingwood utility. Bonwick wrote to Bentz on January 10, 2011:

Over the course of the last few years and more specifically the last few weeks, I have followed with interest the situation presently being experienced by Collingwood Council, more specifically their financial situation and the need for a significant capital injection. As I reviewed options that might help Council address this need, I remembered that during the time I spent in elected office, the potential sale of Collingwood’s Capital Utility Services had been raised with mixed emotion. It is a result of that possibility I would like to meet and discuss PowerStream’s level of interest in pursuing such an option. Municipal Council is in the process of beginning their budget considerations and as a result, timing is potentially a critical factor. As a result, I am requesting an opportunity to meet and discuss the situation should PowerStream have a potential interest.<sup>114</sup>

153. Certainly Bonwick was aware of the potential for a sale of Collus by this date, notwithstanding that the matter would not be raised with Council until June 27, 2011.

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<sup>111</sup> Evidence of Ed Houghton, June 4, 2019, p. 246-251

<sup>112</sup> Evidence of Ed Houghton, June 7, 2019, p. 84-86

<sup>113</sup> Evidence of Ed Houghton, June 10, 2019, p. 106

<sup>114</sup> Email from Paul Bonwick to Ed Houghton dated January 10, 2011, TOC0036839

154. This email did not reach Bentz because of an error in the email address. On January 10, 2011, Bonwick asked Houghton for a copy of Bentz's correct email address.<sup>115</sup>

155. In his email, Bonwick attached the bounce-back message which he had received from the previous attempt to contact Bentz; naturally, his original message remained attached. This permitted Houghton to see just what Bonwick intended to propose to Bentz. He reviewed the message briefly.

156. According to Houghton, he was concerned when he saw that Bonwick sought to sell his services in relation to the sale of Collus. He had an "emotional allergy" to issues like conflicts of interest.<sup>116</sup> He contacted Bonwick and expressed his concern. Again, Bonwick said that he understood Houghton's concern.<sup>117</sup>

157. Bonwick shared a copy of the proposal he intended to send to Bentz with Houghton.<sup>118</sup>

158. Houghton explained that he reviewed Bonwick's proposal in order to ensure that whatever services Bonwick and his company proposed to sell to PowerStream in no way related to Collingwood. His review was cursory. He wanted to ensure that the Town appeared nowhere in the proposal. Having reviewed the proposal quickly, he was satisfied that Bonwick was not pitching Compenso's services in relation to Collingwood. He did not see the new covering email which Bonwick attached to the Compenso proposal.<sup>119</sup>

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<sup>115</sup> Email exchange between Ed Houghton and Paul Bonwick dated January 1, 2011 ,TOC0036843

<sup>116</sup> Evidence of Ed Houghton, June 7, 2019, p. 122; Evidence of Ed Houghton, June 10, 2019, p. 128

<sup>117</sup> Evidence of Ed Houghton, June 10, 2019, p. 113-114

<sup>118</sup> Email from Paul Bonwick to Ed Houghton dated January 19, 2011, TOC0037577; Compenso Communications Inc., Communications & Strategic Acquisitions Proposal for PowerStream dated January 18, 2011, TOC0037578

<sup>119</sup> Evidence of Ed Houghton, June 12, 2019, p. 80-82



159. Bonwick met Bentz on January 12, 2011 at the PowerStream office in Vaughan. They discussed the present situation in Collingwood and the financial challenge for the Town. Bentz discussed PowerStream's need to have a good understanding of what council was thinking as any transaction approached.<sup>120</sup> Bentz testified that PowerStream had in the past encountered situations where a municipality gave serious consideration to the sale of this utility only to have council withdraw at a late stage. He wanted to avoid that situation in Collingwood because, among other reasons, PowerStream had to devote considerable staff and other resources to the preparation of RFPs.

160. Bonwick mentioned that his sister was the Mayor. He did not think this amounted to a potential conflict of interest but Bentz saw it as a potential issue. Bentz cautioned that there could be no agreement without the involvement of the PowerStream Audit and Finance Committee.<sup>121</sup>

161. Bentz contacted Houghton to learn more about Bonwick as the original proposal had come out of the blue. Bentz testified that during their call, he explained that PowerStream required assistance with respect to the deliberations of Council concerning the sale of the utility. Houghton thought that Bonwick would be able to assist in responding to an RFP, if an RFP proceeded. Notwithstanding his "emotional allergy," Houghton generally endorsed Bonwick as "a good guy" who could help PowerStream.<sup>122</sup>

162. Houghton offered a different recollection of the telephone call, in which he simply spoke about Bonwick's attributes as an elected politician and his effectiveness as a consultant. According

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<sup>120</sup> Evidence of Brian Bentz, May 31, 2019, p. 18-20

<sup>121</sup> Evidence of Brian Bentz, May 31, 2019, p. 19-20

<sup>122</sup> Evidence of Brian Bentz, May 31, 2019, p. 20-22

to Houghton, there was no discussion about Bonwick in the context of a Collus RFP.<sup>123</sup> This evidence cannot be accepted. It makes little sense that Bentz, considering entering a significant consulting agreement relating to the sale of the Collingwood utility, would not raise that subject in his discussion with Houghton about the suitability of Bonwick.

163. Bonwick submitted his proposal to Bentz by email on January 20, 2011. Bentz remained concerned about a potential conflict of interest given the sibling relationship between Bonwick and the Mayor. He had asked whether or not Bonwick could provide a legal opinion that supported the idea that no legal conflict existed by reason of his relationship with Mayor Cooper. In the email which accompanied his proposal, Bonwick wrote:

Hi Brian. Apologies for taking a few extra days to get back to you with a proposal. I wanted to be perfectly clear on my understanding of the conflict guidelines contained in the Municipal Act. The Town's solicitor provided a legal opinion clarifying that there is no breach of conflict of interest guidelines in this situation.<sup>124</sup>

164. Bonwick's response was false. No lawyer was ever involved, and no legal opinion was ever obtained.

165. Bonwick knew that the Deputy Mayor, Rick Lloyd, had encountered difficulties with his brother bidding on contracts in the past. According to Rick Lloyd, the subject had recently come up during a discussion in a bar. There was some banter about the situation and the predicament Rick Lloyd might be in. Lloyd took it upon himself to write to the clerk, Sara Almas, to ask about whether or not his brother would encounter a conflict bidding on Collingwood business.<sup>125</sup>

166. Shortly after the bar discussion, Lloyd emailed Almas:

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<sup>123</sup> Evidence of Ed Houghton, June 7, 2019, p. 103-10; Evidence of Ed Houghton, June 10, 2019, p. 120-123

<sup>124</sup> Email from Paul Bonwick to Brian Bentz dated January 20, 2011, ALE0000059

<sup>125</sup> Evidence of Rick Lloyd, May 2, 2019, p. 101-103

Hi Sara. My brother is considering again Biding on Town Work but was worried about putting me into conflict. I'm not involved in his business, and I told them I will not have a Conflict (Pecuniary) interest as I'm not involved in his business and the Conflict of Interest Act clearly states that I must declare an interest if its is a Spouse, Sons or Daughters and Parents. I am sending this to you only to ask if this is your understanding as well, and I do realize you cannot give advice in this matter.

167. Almas replied,

Deputy Mayor Lloyd, you are correct in that the Municipal Conflict of Interest Act, clearly identifies that a member is NOT deemed to be in conflict if it's the interest (direct or indirect) of a sibling.<sup>126</sup>

168. Rick Lloyd provided this response to Bonwick shortly afterwards. Bonwick sent only Almas' reply to Bentz.<sup>127</sup>

169. In his testimony, Bentz expressed concern that Bonwick had not supplied Almas with all of the relevant information in order to come to a view about the matter. He explained that he was not simply concerned about the conflict question which might arise in the *MCIA* but also broader questions of the perception of conflict by "third parties in the community".<sup>128</sup>

170. On January 19, 2011, PowerStream determined that it would have three members of its board who were themselves mayors of municipalities meet with Bonwick to discuss the potential conflict of interest and other aspects of the Compensio retainer.<sup>129</sup> The mayors were Mayor Lehman of Barrie, Mayor Bevilacqua of Vaughan and Mayor Scarpitti of Markham ("the Mayors").

