



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood City Council Room

97 Hurontario Street

Collingwood, Ontario

August 14th, 2018

1 APPEARANCES

2

3 Janet Leiper) Inquiry Counsel

4 Kirsten Thoreson) Associate Inquiry

5) Counsel

6

7 Michael Watson) Alectra Utilities

8 Belina Bain) Corporation

9

10 David O'Connor) For Paul Bonwick

11

12 George Marron) For Sandra Cooper

13

14 Ravio Uukkivi) For Timothy Fryer

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16 Frederick Chenoweth) For Edwin Houghton

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18 Ryan Breedon) For Town of Collingwood

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1 --- Upon Commencing at 10:00 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Good
4 morning, everybody.

5 MR. GEORGE MARRON: Good morning, Your
6 Honour.

7 MR. FREDERICK CHENOWETH: Good
8 morning, Your Honour.

9 THE HONOURABLE FRANK MARROCCO: Please
10 have a seat.

11 MR. GEORGE MARRON: Thank you.

12 THE HONOURABLE FRANK MARROCCO: We're
13 ready to go. Give me one (1) second.

14 All right, Ms. Leiper, who's going
15 first here?

16 MS. JANET LEIPER: Mr. Marron is here
17 and he will be starting on behalf of his client.

18 THE HONOURABLE FRANK MARROCCO: All
19 right. Mr. Marron, maybe before you start I'll just
20 give a few introductory remarks.

21 I want to say good morning to everybody
22 and welcoming -- welcome you to the first public
23 session of the Collingwood Judicial Inquiry.

24 For some of you who were at the public
25 meeting yesterday, some of this may be a bit

1 repetitious, but nevertheless this is the first
2 opening proceeding of the Inquiry and I -- I do feel
3 the need to say a few things to set the tone for it.

4 The -- my name is Frank Marrocco, I'm
5 the Associate Chief Justice of the Superior Court of
6 Justice, and it's my responsibility to conduct this
7 Inquiry.

8 Today we'll be dealing with
9 applications for permission to participate in the
10 Inquiry.

11 The terms of reference for this inquiry
12 describe what it's expected to inquire into on behalf
13 of the Town of Collingwood. The terms of reference
14 can be found at the website, Collingwoodinquiry.ca.

15 The Inquiry's mandate is to look into
16 the 50 percent share of Collingwood Utility Services
17 Corporation to PowerStream Inc. This will involve
18 looking into the sale transaction, the request for
19 proposal process and the fees and benefits paid to
20 anyone in relation to the sale.

21 The Inquiry will also look into the
22 allocation of the money from the sale for recreational
23 facilities at Central Park and Heritage Park, as well
24 as any fees or benefits paid to anyone involved in the
25 construction at the recreational facilities.

1 In addition, the Inquiry will look at
2 the impact of these transactions as they relate to the
3 good governance of the Town of Collingwood.

4 As I said yesterday, and as I'll say
5 today and I'll probably repeat on more than one (1)
6 occasion, a public inquiry is not a trial. No one is
7 charged with criminal activity. No one is being sued.

8 There will be public hearings into the
9 areas described in the terms of reference, and then
10 I'll prepare a report which I will turn over to the
11 Town of Collingwood.

12 I would encourage anyone who thinks
13 they have information that might be helpful to the
14 Inquiry, whether it involves document or names of
15 potential witnesses, to provide this information as
16 soon as possible. The law offers protection to
17 witnesses to encourage them to come forward and
18 cooperate with public inquiries.

19 There's a commitment to open and public
20 hearings. I encourage members of the public to follow
21 the events on television or on our website, or it --
22 to attend the hearings.

23 Our website will post transcripts of --
24 of the evidence heard every day, in addition to live
25 stream the broadcast -- the actual hearings

1 themselves.

2 I've appointed counsel for this
3 Inquiry. Consistent with the nature of the inquiry,
4 they don't represent any single point of view.
5 They're not prosecutors and they are not adversarial
6 to the lawyers and parties who will appear here either
7 to participate, give evidence, or to do both.

8 My counsel have a duty to ensure that
9 all the issues reflected in the terms of reference are
10 brought to my attention. Their job is to use their
11 skill and their experience to present all the relevant
12 evidence as fairly and as thoroughly as they can.
13 Janet Leiper is lead Inquiry counsel and Kirsten
14 Thoreson is associate Inquiry counsel. The website
15 contains information about the backgrounds of each of
16 them.

17 We drafted Rules of Procedure. The
18 rules explain the process that we're going to follow.
19 The rules are posted on the website.

20 Today we're engaged in a process of
21 identifying those persons or organizations who have a
22 direct and substantial interest in the proceedings of
23 the Inquiry or whose participation in the Inquiry may
24 be helpful. There are eight (8) persons who have
25 requested the right to participate.

1 There will be different stages of the
2 Inquiry. Some of the transactions and issues affect
3 some people quite directly, and other aspects of the
4 Inquiry don't affect those people at all.

5 So there's the ability to participate,
6 the ability to participate in relations to the issues
7 which affect you and there is -- participation takes
8 different forms, the right to call witnesses, the
9 right to question witnesses, the right to produce
10 documents, the right to make written submissions and
11 not all forms of participation have to be the same.

12 Some people can participate -- will be
13 able to participate more fully than others because
14 they are more directly affected than others by what it
15 -- by the particular thing that we're inquiring into
16 at that moment.

17 Those participating have a
18 responsibility to produce all the documents within
19 their possession or control which relate to the terms
20 of reference.

21 Some applicants can request a
22 recommendation for funding. The Town of Collingwood
23 would provide the funding. We provide a
24 recommendation to the Town of Collingwood in relation
25 to those requests. The question of funding is a

1 matter for the Town; our role is to make
2 recommendations.

3 We will hear submissions for funding
4 today, after the persons requesting permission to
5 participate have made submissions on the question of
6 their participation.

7 Any private financial information
8 provided to me as part of a request for -- for funding
9 will be received confidentially, simply because that
10 information contains information not only about
11 income, but social insurance numbers and other
12 personal financial information which it just would not
13 be responsible to indiscriminately dump into the
14 public domain on behalf of anyone.

15 All that information will be turned
16 over to the Town as part of our recommendation for
17 funding, recommendation one way or the other.

18 As far as the question of participation
19 and funding is concerned, we will -- I will issue
20 brief reasons -- not today, but within a short time of
21 the conclusion of these proceedings.

22 Before we can -- to just to deal with
23 the question of scheduling, before we can deal with
24 the public hearing aspect of this, we have to make
25 sure that we have all the pertinent information. We

1 have to make -- we have to try to make sure that we
2 have understood it. We have to interview people who
3 may be helpful and who we may want to call to testify.

4 We haven't set a date yet for the
5 public hearings, but there will be updates published
6 on the website so that people can keep informed about
7 our progress, as far as that's concerned.

8 Thank you for your attention and Mr.
9 Marron, we'll hear from you.

10

11 SUBMISSIONS BY MR. GEORGE MARRON:

12 MR. GEORGE MARRON: Thank you, Your
13 Honour. Unless directed otherwise, I will be
14 referring to you as "Your Honour" as opposed to "Mr.
15 Commissioner," I take it.

16 THE HONOURABLE FRANK MARROCCO: I -- I
17 guess that that's fine. If I -- if I want to change
18 that, I'll -- I'll make an announcement.

19 MR. GEORGE MARRON: All right, thank
20 you.

21 Your Honour, I appear on behalf of
22 Sandra Cooper, who is the current mayor of the Town of
23 Collingwood, and I have filed on her behalf an
24 affidavit, her affidavit, which is dated the 7th day
25 of August, 2018.

1 And so, I intend to refer to that
2 affidavit because I'm acknowledging Section 36(b) of
3 the Procedural Rules wherein I'm requesting as Your
4 Honour's indicated privacy for any of the personal
5 particulars of financial information that are
6 contained in that affidavit but I will refer to the
7 affidavit because there are some statements that are
8 made there which I will contend are of importance on
9 my application for standing.

10 I'm seeking on her behalf standing --
11 full standing, unfettered standing in the sense that
12 she stands with her legal counsel, and with no other
13 counsel, and I'm prepared to address you on the aspect
14 of the Town of Collingwood has retained counsel, and
15 there are some statements that have been made in the
16 obtaining of the counsel that that counsel's
17 responsibility is on to the Town of Collingwood to the
18 exclusion of any of the other interested parties on
19 the Inquiry. I -- I --

20 THE HONOURABLE FRANK MARROCCO: Mr.
21 Marron, I -- I -- you're welcome to go into that to
22 whatever extent you want to, but I do appreciate that
23 there's a difference between the interests of the
24 mayor. For example, because you're speaking on behalf
25 of the mayor and the Town Council as a whole.

1 MR. GEORGE MARRON: All right, thank
2 you.

3 I -- I prepared some remarks in the
4 sense of an outline, Your Honour, and I encourage any
5 question that you may have. To say it's -- I wanted
6 to put certain remarks on the public record, and
7 obviously your comment has assisted me in -- in that
8 regard and it'll shorten the proceedings.

9 But I thought that I should prepare the
10 outline and err on the side of inclusivity in the
11 hopes that other people may want to adopt what I say
12 or amend it in some fashion and have a consequent
13 saving of time.

