



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 24th, 2019

1 APPEARANCES

2

3 Kate McGrann) Inquiry Counsel

4 John Mather) Associate Inquiry

5) Counsel

6

7 Michael Watson (np)) Alectra Utilities

8 Belinda Bain) Corporation

9

10 (No Counsel)) For Paul Bonwick

11

12 George Marron) For Sandra Cooper

13

14 (No Counsel)) For Timothy Fryer

15

16 Frederick Chenoweth) For Edwin Houghton

17

18 William McDowell (np)) For Town of Collingwood

19 Ryan Breedon)

20

21 Patrick Gajos (np)) For Collus PowerStream

22) Corporation

23

24 Luisa Ritacca) Ron Clark

25

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1 --- Upon commencing at 10:04 a.m.

2

3 SUBMISSIONS BY MR. RYAN BREEDON:

4 MR. RYAN BREEDON: Your Honour, just
5 before we get started with this witness, I wonder if I
6 might raise an issue for your consideration.

7 THE HONOURABLE FRANK MARROCCO: Yes.

8 MR. RYAN BREEDON: You'll recall that
9 last week, we heard from Mr. McFadden, who testified
10 that Mr. Clark was acting for the Town, and of course,
11 we've heard a fair bit of evidence from various
12 witness about who Aird & Berlis was acting for, and I
13 expect we'll hear some more evidence today about that
14 very topic.

15 On the 20th, I wrote Inquiry counsel,
16 and I requested that it produce, first, all of the
17 communications which it possesses. So that is
18 documents which have been produced by one (1) of the
19 parties, and over which no privilege has been claimed
20 between Aird & Berlis, on the one hand, and in
21 particular, Mr. Clark, and Mr. Longo, and
22 representatives of Collus Power, in particular, Mr.
23 Houghton, on the other hand. So I asked for that.

24 And secondly, we asked for copies of --
25 or for the details of any claim for privilege that has

1 been made by EPCOR in relation to the documents that
2 Collus Power had. That, as you may know, precipitated
3 a very long exchange between counsel, which had
4 resulted in the letter you received last night from
5 counsel for EPCOR, and has led to the following --
6 following things.

7 First, Inquiry counsel has, I
8 understand, generated a list of documents, or a set of
9 documents which is responsive to the first part of my
10 request. That is, it has generated a set of the
11 documents which have been produced by the parties
12 which contain correspondence between the -- the Aird &
13 Berliss and Collus, and it has produced that list to
14 EPCOR for its consideration as to whether it intends
15 to assert any claim for privilege.

16 We don't know, and we -- we have asked
17 but have not been told how many documents are
18 contained, and that said, what it looks like, where
19 they come from, we don't have any of the particulars
20 of -- of that.

21 Secondly, last night, counsel for EPCOR
22 produced a list of documents which I understand was
23 generated in December.

24 THE HONOURABLE FRANK MARROCCO: Just a
25 minute.

1 MR. RYAN BREEDON: Yes.

2 THE HONOURABLE FRANK MARROCCO: It's
3 Mr. Clark, is it?

4 MR. RON CLARK: Yes.

5 THE HONOURABLE FRANK MARROCCO: You --
6 you can sit in the body of the court if you -- or body
7 of the hearing if you find it more convenient, because
8 I'm not sure how long this might take. So if you're
9 comfortable there --

10 MR. RON CLARK: I'm happy -- I'm happy
11 here. I'm fine.

12 THE HONOURABLE FRANK MARROCCO:
13 Thanks. Go ahead, Mr. Breedon.

14 MR. RYAN BREEDON: Sorry. I --

15 MR. RON CLARK: All dressed up and no
16 place to go, I guess.

17 MR. RYAN BREEDON: So secondly, as I
18 was saying, counsel for EPCOR produced to me last
19 night a list of documents over which it has asserted a
20 claim for privilege. In other contexts, we would call
21 it a Schedule B list, I guess, and that list is two
22 hundred and seventy (270) pages long and contains some
23 seventeen hundred (1,700) documents.

24 Now, I understand that it was generated
25 in December of last year, and that subsequent to its

1 creation, a number of the documents which it lists
2 were produced to Inq -- Inquiry counsel. And we can
3 look at it. On its face, it includes a number of
4 things which are clearly not privileged, and I gather
5 some of those have been produced to Inquiry counsel.

6 We have not -- and again, we've
7 requested this, but have not been advised which of the
8 documents have been produced to Inquiry counsel, and -
9 - and so by extension, we don't know which of the
10 documents EPCOR actually is maintaining a claim for
11 privilege over today. And some of those documents,
12 for our purposes here, would include communications,
13 again, between the Aird & Berlis team and Collus
14 Power.

15 So the difficulty that we have is that
16 there are documents which are clearly relevant. They
17 may or may not be privileged, and we can't -- we can't
18 determine -- we can't evaluate that, because we don't
19 even know what the list of the documents is. And --

20 THE HONOURABLE FRANK MARROCCO: I
21 thought they produced a list yesterday.

22 MR. RYAN BREEDON: They produced a
23 list yesterday, but as I say, that list contains
24 documents of which EPCOR no longer claiming privilege
25 over, but I -- I can't tell from looking at it, and I

1 haven't been told which of the documents it claims
2 privilege over, and which it is does not, right?

3 The -- after they generated this list
4 to December, I -- I'm guessing we may have to hear
5 from Ms. McGrann about this, but there were
6 communications between Inquiry counsel and counsel for
7 EPCOR. Counsel for EPCOR apparently produced some of
8 the documents that is on the list which it has given
9 to me.

10 Because I don't have access to all of
11 the documents which Inquiry counsel is in possession
12 of, I only have, you know the -- the documents
13 produced by the Town or the documents which are in the
14 court book, I don't know, and there's no way for me to
15 tell which of the documents have been produced to
16 Inquiry counsel. And so similarly, I don't know which
17 documents today EPCOR is maintaining a claim for
18 privilege over. Somebody would presumably be able to
19 determine that, but -- but I can't.

20 THE HONOURABLE FRANK MARROCCO: Right.
21 Is the basis for your request the fact that there was
22 a joint retainer between the Town and Pau -- and
23 PowerStream -- or be -- the -- the -- between the --
24 and Collus?

25 MR. RYAN BREEDON: So -- so I'm not

1 even --

2 THE HONOURABLE FRANK MARROCCO: Your
3 claim to look at -- and -- and -- at these documents?

4 MR. RYAN BREEDON: So I'm not even --
5 I -- I'm not at that claim yet. I'm only at the -- I
6 want to know the list of what the documents are, a
7 thing which I would submit all of the parties are
8 entitled to.

9 Once we have those, assuming there are
10 documents that, you know, specifically between Aird &
11 Berliss and the Collus people in relation to the
12 Transaction, I expect that my position will be that
13 the Town is entitled to have those documents because
14 of the presumed joint retainer, but -- but I'm not
15 making that request yet, because I can't even point to
16 what the documents are that we're talking about.

17 So what -- what I am asking for is
18 first of all, that you direct that Inquiry counsel
19 produce to the parties the list of documents which it
20 has generated in the last day or so, which is
21 responsive to my original request. So that is the
22 list of documents which it has containing
23 communications between Aird & Berliss and Collus Power
24 which had been produced by any of the parties.

25 THE HONOURABLE FRANK MARROCCO: Have

1 you asked EPCOR, if that's the right entity, for an
2 up-to-date list?

3 MR. RYAN BREEDON: Yes, and it says it
4 doesn't have one.

5

6 (BRIEF PAUSE)

7

8 MR. RYAN BREEDON: Now, in fairness to
9 --

10 THE HONOURABLE FRANK MARROCCO:
11 There's no one here from the EPCOR today, I take it?

12 MR. RYAN BREEDON: Cor -- correct.
13 Correct. In fairness to EPCOR --

14 THE HONOURABLE FRANK MARROCCO: It --
15 it doesn't have one? That's their position?

16 MR. RYAN BREEDON: That -- that's what
17 we have been advised, that it -- it -- the -- the most
18 up-to-date list it has is the one which -- which I
19 have described, which was generated in December, and
20 is not current.

21 THE HONOURABLE FRANK MARROCCO: But --
22 but you're telling me that you know that that's not
23 current because you understand that some of the
24 documents on that list were produced?

25 MR. RYAN BREEDON: Correct.

1 THE HONOURABLE FRANK MARROCCO: And
2 I'm assuming if they are -- the ones that were
3 produced are part of the universe of documents we
4 have, and the ones that we thought were relevant, it
5 found their way into the court book.

6 MR. RYAN BREEDON: I -- I --

7 THE HONOURABLE FRANK MARROCCO: Is
8 that right?

9 MR. RYAN BREEDON: I presume that that
10 is the case.

11 THE HONOURABLE FRANK MARROCCO: One
12 would assume?

13 MR. RYAN BREEDON: Yes, I -- I presume
14 that that's the case. So -- so presumably, between
15 EPCOR and Inquiry counsel, it can be determined which
16 of the documents on the two hundred and seventy (270)
17 page list have been produced, and -- and, therefore,
18 which of the documents EPCOR still maintains a claim
19 for privilege over.

20 THE HONOURABLE FRANK MARROCCO: I -- I
21 don't see -- well, okay. Go ahead.

22 MR. RYAN BREEDON: So -- so that's --
23 that's one (1) piece of it, but -- but the other thing
24 that I -- I am asking is for a copy of -- or list of
25 the documents which Inquiry counsel has produced

1 responsive to our original request for communications
2 between EPCOR and -- or pardon me, Collus Power and
3 Aird & Berlis. And -- and then we can determine
4 whether EPCOR is claiming privilege over those
5 documents or -- or what have you, because it -- so
6 here we're talking about documents that -- and I don't
7 know what's in it, so I am -- you know, this is all
8 speculation just -- just an example. But, you know,
9 if -- if, for instance, Alectra has a document which -
10 - which it produced to Inquiry counsel responsive to
11 that request, then that would be one (1) of the things
12 that would be in this set.

13 And frankly, just given the evidence
14 that has come out so far, just the fact that such a
15 document was in the possession of Alectra or one (1)
16 of the other parties may be a relevant fact, setting
17 aside whether the document itself is properly the
18 subject for privilege, notwithstanding the fact that
19 it's found its way into the hands of a -- of a third
20 party.

21 So -- so what I'm asking for is that
22 you direct Inquiry counsel to produce to the parties
23 the list of documents it has relating to
24 communications between, again Collus Power and Aird &
25 Berlis. That set of documents has already been

1 generated, so presumably generating the list of those
2 documents would not be an onerous task, and then the
3 parties can determine whether there are privilege
4 issues attaching to those documents or not; that's the
5 first thing.

6 Second, I'm going to ask that you
7 direct that EPCOR determine whether it is in fact
8 claiming privilege over any of those documents.

9 THE HONOURABLE FRANK MARROCCO: Those
10 documents being the remaining documents on the list?

11 MR. RYAN BREEDON: Being the documents
12 --

13 THE HONOURABLE FRANK MARROCCO: The
14 remaining documents --

15 MR. RYAN BREEDON: No.

16 THE HONOURABLE FRANK MARROCCO: --
17 that haven't been disclosed?

18 MR. RYAN BREEDON: No, no. The
19 documents in -- already in the possession of Inquiry
20 counsel that came from one of the other parties,
21 right. Counsel for EPCOR hasn't presumably had a
22 chance to see those either, and so they may or may not
23 be asserting privilege over those documents.

24 And then thirdly, I'd like an updated
25 list of the documents that EPCOR -- that EPCOR

1 possesses and which it is actually claiming privilege
2 over. I think we're all entitled to that. And then
3 once we have all of those things --

4 THE HONOURABLE FRANK MARROCCO: Why
5 are you all entitled to that?

6 MR. RYAN BREEDON: Well, all of the
7 parties are entitled to know if there is documents
8 that are -- over which a claim for privilege is being
9 asserted, because they're entitled to test whether
10 that claim for privilege is valid or not valid.

11 THE HONOURABLE FRANK MARROCCO: A
12 party -- a party that has nothing to do with the a
13 document can challenge a claim for privilege?

14 MR. RYAN BREEDON: Well, sure. So for
15 instance, it may be relevant to Mr. Houghton if there
16 are emails between him and Aird & Berlis. It may be
17 relevant to his position --

18 THE HONOURABLE FRANK MARROCCO: Those
19 are emails between him and Aird & Berlis, but if there
20 is some email between someone else, why would -- no
21 need to pick on Mr. Houghton.

22 Why would any other counsel have -- be
23 in a position to challenge that?

24 MR. RYAN BREEDON: Well, I mean, it's
25 no different than in -- well, if -- if the -- if there

1 is no valid claim for privilege, then the documents
2 prima facie should be produced to the Inquiry.

3 THE HONOURABLE FRANK MARROCCO: That -
4 - that's an issue between Inquiry counsel and the
5 party who's making the -- on the hypothetical, making
6 the bogus claim of privilege.

7 MR. RYAN BREEDON: Well, in my
8 submission, all of the parties would be entitled to --
9 would be entitled to examine that because those
10 documents may be relevant to the positions that they
11 intend to take before this Inquiry.

12 But setting that aside, the Town, in my
13 submission, is in a special position because it
14 appears that Aird & Berlis was acting on some form of
15 joint retainer, and so even if there is a claim for
16 privilege, the Town is going to be entitled to see
17 those documents anyways. Fast forward to -- to next
18 week's argument, I'm sure.

19 But -- but in order to even raise that
20 issue with you, we need to know what the documents are
21 over which privilege is being claimed.

22

23 RULING:

24 THE HONOURABLE FRANK MARROCCO: Here's
25 what I'm going to do. There has been evidence, I

1 agree with you, that Aird & Berlis were acting for
2 both the Town and Collus Power. We have heard
3 evidence of that from more than one (1) witness, so
4 there's evidence before the Inquiry that is capable of
5 supporting the conclusion that there was a joint
6 retainer.

7 What -- what I'm going to do is I'm
8 going to order EPCOR to provide you with a list of the
9 documents over which it claims privilege, and then
10 we'll take it from there.

11 MR. RYAN BREEDON: Okay. Can I also,
12 Your Honour, have the documents that are in the
13 possession of Inquiry counsel responsive to my
14 original request?

15 THE HONOURABLE FRANK MARROCCO: I
16 would assume -- what do you mean, documents responsive
17 to -- you mean non -- documents that are not
18 privileged?

19 MR. RYAN BREEDON: Well, documents
20 over which EPCOR has not yet asserted a claim for
21 privilege, but which have been produced to Inquiry
22 counsel by one (1) of the parties and which are --
23 relate to correspondence between Aird & Berlis --

24 THE HONOURABLE FRANK MARROCCO: No,
25 I'm not going to --

1 MR. RYAN BREEDON: -- and --

2 THE HONOURABLE FRANK MARROCCO: I'm
3 not going to deal with that now. Let's start with a
4 list of the documents in respect of which EP -- there
5 is a claim of privilege outstanding. You're -- as far
6 as I'm concerned, because -- and -- and I'm not making
7 this order in respect of everyone.

8 Your client, the evidence before me is
9 that there was -- there's evidence capable of
10 supporting a conclusion that there was a joint
11 retainer, and I agree with you, if there was a joint
12 retainer, there's no privilege between the clients and
13 the lawyer. There is still a question of privilege at
14 the world -- for the world at large.

15 So in order for you to deal with that,
16 I'm satisfied you need at least an up-to-date list of
17 -- of the documents in respect of which a claim of
18 privilege is maintained.

19 And I can tell everybody in here, if I
20 get the idea that people are playing games with
21 documents, I will -- I am capable of drawing an
22 adverse inference as far as their position is
23 concerned when I'm writing my report, because I would
24 be -- and so people should just bear that in mind.

25 So, let -- you let me know if you're

1 having further difficulties with EPCOR. If necessary,
2 after you've had an opportunity to get to the bottom
3 of this as best you can, if witnesses have to be
4 recalled, I -- I'll hear you on the question of -- of
5 that.

6 MR. RYAN BREEDON: Thank you, Your
7 Honour.

8 THE HONOURABLE FRANK MARROCCO: All
9 right. Now, can we get down to what we're here for,
10 which is --

11 Just for the benefit of Mr. -- Mr.
12 Bonwick and Mr. Fryer, I'm not sure whether you're
13 following all this, but -- but at the -- at the root
14 of it is the question of whether there is a joint
15 retainer or not, at least at this stage, because if
16 there was, then there's -- then as far as the clients
17 are concerned, they stand on an equal footing. You
18 can't -- a lawyer can't keep secrets.

19 This is -- this is a -- this is not a
20 law school lecture on the topic and it's not a law
21 school examination question, but the basic idea is
22 that the clients, if there was a joint retainer, you
23 can't keep secrets -- the lawyer can't keep secrets
24 from the client.

25 The privilege, which simply means

1 nobody can look at -- and privilege is, that's what it
2 means really. Nobody can see it. That privilege
3 belongs to both clients. But as between the two (2)
4 clients, there's no secrets. So if there was a joint
5 retainer, all of the documents have to be produced to
6 both clients by the lawyer, and that's what's rooting
7 around at the bottom.

8 Why it is coming out now when a witness
9 is -- Mr. Clark's been in -- sitting in that chair for
10 twenty (20) minutes, and didn't come out before, I'm
11 not going to speculate on -- there might be good
12 reason for that; there might not.

13 So that's just so you have some idea.

14 MR. PAUL BONWICK: Your Honour, could
15 I ask one (1) question?

16 THE HONOURABLE FRANK MARROCCO: Maybe.
17 What's the question?

18 MR. PAUL BONWICK: Yes, the -- it's a
19 question whether I can get an answer.

20 So am I to understand that you've
21 ordered EPCOR to share documents with counsel --

22 THE HONOURABLE FRANK MARROCCO: No.

23 MR. PAUL BONWICK: -- for the
24 Municipality?

25 THE HONOURABLE FRANK MARROCCO: No.

1 I've ordered EPCOR to provide counsel for the Town
2 with a list of the documents that it claims are
3 privileged. That's all I've done. And then that will
4 give Mr. -- Mr. Breedon an opportunity to reflect on
5 what those documents are, and all -- any next steps
6 are still on the table.

7 The idea that you would give someone a
8 list of 1,700 documents and take some documents off
9 that list and then purport to say that you don't know
10 which is which and you don't have an up-to-date list
11 is annoying.

12 MR. PAUL BONWICK: Thank you, Your
13 Honour. I appreciate the clarification.

14 THE HONOURABLE FRANK MARROCCO: All
15 right. Now, Mr. Clark. Welcome to the Inquiry.

16 MR. RON CLARK: Thank you.

17

18 RON CLARK, Affirmed

19

20 EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

21 MS. KATE MCGRANN: Good morning, Mr.
22 Clark.

23 MR. RON CLARK: Good morning.

24 MS. KATE MCGRANN: Before I start with
25 my questions, and this will be -- we're not asking you

1 to disclose any information that's subject to a claim
2 of privilege.

3 If you have any concerns that any of my
4 questions are asking you to do that, please let me
5 know and we'll deal with it as we go, okay? You've
6 got to say 'yes' or 'no' for the record.

7 MR. RON CLARK: Yes.

8 MS. KATE MCGRANN: To begin, could you
9 provide us with a brief overview of your relevant
10 professional experience?

11 MR. RON CLARK: Sure. Corporate
12 lawyer for a couple of decades. I was practising
13 corporate law. I've got a background in public
14 affairs, civil service, foreign service, actually,
15 prior to that. But I started in the electricity
16 industry in about 2000. And I've been with a couple
17 of different firms. I've been with my current firm
18 about twelve (12) years, Aird & Berlis.

19 But since 2000, I've -- I've been
20 practising corporate commercial law but pretty much
21 exclusively in the power sector, electricity sector in
22 Ontario, some internationally, some other places, but
23 mainly in Ontario.

24 MS. KATE MCGRANN: My questions are
25 going to focus on the work that you did related to the

1 share sales transaction in the period between 2011 and
2 2012.

3 But did you have any prior experience
4 working with the Collus entities before you became
5 involved in that matter?

6 MR. RON CLARK: I did. Around the
7 year 2000 I had a little bit of work with another
8 firm, with -- well, I don't think they were the Collus
9 entities at that time. I think it was the Town of
10 Collingwood establishing or corporatizing, as we say,
11 its electricity assets which subsequently became
12 Collus.

13 MS. KATE MCGRANN: And when would that
14 have been?

15 MR. RON CLARK: Around 2000, as I
16 said.

17 MS. KATE MCGRANN: Before the work
18 that you did in the 2011/2012 period had you done any
19 work or did you know Ed Houghton before?

20 MR. RON CLARK: Ed would have -- I
21 would have had contact with Ed initially around that -
22 - as I say, around that period, 2000. And I would
23 have come across Ed in the industry, generally in the
24 Ontario electricity distribution industry.

25 He was a figure in the industry. He

1 was on the market design committee. He was active in
2 industry organization, so I would have come to know
3 him a little bit.

4 MS. KATE MCGRANN: Other than being
5 involved in the same industry, other than the
6 corporatization work you described to us in the early
7 2000s, had you worked directly with Mr. Houghton any
8 projects before 2011?

9 MR. RON CLARK: No.

10 MS. KATE MCGRANN: Can you turn up
11 ARB1739, please?

12

13 (BRIEF PAUSE)

14

15 MR. RON CLARK: I don't know what ARB
16 means.

17 MS. KATE MCGRANN: It's -- I was
18 speaking to our court reporter (sic) --

19 MR. RON CLARK: Oh, sorry. Okay.

20 MS. KATE MCGRANN: -- who will make a
21 document appear on the screen in front of you. There
22 is it.

23 THE HONOURABLE FRANK MARROCCO: We'll
24 try to produce the documents on the screen, so.

25 MR. RON CLARK: Okay. Great. Thank

1 you.

2

3 CONTINUED BY MS. KATE MCGRANN:

4 MS. KATE MCGRANN: This is a client
5 management form, dated October 27th, 2011. Do you
6 recognize this document?

7 MR. RON CLARK: Do I recognize the
8 document? It's -- it's consistent with how we would
9 normally open a client management form in the firm, I
10 guess. I don't know what 'recognize' means exactly in
11 this context.

12 MS. KATE MCGRANN: So, if you look
13 down a little bit, you'll see it's -- it's in respect
14 of an existing client. The client's ne -- legal name
15 and trade name is Collingwood Utility Services Corp.

16 Have you seen the form filled out for
17 Collingwood Utility Services Corp. before?

18 MR. RON CLARK: Have I seen it filled
19 out before, sorry?

20 MS. KATE MCGRANN: I'm trying to
21 figure out if you've seen this form before, if it's --

22 MR. RON CLARK: In preparation for --
23 I mean, I would have. I have seen it recently in
24 preparing for this, for -- for my pre -- for my
25 appearance here. I don't know if I would have seen it

1 at the time because nor -- I think that would have
2 been something done by an assistant or our -- our
3 finance depar -- or accounting department.

4 MS. KATE MCGRANN: What is the purpose
5 of this form within your firm? Why is it filled out?

6 MR. RON CLARK: I'm going to say for
7 the purposes of client management in light of the name
8 of the form.

9 MS. KATE MCGRANN: Can you explain to
10 me what it means and how it's used?

11 MR. RON CLARK: I suppose it is used
12 so that we know whether it's an existing client, we
13 know whether a prelim -- preliminary search has been
14 done regarding the client in terms of conflicts so
15 that we have the proper legal name and trade name of
16 the client so that we assign it a client number and so
17 that we understand if there's an acronym in the client
18 name and other relevant client information.