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<sup>126</sup> Email exchange between Paul Bonwick and Rick Lloyd dated January 17-21, 2011, TOC0038001

<sup>127</sup> Email exchange between Paul Bonwick and Brian Bentz dated January 17-29, 2011, ALE0000069

<sup>128</sup> Evidence of Brian Bentz, May 31, 2019, p. 44-47

<sup>129</sup> Evidence of Brian Bentz, May 31, 2019, p. 28

171. In February, Bonwick corresponded with Bentz in relation to the provision of references. He supplied letters from Daryl Dorchak of Amazingly Green, and from an unidentified previous client. He also provided a 2005 letter from Houghton, explaining that providing a current letter would put Houghton in a conflict situation.<sup>130</sup>

172. “In hindsight”, Bentz acknowledges it is strange that Bonwick was prepared to have detailed discussions with Houghton about the proposal that he was making to PowerStream, but he felt he couldn't ask Houghton for a current reference letter due to a conflict of interest.<sup>131</sup>

173. On April 13, 2011, Bentz, Bonwick and the Mayors met. The Mayors were unanimous in expressing the view that full disclosure to the Town had to be made concerning PowerStream's retainer of Bonwick.<sup>132</sup>

174. Bentz testified that PowerStream wanted Bonwick to disclose to the “appropriate people” at the time. Bentz was vague in his evidence as to who these appropriate people might be.<sup>133</sup>

175. The question of identifying the group within the Town to whom disclosure would be made was postponed for further consideration during the period of contract negotiation with Bonwick.

176. Following the meeting, on April 20, 2011, Bonwick emailed Bentz and proposed that once agreement had been reached as to terms of an agreement between PowerStream and Compenso, a meeting be arranged with the following:

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<sup>130</sup> Email from Paul Bonwick to Brian Bentz dated February 13, 2011, ALE0000073

<sup>131</sup> Evidence of Brian Bentz, May 31, 2019, p. 64

<sup>132</sup> Evidence of Brian Bentz, May 31, 2019, p. 81-83

<sup>133</sup> Evidence of Brian Bentz, May 31, 2019, p. 84-85

- (a) Ed Houghton;
- (b) Dean Muncaster;
- (c) Kim Wingrove;
- (d) Mayor Sandra Cooper;
- (e) Deputy Mayor Rick Lloyd
- (f) Clerk Sara Almas.<sup>134</sup>

177. Significantly, Bonwick did not propose that disclosure be made to Council as a whole, but rather simply to his sister and his close family friend Rick Lloyd, as well as to employees of the Town. Bentz passed on Bonwick's memo to Mayor Scarpitti.<sup>135</sup>

178. Following execution of the Consulting Agreement between Compenso and Collus, discussed below, Bonwick prepared a letter for signature by Mayor Cooper. The letter contained the following passage:

...should you choose to engage Compenso in some manner of service, it should be based entirely on the merits of the proposal and completely unrelated to his relationship with me and that of my office.<sup>136</sup>

179. Bentz thought it was important that Bonwick make appropriate disclosure of his proposed activities to the Town. Accordingly, the consultation agreement which PowerStream sent to Bonwick on May 31, 2011 required Bonwick to represent and warrant that he had disclosed the scope of his services and his retainer both to Mayor Cooper and to the Town Clerk. Bonwick wrote back with "one small correction". While he had informed Mayor Cooper, and had drafted the letter which she was to send to PowerStream, he had not "formally engaged" with the Clerk or anyone

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<sup>134</sup> Email from Paul Bonwick to Brian Bentz with attached Memo from Paul Bonwick to Brian Bentz, April 20, 2011, ALE0000103; Memorandum from Paul Bonwick dated April 20, 2011, ALE0000104

<sup>135</sup> Email exchange between Brian Bentz and Frank Scarpitti dated April 21, 2011, ALE0000112

<sup>136</sup> Undated letter from Sandra Cooper to Brian Bentz, ALE0000136

else at the Town. This naturally drew a response from PowerStream. Glicksman wrote to Bonwick saying that there had been an “apparent misunderstanding” about his disclosure to Mayor Cooper and Almas.<sup>137</sup>

180. Almas agreed to meet with Bonwick. At the meeting, he advised that it was his intention to work with PowerStream in relation to the CHEC companies in the region; Collingwood was a member of the group. Almas understood that he was going to be providing “PR activities and community outreach”.<sup>138</sup> Bonwick asked whether Almas would provide an e-mail which might be sent to Bentz, and she declined to do so.<sup>139</sup> Almas did not think that Bonwick had disclosed the full scope of his services or his retainer agreement to her in the course of their meeting.<sup>140</sup>

181. Nevertheless, Bonwick wrote to Glicksman and Bentz on June 3, 2011 and advised that “the Clerk has been thoroughly briefed by me.”<sup>141</sup> This was simply not the case.

***B. Involvement of Bonwick and the Direction Provided to Collus***

182. Bonwick had been the chief author of the Mayor’s inaugural address, in which she emphasized the theme from her campaign; that it was necessary for the Town of Collingwood to get its fiscal house in order. She decided that Collus and its related companies would also have a role to play in this austerity initiative. With that in mind, she asked Houghton to provide her with a draft of a letter which would be sent to the Chairman of the Collus Board, Dean Muncaster. Muncaster was a highly respected Canadian businessman who had served as the Chair and CEO of

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<sup>137</sup> Email exchange between John Glicksman and Paul Bonwick dated May 26-31, 2011, ALE000159; Email exchange between John Glicksman and Paul Bonwick dated May 26 to June 1, 2011, ALE0000163; FD1, paras. 190-191

<sup>138</sup> Evidence of Sara Almas, April 15, 2019, p. 46-47

<sup>139</sup> Evidence of Sara Almas, April 15, 2019, p. 39-40

<sup>140</sup> Evidence of Sara Almas, April 16, 2019, p. 177

<sup>141</sup> Email from Paul Bonwick to John Glicksman, Victoria Scoffield, Brian Bentz, and Sandra DiPonio dated June 3, 2011, ALE0000178

Canadian Tire Corporation.<sup>142</sup> He retired to the Collingwood area, and devoted a considerable amount of time to the chairmanship of Collus.

183. Houghton prepared a draft of the letter. In the course of his draft, the Mayor was to say:

My specific request would be for Mr. Houghton and Mr. Muncaster to undertake an valuation of Collus and to look at the positives and negatives of selling the assets of Collus . I'm asking you to do this now where you can still be in control and take the lead because I firmly believe that during our budget deliberations this year or next that the suggestion will be made to sell Collus. When that occurs someone else will be in control.

I trust you and I know that you will take our municipality's best interest when doing this review. This request and your review must be kept in strictest confidence. I must also say that this is not a "done deal" that Collus will be sold. If after the review we are asked about selling Collus we can provide the details that suggest the contrary if that is the right thing.<sup>143</sup> *[Emphasis added]*

184. What happened after the preparation of his draft was a matter of contest in the evidence of a number of the witnesses. Houghton maintained that the Mayor asked him to show the draft to Bonwick. He testified that this was sensible because Bonwick was a close personal advisor to the Mayor, and had been extremely important in her campaign.<sup>144</sup>

185. Bonwick's evidence on this point largely coincided with the evidence provided by Houghton. During the campaign, he had urged Cooper to emphasize the need to cut costs.

186. Mayor Cooper, on the other hand, provided markedly different testimony. While she recalled having given Houghton direction to draft the letter, she denied having asked Houghton to provide the draft to Bonwick, and was unable to explain why that had happened.<sup>145</sup>

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<sup>142</sup> Mr. Muncaster died suddenly in March 2012.

<sup>143</sup> Email exchange between Ed Houghton and Paul Bonwick dated January 30, 2011, TOC0038100

<sup>144</sup> Evidence of Ed Houghton, June 4, 2019, p. 260-261

<sup>145</sup> Evidence of Sandra Cooper, April 25, 2019, p. 50-51

187. Although Bonwick did not formally conclude the consulting agreement with PowerStream until June 7, 2011 he began sharing confidential information with the company in January.