14 THE HONOURABLE FRANK MARROCCO: I -- I
15 wasn't trying to -- I'm actually quite prepared to
16 hear what it was you wanted to say. I just wanted to
17 --

18 MR. GEORGE MARRON: Yep.

19 THE HONOURABLE FRANK MARROCCO: --
20 signal to you that --

21 MR. GEORGE MARRON: Yep, yep.

22 THE HONOURABLE FRANK MARROCCO: -- as
23 far as the theoretical concept is concerned, I have
24 it.

25 MR. GEORGE MARRON: Okay, well --

1 yeah, well I -- as I say, I encourage that and I
2 invite that, Your Honour, yeah.

3 The other matter is more of a practical
4 matter. I -- I've -- this -- this date and this time
5 this morning conflicts with our local intake court
6 which is here in Collingwood and I've got a commitment
7 -- prior commitment to the choosing of this date for
8 this purpose, the Inquiry purpose, and so I'm going to
9 be requesting that when I conclude my remarks, that I
10 could withdraw, attend to that. I plan to be back for
11 2:30 this afternoon, apparently, there's a meeting of
12 counsel that's been set up.

13 THE HONOURABLE FRANK MARROCCO: All
14 right. That's -- you can -- you can withdraw as soon
15 as you find it appropriate.

16 MR. GEORGE MARRON: Thank you. Thank
17 you. Well then, the affidavit materials that I would
18 care to refer to deal with personal particulars and,
19 in particular, the years of munici -- municipal
20 service which my client has rendered to the Town of
21 Collingwood, and I would refer you to paragraph 8, 9,
22 10, and paragraph 17 and part of -- and just for
23 purposes of the public record, I propose reading this
24 in because I'm asking the affidavit be safeguarded.

25 So paragraph 8, my -- my client, Sandra

1 Cooper, affirms that by way of personal particulars,
2 she was born and raised in the Town of Collingwood,
3 lived in Collingwood throughout her lifetime,
4 attending both elementary and secondary school,
5 completing a Grade 12 secondary school education,
6 obtaining a diploma, and at the age of 18 years
7 entered the workforce, has been employed throughout
8 her working career life in the Town of Collingwood,
9 and of note in 2009, she retired from thirty-two (32)
10 years of employment with Loblaw's Collingwood.

11 Further in 1997, I was elected to the
12 Town Council of Collingwood. I served two (2) terms
13 in that capacity as a councillor, up to the year 2003
14 when I was elected to the position of Deputy Mayor.

15 I served two (2) terms as Deputy Mayor
16 for the Town of Collingwood from 2003 to 2010. In the
17 year 2010, I was elected Mayor for the Town of
18 Collingwood.

19 She was re-elected in 2013 to a second
20 term as Mayor and this term as Mayor concludes in
21 December of 2018, and she will not be seeking re-
22 election in October of this year, Your Honour.

23 In addition, throughout her terms as
24 Deputy Mayor and Mayor for the Town of Collingwood,
25 she served on the county of Simcoe council over the

1 past fifteen (15) years from 2003 to 2018 and this
2 position, as well, concludes in 2018.

3 Finally, paragraph 17 and part that --
4 my client's decision to retire from public life was
5 made some considerable time ago, and well prior to the
6 February 2018 date when Council voted on the
7 establishment of this judicial Inquiry, she voted in
8 the negative, registered her opposition in Council by
9 so voting.

10 I -- I would ask you to consider those
11 personal particulars in reference to the application
12 to -- for standing purposes. So, I -- I -- I guess
13 I'm saying it in a -- in a nutshell, Your Honour, her
14 years as a public server put -- put her in a
15 particular category of info -- of being informed, and
16 being able to draw down on the years of experience and
17 the matters under discussion and under a decision for
18 the Town of Collingwood. So the request, as I
19 indicated, is for full and unfettered standing
20 throughout the Inquiry proceedings.

21 As I've noted in the extensive time
22 period under the Inquiry review, we are looking at a
23 point in time that pre-dates the 6th of March, 2012
24 Share Purchase Agreement as between the Town of
25 Collingwood and PowerStream Incorporated and we go

1 forward in the terms of reference to some date prior
2 to the year 2017.

3 I don't know exactly to what point that
4 is, but it's an extensive period of time, and it's all
5 a timeframe, which is under the watch of Sandra Cooper
6 as Mayor for the Town of Collingwood.

7 Now, the criteria for participation in
8 standing, Your Honour, is tended -- or attached to the
9 affidavit material and it's Exhibit B, second page of
10 which sets out clauses A, C, and D, of which we would
11 contend are applicable to this application.

12 Firstly, paragraph A:

13 "I have a substantial and direct
14 interest in the subject matter in
15 the Inquiry."

16 I don't propose to enlarge on that.

17 Paragraph C:

18 "My participation would further the
19 conduct of the Inquiry."

20 I believe that I've generally referred
21 to the timeframe and her position throughout with the
22 Town of Collingwood.

23 And finally, paragraph D:

24 "My participation would contribute
25 to the openness and fairness of the

1 Inquiry."

2 In -- in my submission, she is an
3 essential witness to your Inquiry.

4 We're seeking participation with a seat
5 at the counsel table with the opportunity to make an
6 opening statement, to lead evidence, to lead expert
7 evidence if need be, to cross-examine witnesses, and
8 to make closing submissions.

9 You might note I didn't -- I -- she
10 didn't, in her affidavit, mark out "deliver written
11 submissions." There was a certain amount of urging on
12 my behalf on that -- on that point.

13 Now, the -- and I -- I, too, was
14 present last night in the public forum and attended
15 what you've referred to as the public meeting of
16 August the 13th. And I would simply make the
17 following comment, that there were a number of
18 interested citizens who expressed concern in various -
19 - with various issues as they sought referencing the
20 Town of Collingwood and their desirability be heard on
21 certain subject areas within the Terms of Reference of
22 the Inquiry, or terms that may very well be related
23 either indirectly or directly.

24 So I -- I would just make reference to
25 that generally. I don't intend to go -- go through

1 the various statements that were made by the various
2 people. But it was a meeting that extended over the
3 course of an hour, and I'll say nothing further in
4 that regard unless there's something to which you
5 would care to direct me now.

6 I -- I made earlier reference to the
7 Town of Collingwood Council. I will -- and the fact
8 that there has been counsel retained, I won't -- as --
9 as a result of our discussion on that have anything
10 further to say other than we're here, obviously,
11 dealing with an appearance of fairness concern, and
12 any -- and the -- the Rules of Procedure, as they are
13 stated in paragraph 5 in the Rules of Procedure that
14 deal with the element of fairness:

15 "That the Inquiry is committed to a
16 process of fairness, including
17 public hearings and public access to
18 evidence and documents used as the
19 hearings, subject to Rule 36."

20

21 SUBMISSIONS RE FUNDING

22 MR. GEORGE MARRON: So finally -- now,
23 do you want me to address the request for funding?

24 THE HONOURABLE FRANK MARROCCO: Why
25 don't -- why don't you do it now, if you've really

1 completed --

2 MR. GEORGE MARRON: Yeah.

3 THE HONOURABLE FRANK MARROCCO: -- the
4 explanation of -- of your client's interest in the
5 matter, why don't you just do it now.

6 MR. GEORGE MARRON: Okay. Thank you.
7 Thank you. The affidavit materials deal with -- with
8 the financial status of my client. The only addition
9 is that in reference to the twenty-one (21) years of
10 municipal service on the part of my -- on the part of
11 Sandra Cooper, there is no provision for any
12 pensionable benefits relating to that time. So -- so
13 with that addendum and addition to the -- to the
14 affidavit materials, the -- the financial situation
15 and status is set out in the affidavit. And
16 obviously, I would urge you to consider that.

17 The other -- the other aspect of the
18 funding application is the projected cost, given the
19 request for the type of standing that we are seeking.
20 There's a staff report that was prepared and it's
21 dated the 30th of April, 2018. I have a copy of that
22 here. I've highlighted it. It was prepared -- I
23 don't know -- it was prepared by the CAO, Chief
24 Administrative Officer, Fareed Amin, in conjunction
25 with Marjory Leonard, the treasurer for the Town of

1 Collingwood.

2 It indicates that -- and -- and I may
3 be repeating and I apologize for that, but I just
4 wanted to err on the side of completeness, because of
5 my personal commitment this morning. It indicates on
6 page 3, it's a seventeen (17) page document, but it
7 indicates on page 3 that Council -- and this was a
8 report back to Council on the part of these two (2)
9 individuals, a staff report referencing the subject of
10 judicial inquiry and it was submitted to Council, as I
11 indicated dated the 30th of April 2018.

12 And it indicates that:

13 "Council should authorize outside
14 legal counsel to be retained to
15 represent the Municipality in the
16 conduct of a judicial inquiry to
17 ensure there is no perception of
18 bias, and to ensure the integrity of
19 the process in the public eye.
20 Council must also give consideration
21 to paying for the cost of legal
22 counsel for the parties to the
23 proceedings or for members of
24 Council or staff called upon to
25 provide testimony."