19 MS. KATE MCGRANN: Are you just
20 reading to me from the part of --

21 MR. RON CLARK: Ye -- yes, I am.

22 MS. KATE MCGRANN: -- the form that
23 you can see? Do you independently know what the
24 purpose of this form is at your firm?

25 MR. RON CLARK: I -- I can't -- I've -

1 - I've given you what I've got.

2 MS. KATE MCGRANN: Okay, but you
3 haven't answered my question. Why is this form filled
4 out at your firm? How is it used, for what purpose?

5 MR. RON CLARK: I -- I've -- that's
6 the ans -- that's the answer I have.

7 MS. KATE MCGRANN: Do you know if --
8 if this is the client management form that was filled
9 out in respect of the work that you were asked to do
10 with respect to the Collus share sale transaction?

11 And before you answer that, you note at
12 the bottom of the page this is a document that's ten
13 (10) pages long. If it would assist you in answering
14 your question, you can direct our court reporter to
15 scroll through --

16 MR. RON CLARK: Yeah. Sure. That
17 would be --

18 MS. KATE MCGRANN: -- so you can read
19 it.

20 MR. RON CLARK: That would be useful.

21 MS. KATE MCGRANN: And just as we go
22 forward, for the sake of our court reporter, we have
23 to endeavour not to speak over each other or the
24 transcript becomes confusing.

25

1 (BRIEF PAUSE)

2

3 MR. RON CLARK: Okay. Great. Sorry,
4 I forget the question.

5 MS. KATE MCGRANN: Was this the client
6 management form that was filled out in respect of the
7 work that you were doing on the Collus share sale
8 transaction?

9 MR. RON CLARK: Yes.

10 MS. KATE MCGRANN: What do you recall
11 about how you became involved in working on the Collus
12 share sale transaction?

13 MR. RON CLARK: I would have had a
14 call from somebody, I think, originally, a call from
15 Ed Houghton, who asked if I would be interested in --
16 in working for them on the transaction.

17 MS. KATE MCGRANN: Who was them?

18 MR. RON CLARK: I wouldn't recall at
19 the time whether them was the Town or Collus or one
20 (1) of the -- one (1) of the companies within the
21 Collus family or the Board of Collus as such, but on
22 the tur -- it was -- the -- the them is not clear
23 right at that call.

24 My impression was it was for the Town
25 and Collus together right from the beginning.

1 MS. KATE MCGRANN: The first call that
2 you're describing, do you remember when that call took
3 place?

4 MR. RON CLARK: The date?

5 MS. KATE MCGRANN: Yeah. And if you
6 can't do the exact date, approximately when in the
7 year.

8 MR. RON CLARK: No, I don't recall.

9 MS. KATE MCGRANN: The date of the
10 client information form is October 27th, 2011.

11 Does that help you recall when the
12 first contact was?

13 MR. RON CLARK: Yeah. So, I -- I mean
14 --

15 MS. KATE MCGRANN: Sorry, we've got to
16 try to not talk, so I'll try to -- we just have to be
17 careful with each other.

18 Does this date help you remember
19 approximately when you would have first been contacted
20 by Mr. Houghton?

21 MR. RON CLARK: It would have made
22 sense to be shortly before the date on the client
23 management form.

24 MS. KATE MCGRANN: I understand your
25 evidence to be that you can't -- you can't recall

1 whether it was clear to you at the first call who
2 exactly you would be working for, but it was your
3 understanding it would be both, some iteration of the
4 Collus entities, one (1) or more, or the Board and the
5 Town.

6 What do you recall about the steps you
7 took to clarify who your client would be for this
8 engagement?

9 MR. RON CLARK: At that time, I don't
10 recall the steps I took.

11 MS. KATE MCGRANN: Do you recall
12 taking steps to clarify that at any time during the
13 work that you did on the transaction?

14

15 (BRIEF PAUSE)

16

17 MR. RON CLARK: I -- I don't think so,
18 other than ongoing communication with a person who was
19 wearing quite a few hats. And, also, sor -- sorry,
20 there were -- there were communications with the
21 Chairman of the Board. There were communications with
22 Ed Houghton in his capacity as an employee.

23 He was an exe -- at the time, he was
24 Executive Director of Public Works. He was acting CAO
25 at certain times of the Town of Collingwood. He was

1 CEO of Collus. He was also an officer of, I think,
2 Collus Holdco and the Collus Services company.

3 And he was also, and I think it's a bit
4 different from the others, the point person on the
5 transaction. And this is important because -- and it
6 is slightly different because the -- the entity Collus
7 as such is the asset, the shares of the asset that are
8 being transferred.

9 So, to the extent my job was to paper
10 the transaction -- and by the way, as I'm sure we'll
11 get to, much of the transaction had already been
12 decided when I was retained. The -- the key
13 documentation and the transaction itself was primarily
14 between the Town and the purchaser.

15 So, to the extent I was retained to
16 prepare the documentation on the transaction, it would
17 have made sense that I was doing so from the
18 perspective and being instructed to do so, as
19 importantly, from the perspective of the shareholder
20 because the parties to a shareholder agreement are
21 shareholders and the parties to an agreement of
22 purchase and sale are the purchaser and the seller.

23 And the -- the utility, Collus, was
24 none of those things.

25 MS. KATE MCGRANN: Okay. So, I'll ask

1 you questions about all of the things that you've just
2 told me. But for starters, I just want to understand
3 the steps you took to determine who your client was in
4 this engagement.

5 I think your evidence is that you don't
6 remember taking any steps to determine who your client
7 was, but please tell me because I'm not sure that I'm
8 getting that right.

9 MR. RON CLARK: I think that's fair as
10 long as it's understood in the context of the retainer
11 and the transaction, and at the time, it didn't
12 matter.

13 MS. KATE MCGRANN: Okay. With respect
14 to the retainer, what was the retainer? It's
15 important for us to understand this in the context of
16 the retainer.

17 MR. RON CLARK: Sure.

18 MS. KATE MCGRANN: What was the
19 retainer?

20 MR. RON CLARK: The retainer was to --
21 I'll use -- I'll use the colloquial term -- paper the
22 transaction in a way. So, at the time I was retained,
23 as I understand it in looking at the documentation
24 that I've seen, there had been a process created to
25 decide on a -- on a structure for transaction and a

1 potential purchaser for the transaction and a process
2 that had selected a purchaser and a process that had
3 settled on consideration for the purchase and the
4 structure of the purchase in the sense of share versus
5 asset versus the whole thing, et cetera.

6 So, to be honest, in some ways, I --
7 I'm kind of disappointed when I get that call because
8 I want to -- I want to be retained on the -- on the
9 whole deal and kind of, at the end of the day, I'm
10 getting the call at the tail end of things, in -- in
11 many ways.

12 So -- so, the call really is to, you
13 know, paper the deal that had already been decided in
14 many ways. So, the retainer, to that extent, is
15 prepared. The primarily documents in these sorts of
16 things, as I've mentioned, are share purchase -- or
17 share -- yeah, share purchase agreement and a
18 shareholders agreement.

19 And a share purchase agreement is the
20 terms and conditions under which 50 percent of the
21 shares in -- that the Town held in Collingwood were
22 going to be sold to PowerStream at the time.

23 And the -- and the way I describe a
24 shareholders agreement is, in a way, a marriage
25 contract because the shareholders have to work

1 together to govern, oversee, et cetera, the -- the
2 company that they're both shareholders of.

3 And so, the retainer was, in my mind,
4 to prepare that documentation and to implement and
5 complete the transaction.

6 MS. KATE MCGRANN: Okay. With respect
7 to -- you've used the phrase 'paper the deal' which
8 may have different meanings to different people who
9 hear it. What does that mean when you use it?

10 MR. RON CLARK: I've just described it
11 as best I can.

12 MS. KATE MCGRANN: Okay. Was it the
13 case that you had been retained to effectively reduce
14 the decisions made by others before you were retained
15 to paper? Is that what you mean?

16 MR. RON CLARK: Yes.

17 MS. KATE MCGRANN: So you didn't
18 believe or understand that you were being retained to
19 give advice on the transaction other than to give
20 advice about how to convert what had been agreed to in
21 the language on the paper that the documents -- that
22 the parties would sign.

23 MR. RON CLARK: Yes.

24 MS. KATE MCGRANN: To your knowledge,
25 had any lawyers been retained to provide either the

1 Town or any of the Collus entities with legal advice
2 about the decisions they made about the transaction
3 that were already made when you were retained?

4 MR. RON CLARK: So David McFadden was
5 on the Board of Directors. Now, he wasn't -- he
6 wasn't retained as counsel as such.

7 But certainly, they had expert advice
8 in various facets on -- on the -- the steps prior to
9 when I was retained. But I was not aware that they
10 had retained other outside counsel prior to me.

11 MS. KATE MCGRANN: You've referenced
12 Mr. McFadden. Was it your understanding that
13 Mr. McFadden provided legal advice to the Town or any
14 of the Collus companies with respect to the
15 transaction?

16 MR. RON CLARK: I don't know.

17 MS. KATE MCGRANN: Do you have any
18 reason to believe that he gave legal advice?

19 MR. RON CLARK: No.

20 MS. KATE MCGRANN: You said that when
21 you were retained, a number of decisions had already
22 been made with respect to the transaction, and I think
23 that you identified -- we'll go on by one just to make
24 sure that I've got the list of it right -- the
25 transaction structure.

1 What does -- what do you mean by that?

2 MR. RON CLARK: That it was a share
3 sale for instance, not an asset sale; that it was a
4 share of -- that it was a sale of 50 percent of the
5 utility; that it was a sale of 50 percent of the
6 shares in the holding company and not 50 percent of
7 the shares in the LDC or the services company. Those
8 are some of the aspects.

9 MS. KATE MCGRANN: With respect to
10 governance considerations, representation on the Board
11 of Directors, and things like that, had those
12 decisions already been made when you were retained?

13 MR. RON CLARK: I don't recall.

14 MS. KATE MCGRANN: With respect to,
15 what I'll call it, exit options -- things like a right
16 of refusal, or a buy-sell provision, or other options
17 for how one or more of the parties that are in the
18 agreement could choose to end the agreement -- had
19 those -- had decisions about those items been made
20 when you were retained?

21 MR. RON CLARK: I don't recall.

22 MS. KATE MCGRANN: We've received and
23 heard evidence that PowerStream was selected through a
24 request for proposal process.

25 Is that consistent with your

1 understanding?

2 MR. RON CLARK: Yes.

3 MS. KATE MCGRANN: So our
4 understanding that that RFP process, the responses
5 were not due until November 16th, and then there was a
6 period of evaluation after that. Your client
7 management form is dated October 27th, 2011.

8 I'm wondering if, based on your
9 answers, you considered yourself to be retained at a
10 later date. When did you start actively working on
11 this matter?

12 MR. RON CLARK: I don't recall.

13 MS. KATE MCGRANN: Can you -- can you
14 help us at all with when you started working on it?

15 MR. RON CLARK: Only in the sense of
16 functionally, it would have been after they had
17 selected PowerStream 'cause I certainly have no
18 recollection of being part of that RFP process at all.
19 I don't remember seeing it; I don't -- don't remember
20 that at all.

21 MS. KATE MCGRANN: Okay. Fair to say
22 that you don't -- you weren't asked to give -- what
23 can you tell us about any advice that you were asked
24 to give with respect to the RFP process or the
25 selection of the successful proponent?

1 MR. RON CLARK: I wasn't.

2 MS. KATE MCGRANN: You've mentioned
3 that you were in ongoing communication with a person
4 who is wearing many hats.

5 MR. RON CLARK: Yes.

6 MS. KATE MCGRANN: I assume that to
7 mean a person who held many different roles. Is that
8 right?

9 MR. RON CLARK: Correct.

10 MS. KATE MCGRANN: Who are you
11 referring to?

12 MR. RON CLARK: Ed Houghton.

13 MS. KATE MCGRANN: What roles did you
14 understand him to be inhabiting when he was
15 communicating with you? Like in what -- in which of
16 his many roles was he acting when he was communicating
17 with you?

18 MR. RON CLARK: The last one that I
19 mentioned, which is -- I think of it different from
20 the others -- and that's kind of the point person on
21 the transaction.

22 MS. KATE MCGRANN: What does that
23 mean?

24 MR. RON CLARK: It means the person
25 who is instructing Council; who is reviewing

1 documentation; who is informing other stakeholders of
2 the progress of the transaction; who is, you know, in
3 my world, the immediate contact person.

4 It's -- it's best as a lawyer if you
5 have a single contact person, although often that does
6 not -- is not the case, and you're dealing with
7 different sets of instructions.

8 But the transaction from a legal point
9 of view works best to a single point of contact, and
10 Ed -- Ed Houghton served that role for the most part,
11 although there were other times when we were meeting
12 with the municipality; there were communications with
13 the mayor, et cetera. But -- but our -- our immediate
14 contact were mostly with Ed Houghton.

15 MS. KATE MCGRANN: Why is it best for
16 there to be a single point of contact in work like
17 this?

18 MR. RON CLARK: It gets expensive if
19 you're responding to different needs that may be
20 consistent or may be inconsistent; different sets of
21 instructions at different times.

22 If you're receiving instructions from
23 different people that -- where they're not aware of
24 what the other person was instructing, that -- that
25 gets both potentially difficult and potentially

1 expensive for the client.

2 MS. KATE MCGRANN: Was it your
3 understanding that you were -- you said you understood
4 you were representing both the Town and a Collus
5 entity. I'm not sure that I understand which one.

6 Which Collus entity did you think you'd
7 been retained to represent?

8 MR. RON CLARK: All of them.

9 MS. KATE MCGRANN: All of them. You
10 consider yourself to be working under a joint retainer
11 then.

12 MR. RON CLARK: Yes.

13 MS. KATE MCGRANN: What can you tell
14 us about conversations you had with your clients about
15 the implications of a joint retainer?

16 MR. RON CLARK: I didn't. I wasn't
17 involved in the actual -- well, I opened the client
18 management form. The retainer letter itself was not
19 dealt with by me.

20 MS. KATE MCGRANN: Who dealt with the
21 retainer letter?

22 MR. RON CLARK: It would have been --
23 it was either John Mascarin or Leo Longo. I'm not
24 sure which.

25 MS. KATE MCGRANN: Have you seen a

1 copy of the retainer letter?

2 MR. RON CLARK: Yes.

3 MS. KATE MCGRANN: When?

4 MR. RON CLARK: When did I see a copy
5 of the retainer letter? A few days ago.

6 MS. KATE MCGRANN: I will double-check
7 this on the break, but I don't believe that we have
8 seen a copy of the retainer letter. Did you review
9 the retainer letter before it was sent to your
10 clients?

11 MR. RON CLARK: The retainer letter
12 had been entered into long before this transaction
13 started.

14 MS. KATE MCGRANN: Are you describing
15 a retainer letter that doesn't specifically pertain to
16 the work that you did on the share to sale transaction
17 but pertain to a larger, more general, long-lasting
18 relationship that your firm had with one or more of
19 your clients on this transaction?

20 MR. RON CLARK: Yes.

21 MS. KATE MCGRANN: Was a retainer
22 letter with respect that you had been retained to do
23 on this share to sale transaction ever created?

24 MR. RON CLARK: No. Not -- not that
25 I'm aware of.

1 MS. KATE MCGRANN: The retainer letter
2 that you did review, did it provide information about
3 the implications of a joint retainer for your clients?

4 MR. RON CLARK: No.

5 MS. KATE MCGRANN: To your knowledge,
6 were your clients ever given advice about the
7 implications of a joint retainer?

8 MR. RON CLARK: I'm not aware of any.

9 MS. KATE MCGRANN: What did you
10 understand about who had authorized Mr. Houghton to
11 give instructions to you on this matter?

12 MR. RON CLARK: Well, given all the
13 hats, I guess, and -- and a subsequent conversation I
14 had with Mr. -- with Mr. McFadden who had -- who was
15 the -- I don't know if he was the chairman or a
16 director, but he was obviously appointed by the
17 municipality. So my sense was the -- the municipality
18 and -- and Ed had given authority.

19 MS. KATE MCGRANN: Did Mr. Houghton
20 ever say anything to you about the authority that he
21 had been granted by any of your clients to provide
22 instructions on their behalf?

23 MR. RON CLARK: I don't recall.

24 MS. KATE MCGRANN: Did you ever have
25 instructions with -- did you ever have discussions

1 with anyone other than Mr. Houghton and Mr. McFadden
2 about any authority that had been granted to
3 Mr. Houghton to provide instructions on the
4 transaction?

5 MR. RON CLARK: No, not that I recall.

6 MS. KATE MCGRANN: You mentioned a
7 conversation with Mr. McFadden, and two questions
8 about that.

9 First of all, you said Mr. McFadden had
10 been appointed by the municipality. What do you mean
11 by that?

12 MR. RON CLARK: So any director of the
13 Board will be elected or appointed by the shareholder,
14 so that a municipality is of the shareholder.

15 MS. KATE MCGRANN: We've had evidence
16 or we've heard evidence that Mr. McFadden was an
17 independent director on the Board of Directors. Is
18 that consistent with your understanding?

19 MR. RON CLARK: That may or may not be
20 the case if they're relevant to whether he was
21 appointed by the shareholder or not.

22 MS. KATE MCGRANN: So by virtue of his
23 role on the Board of Directors, you viewed him as a
24 representative of the municipality.

25 MR. RON CLARK: Again, it's not his

1 capacity on the Board. There is -- the -- I'll go
 2 back to what I said earlier. The -- Collus and the
 3 shares in Collus are the asset. The -- while they may
 4 be party certain agreement, the key aspects of the
 5 transaction have to do with the relationship
 6 between -- on the one hand, under the share purchase
 7 agreement, the purchaser, and the seller, and on the
 8 other hand the shareholders.

9 It's a relatively minor aspect of the
 10 transaction that the -- that Collus itself needs
 11 advice on the -- the reps and warranties, the terms
 12 and conditions, the -- the relationship between the
 13 shareholders. All are relevant to the -- to those
 14 parties.

15 So my job essentially to a large extent
 16 had to do with protecting the interest of the
 17 shareholder because that's what the documents dealt
 18 with.

19 MS. KATE MCGRANN: And the shareholder
 20 is the Town?

21 MR. RON CLARK: So --

22 MS. KATE MCGRANN: Sorry.

23 MR. RON CLARK: Yes. Yes. So --

24 MS. KATE MCGRANN: I didn't mean to
 25 interrupt you.

1 MR. RON CLARK: -- so while
2 Mr. McFadden was on the Board of Directors of Collus
3 and while Ed was CEO of Collus, the job they were
4 doing, implicitly or explicitly, was protecting and
5 thinking about the interests of the Town. Otherwise,
6 it didn't matter. Otherwise, I wasn't retained to do
7 anything.

8 MS. KATE MCGRANN: Okay. So I'm still
9 trying to understand what information was given to you
10 about the authority that Mr. Houghton had to provide
11 instructions on behalf of, in particular, the Town but
12 any of the clients.

13 You've mentioned that you had a
14 conversation with Mr. McFadden. What can you tell us
15 about that conversation?

16 MR. RON CLARK: I don't recall
17 specifics.

18 MS. KATE MCGRANN: You mentioned that
19 you had a conversation with Mr. McFadden in response
20 to a question that I had about why you understood that
21 Mr. Houghton had authority to provide instructions.
22 What caused you to mention the conversation as part of
23 your answer?

24 MR. RON CLARK: In reviewing the
25 documentation that was relevant to this proceeding, I

1 saw -- frankly, I didn't remember it independently --
2 but I saw that around that time, I did have a meeting.
3 I think there was a mention in his testimony or a
4 mention in the Foundation Document of him coming over
5 to -- I think it was my office and having a discussion
6 with me.

7 So I didn't independently recall that,
8 but it would have made sense to me to -- for Ed to
9 have called me and then for David to -- to sit down
10 with me and brief me as to the progress of the
11 transaction to that point.

12 MS. KATE MCGRANN: Do you specifically
13 recall having any discussion with Mr. McFadden about
14 the authority that Mr. Houghton had to provide
15 instructions on behalf of any of the clients that you
16 were representing?

17 MR. RON CLARK: No.

18 MS. KATE MCGRANN: Is it fair to say
19 that you proceeded on the assumption that Mr. Houghton
20 had the authority to provide instructions on behalf of
21 all of your clients?

22 MR. RON CLARK: Yes. And if I may
23 add, given that he was subsequently the acting CAO of
24 the Town, there's sort of, in a way, implicit
25 ratification of that, I would suggest.

1 MS. KATE MCGRANN: Okay. Do you know
2 when he became CAO of the Town?

3 MR. RON CLARK: No. I think you had
4 mentioned to me actually. It -- I believe it was
5 around -- at the end or just after the -- the
6 transaction was signed.

7 MS. KATE MCGRANN: The evidence that
8 we have heard is that he became acting CAO of the Town
9 at the beginning of April 2012.

10 MR. RON CLARK: M-hm.

11 MS. KATE MCGRANN: So by that point, a
12 number of things had happened including the signing of
13 the first round of transaction documents --

14 MR. RON CLARK: M-hm.

15 MS. KATE MCGRANN: -- which takes
16 place on March 6th. Do you remember having any
17 interactions with the person who held the office of
18 CAO of the Town before Mr. Houghton was appointed as
19 acting CAO?

20 MR. RON CLARK: I do not. That
21 doesn't mean they didn't happen. I don't recall them,
22 no.

23 MS. KATE MCGRANN: So I understand --
24 and you can tell me if I've got this wrong -- that you
25 didn't -- your main point person, the person you

1 mostly took instructions from, was Mr. Houghton.

2 Is there anybody else that you took
3 instructions from in the course of the work that you
4 did on this transaction?

5 MR. RON CLARK: You know, taking
6 instructions is not a technical term. I will say that
7 there was broad dissemination of the documentation to
8 the mayor, possibly others in the municipal --
9 municipal officials. And -- and there were more --
10 there's more than one, I think, presentation to
11 Council, as well.

12 So at all of those times, any recipient
13 of those -- of that documentation would have had the
14 chance to have input and give me "instructions."

15 MS. KATE MCGRANN: At any point in
16 time during the Transaction, did you have a list of
17 individuals in your mind who you believed you could
18 follow their instructions?

19 MR. RON CLARK: A list of individuals?

20 MS. KATE MCGRANN: Yeah. I understand
21 you to be saying that you -- you were in communication
22 with a number of people --

23 MR. RON CLARK: Yes.

24 MS. KATE MCGRANN: -- representatives
25 of -- of your clients in this -- in this matter, and

1 that any of them could -- respond to you.

2 I'm trying to understand who you
3 thought you could -- you could act on what they said,
4 and who you thought you couldn't act on what they
5 said, or was it the case that anyone that you
6 communicated with at your client's -- if they provided
7 you with an instruction, you would follow it?