188. On January 20, 2011, Bonwick emailed Bentz. He said incorrectly that the “Town’s solicitor provided a legal opinion to the Deputy Mayor clarifying that there is no breech [sic] of conflict of interest guidelines in this situation.” He went on to describe the detailed discussions which he had had with Houghton “in the context of involvement and timing”. He said that the proposal should be structured so that it was not focussed on Collingwood alone, but also on “a much broader level” so as to eliminate “the potential accusation that our business relationship is somewhat predicated on family contacts”. He is clear, however, that its focus remained on Collingwood: “this approach would in no way detract from LDC opportunity presently being discussed ...”.<sup>146</sup>

189. On January 31st, Mayor Cooper sent her letter of direction to Muncaster and Houghton. The letter remained substantially in the form as prepared by Houghton, with minor revisions; it removed a line in the Houghton draft which had cautioned that, following the valuation which she directed be undertaken, the utility might not be sold; the Houghton draft had been clear that the Town was not absolutely committed to changing the status quo. Cooper’s recollection of the drafting process was somewhat vague, although she accepted that she had commissioned Houghton to write a draft.<sup>147</sup>

190. On January 30, 2011, the same evening that Houghton sent Bonwick the draft letter to be signed by Mayor Cooper, discussed in further detail below, he emailed him suggesting that they

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<sup>146</sup> Email from Paul Bonwick to Brian Bentz dated January 20, 2011, ALE0000059

<sup>147</sup> Evidence of Sandra Cooper, April 23, 2019, p. 119-121



chat. He emphasized “[i]t is so important that Rick does not know what I am doing.” Bonwick responded, “[n]o kidding .... that applies to absolutely everyone”.<sup>148</sup>

191. At the same time, Houghton remained interested in Bonwick’s progress with PowerStream, asking him on February 2, 2011 by email, “any word?”, to which Bonwick replied, “nothing yet”.<sup>149</sup>

192. Rick Lloyd offered an alternate explanation for the January 30, 2011 email exchange. He said that it had to do with changing the portrait of the immediate past Mayor, Chris Carrier, from a colour photograph to a black and white version, in keeping with the past practice.<sup>150</sup>

193. Houghton testified that his email to Bonwick suggesting they chat before the Collus Board meeting the next day was with respect to the changing of the portrait of Mayor Carrier’s colour photograph. Houghton testified he wanted to speak with Bonwick to see if he had a chance to speak with Mayor Cooper about the problems removing the photograph could cause. Despite the fact that Houghton had a relationship of direct contact with Mayor Cooper, and saw her “every other day, at least” at that point in time, he explained it would be easier for one of her advisors, Bonwick to address the issue of the photograph.<sup>151</sup>

194. This evidence should not be accepted. The timing is too coincidental. Moreover, when Houghton was asked if the suggestion to Bonwick that they chat prior to the Collus Board meeting the next day could have actually been in reference to the letter he drafted for Mayor Cooper in the

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<sup>148</sup> Email exchange between Paul Bonwick and Ed Houghton dated January 30, 2011, TOC0038108

<sup>149</sup> Email exchange between Paul Bonwick and Ed Houghton dated February 2, 2011, TOC0038291

<sup>150</sup> Evidence of Rick Lloyd, April 30, 2019, p. 193-198

<sup>151</sup> Evidence of Ed Houghton, June 10, 2019, p. 96, 144-146

email chain, despite testifying in detail that he was referring to the photograph controversy, Houghton was unable to determinatively rule out the possibility.<sup>152</sup>

195. Bonwick wrote to Bentz on February 1, 2011. He said that, “I had to initiate the beginning of the process we discussed.” He explained that given the schedule of Committee meetings, there would have been difficulties if the process was “not initiated this week ... as a result, the Chairperson and the Executive Director have now received direction to commence a valuation of the Utility.”<sup>153</sup> He went on to describe how the valuation was being sole-sourced.

196. Some at PowerStream had misgivings about hiring Bonwick for the Collingwood project. Dennis Nolan testified he was initially concerned whether there was a conflict, or the appearance of a conflict, because Bonwick was Mayor Cooper’s brother. Ultimately, Nolan was satisfied that disclosure of Bonwick’s involvement to the Mayor, Clerk, and later the Deputy Mayor, appropriately remedied the conflict of interest concerns as it exceeded what he viewed as the “contractual obligation”.<sup>154</sup>

197. Indeed, Bonwick was, from the time of his first contact with PowerStream, in an impossible conflict of interest. On the one hand, he was the Mayor’s most important political advisor, having counselled her during her election campaign, prior to her formal assumption of office, and in her inaugural speech. At the instance of Houghton, a senior official of the Town, he had crafted the proposal to begin the process to sell Collus, which all witnesses agreed was the Town’s most valuable asset. At the same time, he proposed taking on an important consulting role for PowerStream. The core of that retainer involved the gathering of intelligence from members of

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<sup>152</sup> Evidence of Ed Houghton, June 10, 2019, p. 146

<sup>153</sup> Email from Paul Bonwick to Brian Bentz dated February 1, 2011, ALE0000071

<sup>154</sup> Evidence of Dennis Nolan, May 28, 2019, p. 234-238

Council and public officials concerning any proposed Collus transaction. Bentz testified that it was very important that the company receive excellent intelligence as to what members of Council were thinking.<sup>155</sup> In this way, Bonwick was to promote PowerStream's interests.

198. Throughout the hearing, Bonwick repeatedly asked witnesses whether or not he had promoted the interests of the Town in his work on behalf of PowerStream. Several of the PowerStream witnesses answered that sometimes he had promoted municipal interests; indeed Nolan remarked that it was not always clear whose side Bonwick was on.<sup>156</sup> This evidence simply serves to underline how obvious the conflict of interest was.

199. Although this conflict of interest ought to have been apparent to Houghton, he testified that he was operating on the understanding that Bonwick was going to be making full disclosure.<sup>157</sup>

200. Bonwick continued to provide political advice to Mayor Cooper. In the wake of his discussions with PowerStream, he wrote to her on January 31, 2011, saying,

[...] You will need to be very clear with Department Heads on your expectations.

Same goes for COLLUS. It also sends a message through early in your term that your Council will provide direction.

When I spoke to you a few weeks ago about this type of direction, Ed thought his Board would be supportive of the request.<sup>158</sup>

201. Mayor Cooper's recollection of this email and the discussions around it was vague.<sup>159</sup>

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<sup>155</sup> Evidence of Brian Bentz, May 31, 2019, p. 111

<sup>156</sup> Evidence of Dennis Nolan, May 30, 2019, p. 314

<sup>157</sup> Evidence of Ed Houghton, June 7, 2019, p. 122-123

<sup>158</sup> Email from Paul Bonwick to Sandra Cooper dated January 31, 2011, TOC0038162

<sup>159</sup> Evidence of Sandra Cooper, April 23, 2019, p. 116-119

202. Bonwick could not recall sending the email; his evidence on this issue must be taken to be a reconstruction.<sup>160</sup> Similarly, Houghton did not recall the discussions with Bonwick, as reflected in Bonwick's January 31st email.<sup>161</sup>

203. In his evidence, Bonwick acknowledged that he had engaged in general discussions with the Mayor about the importance of Collus being included in any austerity discussions:

[T]here was no particular entity that should be left out of that consideration or that direction that she would be providing.<sup>162</sup>

**C. *Bonwick Provides PowerStream with Confidential Information***

204. Throughout the RFP process, PowerStream executives were frequently provided with confidential information that they knew, or ought to have known, they should not have received. Bentz, Glicksman, and Nolan admitted as much throughout the course of their testimony.

205. On September 14, 2011 Paul Bonwick sent Houghton a memorandum entitled "Powerstream competitive analysis", which addressed the presentations made by Hydro One and Veridian to the STT, and information of the impressions of each bidder. The memorandum was addressed to Brian Bentz, John Glicksman, Mark Henderson and Dennis Nolan.<sup>163</sup>

206. Although there is no evidence that Bonwick actually provided this memo to PowerStream, Bentz and Nolan both testified that Bonwick did convey at least some of the confidential information contained in the memo.<sup>164</sup>

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<sup>160</sup> Evidence of Paul Bonwick, June 12, 2019, p. 222

<sup>161</sup> Evidence of Ed Houghton, June 11, 2019, p. 8-9

<sup>162</sup> Evidence of Paul Bonwick, June 12, 2019, p. 224

<sup>163</sup> Email chain including Paul Bonwick and Ed Houghton, September 14-15, 2011, TOC0059012; Undated memorandum from Paul Bonwick, TOC0059013

<sup>164</sup> Evidence of Brian Bentz, May 31, 2019, p. 195-198, 286-287; Evidence of Dennis Nolan, May 30, 2019, p. 182-185

207. Bentz testified that PowerStream understood that the presentations made by bidders to the STT, and any discussions at that meeting, were intended to be kept confidential. He testified that it was his expectation that, if other bidders became aware that information was being leaked, they would report the leak to Collus.<sup>165</sup> PowerStream did not report such a leak.