1 It goes into the area of the difficulty
2 in estimating potential costs of an inquiry. But it
3 goes on to say that:

4 "Any person who has a substantial or
5 direct interest in the subject
6 matter of an inquiry is entitled to
7 apply for standing. Where the
8 Commissioner grants full standing
9 that person can call evidence and
10 cross-examine witnesses, and also
11 must agree to abide by the Rules of
12 Procedure established by the
13 Commissioner. Standing may be
14 granted for the entire proceeding,
15 or for only part of it, and it may
16 have lesser rights attached to it as
17 determined by the Commissioner.
18 Legal counsel acting for parties at
19 a judicial inquiry play a different
20 role than in a courtroom, and will
21 be expected to assist the inquiry,
22 ensure that all relevant and helpful
23 evidence is brought forward."

24 I -- I submit that my -- that Sandra
25 Cooper falls clearly within that category of witness.

1 The other indication I would make and -- is
2 referencing other costs and it accounts for -- it --
3 it stipulates that:

4 "The Counsel representing the Town
5 of Collingwood has been provided
6 with a budgetary amount of two
7 hundred and forty thousand dollars
8 (\$240,000). It indicates that
9 counsel for parties, Council
10 members, and staff -- legal counsel
11 retained to represent the Town
12 cannot represent the interests of
13 individual employees or member of
14 Council. The Commissioner cannot
15 order the Town to provide funding.
16 However, in order to ensure that all
17 parties, staff, and Council members
18 are treated in a fair and unbiased
19 manner, the Town should consider
20 funding these costs. Staff can only
21 guess at the potential costs and are
22 assuming these costs would be
23 similar to the cost for Town
24 Council."

25 And they've set aside two hundred and

1 forty thousand dollars (\$240,000). Now, I don't know
2 if that's a collective sum. It doesn't indicate that
3 it is, but it would seem to me for purposes of my
4 application for funding that I -- I fail to see that
5 there's much in the way of differentiation between
6 counsel acting for Sandra Cooper, the current Mayor,
7 and counsel representing the Town of Collingwood.

8 So it's -- what -- the point being is,
9 is it's a significant amount that's beyond the --

10 THE HONOURABLE FRANK MARROCCO: But
11 when you -- when you say not much difference, you mean
12 in an -- in the notion.

13 MR. GEORGE MARRON: Exactly.

14 THE HONOURABLE FRANK MARROCCO: Yes.

15 MR. GEORGE MARRON: Yeah. Thank you
16 for that. So the point being that it's a significant
17 amount that's beyond the reach of the average
18 individual, and certainly beyond the reach of Sandra
19 Cooper.

20 So unless there's something you'd care
21 to direct me, those -- those would be my submissions
22 in my request for standing as requested, and for
23 funding.

24 THE HONOURABLE FRANK MARROCCO: No, I
25 -- I don't think --

1 MR. GEORGE MARRON: Funding
2 recommendation.

3 THE HONOURABLE FRANK MARROCCO: -- I
4 was able -- I'm following what you're submitting. I -
5 - I don't really need to hear anything further unless
6 there's something further you want to tell me. I'm
7 going to take it under reserve and issue reasons later
8 on.

9 MR. GEORGE MARRON: Yeah.

10 THE HONOURABLE FRANK MARROCCO: And as
11 I -- as you are well aware --

12 MR. GEORGE MARRON: Yeah.

13 THE HONOURABLE FRANK MARROCCO: -- my
14 recommendation concerning funding goes to the Town.

15 MR. GEORGE MARRON: Yeah, exactly.

16 Yeah. So those are my submissions and --

17 THE HONOURABLE FRANK MARROCCO: Thank
18 you, Mr. Marron and --

19 MR. GEORGE MARRON: -- on qualifying.
20 Thank you, sir.

21 THE HONOURABLE FRANK MARROCCO: And if
22 you have to leave I understand.

23 MR. GEORGE MARRON: Thanks, Your
24 Honour. Okay. Thank you.

25 MS. JANET LEIPER: Mr. Uukkivi is here

1 on behalf of Council Fryer.

2

3 SUBMISSIONS BY MR. RAVIO UUKKIVI:

4 MR. RAVIO UUKKIVI: I -- I had a quick
5 discussion with Mr. Marron, and he promised that he
6 wouldn't have sharp elbows when I sat down beside him.
7 Good morning, Your Honour.

8 THE HONOURABLE FRANK MARROCCO: Well,
9 probably not a good sign if a fight breaks out over a
10 seat.

11 MR. GEORGE MARRON: It was just going
12 to be an elbow.

13 MR. RAVIO UUKKIVI: That's what he
14 thinks to start. And that's how it all starts, right?

15 I'm the lawyer for Mr. Timothy Fryer.
16 And he is -- he is a Councillor for -- for the Town of
17 Collingwood. He is -- he is running for re-election
18 this -- this time around. I intend to be, hopefully,
19 brief in my submissions. I will cover the request for
20 standing, as well as some brief submissions with
21 respect to the funding request.

22 At the outset, though, I would like to
23 request one (1) additional clarification and direction
24 from Your Honour when the materials and your report
25 gets forwarded to the Town; that being specifically,

1 that since the financial information that I have filed
2 with Ms. Leiper this morning which includes all of the
3 detailed financial information that you referred to,
4 is -- contains an additional order or direction to the
5 Council that it be held in confidence and I ask for
6 that specifically because the while the Town might be
7 considering this in a confidential session when it
8 considers the information, the additional order would
9 provide some satisfaction to my client that that
10 information will not become part of the public record.

11 THE HONOURABLE FRANK MARROCCO: I will
12 forward it to the Town in confidence, but Town Council
13 has to decide for itself what it does with -- with the
14 information.

15 I am not going to dir -- I'm not going
16 to order them to keep it confidential. I assume that
17 they will be governed by the same sort of
18 considerations that I was about the difficulties that
19 can be created if a personal financial information is
20 indiscriminately publicized.

21 But -- but the -- the use -- the -- the
22 extent to which information is made public with
23 respect to funding will be a matter for them when they
24 decide whether to fund.

25 I -- I won't go any further there. So,

1 there won't be an order from me that no matter what
2 happens they're to keep it confidential. There will
3 be a recommendation concerning funding. The documents
4 will be confidential at that stage, and then it will
5 be between Mr. Fryer and counsel and -- and Town
6 Council as to what informa -- how they deal with that
7 information.

8 MR. RAVIO UUKKIVI: Thank you for that
9 direction, Your Honour.

10 The request for standing is based on a
11 criteria that were set out in the application for
12 standing. I'm not going to repeat them bu -- but, the
13 -- my submissions will be directed to those specific
14 criteria.

15 My client, Mr. Fryer, meets the
16 criteria for standing and -- and there -- the level of
17 standing that we're requesting is full participation
18 in all aspects inclu -- all aspects of the Inquiry
19 without being made a joint party with any other person
20 or party was standing in this Inquiry.

21 The -- Mr. Fryer's -- is a -- is a long
22 time employee of the Collingwood Utility Services
23 Corporation referred to as "Collus" throughout, and
24 was the Chief Financial Officer of Collus at the time
25 that the transactions occurred that are relevant to

1 this Inquiry.

2 The -- oh -- the one -- one (1)
3 limitation with respect to the standing that we are
4 seeking is that Mr. Fryer left the Utility on
5 September -- in September 2012. So, after that time,
6 his knowledge and the assistance that he can provide
7 to this Inquiry will be limited. And, as a result, we
8 don't think that we require standing beyond that.

9 So, to the extent that Your Honour
10 feels it appropriate to recommend a limitation on the
11 standing that would be appropriate in my respectful
12 submission to this Inquiry.

13 THE HONOURABLE FRANK MARROCCO: Thank
14 you. That's helpful actually.

15 MR. RAVIO UUKKIVI: It's my submission
16 that the -- Mr. Fryer does have a unique and directly
17 relevant perspective and information to provide on
18 matters that are subject to this inquiry.

19 Specifically, he has information with
20 respect to the history of the initiative to sell the
21 public utility, as well as the eventual decision to
22 enter into the agreement with PowerStream.

23 He has information with respect to the
24 price at which the shares were sold; the impact on the
25 ratepayers of the Town of Collingwood. He has -- he -

1 - he would have information on the question of the
2 relationships, if any, between existing and former
3 elected administrative representation --
4 representatives of the Town, Collus and PowerStream.
5 He has information about the question of the
6 commercial relationship between PowerStream, Collus,
7 and -- and other entities prior to 2017, specifically,
8 prior to September 2012. And he has information with
9 respect to the question of salaries, benefits, and any
10 -- any payments that have been made in relation to the
11 transaction.

12 As I noted, as a CFO, he would have
13 been a key member of the -- the team even though he
14 didn't have decision-making power with respect to the
15 approval of the transaction, he would have been at
16 least at the table for the -- for the duration and --
17 and because of that, has a unique perspective to
18 provide.

19 And, I make those submissions with --
20 with the expectation that not only will he have a
21 unique perspective to provide as a witness to this
22 Inquiry in bringing critical information to the
23 attention of the Inquiry, but through his knowledge
24 and experience during the course of this relevant
25 matters in this transaction, he will be able to

1 provide an assistance to the Inquiry by being
2 permitted to question and examine witnesses that are
3 involved in the Inquiry through counsel.

4 And -- and I think that that provides
5 an opportunity and -- and a reason why he should be
6 granted standing because -- because that the -- the
7 dual role that he would be expected to play, both as a
8 witness and as a person with relevant information that
9 can assist this Inquiry in bringing matters to the --
10 the public's attention.