8 I apologize if that's a bit of a -- a
9 sloppily-worded question. I'll try to come at it a
10 bit differently. You've explained the importance of
11 having a point person on the Transaction, and --

12 MR. RON CLARK: M-hm.

13 MS. KATE MCGRANN: -- you mentioned
14 the cost that can come from getting in -- inconsistent
15 instructions.

16 MR. RON CLARK: M-hm.

17 MS. KATE MCGRANN: I'm trying to
18 understand who you thought that you were authorized to
19 take instructions from.

20 MR. RON CLARK: Okay. So again, I'm
21 not -- I'll use the term 'input', because I'm not sure
22 what -- I'm not sure 'instructions' is a term of art.
23 I'm not sure exactly what it means in this context.

24 Certainly, councillors can have input.
25 The mayor can have input. The CAO can have input.

1 The directors can have input, et cetera.

2 It's -- it's -- as I mentioned, it's
3 less than ideal to have all these sources, but
4 frankly, that's what usually happens. We try to -- to
5 corral it.

6 Whether -- now they -- they may channel
7 their comments directly. They may channel their
8 comments through the board, or through Ed Houghton,
9 but, you know, that's kind of a -- there's a amorphous
10 set of information, reactions, comments, et cetera
11 that are all taken into account in preparing the
12 documentation.

13 You know, part of my job is certainly
14 to be aware of the interests of all stakeholders. So
15 while Ed was kind of the regular contact, it did not
16 exclude the possibility of receiving input from other
17 parties within the clients.

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: I've reviewed this
22 client management form. You've had the opportunity to
23 see it scrolled through in front of you. I didn't see
24 any mention of the Town of Collingwood on this form.

25 Do you know why the Town of Collingwood

1 is not -- not mentioned?

2 MR. RON CLARK: No.

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: Can we turn to page
7 5 of this form for a moment, please.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: I'll paraphrase,
12 but there are a number of -- of entities listed here
13 for the purposes of checking existing or future
14 conflicts. We see PowerStream, Horizon, Verdian, and
15 Hydro One.

16 Do you know why these entities are
17 listed here?

18 MR. RON CLARK: It's very important
19 when we open a matter and -- yeah, open a matter,
20 we're aware of potential conflicts, and I guess at the
21 time this was opened, and again, I don't have
22 independent recollection, but just having prepared for
23 -- for this appearance, the -- the potential -- I
24 guess the -- at the time this was opened, the
25 potential purchasers were those companies, I suppose.

1 Again, I don't -- I don't recall.

2 And if so, it would be important that
3 we understood within the firm, if any other lawyer
4 within the firm is acting for any of those parties in
5 any capacity, not just on this particular transaction.
6 So there's a -- a process by which there is a -- a
7 list of new matter openings each day so that all the
8 lawyers in the firm can see, and -- and who might be
9 opposite in interest to our client, and therefore,
10 it's clear that if -- and if somebody's acting for --
11 for example, PowerStream, that then that would be
12 brought to our attention, so that we wouldn't be in a
13 conflict situation.

14 MS. KATE MCGRANN: Other than the --
15 the -- this form that we're looking at right now, and
16 the retainer letter that we've already discussed, to
17 your knowledge, are there any other documents that
18 were created that describe or attest -- or describe
19 the work that you were retained to do on this share
20 sale Transaction --

21 MR. RON CLARK: No.

22 MS. KATE MCGRANN: -- set out the
23 relationship between yourself and your clients?

24 MR. RON CLARK: No.

25 MS. KATE MCGRANN: I apologize if I

1 already asked you this, but do you know why no
2 retainer letter was created with respect to your
3 engagement on this matter?

4 MR. RON CLARK: A retainer who -- so
5 we had a retainer letter, and that's what's required,
6 and we -- there wasn't need -- there didn't need to be
7 another one beyond the one we had.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: Other than Mr.
12 Houghton, did you have any discussions about the
13 nature of the scope of the services that you were
14 being asked to provide your clients with respect to
15 the share sale Transaction?

16 MR. RON CLARK: I don't recall.

17 MS. KATE MCGRANN: Turning from your
18 retainer in this matter to some questions about the
19 work that you did, you have prior experience in -- in
20 the sale of LDCs?

21 MR. RON CLARK: Yes.

22 MS. KATE MCGRANN: And did you at the
23 time? I should have asked you.

24 MR. RON CLARK: Yes.

25 MS. KATE MCGRANN: Had you been

1 involved in a -- an RFP process related to the sale of
2 an LDC before, or a merger?

3 MR. RON CLARK: You're -- I'm not sure
4 -- I certainly have been since. I have been involved
5 in many transactions with many of LDCs, including
6 RFPs. Whether -- whether that was the case before
7 this particular one, I -- I can't recall.

8 Likely, yes; certainly following.

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: You said that when
13 you -- recall when you became actively involved in the
14 Transaction, a number -- a number of items had already
15 been determined. You mentioned the -- the structure
16 the Transaction -- the counterparty to the deal had
17 been selected. The consideration to be paid had
18 already been determined.

19 Anything else that you recall that had
20 already been decided when you begin working on this?

21 MR. RON CLARK: I can't add to that,
22 no.

23 MS. KATE MCGRANN: Were you asked to
24 consider the decisions that had already been made in -
25 - or give any advice about the decisions that had

1 already been made?

2 MR. RON CLARK: No, not that I
3 recollect.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: What can you tell
8 us about what you understood the Town's goals were for
9 the partnership that was being entered into?

10

11 (BRIEF PAUSE)

12

13 MR. RON CLARK: Town's goals. Well, I
14 -- I have no recollection of discussions at the time
15 with regard to the particular goals. I think the
16 process would have been something like, you know,
17 using our experience, precedent documentation, our
18 understanding of the Town -- Town's requirements
19 generally to produce documentation, and probably
20 proposals and suggestions as to things like, you know,
21 shareholder representation.

22 I mean, I suppose there was 50/50. I
23 mean, in many ways, it was, you know, look at -- look
24 at what's appropriate to commercially, as you say,
25 reduce the docu -- the -- the Transaction to paper,

1 protect the Town's interests as much as possible in
2 terms of appropriate reps and warranties. That's
3 usually a large topic of discussion.

4 So it was kind of within the context of
5 -- of what was commercially feasible, and reasonable,
6 and standard to protect the Town's interest.

7 MS. KATE MCGRANN: Was it your
8 understanding that the -- the Town was looking to
9 become involved in a -- a long-term partnership with
10 PowerStream --

11 MR. RON CLARK: Yes.

12 MS. KATE MCGRANN: -- through Collus-
13 Power.

14 MR. RON CLARK: Sorry. Yes.

15 MS. KATE MCGRANN: What can you tell
16 us about what you were asked to do to help bring that
17 goal into reality?

18 MR. RON CLARK: I -- I don't know that
19 I have anything to add beyond what I've already stated
20 on that -- on that issue.

21 MS. KATE MCGRANN: Okay. Were you
22 asked to provide advice about appropriate or -- or the
23 best for the Town, aspects of the shareholder
24 agreement with respect to governance?

25 Were you asked to give advice about

1 what -- what the Town could do in the shareholder
2 agreement from a governance perspective to protect its
3 interests in the Company?

4 MR. RON CLARK: Likely. I -- I don't
5 have recollection of particular conversations, but
6 that would make sense.

7 MS. KATE MCGRANN: Do you -- do you
8 specifically recall being asked to consider how the
9 Town could protect its interests through the --
10 through the documents you were drafting?

11 MR. RON CLARK: I don't -- as I say, I
12 don't recollect specific discussions or instructions
13 or comments on that, other than kind of what we
14 generally get following production of the
15 documentation.

16 MS. KATE MCGRANN: Do you have a -- do
17 you have a general recollection that that was one of
18 the things that you were -- that you were working on?

19 MR. RON CLARK: Governance
20 arrangements would be part of the shareholders'
21 agreement, yes.

22 MS. KATE MCGRANN: More specifically
23 than that, determining what governing arrangements
24 would best protect the Town's interests, is that
25 something that you were working on?

1 MR. RON CLARK: Yes.

2 MS. KATE MCGRANN: Can you tell us
3 anything about the steps that you took to understand
4 what the Town was hoping that those would look like,
5 or any advice --

6 MR. RON CLARK: Not beyond -- sorry.

7 MS. KATE MCGRANN: No, that's --

8 MR. RON CLARK: Not beyond what I've
9 already said.

10 MS. KATE MCGRANN: And no specific
11 recollection of anything, but generally you understood
12 that was part of your job?

13 MR. RON CLARK: Correct.

14 MS. KATE MCGRANN: Similarly, do you
15 remember whether -- come at it this way. What can you
16 tell us about any discussions you had about available
17 options for the Town should it choose to leave the
18 partnership that could be included in the documents?

19 MR. RON CLARK: What discussions I
20 had? I don't recollect particular discussions.

21 MS. KATE MCGRANN: Can you recall
22 whether you were asked to give the Town advice about
23 the best options it could include for itself in the
24 transaction should -- to allow it to exit the
25 partnership?

1 MR. RON CLARK: That certainly would
2 have been part of, for instance, the shareholders'
3 agreement. So, yes, I would have dealt with those
4 issues.

5 MS. KATE MCGRANN: You don't
6 specifically recall any discussions about how to
7 protect the Town's interests in those documents on --
8 as far as an exit from the relationship?

9 MR. RON CLARK: It would have been
10 part of -- and again I use it would have because I
11 don't have independent direct recollection, but it
12 certainly would have been part of the presentations we
13 would have given, for instance, to Council. I think
14 normally a part of the discussions -- it certainly
15 would have been something we would have mentioned as
16 being kind of part of the shareholders' agreement.

17 MS. KATE MCGRANN: We'll come to the
18 presentations. I'm aware one (1) presentation that
19 you made to Council.

20 Were there other presentation that you
21 made to the -- the Town of Collingwood Council?

22 MR. RON CLARK: Again, I don't have
23 independent recollection of the number of
24 presentations or when they were, et cetera. I know
25 that there were -- I -- I remember I was -- at -- at

1 least one of them. There may have been others as
2 well.

3 MS. KATE MCGRANN: At the time that
4 you were working on this transaction, had you seen the
5 sale of a 50 percent share of an LDC before?

6 MR. RON CLARK: No.

7 MS. KATE MCGRANN: Would the sale of a
8 50 percent share of an LDC present potential issues or
9 risks that are not presented by a majority sale,
10 minority sale, full sale, or merger?

11 MR. RON CLARK: Each of those
12 transactions would have its own set of risks,
13 disadvantages, and advantages.

14 MS. KATE MCGRANN: And is it the case
15 that a 50 percent share sale would have advantages,
16 disadvantages, and risks that were unique to it as
17 compared to the other transactions I described?

18 MR. RON CLARK: That's consistent with
19 my previous response, yes.

20 MS. KATE MCGRANN: Were you
21 specifically -- what can you tell us about discussions
22 you had about the specific advantages, disadvantages,
23 and risks associated with a 50 percent share sale with
24 your clients?

25 MR. RON CLARK: I don't have any

1 specific recollection of the discussions, given that
2 that was a key building block of the deal that had
3 already been reached. I -- we would have explored the
4 implications it had for the governance framework, but
5 I don't know that I would have had them relitigate
6 that decision.

7 MS. KATE MCGRANN: Okay. And I
8 understand that your evidence was that you weren't
9 asked to give an opinion on whether a 50 percent share
10 sale was a good idea or a bad idea. That was a
11 decision that was already made.

12 MR. RON CLARK: Correct.

13 MS. KATE MCGRANN: Do you have any
14 specific recollection of any discussions you had with
15 your clients about advantages, disadvantages, and
16 risks posed by a 50 percent share, how those could be
17 addressed in the documents you were drafting for them?

18 MR. RON CLARK: Well, in -- in
19 preparing the shareholders' agreement, you're -- and
20 given that framework, you're looking at governance
21 arrangements and other issues that implement that and
22 that kind of show the implications of that choice. I
23 mean, I think that's the way I'd answer that question.
24 I'm not -- I'm not sure beyond that there were kind of
25 -- again, it's not a re-litigation of that fundamental

1 choice that has already been made.

2 MS. KATE MCGRANN: I'm more interested
3 in whether you can recall any specific discussions
4 about how to address the disadvantages and risks posed
5 by that arrangement --

6 MR. RON CLARK: I don't have --

7 MS. KATE MCGRANN: -- in the documents.

8 MR. RON CLARK: -- a recollection,
9 sorry. I don't have a rec -- recollection of specific
10 discussions.

11 MS. KATE MCGRANN: Do you have a
12 general recollection of talking about those issues?

13 MR. RON CLARK: It would have -- I --
14 I don't have a direct recollection. Normally, that
15 would be part of the back and forth in the discussion,
16 the explanation of how the documentation works.

17 MS. KATE MCGRANN: In your discussions
18 with Mr. Houghton, was it your understanding that if
19 you only spoke to him about a certain issue with
20 respect to the transaction, that he would then go and
21 report back to -- to the clients that you understood
22 he was representing?

23 MR. RON CLARK: Well, yes, but it goes
24 beyond that in that the documentation, I believe, had
25 a fairly wide distribution list, so, chain -- and --

1 and -- and as you may be aware, there's initial drafts
2 of documentation, there's comments internally, there's
3 comments from the other side, and as you negotiate, as
4 you revise, as positions change, as the transaction
5 evolves, you highlight -- it's called black lining or
6 red lining -- every change in the documentation so
7 that it leaps out and people can understand what's
8 happened to the documentation.

9 So, you know, was -- who was he in
10 contact with? Yeah, I -- I -- I guess my assumption
11 was that he would be reporting back to the Board, to
12 the Council, to the Mayor, to the CAO, et cetera. I
13 don't have a sense of that relationship, but certainly
14 I -- I believe there was a distribution list. And
15 again this is more -- I don't recollect independently
16 what the distribution list was, but I've seen some of
17 the other testimony and information, that there was a
18 wide distribution list, which would normally be the
19 case in this kind of transaction.

20 MS. KATE MCGRANN: And I understand
21 you to be saying that there was a wide distribution
22 list of the drafts that were being exchanged --

23 MR. RON CLARK: M-hm.

24 MS. KATE MCGRANN: -- between the
25 parties. Fair to say that your discussions with Mr.

1 Houghton would have gone beyond what was evidenced in
2 the drafts that were being exchanged? Could have
3 included things like questions he would ask you,
4 advice you would give him, things that you considered
5 that were left for a later decision.

6 Is it -- is it fair to say that the
7 discussions that you had with him went beyond the
8 drafts that were circulated to the distribution list?

9 MR. RON CLARK: There would have been
10 perhaps information exchanged with him. I don't
11 recollect that.

12 I should also mention, the day-to-day
13 exchanges, I believe, and again I didn't -- and I --
14 this is just from the documentation I've seen, there's
15 an associate who worked with me closely at the time
16 who was kind of doing the -- the -- drafting, take
17 instructions, the changes, et cetera, and kind of
18 having the exchanges, I think, on a regular basis with
19 -- with Ed and with -- with others.

20 Now, actually I'm recalling that were
21 others who were involved, I believe the CFO and there
22 may have been others as well. And I certainly was
23 made aware of every change, certainly the -- the --
24 the associate reported to me and I was aware if not a
25 daily basis, I think, exactly what was going on, but

1 the -- but the exchanges I think were with -- with the
2 associate at the firm.

3 MS. KATE MCGRANN: And when you're
4 talking about the associate who worked with you at the
5 firm, are you talking about Corrine Kennedy?

6 MR. RON CLARK: Yes.

7 MS. KATE MCGRANN: You mentioned that
8 she was in contact with the CFO. Are you referring to
9 Tim Fryer?

10 MR. RON CLARK: No.

11 MS. KATE MCGRANN: Are you referring
12 to --

13 MR. RON CLARK: It's -- sorry.

14 MS. KATE MCGRANN: -- Cindy
15 Shuttleworth perhaps?

16 MR. RON CLARK: Yes, I believe so.

17 MS. KATE MCGRANN: What I'm trying to
18 -- what I'm trying to understand here through the
19 questions that I'm asking you for the few -- last few
20 minutes is what you understood about how your work and
21 the information and advice that you were giving in
22 part of your role was disseminated to your clients.

23 Do I understand you to be saying that
24 draft were -- were shared with them? I want to know
25 if -- if you had an understanding of -- of any other

1 ways that -- that the work that you were doing was
2 being disseminated to your clients.

3 MR. RON CLARK: They were copied on
4 emails, they were copied on drafts, they were -- there
5 were exchanges, there may have been phone
6 conversations, there may have been meetings, there may
7 have been presentations. That's -- that's the
8 dissemination.

9 MS. KATE MCGRANN: Did you think that
10 Mr. Houghton was reporting back to -- to people at the
11 Town, for example, on the conversations he was having
12 with you and the instructions he gave you?

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: And did you think
15 that he was doing the same thing within the Collus
16 entities?

17 MR. RON CLARK: Yes.

18 THE HONOURABLE FRANK MARROCCO: Are
19 you moving on to something else?

20 MS. KATE MCGRANN: I'm --

21 THE HONOURABLE FRANK MARROCCO: No,
22 no, I'm not saying it for that reason. I would break,
23 that's all.

24 MS. KATE MCGRANN: Yes. This is a
25 good time for a break.

1 THE HONOURABLE FRANK MARROCCO: Take
2 ten (10) minutes.

3

4 --- Upon recessing at 11:17 a.m.

5 --- Upon resuming at 11:30 a.m.

6

7 CONTINUED BY MS. KATE MCGRANN:

8 MS. KATE MCGRANN: Over the break, we
9 located a copy of the retainer letter that you
10 referred to. A copy of that retainer letter will be
11 emailed to all of the participants in the next few
12 minutes, I think, but if it's a bit longer than that,
13 I can't -- I apologize. It should be showing up in
14 your in-boxes soon.

15 And we'll come back to it at the end of
16 my questions so everyone's had a chance to review it.
17 It's also being uploaded into the court book.

18 I just want to ask you some questions
19 about who else from Aird & Berlis was -- was working
20 on this matter with you. You've already made
21 reference to an associate who was working with you,
22 Corrine Kennedy.

23 What was her role on this matter?

24 MR. RON CLARK: She was assisting me
25 on the corporate documentation.

1 MS. KATE MCGRANN: Was she also
2 involved in communicating with the clients?

3 MR. RON CLARK: Yes.

4 MS. KATE MCGRANN: What else did she
5 do?

6 MR. RON CLARK: It takes -- it's a
7 short way to describe it, but it -- the hours are very
8 extensive in carrying out what we just talked about.

9 MS. KATE MCGRANN: For people who
10 aren't transaction lawyers --

11 MR. RON CLARK: Yeah.

12 MS. KATE MCGRANN: -- can you help
13 them have a better sense of understanding what her
14 days would look like and the work that she did on the
15 file?

16 MR. RON CLARK: Okay. So, the -- the
17 shareholders agreement, the share purchase agreement.
18 There would be ancillary documentation, share
19 certificates to worry about, share issuances,
20 resolutions, memos on different issues, back and forth
21 with contact points, whether it's Ed or other contact
22 points and the clients, revising documentation,
23 running them by me, having me comment on them,
24 revising them again potentially, often not, she is an
25 excellent associate, then distributing it, as -- as we

1 talked about, to the -- to the clients, getting
2 comments back, dealing with -- and that's not even,
3 you know, dealing with the other side, where there'll
4 be suggestions or comments or communications or
5 logistics issues dealing with counsel for the
6 purchaser.

7 And I'm sure I've left a tonne out, but
8 that gets you -- gives you a picture.

9 MS. KATE MCGRANN: That -- that does
10 help quite a bit. You listed a number of different
11 kinds of documents. I understand that she was making
12 revisions in response to suggestions by others. It
13 sounds like she was also liaising with your client and
14 communicating with PowerStream and its counsel.

15 Is that a fair summary of -- of what
16 you've described there, not complete, but a fair
17 summary of some of what you've described there?

18 MR. RON CLARK: Yes.

19 MS. KATE MCGRANN: When it came to
20 advice that was going to be provided to your clients,
21 was it the case that the -- the advice would be
22 provided by you or was she also in a position to
23 provide advice to the clients?

24 MR. RON CLARK: I don't think -- I
25 think -- I think in the question there's this kind of

1 segmentation or, you know, a term of art, quote
2 unquote, "advice." I think there's a back and forth
3 of communication and instruction and at different
4 levels of sophistication at different times that's
5 required.

6 And so, there's the -- the process of
7 giving advice and receiving instructions, et cetera,
8 is -- is more of a amorphous in terms of the exchange
9 of information. I don't think there's -- you know,
10 some bits of information that go back and forth
11 qualifies advice and some don't. I think it's more of
12 a spectrum.

13 MS. KATE MCGRANN: Okay. Was there a
14 point on the spectrum -- I'm not sure what the two (2)
15 end points would be, but was there a point on the
16 spectrum beyond which she was not permitted to make
17 independent decisions, she would have to consult with
18 you before she gave information or otherwise
19 communicated with a client on something?

20 MR. RON CLARK: I wouldn't
21 characterize it a particular point on a spectrum. I
22 think, generally, there were times when she would give
23 me information about the transaction and I would
24 perhaps respond or have to deal with it. And there
25 were times when I would suggest to her what her

1 response should be and she would deal with it.

2 MS. KATE MCGRANN: Fair to say that
3 she was in constant communication with you about the
4 work that she was doing on the file?

5 MR. RON CLARK: Yes.

6 MS. KATE MCGRANN: Was there anybody
7 else at Aird & Berlis that -- that you were working
8 with on this transaction?

9 MR. RON CLARK: There were pro --
10 certainly, I remember Leo Longo, my partner in the
11 municipal department, was working on it. There --
12 there likely -- I don't have an independent
13 recollection, but I would be surprised if from time to
14 time there weren't tax or employment or labour or
15 other types of issues, or real estate, where we may
16 have retained other law -- or when I say, "retained,"
17 consulted with other lawyers within the firm.

18 MS. KATE MCGRANN: With respect to Mr.
19 Longo, what was his role in the transaction?

20 MR. RON CLARK: He had, as I
21 understood it, a longstanding relationship with the
22 Town of Collingwood. And there were times when they
23 felt comfortable having his municipal expert --
24 expertise and experience from the municipal
25 perspective.

1 They -- there were times, as I
2 understood it, when they -- they felt comfortable
3 having him weigh in or -- or his thoughts on the
4 transaction.

5 MS. KATE MCGRANN: You mentioned he's
6 a municipal lawyer. Fair to say that his areas of
7 expertise are different than yours?

8 MR. RON CLARK: Yes.

9 MS. KATE MCGRANN: Do you know if he
10 had experience or expertise in the kind of transaction
11 that you were working on for your clients here?

12 MR. RON CLARK: I don't know if he had
13 experience. There are municipal aspects, as you can
14 imagine, to this type of transaction. In fact, I
15 would suggest there are very few lawyers who operate
16 kind of in the corporate commercial but also municipal
17 context, so.

18 Certainly, he's not a corporate
19 commercial lawyer. He's a municipal lawyer. So, in
20 that respect, he had a different skill set and
21 experience.

22 MS. KATE MCGRANN: Were you in direct
23 communication with Mr. Longo with the work that you
24 were doing and that he was doing on the transaction
25 throughout the engagement?

1 MR. RON CLARK: I'm not sure what
2 'direct' means. There were certainly times when we
3 had communications about it.

4 MS. KATE MCGRANN: Okay. Were you
5 keeping him up to date with what you were doing? Was
6 he keeping you up to date with what he was doing?
7 Were you working together as a team in that way?