208. Nolan testified if the ‘PowerStream competitive analysis’ memorandum had been conveyed to him, it “might have raised some concern” with respect to his view of Bonwick and his retainer with PowerStream, in particular, concern regarding “...how the information was obtained”.<sup>166</sup> Nolan further testified he would “assume that it... came from someone that had knowledge of... those meetings”, that “possibly” should not have disclosed the information to Bonwick.<sup>167</sup>

209. On September 20, 2011 Bonwick sent an e-mail to Glicksman, which was copied to Bentz, Nolan and Mark Henderson.<sup>168</sup> This email provided feedback about how PowerStream’s interview with the STT was received, and suggested strategies for how to use the STT’s views to PowerStream’s advantage. Bentz conceded this document contained information confidential to the bidders, and conceded in his testimony “that information should not have been conveyed.”<sup>169</sup> Glicksman also acknowledged that this information should not have been received by PowerStream, and that it was a breach of confidentiality.<sup>170</sup> Glicksman and Bentz both testified

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<sup>165</sup> Evidence of Brian Bentz, May 31, 2019, p. 193-194

<sup>166</sup> Evidence of Dennis Nolan, May 29, 2019, p.324

<sup>167</sup> Evidence of Dennis Nolan, May 29, 2019, p.325

<sup>168</sup> Email from Paul Bonwick to John Glicksman dated September 20, 2011, ALE0000412

<sup>169</sup> Evidence of Brian Bentz, May 31, 2019, p. 211, 287

<sup>170</sup> Evidence of John Glicksman, June 3, 2019, p. 250

that, in retrospect, they should have told Bonwick at that time that he should not send them that type of information.<sup>171</sup>

210. On November 6, 2011 Glicksman sent a memorandum to Bentz, Nolan, and Henderson.<sup>172</sup> The memorandum contained two possible approaches to making the offer to the Town of Collingwood, one of which includes a note purporting to be a suggestion by Paul Bonwick as to which presentation best “follows the approach (apparently) taken by KPMG.”<sup>173</sup> Bentz testified he thought Bonwick may have had information from KPMG on “how they presented their valuation”.<sup>174</sup> Bentz further testified that this information had not been made available to the bidders, but that “it would be helpful”.<sup>175</sup>

211. On November 28, 2011 Glicksman reported to the PowerStream team including information Bonwick had provided about the other bids:

Based on my discussion with Paul this evening I understand that others were more detailed with the type and costs of operational services they would offer Collus Hydro. I expect that we will get more details regarding this when Ed calls to formally invite us in.<sup>176</sup>

212. Bentz conceded PowerStream should not have had this information, and testified that he “would have concerns about” receiving this kind of information about other bidders’ responses.<sup>177</sup> He further conceded that there is an obvious strategic advantage to having that information.<sup>178</sup>

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<sup>171</sup> Evidence of John Glicksman, June 3, 2019, p. 250-252; Evidence of Brian Bentz, May 31, 2019, p. 214-215

<sup>172</sup> Email from John Glicksman to Brian Bentz et al. dated November 6, 2011, ALE0000820

<sup>173</sup> Undated memorandum from John Glicksman and Daniel Miller, ALE0000821

<sup>174</sup> Evidence of Brian Bentz, May 31, 2019, p. 229-230, 297

<sup>175</sup> Evidence of Brian Bentz, May 31, 2019, p. 229-230, 299

<sup>176</sup> Email exchange between John Glicksman and Mark Henderson dated November 28, 2011, ALE0001078

<sup>177</sup> Evidence of Brian Bentz, May 31, 2019, p. 238, 288-289

<sup>178</sup> Evidence of Brian Bentz, May 31, 2019, p. 291

213. Nolan testified that he understood Collus to be using Hydro One's bid as leverage to get PowerStream to increase their price at a meeting of December 1, 2011 through "an intimation that it was higher and -- and that [PowerStream] needed to up [their] bid."<sup>179</sup> Bentz testified he remembered "Dean Muncaster asking if we would consider increasing our bid to -- to \$8 million" at the December 1 meeting.<sup>180</sup>

214. On January 4, 2012 Scott Stroll sent Colin MacDonald of PowerStream an email attaching a STT document which included the financial details of the other bids. Glicksman forwarded the presentation to Bentz, writing:

We got it from Aird & Berlis when we like shouldn't have. It shown our ranking in detail along with other interesting points on our proposed transaction.<sup>181</sup>

215. Nolan testified Glicksman's assumption was that it was sent to PowerStream in error, and his opinion was that if it was not sent intentionally "someone should have called them" to let them know.<sup>182</sup> Bentz testified that the "information may be useful in negotiations...", and that "[t]he information should have been sent back".<sup>183</sup> He stated, "[w]e -- we should have returned the information, we didn't, and -- and yeah, in retrospect, we should have."<sup>184</sup> Glicksman testified "maybe we should have destroyed it, but we did not do anything with it."<sup>185</sup> Nolan was not aware of anyone from PowerStream contacting Stoll about whether or not the disclosure was

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<sup>179</sup> Evidence of Dennis Nolan, May 29, 2019, p. 321-322; Evidence of Dennis Nolan, May 30, 2019, p. 116

<sup>180</sup> Evidence of Brian Bentz, May 31, 2019, p. 240

<sup>181</sup> Email exchange between John Glicksman and Brian Bentz dated January 4, 2012, ALE0001307

<sup>182</sup> Evidence of Dennis Nolan, May 30, 2019, p. 125

<sup>183</sup> Evidence of Brian Bentz, May 31, 2019, p. 245

<sup>184</sup> Evidence of Brian Bentz, May 31, 2019, p. 247

<sup>185</sup> Evidence of John Glicksman, June 4, 2019, p. 22

intentional.<sup>186</sup> Bentz does not know if the information was deleted, or if the senders were ever notified of its receipt.<sup>187</sup>

216. Ultimately, despite all the red flags that confidential information was being provided, both Glicksman and Bentz testified there was no point where they ever directly asked Bonwick where he got his information from.<sup>188</sup> Bentz testified that he didn't take any steps to determine who Bonwick was getting information from once the RFP was issued.<sup>189</sup>

217. Bentz further testified that at some point in early 2012, after PowerStream was already selected for the bid, there were internal discussions surrounding a concern that Bonwick had been bringing confidential or proprietary information to PowerStream.<sup>190</sup> PowerStream knew that it was receiving confidential and propriety information. It also knew that this was in breach of the Town's confidentiality agreements with other bidders.<sup>191</sup>

218. These concerns prompted PowerStream to seek legal advice. This subject was not fully explored in cross-examination because PowerStream asserted that a number of its internal discussions were protected by solicitor-client privilege.

219. Despite PowerStream's serious concerns, it took no steps to alert the Town or STT of the leak of confidential or proprietary information.<sup>192</sup>

220. PowerStream's inside information gave it a real commercial advantage over the other bidders. This point was succinctly expressed by Neil Freeman, of Horizon, in response to a series

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<sup>186</sup> Evidence of Dennis Nolan, May 30, 2019, p. 123-124

<sup>187</sup> Evidence of Brian Bentz, May 31, 2019, p. 244-246

<sup>188</sup> Evidence of John Glicksman, June 4, 2019, p. 9; Evidence of Brian Bentz, May 31, 2019, p. 230-233

<sup>189</sup> Evidence of Brian Bentz, May 31, 2019, p. 230-233

<sup>190</sup> Evidence of Brian Bentz, May 31, 2019, p. 305-306

<sup>191</sup> Evidence of Dennis Nolan, May 30, 2019, p. 201-202

<sup>192</sup> Evidence of Brian Bentz, May 31, 2019, p. 305-307; Evidence of Dennis Nolan, May 30, 2019, p. 192, 193, 199



of questions posed by Houghton's counsel regarding the scoring of the responses. Houghton's counsel raised the fact that the PowerStream was ranked first by the STT, leading to the following exchange:

MR. FREDERICK CHENOWETH: Ms. Gaspar, it appears that Hydro One really appeared to be fourth in line in terms of the scoring on the nonfinancial aspects of the bid? I guess that's clearly one (1) of the substantial reasons why Hydro One was unsuccessful?

MS. KRISTINA GASPAR: I -- I have no idea why Hydro One was not successful. I wasn't privy to those discussions. I -- I see a series of numbers here on -- on a sheet, but I -- I have no knowledge as to what supports those.

MR. FREDERICK CHENOWETH: But it -- it appears clear that the final evaluation that was done put Hydro One fourth in line in the nonfinancial aspects of the bid?

MS. KRISTINA GASPAR: Two eighty-eight (288) is the lowest number on the sheet.