11 While we don't anticipate the need to
12 call any witnesses at this time, in -- in the sense
13 that being granted to standing with the right to call
14 witnesses, we would like to retain that opportunity at
15 least to the extent that we get to review the
16 documents that everybody has, and the proposed
17 witnesses that will be called to determine whether we
18 believe there to be any deficiencies, but ultimately
19 we don't anticipate the need to call any additional
20 witnesses.

21 Those are my res -- submissions with
22 respect to standing and I -- I -- I think that his
23 role in the transaction is self-evident. He was there
24 for -- just to rece -- summarize, he was there for the
25 -- through the approval of the sale in November of

1 2011; he was the CFO at the time. He was there when
2 this transaction was -- was approved by the Council.
3 He was there when the transaction was approved by the
4 Ontario Energy Board and he was there when the
5 recreational facilities were ultimately purchased with
6 the funds.

7 So, as a result, he has knowledge of
8 all of the material main elements of what this Inquiry
9 will be considering.

10

11 SUBMISSIONS RE FUNDING:

12 MR. RAVIO UUKKIVI: With that, I'm
13 going to move on to my submissions with respect to the
14 application for funding unless Your Honour has any
15 questions with respect --

16 THE HONOURABLE FRANK MARROCCO: No, no
17 --

18 MR. RAVIO UUKKIVI: -- to what I said.

19 THE HONOURABLE FRANK MARROCCO: -- I'm
20 following.

21 MR. RAVIO UUKKIVI: I'm requesting
22 that you make a recommendation to the Town Council
23 that Mr. Fryer received funding for his participation
24 in the Inquiry.

25 While Mr. Fryer feels strongly that he

1 should participate in this Inquiry, both as a witness
2 and as a party withstanding to examine witnesses and
3 participate in all elements of the opening and
4 closing, he cannot adequately do so unless he has
5 legal counsel, and he can't -- he doesn't feel he can
6 or he definitely cannot do that with the financial
7 resources that he has available to him.

8 The financial information has been
9 filed with Ms. Leiper this morning. The detailed
10 financial information which I trust, Your Honour, will
11 have the opportunity to review and I -- I -- I'm
12 confident that after the review of those information
13 or that it -- that information evidence, it will
14 satisfy you that he is not a man of the type of means
15 that would be required to fund this kind of Inquiry
16 that is intended for the benefit of the public out of
17 his personal funds that he has available to him.

18 One (1) of the submissions I would like
19 to make is that it was suggested to us that Mr. Fryer
20 should seek alternative sources of funding other than
21 from his personal means, and I just wanted to address
22 that comment that -- that -- that of why that wouldn't
23 be possible to seek from his former employer Collus.

24 First, Mr. Fryer's employment ended by
25 way of a settlement agreement. It's -- the terms of

1 which remain confidential. But I think that it's
2 suffice to say that it is unlikely that we would be
3 able to, or nor would we make that request in the
4 circumstances.

5 And second, I don't think it would be
6 in the interest of the inquiry to ask Mr. Fryer to
7 seek funding from the company whose transactions are
8 being investigated. This could give the appearance
9 that the evidence is being purchased, and I don't
10 think it would be appropriate to expect Mr. Fryer to
11 do so.

12 While I don't think it's easy to
13 identify the type of financial resources that one
14 should have available before they should be funding
15 their own way, and when they're granted standing in
16 this case, I think that the materials that we filed
17 will ob -- be obvious that any money expended would
18 require the expenditure of money from -- by Mr. Fryer
19 that he doesn't have available to him.

20 The final comment that I would -- I
21 want to make with respect to the nature of the
22 recommendation I'm asking you to make to Council, is
23 with respect to the appropriate hourly rate and the
24 structure of the funding that should be provided or
25 recommended -- that you recommend should be provided

1 by the Town of Collingwood.

2 I have no issue with respect to
3 reasonable restrictions or limitations being placed on
4 the type of time that is expended in order to prepare
5 for a hearing event or -- or -- or a portion of the
6 Inquiry, that is, I think appropriate and Mr. Fryer,
7 as you will note from his materials, strongly
8 advocates for the protection of public resources.

9 However, I think that the -- the -- the
10 there -- there needs to be an appropriate hourly rate
11 provided that will permit the hiring of counsel that
12 can assist each one (1) of the members of the Inquiry.
13 In the Council report that was prepared for the Town
14 dated April 30th, 2018, that's a staff report that Mr.
15 Marron referred you to previously, the recommendation
16 of an hourly rate was made in there -- or the
17 expectation -- or estimate that was provided by the --
18 the counsel for the Town in its report was a \$500 an
19 hour rate, and while that, you know, it -- it may seem
20 significant, it's not sufficient for -- for -- for Mr.
21 Fryer to retain my services to participate in this
22 Inquiry.

23 And I would ask for a variation up or a
24 reasonable range of up to \$575 per hour, otherwise,
25 Mr. Fryer will be put in a position where he will have

1 to seek alternative counsel, and he has made an effort
2 to this -- to date to do so, and he's been -- been
3 unable.

4 I can -- I can assure, Your Honour,
5 that that rate that I'm requesting is significantly
6 below the rates that are charged by many, many lawyers
7 in this province. Not all, I know that there are many
8 that charge significantly less, but I would ask that
9 you -- that -- that you make a recommendation that
10 that would be appropriate in the circumstances for Mr.
11 Fryer.

12 One (1) other way that I can recommend
13 that you approach the hourly rate or your
14 recommendation to Council would be to have counsel
15 disclose their regular hourly rate, and in accordance
16 with the criteria for funding that have been
17 established is that it is -- that is -- that it's not
18 expected that counsel will work at their regular
19 hourly rates for this Inquiry.

20 I can assure you that that rate that
21 I'm requesting is at significant variance to my
22 regular hourly rate that I charge to the majority of
23 my clients and only in limited circumstances do I vary
24 from that.

25 The final comment I will make on my

1 request for funding is -- is that I strongly
2 discourage this Inquiry for making a recommendation
3 that funding that -- that funding be contingent on
4 other sources of money being -- not being sought out.

5 I have seen in some inquiries where the
6 -- where an hourly rate and funding is provided
7 contingent on there not being a top-up from other
8 sources to the extent that the -- to the extent that
9 an hourly rate is recommended at variance to the one I
10 have requested, I would ask that you permit the
11 opportunity for the parties withstanding to at least
12 have the option of topping up or choosing other
13 counsel rather than leaving them with a maximum hourly
14 rate that can be charged, and so those -- those are my
15 submissions with respect to funding.

16 I suggest that my submissions are
17 entirely in keeping with suggested limits on legal
18 funding that have been set out by the Inquiry, and I
19 ask that you keep those in mind in making a
20 recommendation to Town Council. And subject to any
21 questions that Your Honour has, those are my
22 respectful submissions.

23 THE HONOURABLE FRANK MARROCCO: Thank
24 you. The question of hourly rates and the conditions
25 attaching to funding is a very vexing question and --

1 not exclusively mine, part -- part of it rests with
2 the party that has to write the cheque, I think, at
3 the end of the day. But, it is a vexing -- it is a
4 vexing issue and I appreciate you raising it.

5 MR. RAVIO UUKKIVI: And I -- I --

6 THE HONOURABLE FRANK MARROCCO: Well
7 because -- because it has been -- it's obviously a
8 matter that one thinks about what should the hourly
9 rate be, what restriction should there be, should
10 there -- should you be able to top up, that sort of
11 thing. And, there's different aspects to that issue
12 which it's unlikely that we will all resolve since,
13 generally speaking, the legal community is -- this is
14 what happens every time there's a case.

15 MR. RAVIO UUKKIVI: Yeah, no, I say --
16 I say that knowing full well that it's -- it's my
17 interests that I'm trying to protect and I'm trying to
18 distance myself to -- from those interests as much as
19 I can, but I -- but I do appreciate the significant
20 variances that there are in rates across the province
21 of Ontario, but -- I mean, I know that there are
22 number of lawyers in -- in -- in the area I practice
23 in which is development and municipal law that charge
24 north of \$1000 an hour all the way down -- and I know
25 -- I -- there are some that charge less than \$400 an

1 hour or so.

2 THE HONOURABLE FRANK MARROCCO: Well
3 and then their government rates, which are even --
4 even lower than that. There -- there is a

5 MR. RAVIO UUKKIVI: Right --

6 THE HONOURABLE FRANK MARROCCO: --
7 wide range of --

8 MR. RAVIO UUKKIVI: Right --

9 THE HONOURABLE FRANK MARROCCO: -- of
10 rates that are charged and then there are the
11 commercial realities that people in the private
12 sector, for example, face that people in the public
13 sector don't face. I -- I -- it's a vexing issue.

14 MR. RAVIO UUKKIVI: Right. Thank you,
15 Your Honour. Those are my submissions.

16 THE HONOURABLE FRANK MARROCCO: Thank
17 you very much.

18 MS. JANET LEIPER: Mr. Chenoweth is
19 here on behalf of his client, Mr. Houghton.

20

21 SUBMISSIONS BY MR. FREDERICK CHENOWETH:

22 MR. FREDERICK CHENOWETH: Very good,
23 thank you. If it please the Inquiry, Your Honour, as
24 counsel has indicated, my name is Chenoweth. Fred
25 Chenoweth, and I appear on behalf of Edwin Houghton,

1 who is seeking standing with respect to this Inquiry.