8 MR. RON CLARK: No, not in the same
9 way that I was working with Corrine, let's say. I
10 think we -- we -- there was occasional exchanges, but
11 there weren't -- there wasn't kind of a regular update
12 or regular discussion of what we were doing.

13 I think there were certain touch
14 points, but -- but not -- not a regular exchange,
15 certainly not daily, or possibly not even weekly.

16 MS. KATE MCGRANN: I understood you to
17 say that the Town -- you understood the Town felt
18 comfortable with Mr. Longo and -- and would time to
19 time consult him on -- on the transaction. Is that
20 fair?

21 MR. RON CLARK: Yes.

22 MS. KATE MCGRANN: Okay. When Mr.
23 Longo was consulted by the Town on the transaction
24 would he let you know about the conversations that he
25 had with the Town so the two (2) of you could ensure

1 that the Town was getting full information, you
2 weren't giving conflicting information, things like
3 that?

4 MR. RON CLARK: As far as I know, yes,
5 I certainly have recollections of having discussions
6 with him about that.

7 MS. KATE MCGRANN: Do you know who he
8 was communicating with and, I'll say, taking
9 instructions from at the Town?

10 MR. RON CLARK: My -- my recollection
11 is -- and it's not a strong one (1), but -- but I had
12 -- I -- I think I had the impression at the time that
13 he was -- he was -- he had a line of communication
14 with the mayor.

15 MS. KATE MCGRANN: Was it the case
16 that -- that you understood that he was -- he has a
17 lot of communication with the mayor, he was taking
18 instructions from the mayor?

19 MR. RON CLARK: I -- I -- define --

20 MR. LUISA RITACCA: Oh, I need to --
21 sorry. Mr. Commissioner, Mr. Longo's going to be here
22 as the next witness. And I'm not sure what the value
23 is of what Mr. Clark's understanding of who Mr. Longo
24 was receiving instructions from when you're going to
25 hear it from him later today or at some other point.

1 THE HONOURABLE FRANK MARROCCO: I'll
2 still allow the question.

3

4 CONTINUED BY MS. KATE MCGRANN:

5 MS. KATE MCGRANN: And I'm happy to
6 that I just -- I will then ask you questions
7 potentially about how impacted the decision about how
8 you conducted yourself on the file and who you
9 communicated with.

10 So, that's -- that's one (1) of the --
11 the reasons that I'm asking you about this. So, was
12 it your understanding that Mr. Longo was taking
13 instructions from the mayor?

14 MR. RON CLARK: Define "instructions".

15 MS. KATE MCGRANN: Who -- who was --
16 who was telling Mr. Longo what he should do in his
17 work on this matter?

18 MR. RON CLARK: Yeah, I -- I don't
19 know. All I can -- I can say that I had, as I said
20 before, an impression that he had a line of
21 communication with the mayor. As to whether those
22 communications constituted instructions or which
23 direction the information flowed, I'm not sure.

24 MS. KATE MCGRANN: Was it an
25 understanding that you, Ms. Kennedy, and Mr. Longo

1 were all providing services under the same joint
2 retainer that you've described to us?

3 MR. RON CLARK: Yes.

4 MS. KATE MCGRANN: At the time, do you
5 remember having any concerns that the three (3) of you
6 may be receiving instructions about what to do on the
7 work that you were doing from different people at your
8 client's?

9 MR. RON CLARK: No.

10 MS. KATE MCGRANN: Can we turn up
11 paragraph 417 -- 417, sorry, of the Foundation
12 Document?

13

14 (BRIEF PAUSE)

15

16 MS. KATE MCGRANN: So, 417 describes
17 steps being taken to schedule a meeting as between
18 PowerStream, Mr. Rockx, Mr. Houghton, and Mr.
19 Muncaster. You're not copied on this correspondence.
20 The meeting in -- in question took place on December
21 1st.

22 Do you remember being involved in
23 discussions about what was going to happen at this
24 meeting or -- or what had happened at this meeting?

25 MR. RON CLARK: No.

1 MS. KATE MCGRANN: You can see from
2 paragraph 417 that:

3 "The agenda items for the discussion
4 at that meeting included no shotgun
5 clause, service agreements, purchase
6 price, avoiding tax, corporate
7 structure, future acquisitions and
8 MAAD application assistance."

9 What can you tell us about discussions
10 that you were involved in about service agreements
11 that were -- that were involved in the transaction
12 that you were working on?

13 MR. RON CLARK: I have a general
14 recollection that there were discussions around
15 service agreements. I believe there needed to be
16 either amendments or new service agreements entered
17 into.

18 And based on documentation I've seen
19 recently in preparation for this, I -- I see that
20 there was an -- I guess it was a non-binding letter of
21 intent or MOU or something around that there would be
22 services agreements entered into following the
23 transaction at some point between the Town and Collus.

24 MS. KATE MCGRANN: Do you remember
25 considering what -- what should happen with the

1 service agreements before the closing of the
2 transaction at all from the perspective of the Town?

3 MR. RON CLARK: No.

4 MS. KATE MCGRANN: I've already asked
5 you some questions about the shotgun clause, or the
6 question of a shotgun clause or a buy/sell provision.

7 Anything else you can add to what you
8 may recall about discussions about a buy/sell
9 provision at this point in time, so Decem -- the
10 beginning of December 2011?

11 MR. RON CLARK: No, I don't recall.
12 But going back to the previous, I mean, it's
13 interesting also that, of course, as we mentioned
14 earlier, Ed Houghton would have been the acting CAO
15 when the services agreements would have been -- when
16 that MOU or commitment to do a service agreement in
17 the future would have been prepared.

18 MS. KATE MCGRANN: Are you referring
19 to documents that were signed on July 31st, 2012?

20 MR. RON CLARK: I'm not sure if that's
21 the date.

22 MS. KATE MCGRANN: Okay. Well, we'll
23 come to that. We'll come to that. I'm going to ask
24 that --

25 THE HONOURABLE FRANK MARROCCO: Can I

1 just -- before you move on, as you can see from 417,
2 and I -- I -- the agenda included no shotgun clause.

3 Do -- do you recall, was there a
4 decision not to have one (1), or a discussion about
5 that? Do -- do you recall anything about that?

6 MR. RON CLARK: Yeah. It's
7 interesting, Your Honour, because, obviously, one (1)
8 -- I think one (1) made it in, so there must have been
9 a decision at some point.

10 THE HONOURABLE FRANK MARROCCO: Yes,
11 sir.

12 MR. RON CLARK: I --

13 THE HONOURABLE FRANK MARROCCO: There
14 is a shotgun --

15 MR. RON CLARK: Yeah.

16 THE HONOURABLE FRANK MARROCCO: --
17 clause in the agreement.

18 MR. RON CLARK: Yeah. But I don't
19 have a recollection as to discussions, you know, to
20 put it in or take it out.

21 THE HONOURABLE FRANK MARROCCO: So,
22 you don't have a recollection of a point in time when
23 there was a decision -- and I don't mean to imply that
24 there was such a decision, that's what I'm trying to
25 figure out -- the -- there was a decision not to have

1 a shotgun clause?

2 MR. RON CLARK: I do -- I don't
3 recollect.

4

5 CONTINUED BY MS. KATE MCGRANN:

6 MS. KATE MCGRANN: Before we leave
7 this meeting, I'm going to ask that you be shown
8 KPM1877, an email exchange that you're not copied on.
9 It'll pop up in a second.

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: So, this is an
14 email exchange between John Herhalt and John Rockx at
15 KPMG. You can see that the re: line is, "Collus and
16 PowerStream meeting." It's -- the exchange is dated
17 November 29th, 2011.

18 What I want to ask you about is what
19 Mr. Rockx writes in the middle of the page here where
20 he says:

21 "It should be an interesting
22 discussion. It will be interesting
23 to see what PowerStream's reaction
24 will be to the proposed elimination
25 of the shotgun clause and the

1 possible entry into a long-term,
2 50/50 relationship with the Town.
3 Ideally, all the proponents really
4 want to own a hundred percent of
5 Collus."

6 Was it your understanding during the
7 time that you were working on this transaction that
8 PowerStream really wanted to own a hundred percent of
9 the LDC?

10 MR. RON CLARK: No.

11 MS. KATE MCGRANN: What was your
12 understanding about what they wanted to do?

13 MR. RON CLARK: My understanding was
14 they wanted to own 50 percent of the LDC.

15 MS. KATE MCGRANN: Did you interact
16 with John Herhalt, John Rockx, or Jonathan Erling from
17 KPMG through your work on this matter?

18 MR. RON CLARK: John Rockx.

19 MS. KATE MCGRANN: Did Mr. Rockx ever
20 express to you his view that the proponents -- or the
21 bidders on the RFP all really wanted to own a hundred
22 percent of Collus?

23 MR. RON CLARK: Not that I recollect.

24 MS. KATE MCGRANN: Here you see
25 Mr. Rockx discussing the possible entry into a

1 long-term 50/50 relationship with the Town.

2 Was it your understanding when you were
3 working on the transaction that a long-term 50/50
4 relationship with the Town was merely a possibility
5 for this transaction?

6 MR. RON CLARK: No.

7 MS. KATE MCGRANN: What was your
8 understanding about the status of the long-term -- or
9 the 50/50 relationship with respect to how long it was
10 going to last?

11 MR. RON CLARK: Indefinitely.

12 THE HONOURABLE FRANK MARROCCO: And
13 just -- just --

14 MR. RON CLARK: I'll go -- I'll go
15 further. Sorry.

16 THE HONOURABLE FRANK MARROCCO: No.
17 Go ahead. Complete your answer.

18 MR. RON CLARK: I'll go further
19 because it was a -- there was a -- it was an
20 interesting -- there was a strategic view at the time
21 that in fact there would be further consolidation in,
22 I'll call it, central Ontario, I guess, and that in
23 fact Collus could be used as a vehicle for that
24 further consolidation, and that -- and that
25 PowerStream -- at the time PowerStream, now Alectra,

1 would be sort of -- so have an ongoing 50 percent
2 interest in the additional utilities that would be
3 merged with Collus.

4 So -- so not only was there not -- not
5 a sense that this was a temporary thing. It was a
6 fact -- in fact a vehicle for an ongoing useful
7 strategic asset in terms of continuing consolidation
8 in the electricity sector and continuing involvement
9 by PowerStream in that consolidation.

10

11 CONTINUED BY MS. KATE MCGRANN:

12 MS. KATE MCGRANN: And was it your
13 understanding that the -- that strategic view that
14 you've just described to us as one of the motivations
15 to select the 50/50 sale of shares as opposed to a
16 different corporate structure?

17 MR. RON CLARK: That and just the
18 general sense that given the -- the government
19 policies on consolidation, given the trends in the
20 industry that this structure was a way to continue to
21 have a utility based in Collingwood, yet still have
22 access to sophistication capital resources and
23 expertise that a larger utility would provide.

24 MS. KATE MCGRANN: Based on your
25 experience at the time, was the approach that was

1 taken in the transaction the only way to achieve those
2 goals?

3 MR. RON CLARK: I didn't turn my mind
4 to that at the time, and I don't think I have since.

5 MS. KATE MCGRANN: Okay. But sitting
6 here today, can you answer that question?

7 MR. RON CLARK: Not without a pretty
8 big analysis and memo. And no, I wouldn't -- those
9 are big huge questions that have serious implications,
10 and I'm not going to say anything off the top of my
11 head in twenty (20) seconds, no.

12 MS. KATE MCGRANN: I think --

13 THE HONOURABLE FRANK MARROCCO: Well,
14 before you do that, KPMG were on the file or involved
15 with the Town when you came on.

16 MR. RON CLARK: Yes.

17 THE HONOURABLE FRANK MARROCCO: And
18 was it your understanding that they were providing
19 advice to the Town as opposed to Aird & Berlis?

20 MR. RON CLARK: Yes.

21 THE HONOURABLE FRANK MARROCCO: Thank
22 you.

23

24 CONTINUED BY MS. KATE MCGRANN:

25 MS. KATE MCGRANN: Just while we're

1 talking about the strategic meetings and things like
2 that, I think that you had said that you had not seen
3 a 50 percent or a 50/50 share split in an LDC before
4 this transaction. Have I got that right?

5 MR. RON CLARK: Yes.

6 MS. KATE MCGRANN: Beyond the LDC
7 world in your experience up until this point, had you
8 seen a 50/50 share sale in a different context?

9 MR. RON CLARK: Had I seen them? Very
10 likely, yes. There's -- in our firm, in the financial
11 press, in the world, the answer is yes.

12 MS. KATE MCGRANN: Okay. I take your
13 point. Let me be more specific. Had you been
14 involved in a transaction that involved the sale of a
15 50 percent interest in something?

16 MR. RON CLARK: It's quite possible.
17 Before -- you know, focussing on the electricity
18 sector -- I'd been a corporate commercial lawyer.
19 I've probably done hundreds of transactions. Were
20 there 50/50 transactions within that? Very likely.

21 MS. KATE MCGRANN: Okay. So if I ask
22 you in your broader experience as a corporate lawyer
23 what risks you had seen and encountered and sought to
24 address in the 50 percent share sale before, would you
25 be able to answer that question?

1 MR. RON CLARK: Again, it's a big
2 question. If I were -- if a client asked me to answer
3 that, I'd say I'm going to go away and prepare a nice
4 long memo with a laundry list of issues.

5 It would involve governance; it would
6 involve how to deal with the shares; it would involve
7 selection of the directors; it would involve, you
8 know -- there's a reason why shareholder agreements
9 can be a hundred pages long.

10 MS. KATE MCGRANN: Okay. So the -- it
11 would involve a number of issues, including the ones
12 that you just identified for us there.

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: I'm going to ask
15 that we go to paragraph 459 of the Foundation
16 Document.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: So this paragraph
21 describes a memo that Robert Hull sent to
22 Corrine Kennedy with a copy to individuals at
23 PowerStream, Mr. McFadden, and yourself. Excerpt from
24 the memo as set out below.

25 What I want to ask you about is what he

1 starts off with in this quote where he says:

2 "We understand that by virtue of
3 Collingwood's tax status, it is
4 desired to have PowerStream acquire
5 50 percent of the issued net
6 standing shares of Collingwood
7 Utility Service Corp."

8 And he goes on. I think that you've
9 already answered this question, but were you involved
10 in the decision at all about which entity would be
11 selling its shares?

12 MR. RON CLARK: No.

13 MS. KATE MCGRANN: Okay. And to your
14 knowledge, was anyone at Aird & Berlis involved in
15 that decision?

16 MR. RON CLARK: No.

17 THE HONOURABLE FRANK MARROCCO: While
18 you're doing that, did it change -- did the deal in
19 terms of change, in terms of Collus Power versus
20 Collus Utilities Services Corporation while you were
21 retained?

22 MR. RON CLARK: No, I don't think it
23 did. I remember -- I have a vague recollection of
24 wondering whether it should just be the LDC. And it's
25 an interesting question because -- and this was

1 brought out even at -- in presentation to Council. It
2 creates an asymmetry.

3 And -- and what I mean by that, what's
4 unusual in particular about this deal -- and I say it
5 has advantages and disadvantages -- is that -- so --
6 so let's look at what PowerStream was. PowerStream
7 was an entity that itself was owned by four (4) or
8 five (5), I think, municipal shareholders.

9 So you have a municipality kind of at
10 the higher level, and then PowerStream, and then
11 Collingwood, and then the Shareholders Agreement is
12 between PowerStream, which is municipally owned but is
13 not itself a municipality on the one hand, and the
14 municipality of Collingwood on the other. So
15 that's -- it's interesting, right?

16 Because often you'd see the
17 municipalities at the same level, right? And so
18 they'd be dealing with each other, and there -- there
19 would be perhaps a -- a vehicle, a holding company, or
20 something that would enter into this.

21 So that was different here, and -- and
22 so there -- there would have been some discussion.
23 I -- I don't remember, you know, how that went or
24 where it happened, but to me, it was interesting at
25 the time.

1 And I certainly made this point that it
2 was going to be a little different in terms of the
3 municipality interacting with PowerStream directly,
4 and those were the shareholders and the dance
5 partners, if you will, rather than the -- the more
6 conventional situation which would be the Shareholders
7 Agreement among the municipal shareholders at the top.

8 So this would have been a slightly
9 different structure in that respect.

10

11 CONTINUED BY MS. KATE MCGRANN:

12 MS. KATE MCGRANN: The different
13 structure that you described there, what implications
14 would that have for the Town?

15 MR. RON CLARK: Well, the Town is
16 still the Town backed through Council. And
17 PowerStream acts, you know, the Board of Directors and
18 CEO.

19 So call it cultural. I didn't -- like,
20 I didn't know particular scenarios, but -- but it was
21 kind of different and something that had to be kind of
22 thought about. And I -- I thought -- just because a
23 Town acts differently than a corporation.

24 MS. KATE MCGRANN: How did your
25 understanding of the fact that the Town acts

1 differently than a corporation impact the work that
2 you were doing and the information and advice that you
3 provided to the Town about the transaction?

4 MR. RON CLARK: I don't know
5 specifically other than bringing up that fact and kind
6 of ensuring it -- from an optics point of view but
7 also from a governance point of view.

8 MS. KATE MCGRANN: What do you mean by
9 "from an optics point of view"?

10 MR. RON CLARK: Well, you'd have the
11 CEO -- well, it could be -- the mayors of the
12 shareholders of PowerStream would be at one level
13 and -- and the mayor of Collingwood, as it were, would
14 be at the -- at a level the same as the CEO of
15 PowerStream.

16 MS. KATE MCGRANN: Just for the sake
17 of --

18 MR. RON CLARK: That's -- that's the
19 optic.

20 MS. KATE MCGRANN: Just for the sake
21 of the purposes of the record --

22 MR. RON CLARK: Yeah.

23 MS. KATE MCGRANN: -- you were just
24 holding your hands in a way where the mayors who were
25 on the -- who were involved in PowerStream. I said

1 you were at the Board. You held your hand up very
2 high to indicate them. And then with respect to the
3 mayor of the town, you held your hand down quite a bit
4 lower.

5 MR. RON CLARK: Yeah.

6 MS. KATE MCGRANN: So you're saying
7 that from an optic perspective, the mayor of the town
8 of Collingwood is in a subservient position to the
9 mayors in -- who are working at PowerStream? Help me
10 understand what you were trying to say in your answer.

11 MR. RON CLARK: No. It's not -- it's
12 not -- no. Sorry. I talked over you. I apologize.

13 MS. KATE MCGRANN: No. It's --

14 MR. RON CLARK: No, it's not --
15 it's -- I guess 'cause I see things in terms of a
16 corporate organization chart, it's not -- it's not
17 subservient, and it's not inferior. It's just
18 where -- where it would appear on the chart with the
19 shareholders being higher on a chart and the -- the
20 shareholders of PowerStream -- the municipalities
21 holding shares in PowerStream.

22 And then so the Collingwood
23 municipality would be at the same level as PowerStream
24 on an organizational chart. And that's what my hands
25 represented. It did -- it was not subservience or

1 inferiority or anything like that.

2 MS. KATE MCGRANN: Okay. And those
3 may have been bad --

4 MR. RON CLARK: Yeah.

5 MS. KATE MCGRANN: -- choices of words
6 on my part. But fair to say that on the org chart
7 that we're envisioning --

8 MR. RON CLARK: Yeah.

9 MS. KATE MCGRANN: -- you're trying to
10 describe --

11 MR. RON CLARK: Yeah.

12 MS. KATE MCGRANN: -- without drawing
13 the mayors who are involved in PowerStream are at a
14 higher position on that chart than the -- the mayor of
15 Collingwood.

16 MR. RON CLARK: Exactly.

17 MS. KATE MCGRANN: And does that have
18 any implications with respect to the ability of -- of
19 the mayors of PowerStream to exert control or make
20 decisions that would affect the mayor of Collingwood?

21 MR. RON CLARK: Yeah, exactly. And
22 that's where it -- that's -- that's precisely it in
23 that they -- the mayor of Collingwood would be the,
24 you know, "partner," not -- not in a legal sense
25 with -- with, in some sense, the CEO of PowerStream.

1 Right? That would be -- I'll call the interlocutor,
2 if you want to use that word.

3 And so the mayors on the PowerStream
4 side kind of wouldn't be involved, but yet at the same
5 time, there would presumably be interactions between
6 the mayor of Collingwood and the other mayors in
7 different venues, et cetera. So it kind of -- the
8 dynamic would be interesting and different.

9 MS. KATE MCGRANN: You said -- I think
10 you said that an asymmetry that you saw in the
11 structure that -- the structure of this transaction
12 was discussed at presentations to Council. Have I got
13 that right?

14 MR. RON CLARK: Again, I don't
15 remember what the actual presentation looked like. I
16 remember it being interesting to me and notable at the
17 time. So I -- I likely would have -- I think I would
18 have brought it -- you know, brought out that point
19 and emphasized it.

20 MS. KATE MCGRANN: Do you remember
21 what you would have said if you brought that point up
22 to Council?

23 MR. RON CLARK: Probably the things I
24 just said to you now, although maybe with more
25 preparation, more intelligently.

1 MS. KATE MCGRANN: Can we turn up
2 document ARB6, please.

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: So you're being
7 shown a January 10th, 2012 email from Leo Longo to
8 Corrine Kennedy. And here Mr. Longo writes:

9 "Further to our discussion in 19A,
10 here are the three (3) things the
11 Town CAO asked of me respecting the
12 Collus PowerStream transaction."

13 He lists three (3) items. What can you
14 tell us about any discussion you were involved in or
15 decisions you were involved in about the need for
16 service level definitions?

17 MR. RON CLARK: I have no recollection
18 or thoughts on this.

19 MS. KATE MCGRANN: What can you tell
20 us about your involvement in discussions or decisions
21 made about the need for clarity with respect to the
22 relationship of staff to the Town versus Collus versus
23 PowerStream?

24 MR. RON CLARK: No recollection.

25 MS. KATE MCGRANN: You don't remember

1 being involved in any discussions or giving any advice
2 about how to deal with the relationships between staff
3 of the Town, services they provided to Collus, or --
4 or PowerStream, or would be providing to PowerStream,
5 I should say?

6 MR. RON CLARK: I'm not saying I
7 wasn't involved in discussions. I -- I don't have any
8 recollections of how those discussions went.

9 MS. KATE MCGRANN: Do you remember
10 being involved in any discussions about how ongoing
11 infrastructure and IT needs and costs would be dealt
12 with in the transaction?

13 MR. RON CLARK: Same response.

14 MS. KATE MCGRANN: Which is that you
15 don't recall any discussions?

16 MR. RON CLARK: Correct.

17 MS. KATE MCGRANN: Can we turn up
18 CPS7947_0001, please?

19

20 (BRIEF PAUSE)

21

22 MS. KATE MCGRANN: If you could scroll
23 down to see the message that's below the one we're
24 looking at now. Yeah, keep going, please. Just
25 scroll up a little bit so we can see the addressees,

1 for starters. A little bit further.

2 You're being shown a January 11th,
3 2012, email from Ed Houghton to a number of
4 addressees. The subject is: "Strategic Partnership
5 Update, Confidential."

6 Do you know who Doug Parker is?

7 MR. RON CLARK: No.

8 MS. KATE MCGRANN: With respect to
9 Sandra Cooper, she was the Mayor at the time that you
10 were working on this transaction, correct?