MR. FREDERICK CHENOWETH: Thank you. And Mr. Freeman, Horizon faired a little better, but not quite as well as PowerStream, correct?

MR. NEIL FREEMAN: I -- I guess I can't accept your premise, because you didn't give me a chance to answer to your previous question about Mr. Hull's comments. And to what Ms. Gaspar and the three (3) of us have been saying throughout, if this information were shared equally and everybody knew how to respond to the questions the way the vendor wanted to hear the answers, then the score -- these scores might have been different.

So to -- to -- for you to ask me to acknowledge that it got a low number in a -- in a framework where there's evidence now or appears to be evidence that PowerStream got the highest number, but it also had infi -- inside information, how to speak to the vendor, accepting all that, yeah, Horizon came in second, but -- but the -- the very fact that the person who came in first was -- had essentially coaching from someone about how to respond, it makes it difficult to -- to agree that -- that I should accept that, well, we -- we came in second, fair and square...<sup>193</sup>

221. Bonwick's actions in obtaining confidential information and using it to tailor PowerStream's bid to the preferences of the STT fundamentally skewed the RFP process. Had

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<sup>193</sup> Evidence of Neil Freeman, May 29, 2019, p. 199-200

Horizon and the other bidders been provided with access to the same inside information the scores may well have been different.<sup>194</sup>

222. Several witnesses testified that the purpose of the RFP was to encourage competition in order to get the best possible deal for the Town. For this to work, it is critical that all of the bidders be given the same information. PowerStream's unfair advantage allowed it to circumvent this process. As described above, the result was a significant loss of value for the Town.

**IV. PowerStream was Given an Improper Advantage Through the Solar Vent Initiative**

223. In February of 2011, Peter Budd was considering installing solar panels on his farmhouse in Grey County. A man named Tom Bushey came out to inspect the property. In the course of their discussions, Bushey asked Budd if he would look at a device which he had with him. He came back carrying a little solar panel, "the size of ... the Owen Sound phone book", attached to a fan with a shroud. Budd was intrigued by it, and fairly quickly became involved in business with Bushey.<sup>195</sup>

224. Budd had a long history with Collingwood as well as with Houghton. His former law firm, Power Budd, had been involved in the corporate organization of the Collingwood utility at the end of the 1990s. Budd had not done the corporate work himself, but had been the 'rain maker' who had attracted the work to his firm. Budd was an acknowledged expert in matters concerning the Ontario electrical market. He was appointed to sit on the Board of Directors of the Independent Market Operator following the reorganization of the Ontario electrical system. He sat on the IMO

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<sup>194</sup> Evidence of Neil Freeman, May 29, 2019, p. 200-201

<sup>195</sup> Evidence of Peter Budd, June 18, 2019, p. 122-123

representing Ontario consumers; Houghton had been appointed as a director to represent small electrical distributors.<sup>196</sup>

225. After Budd became involved formally in the solar vent business, he made contact with Houghton. Budd believed that the Collingwood utility and other LDCs would be interested in the device. Houghton was indeed interested in becoming involved in this project. Houghton thought that the device had tremendous potential. He mused that the solar vent could become the “blue box of the solar or renewable energy industry ...”<sup>197</sup>

226. Fairly shortly after he met Budd to view the solar unit, Houghton introduced Bonwick to the project. For his part, Bonwick was equally enthusiastic about the prospects for ISSI and the solar vent product. Bonwick met with Budd in at Houghton’s home.<sup>198</sup> Budd walked him through the features of the product using a model which was a cut-out from a typical residential roof.<sup>199</sup>

227. In his discussions with Houghton, Bonwick shared his view that the product had significant potential having regard to the passage by the Provincial Government of the *Green Energy Act*, and the conservation programs which it contemplated, as well as the direction in which municipal governments seem to be heading.<sup>200</sup>

228. Bonwick saw a significant market in warmer climates, and believed that the product could be marketed not only through LDC’s, but in “retail large box stores”, including Canadian Tire, Walmart, Lowes and other similar outlets.<sup>201</sup>

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<sup>196</sup> Evidence of Peter Budd, June 18, 2019, p. 120-124

<sup>197</sup> Evidence of Ed Houghton, June 11, 2019, p. 49

<sup>198</sup> Evidence of Paul Bonwick, June 13, 2019, p. 15

<sup>199</sup> Evidence of Paul Bonwick, June 13, 2019, p. 7

<sup>200</sup> Evidence of Paul Bonwick, June 13, 2019, p. 6-7

<sup>201</sup> Evidence of Paul Bonwick, June 13, 2019, p. 13

229. Having seen the product and met Budd, Bonwick set about trying to devise a structure for the ownership of ISSI.

**A. *Ownership of ISSI***

230. On May 24, 2011, Bonwick sent a draft memo to Houghton which described the ownership structure of ISSI. Bonwick requested that a copy of the memo be printed for another partner Peter Budd.<sup>202</sup>

231. The memo outlined a split of voting shares between Budd and the inventor, Bushey, with the non-voting shares being divided as follows<sup>203</sup>:

- (a) Bushey – 30%
- (b) Budd – 23.3%
- (c) Bonwick – 23.3%
- (d) Houghton – 23.3%

232. On June 9, 2011, Bonwick wrote to Houghton suggesting that he use a Gmail address to discuss the solar vent business. The Gmail address then could then be linked to Houghton's mobile device.<sup>204</sup> Houghton could not recall why he had agreed that the correspondence with Budd should be routed through his Gmail account.<sup>205</sup>

233. As described in detail below, ISSI sold solar vents to Collus and PowerStream. It shipped the solar vent units on two dates in September. The unit cost was \$155. It followed that ISSI had

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<sup>202</sup> Email from Paul Bonwick to Ed Houghton dated May 24, 2011, TOC0048017

<sup>203</sup> Email from Paul Bonwick to Ed Houghton dated May 24, 2011, TOC0048017; Memorandum from Paul Bonwick dated May 24, 2011, TOC0048018

<sup>204</sup> Email exchange between Paul Bonwick and Ed Houghton dated June 9, 2011, TOC0049530

<sup>205</sup> Evidence of Ed Houghton, June 11, 2019, p. 91-92

\$155,000 in revenue giving rise to gross profit of \$88,500. The ISSI statement indicated that the gross profit was to be shared on a basis slightly different than Bonwick's proposed distribution:<sup>206</sup>

- (a) 35% Nature's Power (a company owned by Bushey)
- (b) 35% Compenso Communications
- (c) 30% Budd Energy Inc.

234. Bonwick's share was \$35,001.75. These funds were deposited into Compenso's bank account on October 3, 2011.<sup>207</sup>

235. On October 6th, Bonwick paid Shirley Houghton \$19,350. He claims that this was largely for the rental of the Houghton's Florida property. This claim is discussed further below.

236. The discussions about remuneration arrangements within ISSI continued through the fall.

On September 21, 2011 Budd emailed Houghton and Bonwick, writing, in part:

Rather than us sit around discussing fees, insurance, rent, utilities, admin, allocations, etc., what would you both say about being paid a flat fee per unit reflecting your 35%? ... Please give this simple concept some advance thought. The bookkeeper, accountant and Tom [Bushey] raised this with me as a means to (1) see you both paid a set flat fee for each unit sold under the Market Agreement(s) for each jurisdiction entered, (2) keep admin simple, and (3) we absorb the operating costs as Tom and I are the only Class A shareholders.

237. Mr. Houghton forwarded this message to Shirley Houghton's Gmail account.<sup>208</sup>

238. Budd testified that this proposal took into account that ISSI might use a marketing company (which would be founded by Bonwick) to sell the product throughout Ontario and

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<sup>206</sup> Invoice from International Solar Solutions Inc. dated September 12, 2011, CJI0007644

<sup>207</sup> Invoice from Compenso Communications Inc. dated September 28, 2011, CJI0007645; Evidence of Paul Bonwick, June 13, 2019, p. 75-76

<sup>208</sup> Email from Ed Houghton to Shirley Houghton dated September 21, 2011, TOC0059599

elsewhere. The flat fee proposal assumed that a marketing company would take a considerable amount of responsibility away from ISSI and Bushey. Bonwick and Houghton were to be compensated accordingly. Budd said that he sent the email to Houghton as a matter of courtesy since Houghton had introduced Bonwick to Bushey and him. He said he assumed that the fees would all be paid to Bonwick, who was going to establish and operate the marketing company.<sup>209</sup>

239. When asked why he wrote “What would you both say about being paid a flat fee per unit reflecting your 35 percent”, he testified:

I actually would have been interested in hearing their views. That’s what I’m asking.<sup>210</sup>

240. If Houghton had told Bonwick and Budd that he would not accept any financial interest, this reasoning is odd. Budd emphasized in his evidence that the “flat fee” proposal was never finalized; and no marketing agreement was ever concluded. He agreed that the cash had been distributed to Compenso, and he simply did not know whether Bonwick had shared the cash with Houghton, although he did not believe that had happened.<sup>211</sup>

241. On November 3, 2011, Budd wrote again to Houghton. Budd said that his email was intended to be an accurate statement of where things stood at that time, and what he proposed going forward.<sup>212</sup> His email included the following:

But, before you both, the LDC marketers joined, the deal was 70/30 TB/PB on everything from sales, costs, mktg, etc.