2 He's seeking full unfettered standing,
3 which in his view, should include the right to cross-
4 examine; the right to call witnesses; the right to
5 review documents; the right to make opening and
6 closing statements; the right to call experts.

7 It should also include the ability to
8 stand alone and make representations other than the
9 representations that may be made by parties of a
10 similar, but a different interest.

11 We believe that Mr. Houghton has a
12 unique interest in this matter that must be protected
13 and spoken to by -- by the prospect of -- of his own
14 counsel in this matter.

15 I also bel -- believe and submit that
16 Mr. Houghton meets the criteria for standing in this
17 Inquiry in that he does have a substantial and direct
18 interest in the subject matter of the Inquiry, and
19 I'll detail that in a moment, and he -- his
20 participation will be helpful to the Inquiry in
21 fulfilling the Inquiry's mandate and I'll
22 particularize that, as well.

23 The particulars of that are set out in
24 a fulsome fashion in the affidavit that I have filed
25 in this matter, which is dated August 2nd, 2018, and

1 to some extent I'm repeating some of the matters in
2 that affidavit, but it's my view that the opportunity
3 for vocal submissions is a useful one, and I would
4 wish to take that opportunity now.

5 The Inquiry should be aware that Mr.
6 Houghton is a third-generation Collingwood resident,
7 he and his family have lived in this community for
8 many decades.

9 Mr. Houghton had a thirty-nine (39)
10 year career, a thirty-nine (39) year career with the
11 Town of Collingwood and its various institutions,
12 which included a significant involvement in the 50
13 percent share of the Collus shares to the entity
14 Collus PowerStream, and also included a direct
15 involvement in the matter of the purchase of the two
16 (2) architectural membrane roofs, one (1) over the
17 second arena, one (1) over the pool. He is quite
18 intricately involved in those matters and I'll again
19 detail how that occurred.

20 Mr. Houghton's thirty-nine (39) year
21 career with the Town of Collingwood began with Collus,
22 the electrical power utility which was fully-owned by
23 the Town; that commenced in 1977, as an engineering
24 technologist.

25 It progressed, he moved through the

1 ranks with Collus and eventually in the year 2000
2 became the President and Chief Executive Officer of --
3 of Collus, and in fact was the President and Chief
4 Executive Officer of Collus PowerStream, the strategic
5 partnership, as it's described, which was formed by
6 the various shareholders of the second corporation.
7 So he continued his position as President and CEO of
8 that organization after the -- the creation of that
9 partnership.

10 He was -- he held that position and
11 obviously as -- as President and CEO, would have a
12 very detailed knowledge of the matters which were at
13 the very core of the mandate of this Inquiry.

14 He held those positions and was
15 intricately involved in the two (2) issues which are
16 at the heart of this Inquiry when the strategic
17 partnership was conceived and has a detailed knowledge
18 of how it was conceived and the processes pursuant to
19 which PowerStream was chosen and considered as the
20 strategic partner with which Collus would become
21 involved. He was intricately involved in -- in that
22 concept in those choices, again, as President and
23 Chief Executive Officer.

24 He was also quite involved through the
25 course of the conclusion of the Collus PowerStream

1 transaction, which I believe concluded in March of
2 2012, and continued to be President and Chief
3 Executive Officer, as I have indicated, for both
4 organizations.

5 In addition to that, he was a member of
6 the nine (9) person strategic partnership task force,
7 which you will hear a good deal of through the course
8 of -- of your evidence.

9 That highly-regarded task force, which
10 included luminaries such as David McFadden, a lawyer
11 from the City of Toronto, Dean Muncaster and others,
12 was tasked by the Town of Collingwood and by Collus to
13 help progress the potential partnership, to advise the
14 -- the Town and Collus with respect to the
15 appropriateness of the partnership, the
16 appropriateness of the proposed transaction and the
17 conclusion of that transaction.

18 There was members of KPMG, senior
19 members of KPMG, who were part of that nine (9) man
20 strategic partnership. There was a number of eminent
21 members of Council who were also on that nine (9) men
22 partnership. And in fact, it was, in essence, a
23 committee of the -- the Town and Collus that made
24 recommendations, and very positive recommendations,
25 with respect to that matter.

1 Again, Mr. Houghton was a member of
2 that -- of that -- that group that made those
3 recommendations, and as such has an integral knowledge
4 of the transaction, not simply as an -- as an officer
5 of Collus, Collus PowerStream, but also as a member of
6 the nine (9) man strategic partnership task force.

7 You should also be aware that Mr.
8 Houghton, through his thirty-nine (39) year career,
9 there was a -- really a staff-sharing arrangement with
10 Collus and other areas of the Town's responsibility --
11 yes, and other areas of the Town's responsibility,
12 which led Mr. Houghton to become quite involved, not
13 only with respect to the power utility Collus and
14 Collus PowerStream, but also with respect to other
15 areas of the Town's activity as a result of the
16 employee sharing arrangement that -- that existed in
17 the Town.

18 Mr. Houghton, for I believe thirteen
19 (13) years, from 2000 to 2013, was Executive Director
20 of the Collingwood Public Works. That was an
21 interesting organization and was quite involved in the
22 activities of the Town in that it took care of roads,
23 sewers, sidewalks, buses, railways, airports,
24 snowplowing, many of the activities of the Town.

25 The purpose of my directing the Inquiry

1 to that note is -- is really to indicate the extent to
2 which Mr. Houghton, through his thirty-nine (39)
3 career -- years of career with the Town, has been
4 committed to the Town and worked with the Town. His -
5 - his commitment to the Town is demonstrated by his
6 involvement with the various organizations I'm
7 directing you to, and some other matters to which --
8 which I'll bring to your attention.

9 Also with respect to the Town, at the
10 request of the Town, although quite frankly, his --
11 his tasks burdened him severely as President, CEO of
12 Collus, Collus PowerStream, and as a thirteen (13)
13 year Executive Director of Public Works.

14 In the face of that, after the somewhat
15 precipitous termination of a previous Chief
16 Administrative Officer of the Town, Mr. Houghton was
17 asked to take on, without remuneration, the task of
18 Chief Administrative Officer of the Town, which he
19 did, and he did that for a period of thirteen (13)
20 months, from April of 2012 to May of 2013.

21 That was quite specifically the period
22 after the closing of the Collus PowerStream
23 transaction, in which decisions were made as to the
24 appropriate use of some of the funds that the Town had
25 the benefits of as a result of that sale.

1 Mr. Houghton, as CAO, was quite
2 directly and intricately involved in the question of
3 the selection and the choice of BLT and Sprung as the
4 suppliers of the architectural membrane roofs which
5 were used at the two (2) sites that the Inquiry is now
6 aware of. So he has detailed information with respect
7 to that matter.

8 So that it's clear that the kinds of --
9 of information he could offer to the Town, not only as
10 a witness, but as a result of the use of his own
11 counsel to cross-examine various witnesses, because of
12 his detailed knowledge, I can't conceive that it
13 wouldn't be concluded that Mr. Houghton is other than
14 a highly integral and necessary part of this Inquiry,
15 not only as a witness, but as a party to the Inquiry.

16 Again, a demonstration of Mr.
17 Houghton's commitment to the Town is the fact that
18 through -- through his thirty-nine (39) year career
19 with the Town he received in excess of five (5)
20 different public contribution awards for his activity
21 in public affairs. One (1) of them, I understand, was
22 a -- a North American Status Award with respect to his
23 contribution to public affairs.

24 So he was a highly-regarded, highly-
25 respected individual who committed himself for thirty-

1 nine (39) years, in fact, his entire career, to the
2 Town of Collingwood. And it must be said that he did
3 that at quite a unique, personal expense and personal
4 output to this Town.

5 Really, I'm -- I'm underlining this to
6 indicate the extent of the personal commitment he made
7 to this Town and the service to the various ratepayers
8 and citizens of the Town. It was, in fact, quite
9 substantial and unique.

10 It should be known that the two (2)
11 matters it's submitted by Mr. Houghton, and by me, are
12 the two (2) matters that are pivotal to the Inquiry,
13 the Collus PowerStream share sale, the architectural
14 roofs on the two (2) -- architectural roofs which are
15 pivotal to the two (2) organizations were successful
16 transactions. That's important to note, I think.

17 That is demonstrated in a -- in a
18 number of ways, which will be detailed at a later time
19 and I'll detail them very briefly now.

20 There was a substantial third-party
21 report, which is attached as Exhibit A to my
22 affidavit, prepared for the Town, in which this
23 independent third-party details, in quite a glowing
24 report, at about twenty (20) months after the
25 strategic partnership was formed, it details the

1 successes of that strategic partnership.

2 That's one (1) of the measures that can
3 be used to say that the strategic partnership was
4 highly successful. And for those reasons, Mr.
5 Houghton regarded this as a significant accomplishment
6 in his career and was very proud of that particular
7 contribution.

8 And the third-party report if it's
9 examined in detail and there's a -- an executive
10 summary that goes with it, discloses a highly-
11 successful strategic partnership.

12 In addition, the -- the architectural
13 roofs over the two (2) locations have been
14 significant. It's interesting to note that the
15 Toronto Maple Leafs thought that the -- the arena
16 facility was -- was of the quality that they, in the
17 summer after the erection of that facility, saw fit to
18 make it their summer facility to exercise and develop
19 their Toronto Maple Leaf team.