11 MR. RON CLARK: yes.

12 MS. KATE MCGRANN: Did you also know
13 at the time that she was a director of Collus Power?

14 MR. RON CLARK: Likely, yes.

15 MS. KATE MCGRANN: Did you ever
16 consider what capacity she was involved in the
17 transaction and whether she was acting as mayor or
18 director of -- of the asset that was originally
19 contemplated to be sold or both?

20 MR. RON CLARK: No.

21 MS. KATE MCGRANN: Could you scroll
22 down so we can see the body of the message, please?
23 Keep going. Actually, I should give you an
24 opportunity to read this email, so maybe let's scroll
25 back up a bit and take a look at this and you can let

1 us know when you're done.

2 MR. RON CLARK: I want to back up and
3 -- and go back to the previous response about the role
4 of Sandra Cooper as on the Board versus the
5 shareholder.

6 So the -- the directors of course have
7 fiduciary duties to the Corporation. So what does
8 that mean in the context of the shareholders? In a
9 multiple shareholder situation, it would mean that it
10 would be a breach of fiduciary duty for a director to
11 favour the interests of a particular shareholder over
12 another shareholder.

13 In this context there's a single
14 shareholder. Therefore, the -- the scope for breaches
15 of fiduciary duty and a distinction between the roles
16 starts to become less important and starts to become a
17 bit artificial, this idea that the interests of the
18 Corporation are different from -- in many cases, there
19 are probably some that it does apply, but in -- in
20 general, the way you'd think about it, and the big one
21 is favouring interests of one (1) shareholder over
22 another.

23 So, as I say, the scope for that to
24 happen here is less because of the -- the single
25 shareholder. And then beyond that, as I understand in

1 a shareholder direction that was in place, there was
2 an obligation to maximize the value of the -- of
3 Company for the Municipality, and there are all sorts
4 of provisions around safeguarding the value of the
5 asset for the Municipality. So, an aspect of the
6 fiduciary duty of a corporate director is also to
7 comply with the objects of the Corporation and any
8 shareholders' direction.

9 So again, that reduces even more the
10 scope for differentiating the -- the role of a
11 director from the role of a municipal official such as
12 the mayor. So it starts to get pretty technical at a
13 certain point, this idea that there's different set of
14 duties in a corporate context as opposed to a
15 municipal context when they're wearing a different
16 hat. And in a transaction such as this, the idea that
17 the -- a particular director wouldn't also seek to
18 maximize the value to the shareholder also becomes a
19 breach of a fiduciary duty potentially if they were to
20 -- to not do that.

21 So, the duties one (1) would have as a
22 director of a corporation and in a capacity as an
23 official within the shareholder of the corporation,
24 when you take into account the single shareholder
25 context, when you take into account the shareholder

1 direction, and when you take into account the
2 fiduciary duties, you start to kind of -- the -- the
3 distinction that one would have between one and the
4 other starts to get pretty small.

5 MS. KATE MCGRANN: In the time that
6 you were working on this transaction, I -- I take it
7 that you were familiar with the provisions of the
8 shareholder direction that you just described to us?

9 MR. RON CLARK: I likely would have
10 been, yes.

11 MS. KATE MCGRANN: Did you turn your
12 mind at any point to the question of whether the steps
13 that were being taken with respect to pursuing the
14 strategic partnership were consistent with the
15 provisions of the shareholder direction?

16 MR. RON CLARK: I don't recall whether
17 I did.

18 MS. KATE MCGRANN: Okay. If -- if it
19 was the case that the steps that were being taken with
20 respect to the strategic partnership were inconsistent
21 with the provisions of the shareholder direction, the
22 narrowing of the risk that you just described to us,
23 would that broaden back up again?

24 MR. RON CLARK: The transaction needed
25 to be approved by Council. They're the shareholder.

1 So -- and they can amend, override, waive, whatever,
2 the shareholder agreement any time they want. The --
3 the shareholder agreement -- sorry, the shareholder
4 direction is an instrument of instruction from the
5 shareholder to the Company. The shareholder gets to
6 do whatever it wants.

7 MS. KATE MCGRANN: Okay. So I -- I
8 think that what we're dealing with here is a poorly
9 worded question by me, so I'm going to take another
10 run at this.

11 I understand some of the information
12 that you just gave us to be an explanation of why,
13 when you're looking at a multiple shareholder
14 transaction and a -- a representative, particularly
15 where a municipality is involved, and there's a
16 representative of the municipality on the Board of
17 Directors, there's a risk that the duty owed to the
18 municipality could conflict with the duty owed as a --
19 as a -- as a director of the corporation.

20 Have I started off in the right place?

21 MR. RON CLARK: The -- the point I'm
22 making is that the -- that -- I don't know if it's the
23 opposite or just different. The -- the point is that
24 the -- that a -- a breach of the fiduciary duty to the
25 corporation by a director in that type of circumstance

1 would also, in all likelihood, well, certain --
2 probably would -- unless you can give strong
3 arguments, there would be a breach of the mayor's duty
4 to the -- to the municipality as well.

5 MS. KATE MCGRANN: If it's consistent.
6 Okay, so -- and I just want to go back into some of
7 the steps you took us through to help us understand
8 the conclusion that you are putting to us, and I think
9 you started out by -- with an example of a multiple
10 shareholder situation where I understood that the
11 risks were -- where the risks were higher or there
12 were more of them.

13 So starting from there, is that -- is
14 that right? Do I understand your -- your evidence --

15 MR. RON CLARK: Yeah.

16 MS. KATE MCGRANN: -- to be correct?

17 MR. RON CLARK: Yeah.

18 MS. KATE MCGRANN: And -- yes, sorry,
19 go ahead.

20 MR. RON CLARK: Okay. Yeah, because
21 in that situation, an obvious scenario for conflict is
22 that -- let's say a utility wants to put a new service
23 centre somewhere, and let's say the mayor -- let's say
24 they're two (2) shareholders and -- they're two (2)
25 municipalities, and so each mayor wants the utility to

1 put the new service centre in their own municipality.

2 So then they show up at a board meeting
3 and they say -- and they argue for why it should be in
4 their municipality, and let's say it's less expensive
5 for the utility to put it in one or the other. It
6 would be, I would argue, a breach of their fiduciary -
7 - of -- of the mayors' fiduciary duty to argue with
8 their perspective of, oh, I want it in my
9 municipality.

10 MS. KATE MCGRANN: And then I
11 understood you to -- to take a step and explain to us
12 that where there's only one (1) shareholder, the risk
13 of a breach of fiduciary duty by the mayor is
14 decreased because that potential conflict as between,
15 that you just described to us, is -- is gone.

16 MR. RON CLARK: Correct.

17 MS. KATE MCGRANN: There's only one
18 (1) shareholder. And then I understood you to be
19 saying that the potential risk of a decrease in this
20 situation is even further reduced by the fact that
21 there is a shareholder direction in place that
22 requires the shareholders to -- to seek to maximize
23 the value of the Corporation?

24 MR. RON CLARK: No. It requires the
25 Corporation -- the directors of the Corporation to

1 maximize the value of the Corporation.

2 MS. KATE MCGRANN: Thank you. And I
3 guess what I'm saying is -- so we've -- we've gone
4 multiple shareholders to one (1) shareholder, decrease
5 of risk. That -- a situation with one (1) shareholder
6 plus this shareholder direction again a decrease of
7 risk.

8 If the actions that are being taken
9 with respect to the partnership are not consistent
10 with the shareholder direction, then -- then we're --
11 the risk is increasing I gather because the protection
12 that you've described, existing in the shareholder
13 direction, is not in place.

14 MR. RON CLARK: You've -- you've just
15 redefined the risk. The risk we're talking about is a
16 risk of breach of fiduciary duty. That's -- I think
17 what -- the last thing you said wasn't that, it was
18 the risk of, I don't know, some particular action, not
19 the -- not the breach of duty itself.

20 MS. KATE MCGRANN: Okay. I -- I will
21 try one more time and then I think I -- I will just --
22 we'll move on.

23 But is it fair to say that as long as -
24 - as long as the directors are acting in a manner
25 consistent with a shareholder direction, that

1 additional reduction of risk that results from the
2 shareholder direction is -- is there?

3 MR. RON CLARK: It's -- it -- it means
4 that there's less scope for a -- a director to act in
5 a way that's not consistent with the interests of the
6 shareholder.

7 MS. KATE MCGRANN: Okay. Turning back
8 to the document that's on the screen in front of you,
9 we were about to, I think, give you the opportunity to
10 review this document because I don't believe that you
11 are copied on the email, and even if you were, it's
12 from 2012.

13 MR. RON CLARK: M-hm.

14 MS. KATE MCGRANN: So can you just let
15 our court operator know when you'd like him to scroll
16 down so that you can read the email?

17

18 (BRIEF PAUSE)

19

20 MR. RON CLARK: You're just doing this
21 to butter me up, on the first paragraph?

22

23 (BRIEF PAUSE)

24

25

1 MR. RON CLARK: Is there a particular
2 aspect you'd like me to focus on?

3 MS. KATE MCGRANN: I just want to give
4 you the opportunity to read the document before I ask
5 you any questions about it.

6 MR. RON CLARK: Okay. Scroll down
7 some more, please.

8

9 (BRIEF PAUSE)

10

11 MR. RON CLARK: Scroll some more,
12 please. A little bit up. Missed the first bullet.

13

14 (BRIEF PAUSE)

15

16 MR. RON CLARK: Scroll down, please.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: And I'm actually
21 going to interrupt you because in the time that you've
22 taken to read this email, I've looked at the questions
23 that I had planned to ask you about it and I see that
24 we've already covered them in our discussion, so
25 thanks for reading it and we'll just keep moving.

1 MR. RON CLARK: That's all right. I'm
2 glad I got some kudos. Put that on the record.

3 MS. KATE MCGRANN: Nice break from the
4 questions. Could we turn to paragraph 479 of the
5 Foundation Document, please?

6

7 (BRIEF PAUSE)

8

9 MS. KATE MCGRANN: So this paragraph
10 describes that on January 11th, 2012, Mayor Cooper
11 requested a meeting with your partner, Leo Longo, to
12 discuss a strategic plan with Collus. We see
13 described that Mr. Longo forwarded Mayor Cooper's
14 request to yourself and Ms. Kennedy, stating that he
15 was unclear as to what specifically Mayor Cooper
16 wished to discuss. Ms. Kennedy responds:

17 "I spoke with Ed this morning, and
18 he made it clear that the mayor had
19 expectations that there would be no
20 red flags that come up on Monday
21 night. This may be what she is
22 calling about. We can discuss
23 further later."

24 Do you recall any concerns on the part
25 of the town that there would be red flags that would

1 come up with respect to the negotiations about the
2 Transaction at this time?

3 MR. RON CLARK: No.

4 MS. KATE MCGRANN: More generally, do
5 you remember any concerns of the Town that -- that
6 there would be issues that would come up with -- with
7 the Transaction as it was -- as it was moving forward?

8 MR. RON CLARK: No.

9 MS. KATE MCGRANN: If we turn to
10 paragraph 480, which is just the next paragraph down.
11 This describes a telephone call that Mr. Longo had
12 with Mayor Cooper, Deputy Mayor Lloyd, and Ed
13 Houghton.

14 In notes taken during the meeting, Mr.
15 Longo wrote:

16 "Question, who is our client? And
17 question, who has the Town's
18 interests" --

19 Sorry.

20 "Question, has the Town's interest
21 been considered?"

22 These notes were taken on January 12th,
23 2012. You weren't -- as far as we can tell, you were
24 not on that phone call. Do you recall being on a
25 phone call with those individuals at/around that time?

1 MR. RON CLARK: No.

2 MS. KATE MCGRANN: To your
3 recollection, did you have any discussions with your
4 colleagues at Aird & Berlis who were working on this
5 matter about questions about who your client was or
6 whether the Town's interests had been considered in
7 the work that you were doing?

8 MR. RON CLARK: I don't have a
9 specific recollection, but I think as kind of -- based
10 on all the information I've given you this morning,
11 and -- and how I approached the Transaction, et
12 cetera, I think it would have sen -- it would make
13 sense to me now that I would have had a -- perhaps a
14 discussion with Mr. Longo, and explained to him all
15 the things I've explained to you, and -- and that's
16 probably the discussion that would have happened.

17 MS. KATE MCGRANN: Just that we're
18 clear on what you recall happening, do -- do you
19 actually recall having a discussion about these issues
20 or along the lines you just described with Mr. Longo?

21 MR. RON CLARK: No. Sorry, no.

22 MS. KATE MCGRANN: I'm going to just
23 keep moving through this document. So at paragraph
24 41, which is below it, on January 16th, 2012, you sent
25 an -- an email to Mr. Longo and Ms. Kennedy in which

1 you informed Mr. Longo that there are two (2) other
2 issues of which he needed to be aware of. I'd like to
3 ask you questions about both of them.

4 In the first numbered bullet point
5 there, we see:

6 "We, A&B, had inserted a call right
7 whereby Collingwood could repurchase
8 its shares at the sale price for one
9 (1) year following the Transaction.

10 And then in brack -- brackets, you've
11 written, "If it had seller's remorse."

12 Do you remember -- do you remember that
13 particular provision?

14 MR. RON CLARK: Vaguely.

15 MS. KATE MCGRANN: What can you tell
16 us about why it was inserted in the agreement?

17 MR. RON CLARK: Yeah, I mean, I -- I
18 like this, because it shows -- I think we were being
19 creative in terms of thinking of every possible
20 eventuality, and protecting the Town's interests, and
21 kind of throwing things in that would have given them
22 certain rights, even if it wasn't part of the initial
23 deal.

24 So we kind of were being creative.

25 Well, what if they wanted to -- you know, what, if

1 they didn't like the deal after a year? What could --
2 what could we do? So we put it in, and it didn't stay
3 in.

4 MS. KATE MCGRANN: Do you remember any
5 other creative ideas that you threw into the deal to
6 protect the Town's interests?

7 MR. RON CLARK: No, but I'm happy if
8 you kind of remind me of them. I'll -- I'll comment
9 on them if you come up with more.

10 MS. KATE MCGRANN: But you don't --
11 you don't specifically recall anything that you did
12 along those lines other than this -- this call right?

13 MR. RON CLARK: This is an example of
14 something -- is what I do everyday, is trying to come
15 up with ways to protect my client.

16 MS. KATE MCGRANN: Okay. And given
17 the fact that you've got experience doing that every
18 day, I just want to understand how you put that
19 expertise to work for the Town in this deal. Do you
20 remember anything else that you came up with to put in
21 the deal to help protect their interests?

22 MR. RON CLARK: Not -- not
23 specifically, no.

24 MS. KATE MCGRANN: You go on to write,
25 "This right was bargained away by Collingwood." What

1 can you tell us about how the call right was removed
2 from the deal?

3 MR. RON CLARK: Again, no specific
4 recollection, but I could completely understand if I
5 were advising PowerStream to say, Hey, this wasn't in
6 the original deal, I guess, and b) it would, you know,
7 negate their extensive efforts and resources devoted
8 to entering into the deal in the first place.

9 MS. KATE MCGRANN: Would you have been
10 in a better position to advocate for this call right
11 being involved in the deal if it had been contemplated
12 from -- from the beginning of the negotiations?

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: Do you remember who
15 ultimately made the decision to -- to bargain this
16 right away?

17 MR. RON CLARK: No.

18 MS. KATE MCGRANN: Do you remember if
19 anything was -- was given in return for the agreement
20 by Collingwood to give this right away?

21 MR. RON CLARK: No.

22 MS. KATE MCGRANN: Moving on to the
23 second bullet point, it says:

24 "There will be a confidential 'side
25 letter' giving Collingwood/Collus

1 the right of first refusal, should
2 PowerStream wish to acquire, merge
3 with, or otherwise into a strat --
4 enter into a strategic business
5 relationship with certain utilities
6 in the Georgian Triangle/Central
7 Ontario region. The purpose is to
8 ensure that Collus is used as a
9 vehicle for regional integration and
10 not bypassed by PowerStream."

11 What can you tell us about why this
12 issue was dealt with by way of a confidential side
13 letter as opposed to within other transactional
14 documents?

15 MR. RON CLARK: Yeah. It's
16 interesting. I hadn't -- when I described kind of
17 this strategic approach earlier, I -- I hadn't
18 recalled that it was in a confidential side letter.

19 Yeah, I could -- I would only speculate
20 at this point, so I won't go into it.

21 MS. KATE MCGRANN: Okay, so no
22 specific recollection about why this --

23 MR. RON CLARK: Right.

24 MS. KATE MCGRANN: -- it was decided
25 to do it this way?

1 MR. RON CLARK: Correct.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: You've already
6 given us some information about the questions I'm
7 going to ask you next, but I'm going to be asking you
8 some questions about paragraphs 42 to 487 of the -- of
9 the Foundation Document. I'm going to paraphrase them
10 for you at a very high level, give you the opportunity
11 to read them, and then -- and then I'll ask you the
12 questions.

13 But these paragraphs describe a
14 discussion that Mr. Longo had with Mayor Cooper and
15 Deputy Mayor Lloyd in which he poses a question or
16 notes, more accurately, that the Town's interests may
17 not be identical to Collus.

18 So before I ask any more questions
19 about it, I just want to give you a chance to read the
20 exchange that he had with Deputy Mayor Lloyd. So it's
21 paragraphs 42 to -- to 47. And just tell our court
22 operator to scroll down when you're ready to -- to
23 move on to the next lines.

24

25 (BRIEF PAUSE)

1 MR. RON CLARK: Okay.

2

3 (BRIEF PAUSE)

4

5 MR. RON CLARK: Okay. I'm -- I'm down
6 to 484. Do I need to go further?

7 MS. KATE MCGRANN: You're going to
8 487.

9 MR. RON CLARK: Four eighty-seven
10 (487), okay.

11

12 (BRIEF PAUSE)

13

14 MR. RON CLARK: Okay, keep going.

15

16 (BRIEF PAUSE)

17

18 MR. RON CLARK: Okay.

19

20 (BRIEF PAUSE)

21

22 MR. RON CLARK: Okay.

23 MS. KATE MCGRANN: Were you aware that
24 this discussion was happening at the -- at the time it
25 was happening; it's on January 16th, 2012?

1 MR. RON CLARK: Not that I recall.

2 MS. KATE MCGRANN: Do you remember
3 having any discussion with Mr. Longo about the issue
4 he raises in -- in this email correspondence?

5 MR. RON CLARK: No.

6 MS. KATE MCGRANN: Did you ever
7 consider whether you should offer the opportunity to
8 any of your clients to get independent legal advice
9 about whether there was a potential difference in
10 their interests?

11 MR. RON CLARK: I don't recall that I
12 did.

13 MS. KATE MCGRANN: To your knowledge,
14 did any of your colleagues at Aird & Berlis consider
15 offering that opportunity to your clients?

16 MR. RON CLARK: Not that I'm aware.

17 MS. KATE MCGRANN: Just progressing
18 down the page to paragraph 48, so we're still on
19 January 16th, 2012. I'd like to now take a look at a
20 presentation that you gave to Town Council in an in
21 camera session of the Council meeting that evening.

22 Do you remember making a presentation
23 to Town Council? And I'm going to pull the
24 presentation up, so if you'd like to see it before you
25 answer, that's -- that's totally fine.

1 MR. RON CLARK: I -- I remember making
2 the presentation. As to the content of it in
3 particular, no, I don't recall.

4 MS. KATE MCGRANN: Okay. Do you have
5 -- do you have any recollection about what you said,
6 whether people asked you any questions or anything
7 like that at this meeting?

8 MR. RON CLARK: Not specifically, no.

9 MS. KATE MCGRANN: Can we turn up
10 TOC0531801? This is a copy of the presentation we
11 understand you gave. If we scroll down just a little
12 bit so we can see the bottom of the slide. Okay. It
13 says -- it identifies you as the presenter.

14 Do you know if any of your colleagues
15 at Aird & Berlis gave this presentation with you?

16 MR. RON CLARK: I don't think so. I -
17 - I have a recollection Leo may have been at one (1)
18 of these presentations, or at this one (1), I'm not
19 sure which, but that may or may not be correct.

20 MS. KATE MCGRANN: Do you have any
21 recollection of -- of you jointly giving a
22 presentation to Town Council with Leo on the
23 transaction at any time?

24 MR. RON CLARK: No, I'm not sure.

25 MS. KATE MCGRANN: If we could go to

1 slide 3 in this presentation.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: The -- the title of
6 this slide is, "Why sale of shares of CUS rather than
7 Collus directly?" Am I right in understanding that
8 CUS is a Collus Utility Services Corp., the holding
9 company?

10 MR. RON CLARK: Yes.

11 MS. KATE MCGRANN: And Collus in this
12 context is referring to the LDC, Collus Power?

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: In your slide, you
15 note:

16 "KPMG LLP review determined
17 transaction was more beneficial from
18 a tax perspective when vendor was
19 Town and target was CUS rather than
20 Collus."

21 To your knowledge, did anyone give any
22 consideration to implications for the Town of selling
23 the holding company other than tax implications?

24 MR. RON CLARK: Not to my knowledge.

25 MS. KATE MCGRANN: If you look at

1 subparagraph (d), it says:

2 "Avoid capital gains tax on the
3 transaction -- and then in brackets
4 it says -- estimated at three
5 hundred and fifty thousand dollars
6 (\$350,000)."

7 Do you see that?

8 MR. RON CLARK: Yes.

9 MS. KATE MCGRANN: Okay. To your
10 knowledge, was that the -- the estimated total of
11 taxes that would be avoided if the holding company
12 shares were sold rather than the LDC shares?

13 MR. RON CLARK: I have no
14 recollection. And as -- and this was information
15 provided by KPMG.

16 MS. KATE MCGRANN: Okay. So, it
17 wasn't the case that you or anyone at your firm was
18 asked to -- to review and confirm the advice that had
19 been given?

20 MR. RON CLARK: Correct.

21

22 (BRIEF PAUSE)

23

24 MS. KATE MCGRANN: If we could go to
25 slide 5, please. Try...

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: One (1) more down,
4 I apologize. So, if you look at -- the heading is,
5 "Share purchase agreement." If you look at point two
6 (2), you've got 5.2 million estimated dividend
7 arriving from debt injection by PowerStream or a third
8 party through Collus and up to Town.

9 Can you tell us about any other
10 information or advice you would have provided to
11 Council beyond what's written here about the -- the
12 dividend payment?

13 MR. RON CLARK: No. This -- again,
14 the consideration and the structure was arrived at
15 before I was retained, and this was from KPMG.

16 MS. KATE MCGRANN: Do you recall if --
17 if KPMG gave you, and you then passed on the Town what
18 range the dividend could be in given that you're
19 providing an estimate here?

20 MR. RON CLARK: I don't recall.

21 MS. KATE MCGRANN: If we could scroll
22 down to the next slide just to continue the
23 information that you're providing about the
24 consideration.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: The \$1.7 million
4 repayment of promissary note to Town. Do you recall
5 if there was any discussion about what would happen if
6 the promissary note was not repaid at the time of the
7 transaction?

8 MR. RON CLARK: No.

9 MS. KATE MCGRANN: I know I asked you
10 this generally, but just now that you've had the
11 opportunity to look at these slides, do you recall if
12 you fielded any questions from the members of Council
13 about the consideration that was being paid that you
14 presented to them here?