Then, with Paul and Ed, with the inaugural LDC deal in sight, we established an amended sharing arrangement: 35/35/30 for TB/EH-PB/PB. That worked

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<sup>209</sup> Evidence of Peter Budd, June 18, 2019, p. 182-184

<sup>210</sup> Evidence of Peter Budd, June 18, 2019, p. 184

<sup>211</sup> Evidence of Peter Budd, June 18, 2019, p. 293

<sup>212</sup> Evidence of Peter Budd, June 19, 2019, p. 288-289

well. Tom agreed to it. Cash was fully distributed to Compenco and partially to PB/TB.<sup>213</sup>

242. The only reasonable interpretation of this email is that Budd believed that Bonwick and Houghton were sharing a 30% interest in ISSI. Bonwick testified that this was his understanding from the wording in Budd's email.<sup>214</sup> Houghton agreed that the email sounded like he had ownership.<sup>215</sup> In fact, Houghton forwarded this email to his wife, which prompted her to ask "are we in this business?"<sup>216</sup>

243. Although Houghton, Budd and Bonwick all deny that Houghton was involved in ISSI – presumably to save Houghton from the very serious consequences of acting in a clear breach of his fiduciary obligations to Collus – it is absolutely clear that Budd believed that Houghton was a participant. It is incredible to imagine that Budd could have been mistaken about the shareholders of his company.

244. The financial participation issue remained unresolved through 2011. On January 21, 2012, Budd sent an email to Houghton and Bonwick, copying Tom Bushey, discussing a possible way forward. His email included the following:

You may recall the suggestion that we gather the clan together in January in Collingwood to discuss the structural issues surrounding ISSI and the marketing successes and general company plans for 2012. We are looking at a midday meeting on Sunday afternoon, January 22<sup>nd</sup>, if that is possible. If not, then whenever you and Tom can get together works for me ...

I thought it might be helpful if I were to set out in advance what Tom and I are considering in respect of the above business and structure concepts. Tom will advise me if I have misunderstood his direction on the matters below.

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<sup>213</sup> Email from Ed Houghton to Shirley Houghton dated November 3, 2011, TOC0065379

<sup>214</sup> Evidence of Paul Bonwick, June 14, 2019, p. 101-108

<sup>215</sup> Evidence of Ed Houghton, June 7, 2019, p. 235-237

<sup>216</sup> Email from Ed Houghton to Shirley Houghton dated November 3, 2011, TOC0065379; Evidence of Shirley Houghton, June 14, 2019, p. 240

As you know, we attended at the offices of Howard Lerner to have him run hypothetical business models, now that we know our cost structures better. In précis form, I can advise of the following:

1. There will be a separate marketing company established, funded and owned presumably and exclusively by Ed and Paul (“EPCO”).
2. PB and AY (Alec Young) will continue to provide support services to EPCO, and are provided today, for example, in the Ontario LDC sales.
3. Notwithstanding 2. above, PB and TB’s income will derive exclusively from ISSI and not EPCO
- ....
6. Specific programs and costs relating to the produce sales may be the subject of a future Cost Sharing Agreement, but the plan is that each of ISSI and EPCO shall bear its own costs. [...]
7. All units will be sold by ISSI to EPCO at a predetermined price, which shall be adjusted to whatever makes sense in the market according to the decision of EPCO and ISSI...<sup>217</sup>

245. Bonwick responded to the email by saying,

I very much look forward to sitting down with everyone to cement relationship that will produce significant wealth for all involved.<sup>218</sup>

246. Budd acknowledged that the proposed discussion was to involve Bonwick, Bushey, Houghton and himself. It was proposed that the meeting take place at Houghton’s house.<sup>219</sup>

247. Bonwick could not remember whether the meeting actually occurred. Houghton said that the meeting did not take place. In his evidence-in-chief he testified as follows:

Q. Did you ever become involved in any such meeting either this Sunday or at a later date?

A. I’d met with Peter before for social things, but I’ve never met with him regarding this.<sup>220</sup>

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<sup>217</sup> Email exchange between Paul Bonwick, Peter Budd, and Ed Houghton dated January 21-22, 2012, CJI0011185

<sup>218</sup> Email exchange between Paul Bonwick, Peter Budd, and Ed Houghton dated January 21-22, 2012, CJI0011185

<sup>219</sup> Evidence of Peter Budd, June 18, 2019, p. 298-300

<sup>220</sup> Evidence of Ed Houghton, June 7, 2019, p. 243



248. Houghton did not agree that the email amounted to confirmation that the meeting happened. He testified,

I have a tendency again not to read all emails. I then read the emails. Once – I think it even says in my house or something.<sup>221</sup>

249. Houghton claims he told Budd and the others three times,

...I cannot, will not be involved, period. So this – this conversation never happened – or this – and – if it did, it certainly didn't happen with me or at my house – because it did not occur.<sup>222</sup>

250. Houghton said that he had only ever met Bushey once, at the solar event in Collingwood. He said that he had called off the meeting by telephone. He had assumed that the discussion was going to be about the solar vent project, but when he realized that once again there was to be discussion of his financial participation, “I was, like, stop the presses.”<sup>223</sup>

251. Bushey did not testify at the Inquiry. Instead, he filed an affidavit which was sworn on June 17, 2019. He said that,

I recall attending a meeting at Mr. Houghton's house at some point in the winter following the launch of the Collus and PowerStream pilot project. Mr. Budd, Mr. Bonwick and Mr. Houghton attended the meeting. ... I believe this is the meeting I attended at Mr. Houghton's home. It was the only time I was at the home.

I do not recall specifically what was discussed at the meeting [...].<sup>224</sup>

252. Budd testified that Bushey is a forthright and truthful man, “a very truthful human being”. While he had no recollection of the January 22, 2012 meeting, “I have no reason to believe

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<sup>221</sup> Evidence of Ed Houghton, June 12, 2019, p. 168

<sup>222</sup> Evidence of Ed Houghton, June 12, 2019, p. 168

<sup>223</sup> Evidence of Ed Houghton, June 12, 2019, p. 171

<sup>224</sup> Affidavit of Thomas Bushey, sworn June 17, 2019, paras. 5-6

otherwise if that's what Tom says.”<sup>225</sup> Because of the date of the delivery of Bushey's affidavit, Houghton could neither be examined nor cross-examined concerning its contents. Nevertheless, the preponderance of the evidence is that the meeting at Houghton's house took place as proposed on January 22, 2012, having regard to the following:

- (a) Bonwick could not recall whether the meeting took place;
- (b) Houghton made a blanket denial that the meeting ever happened, or that he had ever met Bushey, except at the solar launch event in Collingwood;
- (c) Budd simply could not remember whether the meeting happened;
- (d) Bushey recalled that he did have a meeting about ISSI at Houghton's house in the winter of 2012; and,
- (e) Budd vouched for Bushey as a forthright, truthful witness.