20 I know that with respect to the -- to
21 the pool ---

22 THE HONOURABLE FRANK MARROCCO: I
23 don't mean to interrupt, but are you suggesting I
24 equate the success of the facility with the -- the
25 success of that team or -- I'm just trying -- I'm just

1 trying to seek some clarification, Mr. Chenoweth.

2 MR. FREDERICK CHENOWETH: I -- I'm not
3 -- I'm not sure that I can make that connection.

4 THE HONOURABLE FRANK MARROCCO: All
5 right. Thank you.

6 MR. FREDERICK CHENOWETH: But the
7 connection I choose to make ---

8 THE HONOURABLE FRANK MARROCCO: That's
9 helpful.

10 MR. FREDERICK CHENOWETH: The
11 connection I choose to make is that an NHL
12 professional team --

13 THE HONOURABLE FRANK MARROCCO: I
14 understand.

15 MR. FREDERICK CHENOWETH: -- made the
16 judgment that the facility was of the quality to
17 attract their usage in the period immediately after it
18 was constructed. But it's an interesting matter,
19 we'll -- we'll -- we may have an opportunity to pursue
20 that later.

21 In any event, with respect to the --
22 the pool facility, I don't -- I'm not privy at this
23 juncture, but maybe at a later time, to the usage part
24 of both the arena and the pool, and I'm not at this --
25 at this time, as I make these submissions, I hope to

1 be at a later time, privy to the -- the financial
2 records of those two (2) organizations as to how
3 they've fared in terms of their budgetary projections,
4 et cetera, et cetera.

5 I know nothing that suggests they
6 haven't done anything but quite well in that respect,
7 but I do know that it's a -- a wonderful facility to
8 visit, that's used by all of the community, in my own
9 observation, and in the observation of Mr. Houghton
10 and others with which he's familiar.

11 And we do know that the Collingwood
12 Clippers, which is the -- the major swim organization,
13 swim team that uses that facility, is highly pleased
14 with the facility.

15 I really simply wish to illustrate that
16 it's -- both of those projects are highly-successful
17 projects, as is Collus PowerStream.

18 And I'm not going to go through the
19 detailed rigours with which both of -- with which in
20 particular the Collus PowerStream was examined by
21 various Ontario regulatory organizations, by three (3)
22 municipalities, each one looked at this separately
23 because they were the owners of PowerStream. So it
24 went -- it went through those three (3)
25 municipalities.

1 This Collus PowerStream thing was
2 looked at up and down by two (2) Ontario regulatory
3 organizations, by several boards of directors, by
4 several municipalities and councils, including the
5 Town of Collingwood, the nine (9) person strategic
6 partnership crew. This thing was looked at front and
7 back by many, including the nine (9) men strategic
8 partners -- strategic task force, all of which suggest
9 to me that it was the right thing to do, and I think
10 history has shown that it was the right thing to do.

11 It's in the face of this success that
12 arose from these two (2) organizations that Mr.
13 Houghton was surprised to see that in February of
14 2014, again at the commencement of an election year,
15 certain parties chose to make a complaint to the OPP
16 with respect to the formation and structure and
17 involvement of some in these facilities; that was a
18 surprise to Mr. Houghton.

19 Mr. Houghton was further surprised to
20 find that, again, at the beginning an election -- of
21 an election year in February 2014 some members of
22 Council, with the resistance of others, chose to make
23 the resolution that -- that mandated this particular
24 inquiry and an argument can be made that both the OPP
25 in the investigation -- OPP investigation and the

1 resolution to -- to mandate this inquiry, an argument
2 can be made that it was made for political purposes to
3 stain the reputation of -- of -- of the mayor and
4 others who a particular group on council wish to
5 oppose in the election. It was made at a time when
6 the mayor had not yet publicly announced that she did
7 not intend to -- to continue.

8 The reason I -- I -- I mention that is
9 because it -- it relates to the question of -- of --
10 of funding and the fact that the Town has now -- has
11 this obligation with respect to this matter, and
12 others such as Mr. Houghton and others now have an
13 obligation to -- to involve themselves in the Inquiry
14 and incur substantial legal expense for what it can be
15 argued the politically -- initially, politically
16 motivated inquiry and I don't suggest that -- that the
17 inquiry itself will have any political matters that
18 will in any way colour its thinking, but there's a
19 substantial expense that's going to have to be
20 recurred (sic) not only by the Town and by others and
21 -- and it's important to consider whether the
22 motivation for that was political or not.

23 THE HONOURABLE FRANK MARROCCO: And
24 that I don't want to get into it now because we're
25 just talking about a person's right to participate --

1 MR. FREDERICK CHENOWETH: But we -- we
2 are --

3 THE HONOURABLE FRANK MARROCCO: But --
4 but getting into the -- what may have prompted an
5 individual councillor to vote a certain way, I'm --
6 I'm obligated to conduct the Inquiry by virtue of the
7 resolution and the way the Municipal Act works.

8 They pass a resolution. I conduct the
9 inquiry. It doesn't mean that that's not relevant to
10 the testimony of a lot of different people, but from
11 my purposes -- for my purposes, it -- it's a little
12 bit of a stretch from -- for me to get into their
13 motivation in calling the inquiry. That issue may
14 affect the testimony or the -- or the weight that's
15 given as to positions individuals take.

16 But I'm -- I'm controlled by the fact
17 that there's a resolution passed asking for an Inquiry
18 and the Municipal Act says that when that happens, the
19 Superior Court conducts an Inquiry.

20 MR. FREDERICK CHENOWETH: I don't -- I
21 don't disagree with anything Your Honour has said and
22 I don't take issue with any of it, but there is no
23 question I have no doubt and I'm sure share with Your
24 Honour the view that this Inquiry must be just and
25 come to a just and fair conclusion.

1 THE HONOURABLE FRANK MARROCCO: Well,
2 I agree with that --

3 MR. FREDERICK CHENOWETH: Indeed. And
4 with respect to that, the -- the initial impetus for
5 the inquiry, its -- its effect on the testimony of
6 some witnesses, it's -- it's -- that initial impetus
7 relation to the justice which I know this Inquiry will
8 -- will seek, in my mind, makes that aspect of the
9 Inquiry relevant -- and -- and I'm quite prepared at
10 other times to say more about that.

11 And -- and I -- and I make these
12 remarks really in the -- in the context of -- in the
13 context of funding because people are now burdened
14 with the obligation to pay substantial fees and one
15 has to consider whether or not, without a
16 recommendation for funding that's just, and it relates
17 to the question of standing because it's important
18 that all of the ideas, including the ones that -- the
19 one that we've been discussing now, the motivation for
20 the inquiry is evident and explored through the course
21 of the Inquiry for the reasons I have suggested.

22 In any event, to move beyond that
23 point, it's -- it will not have gone without notice
24 that this year the CBC did an article which led to the
25 posting by the CBC in an article that went throughout

1 Ontario and through Collingwood of the OPP affidavit.
2 I need not say very much about that OPP affidavit
3 except its substantial effect on Ed Houghton.

4 That affidavit on its front had the
5 allegation that:

6 "Ed Houghton between the 1st day of
7 July, 2012 and the 31st day of
8 August, 2012 at the Town of
9 Collingwood and elsewhere in the
10 province of Ontario, being an
11 official of the Corporation of the
12 Town of Collingwood, did commit a
13 breach of trust in connection with
14 his duties of his office, contrary
15 to Section 122 of the Criminal
16 Code."

17 That's a criminal allegation which was
18 circulated certainly throughout the province and
19 throughout this Town in 2018 shortly after Mr.
20 Houghton's retirement from his thirty-nine (39) year
21 career in 2016.

22 You can imagine the extent of Mr.
23 Houghton's distress at that revelation following the
24 career which I've described and his commitment to the
25 Town for thirty-nine (39) years. "Devastating" is not

1 an inappropriate word for the reaction of Mr. Houghton
2 to these matters.

3 As the Inquiry is fully aware, those
4 allegations have not lead to any criminal charges.
5 Mr. Houghton has not had an opportunity to deal with
6 criminal charges and to clear himself of -- of that
7 allegation and it turns out that this Inquiry is his
8 only opportunity to do so.

9 Mr. Houghton has a strong and
10 substantial connection to the issues that are before
11 this Inquiry. His reputation in the community has
12 been significantly adversely affected by the -- by the
13 matters in the way they've unfolded and his interest
14 in the Inquiry is to clear and clarify his reputation
15 following his thirty-nine (39) year career which he
16 built and served this Town in an admirable way and
17 received five (5) awards, one (1) of them being
18 throughout North America for doing so. So he has, in
19 my submission, that substantial interest.

20 He also, as a result of the -- of the
21 positions he's held, and I won't detail this and I'm -
22 - I'm -- I'll wrap up my remarks. He obviously is an
23 individual with substantial information which can be
24 helpful to the Inquiry, which in my view means that he
25 should not only be a witness, but should have his own

1 counsel at the Inquiry with a full right to cross-
2 examine, to bring forward, in his own fashion as he
3 chooses to, matters which he regards as important to
4 the Inquiry and the recommendations the Inquiry will
5 make. He needs to do that to have his opportunity to
6 deal with his -- with his own reputation and with the
7 information that will lead to the just result of this
8 Inquiry and to contribute in a fulsome way to the
9 gathering of that information by cross-examining,
10 calling witnesses, considering experts, making
11 submissions. All of that is -- is pivotal to his
12 opportunity.