15 MR. RON CLARK: Certainly, there was
16 the opportunity for questions. I don't recall whether
17 there were any.

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: Could we look at
22 slide 12, please?

23

24 (BRIEF PAUSE)

25

1 MS. KATE MCGRANN: Under -- so, the
2 title is, "Shareholders agreement," under item 4
3 Board. It references article 4. I assume that's a
4 reference to the article in the shareholders agreement
5 that discusses these items. Is that fair? Is that
6 what you would guess?

7 MR. RON CLARK: Sorry, article 4 next
8 to Board?

9 MS. KATE MCGRANN: Yeah.

10 MR. RON CLARK: Yes.

11 MS. KATE MCGRANN: Okay. 4(a) says:
12 "Equal representation by both
13 shareholders - six (6) total, three
14 (3) nominations by each
15 shareholder."

16 What implications would this have for
17 the Town with respect to control of the Corporation
18 going forward?

19 MR. RON CLARK: It would mean 50/50 --
20 well, there would -- that each would control half.
21 There wouldn't really be control.

22 MS. KATE MCGRANN: Moving on to
23 subparagraph 4(b) with respect to the chair. I assume
24 that means the chair of the Board?

25 MR. RON CLARK: Yes.

1 MS. KATE MCGRANN: It says:

2 "First two (2) years after agreement
3 there will be two (2) co-chairs, one
4 (1) representing each shareholder,
5 then alternating chair/vice-chairs
6 from each shareholder."

7 Am I reading this properly, that the
8 idea was, for the first two (2) years, there would be
9 co-chairs, one (1) from each, and then after that, one
10 (1) year PowerStream would have the chair and the Town
11 would have the vice-chair, then next year that
12 arrangement would flip?

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: What can you tell
15 us about why there were going to be co-chairs for the
16 first two (2) years only?

17

18 (BRIEF PAUSE)

19

20 MR. RON CLARK: Nothing that I
21 recollection from the time. Looking at it from the
22 perspective now, there probably immediately after the
23 transaction would have been a desire to avoid looking
24 like one (1) party had more control than the other.

25 MS. KATE MCGRANN: And -- and why

1 would that desire change after two (2) years?

2 MR. RON CLARK: There probably would
3 be greater comfort within the community, Collingwood
4 in particular, with -- with the arrangement, so it
5 would be less important.

6 MS. KATE MCGRANN: Less important from
7 a public perception perspective?

8 MR. RON CLARK: Yes.

9 MS. KATE MCGRANN: Would it -- would
10 switching from the two (2) co-chair situation that's
11 in place for the first two (2) years to the
12 alternating chair/vice-chair situation that will be in
13 place going forward have any implications for the
14 Town?

15 MR. RON CLARK: That there would be
16 times when they wouldn't appoint the chair.

17 MS. KATE MCGRANN: Okay. And -- and
18 what -- what possible implications could that have for
19 the Town?

20 MR. RON CLARK: Marginally less input,
21 I guess, into the proceedings of the Board.

22 MS. KATE MCGRANN: Do you remember
23 having any discussions with the Town or whether you
24 explained that to any representatives of the Town
25 through the course of the work you were doing on this

1 transaction?

2 MR. RON CLARK: I don't recall.

3 MS. KATE MCGRANN: With respect to the
4 quorum that's provided for in subparagraph 4(d), what
5 can you tell us about how this was decided?

6 MR. RON CLARK: I don't recall.

7 MS. KATE MCGRANN: Do you recall
8 having any discussions with the Town in which you
9 explained how this quorum would work?

10 MR. RON CLARK: Not directly.

11 MS. KATE MCGRANN: I'm not sure what
12 indirectly would look like, but is your answer
13 different than indirectly?

14 MR. RON CLARK: Well, I mean, you
15 know, through much of this there's -- there are things
16 that I remember actually happening, and then things
17 that I would think happened based on what I'm reading
18 at the time, so I don't have any direct memory of
19 discussions about that.

20 It -- it was in the presentation, so I
21 would have presented it. And I would have had the
22 opportunity to field questions on it.

23 MS. KATE MCGRANN: Are you in a
24 position to tell us what you would have presented if
25 you'd presented on this?

1 MR. RON CLARK: I would have presented
2 what it says.

3 MS. KATE MCGRANN: Anything beyond
4 that?

5 MR. RON CLARK: Maybe. I don't know.

6 MS. KATE MCGRANN: Can we go down to
7 slide 13, please?

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: We're looking at
12 slide 12 right now.

13

14 (BRIEF PAUSE)

15

16 MS. KATE MCGRANN: Find the next one
17 (1). There we go. Paragraph 9(a) refers to a
18 standstill period:

19 "No share transfers for thirty (30)
20 months from the date of agreement
21 without prior written consent."

22 What can you tell us about why this was
23 put in place?

24 MR. RON CLARK: Again, no direct
25 recollection. But normally, you'd want to ensure that

1 nobody was flipping their shares or upending the
2 arrangement that had been arrived at through
3 negotiation and devotion of resources, et cetera, so
4 you'd want a period during which you knew that the
5 other party wasn't going to sell their shares.

6 MS. KATE MCGRANN: Can you help us
7 understand how the thirty (30) month time period was
8 selected?

9 MR. RON CLARK: I -- that seems like a
10 reasonable standstill period. Other than the
11 particular thought process or negotiations that went
12 into it, I don't recall.

13 MS. KATE MCGRANN: Can we scroll down
14 to the next slide, please? This slide is entitled,
15 "Outstanding issues," and it identifies more issues.
16 The holding company between Town and -- and CUS, that
17 was an -- an issue still to be decided. And we see
18 that you've presented on that.

19 To your recollection, was that a matter
20 that was decided at this Council meeting?

21 MR. RON CLARK: I don't know that
22 anything would have been decided at that type of
23 Council meeting because I think it was more a
24 presentation than Q & A opportunity.

25 I don't know -- it would surprise me

1 now if I heard that decisions would have been made at
2 that meeting rather than say a subsequent meeting.

3 MS. KATE MCGRANN: And I understood
4 that some of the information that we looked at, at
5 least in your presentation, you had taken from KPMG,
6 Aird & Berlis had -- hadn't done independent work on
7 that.

8 Was part of your role in giving this
9 presentation to give advice to the Town as to -- to
10 which way they should go on this decision?

11 MR. RON CLARK: Yeah. So, that's
12 interesting. You know, advice which way to go on this
13 decision, I -- I don't think -- I don't think the
14 lawyer gets to decide whether the Town's going to sell
15 its shares in Collus. I think I negotiate the best
16 deal I can. I explain the implications of the deal
17 and the Town decides.

18 MS. KATE MCGRANN: Okay. Well, was it
19 part of your role to -- to give the Town information
20 about the implications of proceeding with or without a
21 holding company so that it could make --

22 MR. RON CLARK: Yeah.

23 MS. KATE MCGRANN: -- a decision? In
24 giving that information, was it also part of your role
25 to -- to give them your professional advice about

1 which option would serve their interests better?

2 MR. RON CLARK: Which option would
3 serve their interests better would depend on what they
4 saw as their interests. I think, as I explained
5 earlier, there's, you know, the -- the reason this
6 came up has to do with this idea that, going back to
7 the org chart, the mayors or PowerStream -- mayors of
8 the municipal shareholders of PowerStream are kind of
9 at a different level in the org chart.

10 So, this was a possible way to deal
11 with that, where -- and a separate holding company
12 would be set up below Collingwood that would hold
13 Collingwood's entire stake -- Collingwood's 50 percent
14 stake in -- in Collus.

15 So, that way, the shareholders
16 agreement would be between PowerStream and that
17 company instead of the Town. So, that -- to deal with
18 the issues that I talked about earlier. So, that was
19 an option that was presented to them.

20 And in the end, I guess they didn't do
21 that because -- for whatever reasons. The reasons may
22 have included, you know, the time and expense and
23 resources that would be necessary to devote -- to
24 creating a holding company, to creating a board of
25 directors.

1 You know, they -- it would have it have
2 its resources, et cetera, so the decision was made to
3 -- to not do that.

4 MS. KATE MCGRANN: Okay. And what I'm
5 trying to understand is -- is whether it was part of
6 what the Town was asking you to do in your work on
7 this transaction, to give them advice on what would
8 better serve their interest to proceed through a
9 holding company or not.

10 I understood you to be saying that, in
11 order to -- that you would need to know what the
12 Town's interests were in order to give advice about
13 what would best serve their interests.

14 Have I paraphrased your evidence
15 accurately?

16 MR. RON CLARK: Well, I wouldn't
17 characterize it the way you did. The example we just
18 talked about is -- you know, there would be advantages
19 to the holding company, but there would be
20 disadvantages, and I would lay that out. And I
21 wouldn't tell them what their interests were one way
22 or the other, but they would have the information to
23 make that decision.

24 So I'm not -- I'm not really with you
25 in terms of my job being to tell them what their

1 interests are.

2 MS. KATE MCGRANN: Okay. Let's come
3 at it this way. What steps did you take to understand
4 your client, the Town's interests, before you gave
5 them a presentation explaining the difference between
6 proceeding with a holding company or not?

7 MR. RON CLARK: What steps did I take?
8 I -- I mean, it's -- it's my experience, I guess, that
9 a -- what I've seen before, considering the structure
10 on the transaction, you know, and -- and, you know,
11 explaining implications.

12 MS. KATE MCGRANN: Did you take any
13 steps to understand what the Town's interests would be
14 so that you could given them advice about whether
15 proceeding with a holding company or not would better
16 serve their interests?

17 MR. RON CLARK: Did I take any steps?
18 I went to law school. I practiced law for twenty (20)
19 years. I had experience in the sector. I brought all
20 that to bear.

21 MS. KATE MCGRANN: How did those items
22 that you just explained to me help you understand what
23 the Town of Collingwood's interests were?

24 MR. RON CLARK: So -- well, this
25 exercise was talking about a particular aspect of a

1 transaction that they could adopt or not. And they
2 were free to give me feedback at that point. So
3 that -- that's a pretty big step.

4 MS. KATE MCGRANN: Okay. And at the
5 end of the day, at this -- during this presentation or
6 at any other time, did you provide your client, the
7 Town, with your view as to whether their interests
8 would be better served if they proceeded via a holding
9 company or not?

10 MR. RON CLARK: Well, I -- I don't
11 think I had a view, and I wouldn't normally have a
12 view.

13 MS. KATE MCGRANN: Okay. So you
14 didn't have -- you didn't have an opinion,
15 professional or otherwise, about whether the Town
16 should sell through a holding company or not.

17 MR. RON CLARK: No. No. There were
18 advantages and disadvantages, and so that was for the
19 client to decide.

20 MS. KATE MCGRANN: You couldn't help
21 them with that decision beyond identifying the
22 advantages and disadvantages?

23 MR. RON CLARK: Oh, I try to be
24 helpful by doing that.

25 MS. KATE MCGRANN: But beyond

1 identifying the advantages and disadvantages, I'm just
2 trying to understand if you did anything else to
3 assist them in making their decision.

4 MR. RON CLARK: Beyond what we've
5 already talked about, no.

6 MS. KATE MCGRANN: With respect to the
7 point number 3 service agreements with Town and
8 subsidiaries approval or amendment, do you remember if
9 you gave the Town any advice as to whether its
10 interests would be better served if they went by way
11 of approval or if they sought to amend those service
12 agreements?

13 MR. RON CLARK: I don't recall.

14 MS. KATE MCGRANN: If we could slide
15 down to the next slide. This slide is titled "summary
16 and timeline."

17 You can see that it starts out in the
18 far left at the top of early February, and then I
19 assume we're moving through time as we move from left
20 to right. Is that fair?

21 MR. RON CLARK: Yes.

22 MS. KATE MCGRANN: And if we look at
23 the items that you've identified on the second row
24 there, we've got "execution of Share Purchase
25 Agreement," "OEB notification," "arrangement for

1 financing for a transaction," and that was with
2 respect to borrowing the finance -- the
3 recapitalization dividend. Is that right?

4 MR. RON CLARK: I'm not sure. It
5 might have been something -- it's possible. It might
6 have a PowerStream financing issue, as well. I'm not
7 sure.

8 MS. KATE MCGRANN: The next one -- the
9 next one as we move to right is "review/amend service
10 agreements." Ultimately, where we land, I think,
11 is -- I will describe it as an agreement to agree in
12 the future. Is that consistent with your memory?

13 MR. RON CLARK: Yes.

14 MS. KATE MCGRANN: Do you know if
15 anyone advised Town Council before the documents were
16 signed on July 31st that the service agreements had
17 not been amended?

18 MR. RON CLARK: No.

19 MS. KATE MCGRANN: I'm going to take
20 you now to the minutes of the meeting, which is at
21 document CJI9079.

22

23 (BRIEF PAUSE)

24

25 MS. KATE MCGRANN: If we could go to

1 page 2 of this document, please. I'm looking at the
2 third paragraph down the page where it says:

3 "Process and OEB filing and public
4 appeal process. Since it is not a
5 'sale of control,' it avoids the
6 MAADs application process."

7 And then in brackets, that acronym is
8 described, I think, as merger, amalgamations,
9 divestitures. And it goes on to say:

10 "May still continue with the MAAD
11 application as it is a good example
12 for other local distribution
13 companies."

14 Is this something that would have
15 formed part of your presentation to Council?

16 MR. RON CLARK: Normally, it would.
17 I -- I can't recall. I would have thought even a
18 50 percent sale would have triggered the application.

19 And -- and it should be -- by the way,
20 it's M-A-A-D: mergers, amalgamations, acquisitions,
21 and divestitures. So that's a requirement when
22 there's a -- a sale of a utility or an interest in a
23 utility that it -- it go before the Ontario Energy
24 Board for approval. That's what that refers to.

25 I would -- yeah -- normally, it would

1 be part of a presentation I would make to the client,
2 yeah.

3 MS. KATE MCGRANN: Okay. And out of
4 fairness to you, I think I've seen more of the minutes
5 from -- in Council meetings from this time period
6 during you -- the combination of the italics and the
7 multiple question marks in this document suggest to me
8 that we may be looking at a draft set of minutes here.

9 But leaving that aside, do you remember
10 whether or not you advised the Town that there wasn't
11 a MAAD's application required because there was --
12 this was -- this transaction was not a sale of
13 control?

14 MR. RON CLARK: I don't recall.

15 MS. KATE MCGRANN: Can you help us
16 understand the last sentence in this paragraph where
17 it says:

18 "May still continue with the MAAD
19 application as it is a good example
20 for other local distribution
21 companies."

22 MR. RON CLARK: Even if it's not
23 required, I suppose, under the -- under the Ontario
24 Energy Board relevant code, it -- maybe it was
25 considered desirable to, in a way, publicize this --

1 what at the time, as we've discussed, is an innovative
2 50/50 structure which preserves local presence of the
3 utility in Collingwood, yet still allows it to have
4 expertise to capital and technical resources of a
5 larger utility.

6 MS. KATE MCGRANN: These minutes don't
7 reflect the discussion of the quantum of costs
8 associated with going through a MAAD's application
9 process.

10 Do you remember explaining to the Town
11 at any point what kind of costs would be involved in
12 proceeding in a MAAD's application?

13 MR. RON CLARK: I don't recall.

14 MS. KATE MCGRANN: Turning to
15 paragraph 492 of the Foundation Document, please.

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: I'd like to discuss
20 the process by which the share sale bylaw was drafted
21 for Council approval. In order to do that, I'm going
22 to have to ask you to read a series of paragraphs in
23 the Foundation Document.

24 Given the timing, I wonder if it makes
25 sense to ask you to read that while we take the lunch

1 break and come back and continue with questions. It's
2 up to you.

3 THE HONOURABLE FRANK MARROCCO: All
4 right. We'll come back at 2:00. That'll give you an
5 opportunity to read the paragraphs, and we'll -- we
6 would have taken a lunch break at 1:00 anyway.

7 MR. RON CLARK: I'm -- I'm --

8 MS. KATE MCGRANN: And just so you
9 know, you're looking at paragraphs 492 through to 503.
10 And I believe that there's a copy of the Foundation
11 Document hard copy in front of you there.

12 MR. RON CLARK: Okay.

13

14 --- Upon recessing at 12:49 p.m.

15 --- Upon resuming at 2:01 p.m.

16

17 CONTINUED BY MS. KATE MCGRANN:

18 MS. KATE MCGRANN: Good afternoon, Mr.
19 Clark.

20 MR. RON CLARK: Good afternoon.

21 MS. KATE MCGRANN: Can we turn up
22 paragraph 492 of the Foundation Document, please?

23 MR. RON CLARK: Okay.

24 MS. KATE MCGRANN: Sub chapter 5.32 of
25 the Foundation Document discusses the drafting of a

1 bylaw authorizing the Town to enter into the share
2 purchase agreement and the unanimous shareholders
3 agreement.

4 I just want to walk through some of
5 these paragraphs and understand what -- what you
6 understood of the process at the time. As you can see
7 from paragraph 492, Mr. Longo sends Mr. Houghton and
8 others, you're not copied on this email, a draft bylaw
9 authorizing Collingwood to enter into the share
10 purchase agreement and the unanimous shareholders
11 agreement.

12 If we scroll down to paragraph 493,
13 this paragraph summarizes that the bylaw that Mr.
14 Longo drafted included a clause authorizing the mayor
15 and clerk to execute those documents once the
16 agreements were in a form and content to the
17 satisfaction of the Town's solicitor and requiring
18 that Town staff and the Town solicitor report back to
19 Council as required on the conditions precedent and,
20 in any event, prior to the final closing of the share
21 purchase transaction.

22 In your experience, were those
23 provisions usual for a bylaw that would be drafted in
24 relation to a transaction like this?

25 MR. RON CLARK: I don't know. I mean,

1 'usual' means a survey. I would -- if I were for --
2 acting for the vendor, i.e, the -- the Town in this
3 case, I can see why it might -- you might want it in.

4 I think, generally, you would find that
5 those kinds of things are -- are resisted by the
6 purchaser and end up being taken out. So, I would
7 suggest -- I mean, bylaws are very customized.
8 Approval bylaws, municipally, they're much more kind
9 of standardized at the corporate level.

10 But as a corporate lawyer certainly for
11 the purchaser, you don't want to create more obstacles
12 to getting the deal done, so you'd generally want to
13 take something like that out.

14 MS. KATE MCGRANN: Okay. From the
15 vendor's perspective, why would you want these two (2)
16 provisions included in the bylaw?

17 MR. RON CLARK: Well, it depends. I -
18 - I don't know that you do. Maybe some did -- a sense
19 a comfort just to make sure -- I can see from a
20 municipal perspective why this would be normal,
21 because you just want to get comfortable that -- that
22 any conditions have been considered by the Town
23 solicitor and they can report back that those
24 conditions are met.

25 For example, a big one (1) in this type

1 of transaction would be subject to Ontario Energy
2 Board approval under the MAAD application, right. So,
3 maybe that's what Leo was after in his initial draft,
4 that kind of thing. You'll have to speak to him about
5 that.

6 But to the extent it is, then the issue
7 becomes, okay, well, then is it two (2) steps, a
8 purchaser, or even from the Town's perspective, is it
9 that, oh, the OEB gives the approval, and then someone
10 says that the OEB's given the approval, and then they
11 might have some conditions or concerns or the OEB
12 approval might not be exactly as they think it should
13 be and -- so it -- it creates potential obstacles to
14 getting the deal done. So, you know, there were
15 different perspectives on this.

16 MS. KATE MCGRANN: If we move on to
17 paragraph 494, we see that January 18th at 12:22 Mr.
18 Nolan, PowerStream executive, vice-president corporate
19 services and secretary, sends Mr. Houghton a revised
20 version of Mr. Longo's draft of the bylaw.

21 In Mr. Nolan's draft, amongst other
22 things, the requirement that the agreements be in a
23 form and content to the satisfaction of the Town
24 solicitor is replaced with a requirement that they be
25 uniform and content to the satisfaction of the mayor.

1 He removes the requirement that Town
2 staff and the Town solicitor report back to Council
3 before closing the transaction. And he adds a clause
4 authorizing the mayor and the Town clerk to execute
5 any documents related to the transaction.

6 Were you aware in January 2012 that Mr.
7 Lo -- Nolan was involved in the drafting of the
8 authorizing bylaw?

9 MR. RON CLARK: Probably not. I think
10 later on, from what I've read, I co -- I come into the
11 picture at a later date, or a later time, anyway. I
12 assume a later date, so unlikely.

13 Having said that, this is kind of a
14 normal back and forth on -- on an authorizing
15 resolution to me. It -- it -- the purchaser would
16 have a very strong interest in what the author --
17 authorizing resolution looks like, and they'd want it
18 to be as clean as possible.

19 MS. KATE MCGRANN: As counsel to the
20 Town on this transaction, would you expect to be aware
21 of any involvement in -- by the deal, counterparty in
22 the drafting of the bylaw?

23 MR. RON CLARK: Yes.

24 MS. KATE MCGRANN: If we move on to
25 paragraph 495, we see that Mr. Nolan's draft of the

1 bylaw is ultimately forwarded on to Mr. Lo -- Longo.
2 If we keep going down, this is where we see you copied
3 in on the chain.

4 On January 19th, Mr. Longo forwards a
5 draft bylaw to Mayor Cooper and Deputy Mayor Lloyd,
6 CAO Kim Wingrove, clerk Sara Almas, Mr. Houghton, your
7 partner, John Mascarin, Ron Clark, and your associate,
8 Corrine Kennedy.

9 The draft that Mr. Longo forwards to
10 all of you adds back a requirement that:

11 "Appropriate Town staff and Town
12 solicitor report back to Council as
13 required with respect to the
14 conditions precedent and, in any
15 event, prior to the final closing of
16 the share purchase transaction."

17 Do you remember being looped in at this
18 point in time?

19 MR. RON CLARK: No.

20 MS. KATE MCGRANN: If we move on to
21 paragraph 497, we see one (1) hour after that email is
22 sent Mr. Houghton sends a draft of the bylaw directly
23 to CAO Wingrove. This version of the bylaw as
24 described here did not include the requirement that
25 Mr. Longo had added, and that's the requirement that

1 there be a report back to Council.

2 If we go down to paragraph 498, Ms.
3 Kennedy, your associate, emails Mr. Longo about the
4 draft bylaw. And she writes:

5 "After some further discussions with
6 Ed and Ron and in an effort to make
7 sure we've covered all bases with
8 respect to authorizing at the front
9 end of this transaction and don't
10 have to go back, I'm working on some
11 revisions to the bylaw for your
12 review.

13 I hope to return it to you as early
14 as possible this afternoon. Hope
15 that works for you, but please let
16 me know if you have any concerns
17 about that approach."

18 Do you remember having discussions with
19 Ms. Kennedy and/or Mr. Houghton about wanting to have
20 this authorizing bylaw happen at the front end of the
21 transaction or for the authorization to happen at the
22 front end of the transaction?

23 MR. RON CLARK: No to the immediate
24 question. But I want to make sure everyone
25 understands what "front end of the transaction" means

1 because I'm not sure -- because it's not intuitive
2 probably if you're not involved in these things.

3 So, what's the transaction? The
4 transaction, to a certain extent, has two (2) parts to
5 it, a signing and a closing. So, you sign the deal.
6 And the way to illustrate it is -- is that the -- the
7 purchase and sale contract has attached to it as a
8 schedule the shareholders agreement.