253. At all events, discussions among Bonwick, Budd and Houghton concerning the ownership of ISSI petered out after that. Budd testified that the proposed shareholders simply could not agree on the structure of the business, including the ownership structure.<sup>226</sup>

254. The group, or different subsets of it, continued to meet and discuss other things:

- (a) an Ontario Power Association Fund grant which was hoped to be obtained on behalf of ISSI;<sup>227</sup>

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<sup>225</sup> Evidence of Peter Budd, June 18, 2019, p. 301-303

<sup>226</sup> Evidence of Peter Budd, June 18, 2019, p. 297-298

<sup>227</sup> Email from Ryan Manchee to Paul Bonwick et al. dated March 29, 2012, TOC0133497

- (b) design issues concerning houses outside of Ontario, shipping delays, hurricane testing in southern States;<sup>228</sup>
- (c) proposed door-to-door sales initiatives for the solar vents and the responsibilities of Greenleaf (by then owned by Paul Bonwick) and Collus;<sup>229</sup> and,
- (d) the preliminary assessment by the Ontario Power Association of the ISSI grant application.<sup>230</sup>

255. Budd testified that after the Ontario Power Association turned down the ISSI grant proposal, he could recall no further involvement with Bonwick and Houghton.<sup>231</sup>

256. Houghton's evidence concerning his financial involvement (or lack of it) in ISSI and the solar vent initiative is confounding. It does not appear that the proposed partners (Bushey, Budd, Houghton, Bonwick) ever finalized their agreement. There is no signed document or even an exchange of emails memorializing an agreement. Budd testified that the parties ultimately could not agree on terms.<sup>232</sup> Moreover, Bushey and Bonwick did not get along.

257. At the same time, there are factors which point to Houghton having a financial arrangement:

- (a) the repeated emails to Houghton suggesting that he had an existing financial arrangement, as discussed, in particular Budd's description of the amended sharing

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<sup>228</sup> Email exchange between Ed Houghton and Ryan Manchew dated April 9-11, 2012 , TOC0140259

<sup>229</sup> Email from Ryan Manchew to Ed Houghton dated April 18, 2012, TOC0144045

<sup>230</sup> Email exchange between Ryan Manchew and Paul Bonwick et al. dated May 17, 2012, TOC0159526

<sup>231</sup> Evidence of Peter Budd, June 18, 2019, p. 306-309

<sup>232</sup> Evidence of Peter Budd, June 18, 2019, p. 231

arrangement in which Houghton and Bonwick split 35% of the revenue and “that worked well ... cash was fully distributed to Compenso”.

- (b) Houghton never wrote a single sentence in which he rejected any suggestion of a financial interest on his part;
- (c) Houghton maintains that he repeatedly said in conversation with Budd, Bonwick or both, that he could not have any financial interest in ISSI, having regard to his responsibilities at Collus. This evidence is questionable given his description of the final phone call in which he rejected the idea of a January 22, 2012 meeting. He clearly described finally saying, “stop the presses”; the meeting never took place. Bushey’s evidence suggests that it did take place, and, having regard to Budd’s description of Bushey, there is good reason to believe that it did;
- (d) Houghton was both interested in, and consulted about, a number of matters consistent with the role of a company owner. When Budd proposed hiring a person with political skills, Houghton indicated that he wanted to understand both sides before coming to a decision in the matter.<sup>233</sup> He was sent extensive materials about ISSI’s marketing plans and door-to-door campaigns; and,
- (e) There is good reason to believe that Bonwick paid Houghton his share of the proceeds from the sale of solar vents, disguised as rental payments.

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<sup>233</sup> Email exchange between Peter Budd and Ed Houghton dated December 1-5, 2011, CPS0010857\_00001

258. The evidence about Bonwick's impulsive rental of the Houghton home in Naples, Florida is troubling. His rental decision was made immediately after Compenso placed the proceeds (\$35,002) in its bank account.<sup>234</sup>

259. Bonwick explained that he owed Ms. Houghton \$1,350 for fees, and the cheque took that into account. The balance, or \$18,000, represented a payment for rent of the Houghton house in Naples, Florida. Bonwick testified that he impulsively agreed to rent the Florida house in a discussion which took place on October 6th, and he wrote the cheque to Ms. Houghton the same day. There was little discussion and the rental agreement was not documented. He explained that he was doing some business in Miami as well as in Fort Meyers.<sup>235</sup> In her affidavit, Ms. Houghton said that Bonwick said he "wanted to try somewhere on the Gulf Coast"; he had his own place on the Florida Atlantic Coast.<sup>236</sup>

260. Bonwick was cross-examined concerning the decision he had made to rent the Houghton property: how could he spend any appreciable time in Florida given his heavy responsibilities to PowerStream during the RFP process?<sup>237</sup> Bonwick maintained that he was able to do a lot of business on the phone as well as on email. Indeed,

I have situations where I will be home from Monday, Tuesday, Wednesday, fly out Thursday afternoon, come home Sunday night.<sup>238</sup>

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<sup>234</sup> Compenso Communications Inc CIBC Account Statement dated October 31, 2011, CJI0006795

<sup>235</sup> Evidence of Paul Bonwick, June 13, 2019, p. 77-81

<sup>236</sup> Affidavit of Shirley Houghton sworn June 13, 2019 ("Shirley Houghton Affidavit"), para. 11

<sup>237</sup> Evidence of Paul Bonwick, June 14, 2019, p. 135-137

<sup>238</sup> Evidence of Paul Bonwick, June 14, 2019, p. 138

261. Bonwick could not recall the number of days he spent in the house but said that it was “very seldom”.<sup>239</sup> He believed he was there on two occasions.<sup>240</sup> Houghton did not know whether Bonwick ever went to the house.<sup>241</sup>

262. There were other curiosities with the Houghton rental project. When others rented, the terms were set out in a document which was exchanged by email.<sup>242</sup> The rental to Bonwick was longer than the rental period for any other tenant. The months for which the property was to be rented seemed to be a matter of confusion. Bonwick testified that he rented the property for the months of October through December, 2011.<sup>243</sup> Ms. Houghton swore in her affidavit that he in fact rented the property from November 2011 to February 2012.<sup>244</sup> In her *viva voce* evidence, provided **after** Bonwick’s testimony, Ms. Houghton said that she and her husband had agreed to let the property for November and December of 2011 as well as April and May of 2012. While Ms. Houghton testified that she knew the importance of making a statement under oath and had reviewed the affidavit before she swore it, she only noticed the error in the text of the document after it was sworn.<sup>245</sup> She assumed that one of the Inquiry counsel had made an error preparing the affidavit.

263. The rental amount, which was apparently \$18,000, or \$4,500 per month, amounted to slightly more than half of the ISSI payment to Compenso, and was consistent with the equal sharing described by Budd.<sup>246</sup>

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<sup>239</sup> Evidence of Paul Bonwick, June 13, 2019, p. 80

<sup>240</sup> Evidence of Paul Bonwick, June 14, 2019, p. 138-140

<sup>241</sup> Evidence of Ed Houghton, June 12, 2019, p. 186-187

<sup>242</sup> Evidence of Shirley Houghton, June 14, 2019, p. 274-276

<sup>243</sup> Evidence of Paul Bonwick, June 14, 2019, p. 134-138

<sup>244</sup> Shirley Houghton Affidavit, para. 13

<sup>245</sup> She sought to correct the error by notifying one of the counsel at the Inquiry.

<sup>246</sup> Email from Ed Houghton to Shirley Houghton dated November 3, 2011, TOC0065379

264. Ms. Houghton, who was ordinarily careful in documenting rental arrangements, did not memorialize the agreement with Bonwick in any way. She gave blatantly inconsistent evidence about the months covered by the rental agreement. She testified that Bonwick had agreed to the Naples rental because he wanted to try the Gulf Coast experience – to do so for a week or two makes sense; to rent a property sight unseen for four months does not.

265. The evidence is equally consistent with a disguised payment in respect of Houghton's efforts to advance interest in ISSI and the solar vent project.

266. Even on his own evidence he had a prospective financial interest. When Houghton promoted the solar vent project to Collus, and thereafter to PowerStream, he acted in spite of a real conflict of interest. A reasonable person in similar circumstances would have recognised that his financial interest might affect his judgement and actions as a public official. Houghton ought to have taken no steps to promote the solar vent project once he was offered a financial interest. In sum, Houghton should have taken no part in the promotion of the solar vent project.

267. Whatever money Houghton may have received from ISSI via Budd and Bonwick, he had an offer for a financial interest in the project which was never rescinded, and was reiterated repeatedly in the period from June 2011 to January 2012. As a fiduciary, this offer and his participation in discussions about it, should have been disclosed both to Collus and to PowerStream. As a matter of law, a fiduciary has an obligation to disclose anything which may bear on the decisions he or she is taking in relation to the affairs of the company.<sup>247</sup>

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<sup>247</sup>*Imperial Parking Canada Corp. v. Anderson*, 2015 BCSC 2221, Town BOA, **Tab 4**, at paras. 232-242

**B.     *The Solar Vent Initiative***

268. Shortly after learning about solar vents, Houghton approached Dean Muncaster about Collus becoming involved in the solar vent project. Muncaster agreed that it was a good idea. Plans were made to approach the Collus board about the device in its June 10<sup>th</sup> meeting.