13 Those are my remarks with respect to --
14 to standing. I've made some remarks with respect to
15 funding. I had the impression, Your Honour, that
16 there will be an opportunity later this morning to
17 make more detailed remarks with respect to funding and
18 I would reserve further remarks on funding until that
19 opportunity --

20 THE HONOURABLE FRANK MARROCCO: Why
21 don't we just -- why don't you just -- I appreciate
22 why you would think that because of the -- the way in
23 which it was put forward, but given the fact that
24 every -- Mr. Marron and -- and the other counsel did
25 that, why don't you just do it now, and then --

1 MR. FREDERICK CHENOWETH: Quite --
2 quite content to do so, Your Honour.

3 THE HONOURABLE FRANK MARROCCO: We
4 just -- perhaps it's more efficient, actually.

5

6 SUBMISSIONS RE FUNDING:

7 MR. FREDERICK CHENOWETH: Indeed.
8 I've made the point with respect to the importance of
9 the Inquiry, in the face of Mr. Houghton's thirty-nine
10 (39) years of --

11 THE HONOURABLE FRANK MARROCCO: No,
12 no, I got --

13 MR. FREDERICK CHENOWETH: And I've
14 made the point that there's an argument that can be
15 made that this Inquiry is called for the benefit of a
16 few at the expense of many, those being, the Town
17 folks of -- and ratepayers of the Town of Collingwood
18 and at the expense of those who will be personally
19 involved in this Inquiry, as Mr. Houghton will no
20 doubt be, and the -- and the fees, et cetera that
21 they're going to have to incur with respect to -- to
22 that.

23 I submit that it's -- particularly for
24 a gentleman who served the Town in the way he has and
25 has been an employee of the Town, an employee of its

1 -- of its entity to -- in his retirement, which only
2 commenced in June of 2016 to be recar -- to be
3 required to have this burden of this subs -- quite
4 substantial burden upon him after that career, and
5 given what I submit might be argued with respect to
6 the benefit of a few at the cost of many.

7 In my submission, it's unjust that
8 there should not be a recommendation by the
9 Commissioner of this Inquiry to the Town that there be
10 funding for Mr. Houghton's legal fees at a rate
11 consistent with the rates which qualified counsel in
12 this -- in this jurisdiction and in the province of
13 Ontario charge and we've -- there's been some debate
14 on that and I don't think I can add much to that
15 debate and you're right, it is -- it is a very vexing
16 and difficult question. That's my comment on rates.

17 That's my comment on the justice and
18 appropriateness of this Inquiry making a
19 recommendation of the Town to the Town.

20 Mr. Marron made the point that the Town
21 has set aside some \$240,000 to fund those who should
22 have the assistance of the Town with respect to
23 funding of their legal fees. In my respectful
24 submission, Your Honour, Mr. Houghton is one (1) of
25 those individuals who requires the assistance of the

1 Town in his retirement and justice, indeed, requires
2 that Mr. Houghton have the benefit of that
3 recommendation.

4 Those are my submissions with respect
5 to funding subject to any questions that Your Honour
6 may have.

7 THE HONOURABLE FRANK MARROCCO: No, I
8 don't have any questions. Thank you very much, Mr.
9 Chenoweth.

10 MR. FREDERICK CHENOWETH: Very good,
11 Sir. Thank you.

12 MS. JANET LEIPER: Your Honour, Mr.
13 O'Connor is here on behalf of Paul Bonwick.

14 THE HONOURABLE FRANK MARROCCO: Mr.
15 O'Connor...?
16

17 SUBMISSIONS BY MR. DAVID O'CONNOR:

18 MR. DAVID O'CONNOR: Yeah, I'm -- I'm
19 a little upset, Your Honour, because I -- I look
20 around and I see names for the -- all -- all the other
21 counsel that have given submissions except for me and
22 I'm -- I'm wondering if that's a bad sign. My name
23 isn't up here, but my name is David O'Connor and I
24 here -- I'm here on behalf of Mr. Paul Bonwick, Your
25 Honour. In terms of --

1 THE HONOURABLE FRANK MARROCCO: I -- I
2 have -- I've known -- I guess -- I guess it's true of
3 all almost all the counsel but I -- I -- I have known
4 all of you for a long time. I did know that your name
5 was David O'Connor, even without the nameplate.

6 MR. DAVID O'CONNOR: Thank you very
7 much, Your Honour. I appreciate that. I was getting
8 -- getting a little worried.

9 In terms of the application for
10 standing I -- I've pro -- provided Your Honour with
11 the actual application form which details his
12 involvement, as well as the affidavit with respect to
13 funding and I don't want to take up a lot of Your
14 Honour's time because we're here with very expensive
15 counsel, Ms. Leiper and so on that the Town is paying
16 for, so far. They might have to pay for more, so, I
17 don't want to -- I don't want to take a lot of time
18 like Mr. Chenoweth did, but I think that it's obvious
19 from the material I've filed that my client has a very
20 unique and important interest with respect to his
21 position on -- on this Inquiry.

22 He was involved with both the things
23 that you're looking at, the PowerStream purchase of
24 Collus and -- and the -- the other municipal buildings
25 that were built. He was retained by the companies in

1 both instances that paid him as a consultant to assist
2 them in getting the contracts and the -- the -- that
3 they did that allowed them to purchase the
4 Municipality's company for the -- the Collus company,
5 as well as the -- he -- the -- installing the two (2)
6 structures that have been spoken about.

7 I -- I was advised by Ms. Leiper, your
8 counsel, that I had provisional standing at the
9 outset, because she and I'm sure you -- by now, Your
10 Honour's aware of my client's involvement. I don't
11 think there's any question that he should get full
12 standing. And so I -- I don't think I'll -- I need to
13 say anything more about that. It's obvious.

14 THE HONOURABLE FRANK MARROCCO: I --

15 MR. DAVID O'CONNOR: Do you have any
16 questions --

17 THE HONOURABLE FRANK MARROCCO: -- I --

18 MR. DAVID O'CONNOR: -- about --

19 THE HONOURABLE FRANK MARROCCO: No, I
20 -- I don't have any -- any questions about that, Mr.
21 O'Connor.

22

23 SUBMISSIONS RE FUNDING:

24 MR. DAVID O'CONNOR: Thank you, sir.

25 Going -- moving on to the funding application, I adopt

1 Mr. Chenoweth's and other counsel's positions. I -- I
2 have to tell you, though, with -- in terms of the
3 rate, I'm used to working for a hundred dollars (\$100)
4 an hour with Legal Aid, Your Honour, so -- and that's
5 been going on for a long time. So all these --

6 THE HONOURABLE FRANK MARROCCO: The
7 Town may very well request that you act for everybody,
8 Mr. O'Connor.

9 MR. DAVID O'CONNOR: Oh, man. So all
10 these high-powered counsel that are being brought in,
11 your -- your own as well, I'm -- I'm happy to ride
12 along on -- on their coattails in terms of the rate.

13 I think -- one -- one (1) of the
14 observations is that I -- I think Your Honour should
15 be made aware of the rate that the Town is paying Mr.
16 Will McDowell as their counsel. I think that's
17 important as a starting point. If the Town is willing
18 to pay him whatever rate that they are, I -- I don't
19 think other people -- I certainly have a lot more
20 experience than Mr. McDowell in the courtroom, and I
21 think that starting there should be another -- some
22 way to look -- look at how -- how you fix the rate.

23 And Your -- Your Honour's aware of the
24 rate that you -- that the Town is paying your counsel
25 Ms. Leiper. I won't say anything more about the --

1 the rate.

2 What I -- what -- what I feel very
3 strongly about is this, Your Honour: Is that this
4 Inquiry, and -- and hopefully you'll get into it,
5 whether it's relevant to the actual things that the
6 Town is being asked you -- for you to look at is -- is
7 a totally politically-motivated inquiry by five (5)
8 members of council. And as a result of their need to
9 do this for their own purposes and their own desire to
10 get re-elected, all of these people that will be
11 witnesses are going to be put out at great expense,
12 including my client.

13 You know, I have total confidence that
14 at the end of the day, Your Honour will find that my
15 client did nothing wrong, and nothing illegal, nothing
16 criminal, and he -- he's been devastated, as his
17 reputation, his financial situation, has been
18 devastated by the allegations that have been brought
19 out by a -- a minority of members of the -- the
20 public, and led by people that eventually got on to
21 council, and one (1) of whom is deputy mayor now, and
22 running for mayor.

23 And -- and the target -- he's been one
24 (1) of the main targets of -- of the allegations that
25 have been made, having done nothing wrong, and having

1 served the community for so many years in various
2 capacities, as a -- as a councillor on Council, and he
3 was elected as a member of Parliament for two (2)
4 terms.

5 And he -- he's just -- he's born,
6 brought -- brought up here, went to school here, and
7 served the community, and continues to do so in
8 various ways, through community service work, as well
9 as working with different corporations in order to
10 advance not only their interests, but the interests of
11 the community, as shown by the fact that he -- his
12 involvement helped to produce the structures that
13 people are using on a daily basis, and everybody's
14 happy with, as well as the sale of the -- the Utility
15 to PowerStream.