9 So, why wouldn't you sign the
10 shareholders agreement at the time you sell the
11 shares, or at least commit to sell the shares?
12 Because there aren't two (2) shareholders. The
13 purchase and sale agreement is entered into, but the
14 closing is at a later date subject to conditions. And
15 there may be various conditions, an important one (1)
16 of which is, for instance, Ontario Energy Board
17 approval.

18 There may be other third party
19 contracts which require the consent of this type of
20 transaction to happen, there may be others as well.

21 So -- so you sign the agreement to sell
22 the shares, you -- they're subject to conditions. You
23 meet the conditions and then the closing takes place
24 and the shares are actually transferred at a later
25 date, when the conditions have all been met.

1 And at that point you have two (2)
2 shareholders because you don't have a shareholder
3 until they own shares, and at that point the
4 shareholders agreement is entered into. So there's
5 kind of a sequence of events.

6 So there's a couple of things going on
7 here in this authorizing resolution. The first is
8 that the report back to Council is required, so let's
9 understand, the condition is precedent to closing, so
10 this isn't about what the share purchase agreement is
11 going to look like, this is to close the transaction,
12 in other words, sell the actual -- the transfer of the
13 actual shares.

14 If you're a purchaser, you're going to
15 say the closing conditions are already in the purchase
16 and sale agreement. What you're doing through a back
17 door here, if you're doing this in the resolution, is
18 you're not giving a clean, authorizing resolution,
19 because in effect, you're kind of adding this
20 condition precedent that's completely within the
21 control of the vendor in certain ways.

22 So as a purchaser you'd very much
23 resist that thing. So that -- that's kind of what
24 we're dealing with here.

25 MS. KATE MCGRANN: Okay. At this

1 point in time on January 19th, 2012, were all of the
2 documents in their final form?

3 MR. RON CLARK: I don't know.

4 MS. KATE MCGRANN: How is it in the
5 Town's -- sorry.

6 MR. RON CLARK: Sorry. I will -- I
7 will rephrase that.

8 In the sense that I'm not sure when the
9 actual signing was, but usually it would be the case
10 that by the time you present to Council and get the
11 authorizing resolution, you -- you're pretty much
12 there, but there are almost invariably last minute
13 changes or things you change that are blanks that have
14 to be filled in and there's information that's --
15 needs to be -- required schedules that need to be
16 completed and you're working on bringing all this
17 together.

18 So it's -- it's usually the case that
19 you're -- the documentations are not in final-final
20 form, but they are suff -- in sufficiently advanced
21 form that you're comfortable brining them to Council
22 for approval.

23 And that's also the -- why -- because
24 you can't have a -- an approval of the document that's
25 presented in Council precisely because there has to be

1 scope for those changes. And you don't want to have
2 to go back to Council again, so generally there is
3 some authority given to the mayor, the CAO, the
4 clerks, city -- City legal advisor to approve whatever
5 subsequent changes happen.

6 MS. KATE MCGRANN: So just to help you
7 out with dates, we're looking at correspondence on
8 January 19th, 2012. It's our understanding that the
9 signing takes place on March 6th, 2012.

10 MR. RON CLARK: So that would
11 reinforce my point that there was probably quite a bit
12 of, you know, potential scope for advancing the
13 documents.

14 MS. KATE MCGRANN: So you've helped us
15 understand why a purchaser would want the
16 authorization to take place at the front and how is
17 having the authorization taking place at the front end
18 useful to the Town?

19 MR. RON CLARK: I -- I think there's
20 two perspectives on it, as a Municipal lawyer maybe
21 you're used to building in checks, you know,
22 opportunities for comment as much as possible, and
23 perhaps that's what informs the original resolution.

24 As a corporate commercial lawyer, I --
25 I want to kind of lessen the possibility of the fewer

1 variables the better. And this would add a -- a
2 variable.

3 So I'm kind of sitting here now looking
4 at this that I -- I for -- I don't have a recollection
5 of what the dynamic was at the time, but sitting here
6 looking at this, I could, as I said, perfectly
7 understand why the purchaser would consider this to be
8 a big deal and wanted it.

9 But -- and that -- and that, by the way
10 -- and I get your question -- to your question why
11 does it matter from the vendor's point of view? It
12 matters because the vendor wants to just move ahead
13 with the deal at some point and if it's going to be a
14 -- a deal breaker or an important obstacle, you know,
15 fight over things that matter, not things that really
16 don't matter.

17 MS. KATE MCGRANN: This by-law
18 envisions documents to be signed by the clerk and the
19 mayor. Do you know if you had met in person with
20 either the clerk or the mayor in the work you'd done
21 on the transaction up until this point in time?

22 MR. RON CLARK: They would have likely
23 attended the presentation or presentations that I
24 gave.

25 MS. KATE MCGRANN: Okay, so they would

1 have been at the Council meeting, you think, where you
2 pre -- made a presentation on January 16th, 2012?

3 MR. RON CLARK: Quite. It wouldn't
4 surprise me if I had been there. Again, I don't
5 recall particularly, but that would have made sense to
6 me.

7 MS. KATE MCGRANN: Do you specifically
8 recall whether you had met either of the -- the clerk
9 Sara Almas or of Mayor Sandra Cooper at this point in
10 time though?

11 MR. RON CLARK: Likely I -- I -- yes,
12 I recall having met the mayor. I don't recall having
13 met the clerk, but I quite possibly did.

14 MS. KATE MCGRANN: What can you tell
15 us about your meeting with the mayor?

16 MR. RON CLARK: I don't recall the
17 particular discussions.

18 MS. KATE MCGRANN: Do you remember
19 what the purpose of it was?

20 MR. RON CLARK: It probably was in the
21 context of the Council presentation that I gave.

22 MS. KATE MCGRANN: But can -- can you
23 say for certain what the purpose of it was?

24 MR. RON CLARK: No.

25 MS. KATE MCGRANN: Do you remember how

1 long the two (2) of you spoke?

2 MR. RON CLARK: No.

3 MS. KATE MCGRANN: Do you remember if
4 anybody else was there?

5 MR. RON CLARK: As I say, it would
6 have been I think in the context of the Council
7 meeting, so presumably the other Councillors.

8 MS. KATE MCGRANN: Do you remember if
9 anybody else was at the meeting that you had with the
10 mayor?

11 MR. RON CLARK: The coun -- well, that
12 meeting, whoever was at that meeting.

13 MS. KATE MCGRANN: I'm reacting to the
14 -- your use of "there would have been", I just want to
15 know if you specifically recall whether you met with
16 her and other people or if you're guessing.

17 MR. RON CLARK: I'm guessing.

18 MS. KATE MCGRANN: If we move down to
19 paragraph 499, right below, we've got -- it says three
20 hours later Corrine Kennedy sent a new draft of the
21 by-law to clerk Almas, John Mascarin, Leo Longo and
22 Ron Clark. This draft authorized the mayor to make
23 any changes to the share purchase agreement, unanimous
24 shareholders agreement that were reasonable or
25 necessary, authorizes the mayor to take a number of

1 actions relating to the completion of the share
2 purchase.

3 We can continue to scroll down.

4 Including amending by-laws and filings,
5 changing the number of directors on the Collus board,
6 amending and entering in the service agreements
7 between the Town and Collus, and authorizing Collus'
8 declaration of dividends, the redemption of the
9 promissory note funds, and re-establishing the
10 requirement that the Town solicitor report back to
11 Council before the re-closing of the transaction.

12 Do you remember whether there was a
13 discussion about whether anyone would be made
14 available to provide the mayor with advice with
15 respect to the various things that she was authorized
16 to do by this by-law?

17 MR. RON CLARK: Other than we've
18 already talked about, and you'll have a chance to ask
19 me about it, Leo's relationship, other than the
20 conversation Leo may have had, which he'll be able to
21 tell you about, no, I have no recollection.

22 MS. KATE MCGRANN: And then if we
23 scroll down to the last paragraph, in this sub chapter
24 we see Mr. -- sorry, 500, my mistake.

25 Mr. Houghton sends the final version of

1 the by-law to Mayor Cooper, clerk Almas, CAO Wingrove,
2 Deputy Mayor Rick Lloyd, and Mr. Muncaster and it says
3 there this version reworded the above mentioned powers
4 and removed the requirement that the Town solicitor
5 report back to Council before the closing of the
6 transaction.

7 Do you recall whether Aird & Berlis was
8 involved in the drafting of the final version, or
9 whether that might be something that -- that you
10 weren't involved in?

11 MR. RON CLARK: I don't recall.

12 MS. KATE MCGRANN: Would it be your
13 expectation that you would be involved in drafting the
14 final version of the by-law, or is that something that
15 your clients could have taken on themselves?

16 MR. RON CLARK: Yes, it would have
17 been my expectation to have been involved in the final
18 drafting, yes.

19 MS. KATE MCGRANN: If we look at the
20 paragraph below this, it says on the same day Paul
21 Bonwick emailed Mayor Cooper, Rick Lloyd, and Ed
22 Houghton at this point in time, so January 19th, 2012.

23 Did you know who Paul Bonwick was?

24 MR. RON CLARK: No.

25 MS. KATE MCGRANN: In Mr. Bonwick's

1 email he says:

2 "Ed mentioned that the Mayor had
3 asked for a motion to be available
4 for a meeting this afternoon for
5 review by CAO clerk and Ed. I would
6 respectfully suggest that the Mayor
7 bring in Rick and Leo, either in
8 person or online. This will provide
9 an opportunity to provide clear
10 direction to Leo and the CAO from
11 both numbers of the review team, who
12 also happen to be the Mayor and
13 Deputy Mayor. If the Mayor believes
14 this to be a reasonable approach, I
15 would suggest it must take place
16 this afternoon."

17 You're not mentioned as being someone
18 who is contemplated as attending this meeting. Do you
19 recall whether you attended a meeting that's being
20 discussed in this email?

21 MR. RON CLARK: I have no recollection
22 of attending this meeting.

23 MS. KATE MCGRANN: If we could turn to
24 paragraph 504 of the Foundation Document. Still
25 looking at the time period around January 18th, 2012.

1 I want to talk about some discussion that happens
2 around the quantum of the recapitalization dividend at
3 this point in time. So just to orient you, this
4 discussion that's described here starts on January
5 18th, 2012, between Mr. Houghton and Mr. Rockx of
6 KPMG.

7 If we could -- here you see Mr.
8 Houghton asking if 5.5 million noted in a draft
9 calculation of the re-capitalization dividend provided
10 by PowerStream was the new value of the recap.

11 If you scroll down to the next
12 paragraph you see that Mr. Rockx responds that he
13 doesn't think that PowerStream's calculation for 2011
14 would be achieved, writing it's too much of an
15 increase over the balance for 2010, he indicates 4.6
16 million.

17 Mr. Houghton writes back so we're now
18 from 5.3 to 4.6, and Mr. Rockx replies, I'm interested
19 in looking at the second paragraph is his reply as set
20 out here, he says I think PowerStream is too
21 aggressive and that the 2011 financial statements will
22 show a 5 to 5.1 million recap from Collus Power, plus
23 .2 million from Solutions. So really get 5.2 to 5.3
24 million.

25 He goes on to note that he can't

1 confirm the recap dividend until the 2011 financial
2 statements are available. I also think it would be
3 dangerous to include PowerStream's projected 2011
4 recap of 5.6 million in the recap dividend schedule
5 attached to the share purchase agreement since it is
6 not realistic and will create unrealistic
7 expectations.

8 Now, do you remember Mr. Rockx raising
9 concerns like this at around this time?

10 MR. RON CLARK: No.

11 MS. KATE MCGRANN: If we scroll down
12 to paragraph 5.7, we see an email chain in which Mr.
13 Houghton reaches out to Mr. Bentz, Mr. Glicksman at
14 PowerStream, and Mr. Bonwick. He's looking -- you can
15 see, he says:

16 "I was hoping you would grant me a
17 small portion of your time on Monday
18 morning to discuss the Collus Power
19 recapitalization dividend."

20 This email continues on to the next
21 page and the portion that I'm interested in is the
22 last paragraph where he starts with:

23 "As you know, we've been telling
24 Council that our goal is to provide
25 them with approximately 15 million

1 by the time we are finished with
2 this transaction."

3 He explains that amount is made up of 8
4 million from 50 percent of the shares, 1.7 million
5 from the promissory note and 5.3 million from the
6 recap dividend.

7 "For Monday evening, I was hoping to
8 increase the Town's certainty of
9 getting near to the total of 5.3
10 million."

11 And he goes on to explain two (2) ways
12 that this could be done. The inclusion of software as
13 part of the recap dividend formula, or the inclusion
14 of a clause in the SPA that provides for a minimum
15 recap dividend at closing. And he goes on:

16 "So I was thinking, could we
17 identify a minimum of 5.1 million
18 recap dividend and a maximum recap
19 dividend to say 5.5 million. A
20 third alternative may be available
21 to us, and hopefully we can discuss
22 at the meeting."

23 Do you recall -- were you or any of
24 your colleagues at Aird & Berlis working on this
25 transaction involved in any negotiations with

1 PowerStream about setting a potential minimum to the
2 recap dividend at this time?

3 MR. RON CLARK: Not that I recall or
4 am aware of.

5 MS. KATE MCGRANN: And do you remember
6 being involved in discussions about setting a
7 potential minimum to the recap dividend at any point
8 in time while you were working on this?

9 MR. RON CLARK: No.

10 MS. KATE MCGRANN: If we could look at
11 paragraph 514 for a moment.

12 So this paragraph describes an email
13 that Mr. Houghton sends to CAO Wingrove, Mayor Cooper,
14 Deputy Layer -- Mayor Lloyd, and Dean Muncaster on
15 January 19th, 2012. The part that I want to ask you
16 about is below. It's in the context of a resolution
17 that will be passed the next morning at the
18 Collingwood Utility Services Board meeting.

19 And if we scroll down to the next page,
20 I just wanted to ask you to explain what's described
21 here. Mr Houghton writes:

22 "As well, I spoke to Ron Clark and
23 Corrine Kennedy today, and they are
24 uncomfortable having an unexecuted
25 agreement out in the public realm.

1 They're suggesting that we can make
2 it available to Council in the
3 Council room. And once it's
4 executed, we will make it available
5 to the public."

6 Was it accurate that you and
7 Ms. Kennedy were uncomfortable having an unexecuted
8 agreement in the public realm?

9 MR. RON CLARK: Yes.

10 MS. KATE MCGRANN: Okay. Can you help
11 us understand why?

12 MR. RON CLARK: So until there's a
13 signed agreement, there is scope -- there's often --
14 Collingwood at the time maybe, certainly in other
15 similar transactions -- there's often a segment of the
16 public that is against the transaction.

17 And to -- to have an unexecuted
18 agreement gives those opponents of the transaction
19 often additional ammunition for stopping the deal.

20 MS. KATE MCGRANN: And what additional
21 ammunition does it give them?

22 MR. RON CLARK: If there's an
23 objection to the purchase price; if there's an
24 objection to Board representation; if there's an
25 objection to -- I -- you know, I don't know. I --

1 you'd kind of -- I'd have to kind of put myself in --
2 in the -- in the mind of someone who's objecting
3 and -- and go through it.

4 I mean, it's -- it's a similar concept
5 to any negotiation, any governmental negotiation that,
6 you know, generally it's not done in public. And you
7 have a discussion in private until the deal's done,
8 and then it's made public.

9 MS. KATE MCGRANN: Is the notion that
10 if an unsigned agreement is put out in public, the
11 public has the opportunity to see the provisions, and
12 there's an idea -- there's room to still push on them
13 because the agreement hasn't been signed yet?

14 MR. RON CLARK: That's part of it.
15 There's also -- you know, there's -- there's the part
16 that is accurate, and there may be valid objections to
17 parts of the deal, and that's kind of -- you know,
18 that's -- that's the job of Council to deal with it,
19 rather than members of the public.

20 But there's also the possibility of
21 taking provisions that are even not understood or
22 misexplained or creating disinformation and using
23 what's in the transaction documents out of context to
24 challenge the deal. So there's a -- a number of
25 problems.

1 MS. KATE MCGRANN: There was a public
2 presentation made to Council on the transaction on
3 January 23rd, 2012. Do you recall if you were asked
4 to attend that Council meeting?

5 MR. RON CLARK: I don't recall.

6 MS. KATE MCGRANN: If we could look at
7 paragraph 519 of the Foundation Document.

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: This paragraph
12 describes staff report CAO201201 which discussed the
13 proposed Collus PowerStream strategic partnerships. I
14 can pull it up if you'd like to see it.

15 My question for you is: Do you recall
16 if you were asked to review the staff report before it
17 was finalized or to provide any information for the
18 drafting of the staff report?

19 MR. RON CLARK: No, I don't recall in
20 particular. Sometimes I'm asked to comment on the
21 staff reports; sometimes I'm not.

22 MS. KATE MCGRANN: Okay. And no
23 specific recollection neither way about this one?

24 MR. RON CLARK: Correct.

25 MS. KATE MCGRANN: If we could turn to

1 paragraph 537 of the Foundation Document, please?

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: So we're moving
6 ahead in time a bit. It's now February 29th, 2012,
7 and this paragraph describes that Mr. Longo sent
8 Mayor Cooper, Clerk Almas, and Ed Houghton copies of
9 the documents to be signed, along with a memo that
10 generally described the purpose of each document.

11 I'm going to start by taking a look at
12 the email chain described here. So could we turn up
13 ALE2075.

14

15 (BRIEF PAUSE)

16

17 MS. KATE MCGRANN: Please scroll down
18 to the bottom of this email chain, please.

19 So this email chain starts with an
20 email from you on February 29th at 8:22 p.m. to
21 Mr. Longo, Mr. Houghton, Ms. Kennedy, and
22 Michael Ventresca, who I believe was an associate at
23 Aird & Berlis at the time?

24 MR. RON CLARK: Yes. Yes, he was.

25 MS. KATE MCGRANN: The subject is

1 "Collingwood/PowerStream documents to be signed by
2 mayor and clerk and explanatory memorandum." You
3 write:

4 "Leo, please see attached for the
5 purpose of your briefing of the
6 mayor and the clerk, the documents
7 to be signed by them, together with
8 an explanatory memorandum prepared
9 by Mr. Ventresca."

10 Do you remember sending this email?

11 MR. RON CLARK: I don't recall, no.

12 MS. KATE MCGRANN: Do you remember any
13 discussions about who would brief the mayor and the
14 clerk about the transaction documents that they would
15 be signing?

16 MR. RON CLARK: No. I have no memory
17 of the particular discussions about who would be doing
18 that.

19 MS. KATE MCGRANN: Do you know why
20 Mr. Longo was chosen to do this work as opposed to you
21 or Ms. Kennedy?

22 MR. RON CLARK: I -- I don't. In
23 particular, I don't sitting here now other than as
24 described earlier. My impression was that Leo had a
25 previous relationship with the mayor, and so she or

1 Council felt comfortable with Leo.

2 MS. KATE MCGRANN: Was Mr. Longo
3 involved in the -- in the drafting of the transaction
4 documents?

5 MR. RON CLARK: No.

6 MS. KATE MCGRANN: Can we turn up --
7 I'm not going to take you the memo that's attached to
8 this email. It's at ALE2084.

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: There would be --
13 up to the top, please. You're being shown an Aird &
14 Berlis memorandum, dated February 29th, 2012, to
15 Mr. Longo from -- with a cc to yourself and
16 Ms. Kennedy from Mr. Ventresca.

17 And if we could scroll down a little
18 bit further, we've got the file number and the client
19 identified as Collingwood Utility Services. The memo
20 says:

21 "Leo, the following is a summary of
22 the documents to be signed by
23 Mayor Sandra Cooper and Town Clerk
24 Sara Almas with respect to the sale
25 of shares in Collingwood Utility

1 Services Corp. to PowerStream Inc."

2 There's an explanation that the
3 execution of the documents is authorized by an
4 authorizing bylaw. There is listed abbreviations.

5 And then if we scroll down further, you
6 can see that there's a chart that sets a document --
7 an explanation of the purpose, and then it identifies
8 the signatures needed. Do you remember this memo?

9 MR. RON CLARK: No.

10 MS. KATE MCGRANN: Could you help us?
11 Would this memo be a document that you viewed as being
12 subject to solicitor-client privilege?

13 MS. LUISA RITACCA: I'm not sure if
14 this witness can answer that question. The privilege
15 would rest with the clients. I don't know why you're
16 asking this witness this question.

17 MS. KATE MCGRANN: Okay.

18

19 (BRIEF PAUSE)

20

21 MS. KATE MCGRANN: I guess what I'm
22 trying to ask -- and you can let me know if this
23 addresses the concern or not -- unless and until your
24 clients chose to share this with third parties or
25 otherwise waive any privilege that would be attached,

1 would the contents of this memo, do you think, attract
2 a claim of solicitor-client privilege?

3 Is this the kind of information over
4 which your client could claim privilege?

5 MS. LUISA RITACCA: Again, I'm having
6 trouble understanding what you're -- what counsel's
7 getting at, Mr. Commissioner. If the question is if
8 Mr. Clark understood that this memo would be shared
9 with people at Collus at people at the Town, then I --
10 I think that that's a fair question to ask.

11 But beyond that, I don't know if he had
12 a view or his view as whether or not it was shared
13 with people outside of those two entities matters.

14 MS. KATE MCGRANN: Sorry. And I'm
15 sure that this is the way that I'm putting the
16 question. I'm not asking whether you understood
17 whether it was shared with others.

18 As at the time that it left your desk,
19 did you have a view as to whether the nature of the
20 information that's provided in this memo was the kind
21 of information that would be covered by
22 solicitor-client privilege?

23 THE HONOURABLE FRANK MARROCCO: I
24 think he can answer the question. I think he's
25 competent. His client may have had a different view,

1 and the client's view would be controlling. But I
2 think he can -- if he can, I think he can answer the
3 question.

4 MR. RON CLARK: Perhaps I can answer
5 it this way. Looking at it quickly -- and I haven't
6 seen page 2 yet --

7

8 CONTINUED BY MS. KATE MCGRANN:

9 MS. KATE MCGRANN: I'm happy to let
10 you take the time you need to review it.

11 MR. RON CLARK: Oh, okay. So there's
12 a lot more.

13 I mean, a lot of this -- things like
14 Council resolutions, shareholder resolutions would
15 have been public. And eventually, the
16 documentation -- the documents themselves would have
17 been public, although not right at that time.

18 The director's resolutions, I'm not
19 sure that they would have been public. So -- although
20 I don't know that there's anything worrisome in them,
21 but -- but on their face, they're not documents that
22 would have been public. Therefore, prima facie, there
23 would -- the -- certain aspects of this would be
24 privileged, yeah.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Do you recall
4 whether you met with anyone from the Town before the -
5 - the Transaction documents were signed on March 6th,
6 2012?

7 MR. RON CLARK: I don't recall.

8 MS. KATE MCGRANN: If we could turn up
9 paragraph 540, please.

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: On March 5th, -- so
14 this paragraph says on March 5th, 2012 -- I'm
15 summarizing -- Ms. Kennedy told Mr. Longo to expect an
16 email from Mr. Rockx of KPMG, explaining that the
17 dividends declared as a result of the upcoming share
18 sale be lower than expected. After receiving
19 information from Mr. Rockx, Mr. Longo followed up with
20 Ms. Kennedy and asked whether Mr. Rockx was preparing
21 any further documentation regarding the dividend.