269. On June 10, 2011, Houghton addressed the Collus Board about the solar vent. The Board supported the participation of Collus in the solar vent project. It thought that the project sent a message to the community about the importance of conservation.<sup>248</sup> Mayor Cooper recalls that the Board was enthusiastic because the solar vent project was “innovative, something different, that could adhere to energy savings”.<sup>249</sup> The Board gave its approval in principle for a pilot project. At its meeting on July 8, 2011, the Collus Board approved an initial outlay of \$90,000 for the purchase of solar vents to be sold to Collus customers as part of a pilot project.

270. Bonwick believed that immediate steps should be taken to broaden the marketing of solar vents. On July 7, 2011, Bonwick emailed Bentz at PowerStream. A meeting had been set for that day among Houghton and the Collus Board Chair, Dean Muncaster, at the PowerStream offices with Brian Bentz and Mark Henderson at PowerStream, together with Paul Bonwick. Bonwick’s email noted that,

Ed’s proposal/objective for Collus Board is 1,000 units (500 homes). I believe his intention is for similar commitment from PowerStream. Intent is to expand program to other Check members as we move forward [...].<sup>250</sup>

271. Bentz had a limited recollection of the July 7th meeting, but recalled that discussion of the solar vent project was interwoven with discussions about PowerStream participating in the

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<sup>248</sup> Minutes from June 10, 2011 COLLUS Power Corp. Board of Directors Meeting, CPS 0007007\_001

<sup>249</sup> Evidence of Sandra Cooper, April 24, 2019, p. 91

<sup>250</sup> Email from Paul Bonwick to Brian Bentz dated July 7, 2011, ALE0000234



forthcoming RFP. Houghton thought that participating in the project would enhance PowerStream's branding in the community, and therefore assist it in winning the RFP.<sup>251</sup>

272. ISSI was formally incorporated on July 12, 2011. Budd and Tom Bushey were named as directors. That same day, ISSI invoiced Collus for 500 solar attic vents. On July 19, 2011, Collus paid ISSI a deposit of \$40,963 in respect of the 500 solar vents.<sup>252</sup> Bonwick followed up the solar vent discussions at the PowerStream offices with a memo to Houghton as well as PowerStream staff members Eric Fagan and Mark Henderson. He proposed a "strategic alliance" between Collus and PowerStream, "in conjunction with a clear commitment ... to reduce energy consumption and utilize sustainable green energy practices."<sup>253</sup> The proposal contemplated that the utilities would purchase the vents and resell them to interested homeowners, who would be responsible for payment of installation costs. ISSI would agree as part of the deal to donate \$10,000 to the Mayor's golf tournament.

273. On August 11, 2011, Collus and PowerStream held a launch event in Collingwood, the same day of the Mayor's golf tournament. Members of Council and the RFP Strategic Task Team were all invited to the event. Bentz, of PowerStream, was given prominence at the ceremony. He posed for a photograph together with Houghton, Tom Bushey and Peter Budd. Collus and PowerStream issued a joint press release concerning the launch ceremony. The release quoted

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<sup>251</sup> Evidence of Brian Bentz, May 31, 2019, p. 155-159

<sup>252</sup> Invoice from International Solar Solutions Inc. dated July 12, 2011, ALE0048850; Deposit Slip dated July 19, 2011, CJ10007641

<sup>253</sup> Memorandum from Paul Bonwick dated July 14, 2011, ALE0048834

Bentz and thanked Houghton and the Town of Collingwood saying, “We expect this partnership to be of benefit to all our utilities.”<sup>254</sup>

274. On August 16th, Bentz wrote a thank you note to Houghton. After praising the success of the event, Bentz included the following:

It was great to have Mayor Cooper there – she is a true ambassador for the Town.

Thank you for allowing us into your beautiful home – you and Shirley are most gracious hosts.

Ed, as you know I have known you a long time but I must say, I have really come to appreciate our friendship even more over the past while as we have had time to connect on both a personal and professional level on initiatives like the one we had last week.<sup>255</sup>

275. Houghton testified extensively about the importance that he and Muncaster attributed to PowerStream’s willingness to participate in the project.

276. For them,

...we saw it as a litmus test to see if the large utilities might jump on board with something – and initiative that the small utility is thinking about.<sup>256</sup>

277. Houghton acknowledged that the PowerStream decision to participate in the solar vent project, thereby passing the litmus test, was not part of the RFP. Participants had not been told that they would be evaluated in part on their willingness to participate.<sup>257</sup>

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<sup>254</sup> News Release dated August 11, 2011, ALE0011152.0001 [While three other utilities joined the press release, PowerStream was the only one participating in the RFP.]

<sup>255</sup> Email exchange between Brian Bentz and Ed Houghton dated August 16, 2011, ALE0014138

<sup>256</sup> Evidence of Ed Houghton, June 11, 2019, p. 58

<sup>257</sup> Evidence of Ed Houghton, June 12, 2019, p. 37-39

278. The solar vents were displayed on billboard ads which showed the logos of Collus and PowerStream through the fall of 2011. Houghton's evidence was that he did not see that they would create any unfairness in the RFP.<sup>258</sup>

279. Not everyone agreed. Neil Freeman of Horizon wrote to Max Cananzi and another colleague on November 23, 2011 that,

COLLIS is not only giving away these vent fans for less than cost ... it is paying for billboards to do so.<sup>259</sup>

280. Cananzi responded, predicting that PowerStream would be the successful proponent and observing that,

This is buying good will in the community. Residents are getting comfortable seeing Collus's brand and Powerstream's brand together on billboards. The perceptions being created is that they are already getting along and working on business together, so a more formal arrangement is no big deal.

The fix is in...<sup>260</sup>

281. In his evidence, Freeman said that he had been struck leaving the community meeting on November 22, 2011 to see a prominent billboard on the wall of the Gayety Theatre, a few hundred feet from the Town Hall:

And I was quite shocked because ... I thought that it was sort of inappropriate that ... we're in the middle of an RFP and Collus is essentially advertising jointly with PowerStream that they've got this transaction going on.<sup>261</sup>

282. Given the preferential treatment that PowerStream received throughout this transaction, it is clear that Cananzi was correct: the fix was in.

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<sup>258</sup> Evidence of Ed Houghton, June 11, 2019, p. 173-174

<sup>259</sup> Email from Neil Freeman to Max Cananzi and John Basilio dated November 23, 2011, ALE0050075

<sup>260</sup> Email from Max Cananzi to Neil Freeman and John Basilio dated November 23, 2011, ALE0050080

<sup>261</sup> Evidence of Neil Freeman, May 29, 2019, p. 29

**PART 3 - CONCLUSION**

283. The evidence revealed serious irregularities with respect to the 50% share sale of Collus to PowerStream:

- (i) Inaccurate, incomplete and misleading financial information was provided to the Strategic Task Team and Town Council;
- (ii) The Mayor, Town Council and Town staff failed to understand their obligations to avoid conflicts of interest;
- (iii) Confidential information was intentionally leaked to PowerStream; and,
- (iv) Ed Houghton and Paul Bonwick used the solar vent project to further weight the RFP process in PowerStream's favour, notwithstanding Ed Houghton's clear conflict of interest.

284. Paul Bonwick, in his dual roles as a consultant for PowerStream and a close political advisor to Mayor Cooper, was in an irredeemable conflict of interest. His involvement in the sale was improper and detrimental to the Town.

285. Ed Houghton worked in concert with Paul Bonwick to ensure a successful outcome for PowerStream. He promoted the solar vent project to Collus and PowerStream, in clear breach of his obligations to both Collus and the Town.

286. This flawed and obscured process unfolded without any meaningful oversight by Town Council and was designed to ensure that PowerStream would be the successful bidder. It resulted in the loss of millions of dollars in potential revenue for the Town.

287. When public officials allow cronyism and their own interests to influence their actions, as happened here, public financial outcomes are compromised. This is measurable. It is harder to measure the erosion of public trust.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of August, 2019.

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## **Schedule “A”**

### ***List of Authorities***

1. *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (2011), The Honourable J. Douglas Cunningham, Commissioner.
2. *Toronto Computer Leasing Inquiry Report Volume 2: Good Government* (2005), The Honourable Madam Justice Denise E. Bellamy, Commissioner.
3. *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens* (1987), The Honourable W.D. Parker, Commissioner.
4. *Imperial Parking Canada Corp. v. Anderson*, 2015 BCSC 2221.