16 And so having done all of that and
17 committing themselves to the community, why should he
18 be put into a position where he's -- where he's done
19 nothing wrong to have to pay for counsel to come --
20 and if he gets full standing -- on a daily basis to --
21 to this Inquiry and for however long it takes, as well
22 as the preparation for it, and as you mentioned last
23 night at the community meeting, the thousands and
24 thousands of documents that somebody's going to have
25 to go through.

1 His role is -- is significant, and --
2 and part of -- part of the -- what you'll be looking
3 into, for instance, is -- is the possible conflict of
4 interest between the fact that he is working as a
5 consultant for all of the companies involved, and the
6 fact that his sister sits on council as mayor, and
7 whether there was a conflict in -- in doing so.

8 And -- and he has material and
9 documents that -- such as -- I'm reading from one (1)
10 in -- in June of 2011, where he writes to certain
11 people and says this:

12 "I had the opportunity to meet with
13 the clerk of the Town of
14 Collingwood, Ms. Sara Almas, this
15 morning. During the meeting, I
16 described the services my company
17 would be willing to -- would --
18 would be providing to PowerStream
19 throughout the region, as well as
20 specific to Collingwood. Ms. Almas
21 was kind enough to offer an
22 interpretation (opinion) of the
23 Provincial Conflict of Interest Act
24 as it relates to my sister being a
25 member of municipal Council. Ms.

1 Almas was quite clear that there is
2 no conflict of interest based on my
3 company's relationship with
4 PowerStream."

5 And the -- that's one (1) of the
6 thousands of documents that you're going to look at
7 that involve him that you'll want to see.

8 And I -- I -- the -- the work that's
9 going to have to go in to reviewing those documents,
10 finding out which ones are relevant, and so on is an
11 immense undertaking for any counsel and an expensive
12 proposition for any client.

13 So the -- the other -- the documents
14 that I provided you with respect to funding indicate
15 that my client has no money to do that. He cannot
16 afford it. He's provided his last two (2) years of
17 income tax returns and what he receives. He's -- he
18 has no other source of funding anywhere that would
19 assist him in -- in retaining counsel.

20 And if he can participate without
21 counsel, in my submission, because of his unique
22 position in -- in these contracts and -- and the
23 buildings that were produced, it would turn out to be
24 an unfair Inquiry, at least for him. And I think that
25 that's what you're here for, is to provide fairness

1 for the -- the Inquiry and -- and how it's conducted.

2 So, I would ask you to make a
3 recommendation to the Town with respect to funding for
4 my client. What -- what happens with the Town's
5 decisions whether or not to follow your recommendation
6 is something that will be very interesting, if you
7 make it, but nevertheless, I -- I think in view of his
8 financial circumstances, in view of the -- the way
9 this Inquiry was called and -- and so on, it would
10 only be fair for you to make that recommendation on
11 behalf of my client, Your Honour. Those would be my
12 submissions.

13 THE HONOURABLE FRANK MARROCCO: Thank
14 you very much, Mr. O'Connor.

15

16 (BRIEF PAUSE)

17

18 MS. JANET LEIPER: Your Honour, maybe
19 I'll just say for the purposes of the record, we do
20 have other counsel here for other parties, but who
21 were identified in advance would not be required to
22 make submissions. I just thought -- just to -- to let
23 you know.

24 THE HONOURABLE FRANK MARROCCO: So
25 that who -- who is that?

1 MS. JANET LEIPER: So Mr. Breedon is
2 here on behalf of the Town of Collingwood in the body
3 of the gallery, and Mr. Watson and Ms. Bain are here
4 from Gowlings on behalf of Alectra Utilities.

5 MR. MICHAEL WATSON: -- Bain, Your
6 Honour.

7 THE HONOURABLE FRANK MARROCCO: Bain?

8 MS. JANET LEIPER: I'll -- I'll say it
9 if you like. It's Michael Watson and Belinda Bain on
10 behalf of Alectra. Thank you.

11 MR. DAVID O'CONNOR: And Alectra is
12 the -- the new Pow -- PowerStream.

13 MS. JANET LEIPER: Correct, Alectra is
14 the successor company to PowerStream. Thank you, Mr.
15 O'Connor.

16 THE HONOURABLE FRANK MARROCCO: So do
17 I have it correctly, then, that as far as Alectra is
18 concerned, you're relying on -- on the written
19 submissions we receive, Mr. Watson? Is that right?

20 MR. MICHAEL WATSON: Yes, that's
21 right, and in particular --

22

23 (BRIEF PAUSE)

24

25 MR. MICHAEL WATSON: Yes, Your Honour.

1 Michael Watson, Gowlings, acting for Alectra Utilities
2 Corporation.

3 And as Mr. O'Connor said, it is the --
4 and Ms. Leiper, it is the successor corporation to
5 PowerStream Inc., which was the purchaser of 50
6 percent of the shares by way of an amalgamation in
7 2017. So when we talk about the purchaser, it now is
8 Alectra, all right.

9 And we made fairly detailed submissions
10 by letter dated August 2nd, 2017 -- of 2018, which
11 followed up on a -- on a prior letter indicating
12 Alectra's interest and the portions of the inquiry in
13 which it was -- it is particularly interested. And
14 there's nothing more, I believe, that we need to say
15 at this point, unless you have any questions, Your
16 Honour.

17 THE HONOURABLE FRANK MARROCCO: No,
18 that's fine. Thank you --

19 MR. MICHAEL WATSON: Thank you.

20 THE HONOURABLE FRANK MARROCCO: -- Mr.
21 Watson. Your position's obvious, I think.

22 MR. MICHAEL WATSON: Yes. Thank you.

23 THE HONOURABLE FRANK MARROCCO: All
24 right. Anything further?

25 MS. JANET LEIPER: There may be one

1 (1) other slight housekeeping matter, but I wonder if
2 we could have a short break, Your Honour? I think
3 we've heard the submissions, and -- and maybe there
4 might be some follow-up.

5 THE HONOURABLE FRANK MARROCCO: All
6 right. Well, we'll take a -- a fifteen (15) minute
7 break. In terms of people who have made submissions,
8 there's no need -- is it -- there's no need for anyone
9 to remain, is there?

10 MS. JANET LEIPER: I don't think so,
11 if people have to leave, although there is a meeting
12 later of all counsel, so if there was --

13 MR. FRED CHENOWETH: Your Honour --

14 THE HONOURABLE FRANK MARROCCO: You're
15 welcome to remain or not, but -- but the point is,
16 I've heard from you, and I've got your submission.

17 MR. FRED CHENOWETH: I wonder if I
18 might just make one (1) additional comment with
19 respect to funding that I inadvertently didn't make -
20 -

21 THE HONOURABLE FRANK MARROCCO: No, go
22 ahead, Mr. --

23 MR. FRED CHENOWETH: -- my remarks.

24 THE HONOURABLE FRANK MARROCCO: -- go
25 ahead, Mr. Chenoweth.

1 MR. FRED CHENOWETH: And that is that
2 it may be that -- that Mr. Houghton, in particular,
3 might have other sources to obtain funding from, and
4 clearly, any recommendation made by this -- by this
5 inquiry to the Town with respect to funding would be
6 subject to reduction and/or adjustment if any of those
7 other sources are -- are found to be useful.

8 Obviously, we were -- we are pursuing
9 other sources, but that's an ongoing process which may
10 or may not be successful, and we have no alternative
11 at the present time but to pursue all avenues by
12 making my remarks to you this morning.

13 THE HONOURABLE FRANK MARROCCO: Yes.
14 Sometimes, depending upon the circumstances, there can
15 be insurance for liability, that sort of thing. I'm
16 not asking you to comment on that, but I would assume
17 that with any -- by applying for funding, that if
18 there were alternative sources that became available,
19 that that would reflect itself in a reduction of the
20 Town's financial commitment.

21 MR. FRED CHENOWETH: I -- I agree with
22 that assertion, Your Honour.

23 THE HONOURABLE FRANK MARROCCO: Yes.
24 Thank you. All right. Well, we'll -- we'll take
25 fifteen (15) minutes. The -- those of you who have --

1 there's apparently a housekeeping matter, and I'll
2 find out what it is. The -- if you -- there's no need
3 for counsel who have made submissions to stay if they
4 have something else to do.

5

6 --- Upon recessing at 11:35 a.m.

7 --- Upon resuming at 11:54 a.m.

8

9 THE HONOURABLE FRANK MARROCCO: Please
10 sit down. Well thank you, everyone, for your
11 assistance this morning. As I indicated, I'll be
12 providing in the next little while written reasons
13 with respect to standing and funding.

14 The applications for standing and the
15 reasons why people think they should be able to
16 participate, there was an application form, and you
17 people will be able to read that application form. As
18 I indicated, the financial information will not be
19 part of that package. And we'll deal with this as --
20 as soon as we can so that people know the extent to
21 which they are able to participate in the Inquiry.

22 We're concluded for today. Thank you.

23 THE COURT REGISTRAR: The hearing is
24 adjourned for today.

25

1 --- Upon adjourning at 11:55 a.m.

2

3

4

5 Certified Correct,

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9 _____

10 Wendy Woodworth, Ms.

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