22 Ms. Kennedy responded:

23 "Leo, Ed Houghton has confirmed that
24 he is briefing the mayor and dealing
25 with this directly, and there's

1 nothing for us to do on our end."

2 Do you remember any discussions about
3 that Mr. Houghton briefing the mayor directly?

4 MR. RON CLARK: No.

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: If we could turn
9 to paragraph 6 for -- 606 for a second.

10

11 (BRIEF PAUSE)

12

13 MS. KATE MCGRANN: I just want to ask
14 you a question about an email from Ms. Kennedy that
15 may be the result of a typo, but if not, I'm having
16 trouble understanding the email, and I'm wondering if
17 you can help me.

18 This paragraph says:

19 "On July 24th, 2012, Ms. Walden had
20 emailed Ms. Kennedy, saying July
21 31st was being targeted as its
22 month-end. There is a question of
23 whether Collus has enough cash on
24 hand to declare the dividend. On
25 July 31st or August 1st, Ms. Kennedy

1 replied that she would ask that the
2 dividend payment was a condition
3 precedent to the corporate deal,
4 which is why it was not contemplated
5 as happening first."

6 You didn't write the email. It's
7 entirely possible this just a typo, but if you
8 understand what she's talking about there, can you
9 help me understand that email?

10

11 (BRIEF PAUSE)

12

13 MR. RON CLARK: I'll do -- the only
14 thing I can think of is that if the closing -- and I'm
15 not sure when the actual closing was, so -- but if the
16 closing was August 1st, then it would have been
17 necessary to declare the dividend on July 31st if it
18 was a condition precedent. But even that isn't really
19 true, because it could have been done the minute
20 before the closing, anyway.

21 So I -- in the end, I don't know if I
22 can help you --

23 MS. KATE MCGRANN: Okay.

24 MR. RON CLARK: -- with what this --

25 MS. KATE MCGRANN: What involvement

1 did you have in the signing of the transaction
2 documents at the closing, which we think -- I
3 understand is July 31st, 2012?

4 MR. RON CLARK: It is July 31st.
5 Okay. I don't know. I would have kind of been in --
6 been coordinating with Corrine and been aware of what
7 was going on, but this might have -- might have been
8 done -- kind of signed in advance, and PDFed to us,
9 and closed based on emailed PDFs. That's often how it
10 takes place.

11 I don't have a specific recollection
12 about the mechanics of the -- of the closing and the
13 exchange of signed documents here.

14 MS. KATE MCGRANN: Okay. Do you know
15 if anyone -- and you was -- let's start that again.

16 Do you know if anyone from your firm
17 was physically present with the representatives of
18 your clients when they signed these documents?

19 MR. RON CLARK: No, I don't recall.

20 MS. KATE MCGRANN: A few areas to
21 cover with you, and then that will be the end of my
22 questions. I just want to take a look at some
23 discussions that take place as between you and Mr.
24 Longo in response to questions asked by John Brown
25 after the close of this Transaction.

1 So if we could go to paragraph 730 of
2 the Foundation Document.

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: This paragraph
7 describes an email exchange between Mr. Brown and Mr.
8 Houghton that you're not copied on. At this point in
9 time Mr. Brown asks Mr. Houghton which entity each of
10 Mr. Longo and you represented in respect of the share
11 sale Transaction, and Mr. Houghton responds that:

12 "Collus worked through Ron Clark and
13 the Town through Mr. Longo."

14 Is that an accurate description of --
15 of the manner in which you and your colleagues worked
16 on this Transaction?

17 MR. RON CLARK: No.

18 MS. KATE MCGRANN: If we could turn
19 next to Foundation Document paragraph 750.

20

21 (BRIEF PAUSE)

22

23 MS. KATE MCGRANN: I'm going to walk
24 with you through the next four (4) paragraphs of the
25 Foundation Document. We're now at March 4th, 2015.

1 Mr. Longo writes to you that Mr. Brown has asked, Who
2 was the lawyer of record that represented the Town on
3 the Transaction. And Mr. Longo writes:

4 "It wasn't you. I don't know what
5 entity you build, but I don't
6 believe it was the Town. It wasn't
7 me, as I was never involved in the
8 negotiations of any of the
9 agreements and other closing
10 documents."

11 He goes on to say:

12 "Frankly, I believe the Town chose
13 not have a lawyer of record on this
14 Transaction."

15 And then if we scroll down, we can see
16 your response, which is:

17 "My understanding at the time was
18 that the Town had designated Ed to
19 give us instructions on behalf of
20 Collus and the Town."

21 You say:

22 "I'm not certain lawyer of record
23 has any meaning in a commercial
24 transaction as opposed to
25 litigation. Ultimately, the firm

1 advised both the Town and Collus and
2 had instructed us as the
3 representatives of them both."

4 If we scroll down a little bit further,
5 we see Mr. Brown comes to you and asks you who you
6 took instructions from and to whom you reported. You
7 respond, "Mr. Houghton," and in a separate email
8 conversation, you advised Mr. Brown, "I represented
9 both the Town and Collus." So you're -- continue to -
10 - you're consistent in your answers. And we could
11 scroll up a little bit further.

12 The last thing I want to bring
13 attention to in this section is Mr. Houghton's email
14 to you about two (2) weeks later, which starts about
15 halfway through this paragraph, where it says:

16 "Mr. Houghton forwarded an email to
17 Mr. Clark saying, 'As you know, Leo
18 is involved. Please provide a
19 correction to Mr. Brown'."

20 You -- you forward Mr. Houghton's email
21 to Mr. Longo, who responds:

22 "As we have discussed, my peripheral
23 involvement was minimal, and I was
24 not the lawyer of record for the
25 Town respecting that Transaction.

1 Please do not suggest otherwise."

2 It appears that there is some confusion
3 or disagreement as between yourself, Mr. Houghton, and
4 Mr. Longo over who did what and who represented who in
5 this transaction.

6 Do you remember these exchanges?

7 MR. RON CLARK: Yes.

8 MS. KATE MCGRANN: What can you tell
9 us about the-- the different views that were taken of
10 who did what and -- and who represented who, here?

11 MR. RON CLARK: Nothing beyond the
12 discussions and information I've already provided you.

13 MS. KATE MCGRANN: The last thing that
14 I -- I want to ask you about, and it's because I said
15 I would take you to this earlier in the day is the
16 retainer letter that you referenced. It's at ARB1740.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: So I -- I should be
21 careful. I think that this is the retainer letter
22 that you were referring to, but my -- my first
23 question to you is going to be: was it?

24 So we can see this is a March 8th, 2007
25 letter to Collingwood Utility Services Corp. If we

1 could scroll down a little bit further, it's re:
2 general employment matters. It goes on to say:

3 "Further to our discussions and
4 emails, this is to acknowledge that
5 Collingwood Utility Services Corp.
6 has retained Aird & Berlis to assist
7 you in the above-mentioned matter."

8 And we can scroll down a little bit
9 further. I'll give you a second to take a look at --
10 at the body of the letter.

11 MR. RON CLARK: M-hm.

12 MS. KATE MCGRANN: And -- and keep
13 scrolling.

14 "Yours very truly," from -- signed by
15 P. Christopher Lloyd of your firm, and Ms. Hogg of
16 Collingwood Utility Services Corp.

17 Is this the retainer letter that you
18 were referring to?

19 MR. RON CLARK: Yes.

20 MS. KATE MCGRANN: Why did you -- why
21 did you think that this retainer lever -- letter would
22 cover the work that you were doing for both the Collus
23 entities and the Town of Collingwood?

24 MR. RON CLARK: I think the premise of
25 your question is that there has to be a separate

1 retainer for every matter that a lawyer acts on for a
2 client, so I don't think that's true. Once the client
3 -- the -- the retainer letter is important for a
4 number of reasons but among the most important is that
5 -- that there's no -- that the firm isn't engaged in
6 conflicts with regard to the client.

7 So once you have the relationship, a
8 solicitor-client relationship with a particular
9 client, it really doesn't matter what it's for. That
10 engages the -- the issues around conflict and
11 fiduciary duty and that's the primary purpose of the
12 retainer letter. It's not necessary to have a --
13 certainly I've never been told either, under -- under
14 various requirements, including firm policy, that
15 there has to be a different retainer letter for every
16 matter that's opened.

17 MS. KATE MCGRANN: What I am actually
18 trying to get at, and I'll be more specific in my
19 question -- if we could scroll up again.

20 Why did you proceed under a retainer
21 letter with Collingwood Utility Services Corp on a
22 matter where you had two (2) clients, one (1) of whom
23 is not mentioned in this letter, that being the Town
24 of Collingwood?

25 MR. RON CLARK: Yeah. To a certain

1 extent, I mean, I was -- I wasn't engaged. I -- I
2 opened a matter. I did do that. But the relationship
3 with the client was, the retainer letter was kind of -
4 - retainer arrangements were -- were handled by, I
5 think it was John Mascarin, who's a partner also in
6 the municipal -- our municipal group.

7 It's -- it's often the case that when
8 you're acting for a number of entities within the same
9 corporate structure, you're not going to get -- it's -
10 - it's not considered necessary to receive separate
11 retainer letters or instructions, et cetera, from all
12 of them because it -- it's just -- you know, it's
13 often the same persons that occupy the various
14 offices, either as directors or officers of the
15 corporations, in a given corporate structure.

16 So that's kind of a -- a normal thing
17 from our perspective, and especially in the case here
18 that, as I said earlier this morning, the whole
19 context of the instructions given to us were on behalf
20 of the shareholder. It -- it -- if -- if Ed and
21 others weren't acting on behalf of the Town, then it -
22 - it would have like -- all of the things that they
23 were worried about, as I say the shareholders'
24 agreement, the share purchase agreement, were things
25 that the Town primarily was entering into, therefore -

1 - and clearly, given the meetings and the relationship
2 between Council and Ed and all the -- all of the
3 meetings and exposure and touch points we had, there
4 was no reason to think that those entities, while they
5 were employed by Collingwood Utility Services Corp,
6 were acting -- not acting on behalf of the Town, for
7 all the reasons we talked about this morning.

8 MS. KATE MCGRANN: Those are my
9 questions.

10 MR. RON CLARK: Thank you.

11

12 CROSS-EXAMINATION BY MR. RYAN BREEDON:

13 MR. RYAN BREEDON: Mr. Clark, we've
14 met. My name is Ryan Breedon and I'm counsel for the
15 Town. I have only a few questions for you.

16 You -- you testified that when you
17 became involved in this transaction, that the
18 structure of the deal was already in place, correct?

19 MR. RON CLARK: Yes.

20 MR. RYAN BREEDON: All right. And
21 that included related material terms of the deal?

22 MR. RON CLARK: Yes.

23 MR. RYAN BREEDON: I -- like the price
24 was already --

25 MR. RON CLARK: Yeah.

1 MR. RYAN BREEDON: -- agreed upon, the
2 fact that it was going to be a 50 percent sale was
3 already agreed upon --

4 MR. RON CLARK: Correct.

5 MR. RYAN BREEDON: -- the fact that
6 there would be some form of recapitalization was
7 already agreed upon?

8 MR. RON CLARK: Correct.

9 MR. RYAN BREEDON: Correct. And so I
10 take it from what you -- what you've said so far, you
11 were not engaged to retain -- pardon me. You were not
12 engaged to give advice on any of those aspects of the
13 deal?

14 MR. RON CLARK: Correct.

15 MR. RYAN BREEDON: All right. And --
16 and similarly, you weren't engaged to give advice with
17 respect to any of the other bids that the Town had
18 received?

19 MR. RON CLARK: Correct.

20 MR. RYAN BREEDON: All right. Or to
21 give advice comparing the impact of the PowerStream
22 bid -- PowerStream bid, and the other bids?

23 MR. RON CLARK: Correct.

24 MR. RYAN BREEDON: And similarly, you
25 didn't give any advice about the impact of the

1 PowerStream bid as compared with not proceeding with
2 the transaction at all?

3 MR. RON CLARK: Correct.

4 MR. RYAN BREEDON: And so can we look
5 again at TOC531801, please?

6

7 (BRIEF PAUSE)

8

9 MR. RYAN BREEDON: So Ms. McGrann
10 asked you some questions about this presentation which
11 you gave to Council. And I take it you don't have
12 much of a recollection of your presentation other than
13 what's contained in the PowerPoint?

14 MR. RON CLARK: Correct.

15 MR. RYAN BREEDON: All right. Slide -
16 - and pardon me, the purpose though was to describe
17 for Council the terms of the proposed deal.

18 MR. RON CLARK: Correct.

19 MR. RYAN BREEDON: Okay. Slide 6,
20 please.

21

22 (BRIEF PAUSE)

23

24 MR. RYAN BREEDON: And Ms. McGrann
25 took you to this. And you'll see at the bottom of

1 this slide there is the discussion of what the
2 proposed consideration for the deal was, and -- and I
3 presume you went through this with Council?

4 MR. RON CLARK: Yes, correct.

5 MR. RYAN BREEDON: All right. And --
6 and again, it's -- it's \$8 million for 50 percent of
7 the shares, and then this \$5.2 million
8 recapitalization dividend, and if we scroll down a
9 little bit more, the \$1.7 million repayment of the
10 promissory note, correct?

11 MR. RON CLARK: Yes.

12 MR. RYAN BREEDON: All right. And I
13 take it from what you've told me before, that you did
14 not discuss as part of this presentation, whether the
15 Town could have recapitalized the Utility without
16 proceeding with the transaction?

17 MR. RON CLARK: Correct.

18 MR. RYAN BREEDON: That -- that --
19 that just didn't come up, I take it?

20 MR. RON CLARK: With me? No.

21 MR. RYAN BREEDON: Yes. And
22 similarly, you didn't discuss the significance of
23 whether the recapitalization was declared -- or pardon
24 me, the dividend was declared a pre- or post-closing?

25 MR. RON CLARK: I don't recall. I --

1 likely not.

2 MR. RYAN BREEDON: Well, some of the
3 bid -- the other bids, other than the PowerStream bid,
4 all provided for a dividend to be declared after the
5 closing. Are you aware of that?

6 MR. RON CLARK: No.

7 MR. RYAN BREEDON: All right. Well,
8 just take it from me. I take it that that wasn't a
9 thing that you discussed, you -- you know, what the
10 significance of that might be as part of your
11 presentation with Council?

12 MR. RON CLARK: Correct.

13 MR. RYAN BREEDON: All right. And
14 similarly, you did not have a discussion about whether
15 Council -- the Town could have called on the
16 promissory note without proceeding with the
17 transaction?

18 MR. RON CLARK: That's correct, but, I
19 mean, this is all financial advice, so for both
20 reasons it would have been kind of outside of my
21 jurisdiction in a way, yeah.

22 MR. RYAN BREEDON: All right. All I
23 really want to know is what you told Council.

24 MR. RON CLARK: Yeah.

25 MR. RYAN BREEDON: But you didn't --

1 you didn't talk about any of these things?

2 MR. RON CLARK: Correct.

3 MR. RYAN BREEDON: Thank you. Can we
4 look at ARB14, please?

5

6 (BRIEF PAUSE)

7

8 MR. RYAN BREEDON: Ms. McGrann took
9 you to this earlier today, and there's this -- sort of
10 a seller's remorse clause that's being discussed here?

11 MR. RON CLARK: Yeah.

12 MR. RYAN BREEDON: And the idea, as I
13 understand it, is that what was being proposed was a
14 clause whereby the Town could repurchase its shares
15 within one (1) year?

16 MR. RON CLARK: Yes.

17 MR. RYAN BREEDON: All right. And --
18 and just help me with what the mechanics would have
19 been, if you're able to remember them. Was the Town
20 then just repay the purchase price?

21 MR. RON CLARK: Yeah. I don't have a
22 specific recollection, but that's generally what it
23 would be. It may be at the -- at the -- the price for
24 which the shares were sold, but normally it would be
25 that price plus some sort of premium.

1 MR. RYAN BREEDON: All right. And you
2 don't recall the -- the -- the specifics.

3 The price at which the shares were sold
4 in this case would have been the \$8 million though,
5 correct?

6 MR. RON CLARK: I -- yes. I mean --
7 well, it's more complicated, right, because it's not
8 just a -- it's not just a cheque. There's the
9 dividend and the promissory note, et cetera, so I
10 don't think the \$8 million is -- is that simple.

11 MR. RYAN BREEDON: Can we look at
12 document ALE1483, please?

13

14 (BRIEF PAUSE)

15

16 MR. RYAN BREEDON: Okay. This is a
17 email from Mr. Rockx to Mr. Miller and copied to a
18 variety of individuals, including yourself, dealing
19 with the calculation of the recapitalization dividend.
20 Yes?

21 MR. RON CLARK: I mean, in looking at
22 it now, that's what it appears to be. I don't have
23 any independent knowledge of what it is.

24 MR. RYAN BREEDON: That's fine. And -
25 - and I'm not going to ask you about the mechanics of

1 -- of what was being negotiated at the time.

2 MR. RON CLARK: Thank you.

3 MR. RYAN BREEDON: You'll agree with
4 me though that a recapitalization dividend was solely
5 to the benefit of the Town?

6 MR. RON CLARK: I'm not going to have
7 any comment on -- on how the recapitalization dividend
8 worked and who benefited from it. That would -- you
9 know, that was primarily KPMG advising, I assume the
10 Town. I -- I didn't have any input on that.

11 MR. RYAN BREEDON: You understand what
12 the recapitalization --

13 MR. RON CLARK: Yeah.

14 MR. RYAN BREEDON: -- dividend was
15 though --

16 MR. RON CLARK: Yeah.

17 MR. RYAN BREEDON: -- correct?

18 MR. RON CLARK: Yeah.

19 MR. RYAN BREEDON: The idea is that
20 the Utility is going to borrow money to recapitalize
21 and then issue a dividend to the shareholder,
22 essentially for the amount of money that was --

23 MR. RON CLARK: Yeah.

24 MR. RYAN BREEDON: -- borrowed?

25 MR. RON CLARK: Yes.

1 MR. RYAN BREEDON: Right. And -- and
2 in this case, the way this deal was structured, the
3 shareholder at the time would just be the Town?

4 MR. RON CLARK: Yes.

5 MR. RYAN BREEDON: And so the Town is
6 the -- is the party who's receiving the dividend?

7 MR. RON CLARK: Yes.

8 MR. RYAN BREEDON: So the -- the
9 benefit of the dividend is -- is flowing to the Town
10 after --

11 MR. RON CLARK: Yeah.

12 MR. RYAN BREEDON: -- this structure?

13 MR. RON CLARK: Yeah.

14 MR. RYAN BREEDON: Okay. Now, who was
15 negotiating the terms of the recapitalization dividend
16 on behalf of the Town?

17 MR. RON CLARK: I don't know.

18 MR. RYAN BREEDON: Okay. It wasn't
19 you, I take it?

20 MR. RON CLARK: No.

21 MR. RYAN BREEDON: Could we look at
22 ARB108, please?

23

24 (BRIEF PAUSE)

25

1 MR. RYAN BREEDON: And scroll down a
2 little bit to the -- to the second email. Okay, stop
3 there.

4 So this is an email from Ms. Kennedy to
5 Mr. Longo and yourself of March 5th, 2012. You see
6 that?

7 MR. RON CLARK: Yeah, yes.

8 MR. RYAN BREEDON: And I understand
9 this is sort of shortly before the final agreement is
10 executed?

11 MR. RON CLARK: M-hm.

12 MR. RYAN BREEDON: You'll see in the
13 last paragraph, Ms. Kennedy writes:

14 "Also a side letter is to be
15 issued,"

16 Pardon me.

17 "A side letter to be issued by the
18 Town and signed by the Mayor and
19 Clerk was negotiated on Friday and
20 will have to be signed today, if at
21 all possible. I have attached it
22 for your reference,"

23 Et cetera. You see that?

24 MR. RON CLARK: Yes.

25 MR. RYAN BREEDON: All right. Do you

1 know -- and -- and we can try to find the letter if --
2 if it will help, but do you know who had negotiated
3 that letter?

4 MR. RON CLARK: Who had negotiated it?
5 When you say negotiated, you mean -- sorry, legal
6 advice or the primary negotiator on behalf of the
7 parties?

8 MR. RYAN BREEDON: Well --

9 MR. RON CLARK: Which do you mean?

10 MR. RYAN BREEDON: All right. Well,
11 why don't we start with the second thing.

12 Who was actually negotiating this
13 letter on behalf of the parties? Ms. Kennedy says it
14 was negotiated on the previous Friday.

15 MR. RON CLARK: Right.

16 MR. RYAN BREEDON: Who did that?

17 MR. RON CLARK: So I think I know
18 which letter it is, but until I see it, I don't want
19 to assume.

20 MR. RYAN BREEDON: Can we -- can we
21 pull up the attachment? I actually don't have the
22 number for it, I'm afraid.

23

24 (BRIEF PAUSE)

25

1 MR. RYAN BREEDON: This is the
2 attachment to -- let's scroll down and see if --

3 THE HONOURABLE FRANK MARROCCO: Do you
4 -- do you think you can find it, if that's not it?

5 MR. RYAN BREEDON: Well, prob --
6 probably.

7 THE HONOURABLE FRANK MARROCCO: Why
8 don't you finish your questions and then I'll let you
9 come back and ask a question about that while the
10 other cross-examination is going on.

11 MR. RYAN BREEDON: Sure, that's fine.
12 Thank you.

13

14 CONTINUED BY MR. RYAN BREEDON:

15 MR. RYAN BREEDON: The -- the last
16 thing then that I want to talk about subject to trying
17 to find this letter, there was a Council meeting on
18 January the 23rd, 2012, where Council finally approved
19 this transaction. You're aware of that?

20 MR. RON CLARK: Not independently,
21 but, okay.

22 MR. RYAN BREEDON: All right. Did --
23 did you attend the meeting?

24 MR. RON CLARK: Not to my
25 recollection.

1 MR. RYAN BREEDON: Okay. And there
2 was a staff report which was distributed to the
3 Council members in advance of the meeting. And we can
4 turn it up and show you if you like. But do you know
5 whether you were provided with a copy of the staff
6 report in advance?

7 MR. RON CLARK: I don't recall.

8 MR. RYAN BREEDON: And do you recall
9 whether you were asked to provide any comments or
10 advice with respect to the staff report?

11 MR. RON CLARK: No. Yeah, we -- that
12 was the -- I think the staff report that was brought
13 up earlier. And, as I said earlier, often, I'm asked
14 to comment, but sometimes not. And I don't have a
15 specific recollection in this instance.

16 MR. RYAN BREEDON: All right. Thank
17 you. And then similarly, there was a PowerPoint
18 presentation that was made at the -- at that same
19 Council meeting. Do you know whether you were asked
20 to comment on that?

21 MR. RON CLARK: I can't recall.

22 MR. RYAN BREEDON: Okay. Thank you.
23 So, subject to whatever we might find for this
24 document, those are my questions.

25 MR. RON CLARK: All right. Thank you.

1 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: Mr. Clark,
3 my name is Chenoweth, Fred Chenoweth, and I represent
4 Ed Houghton with respect to this public Inquiry.

5 I'm going to take you, if I could,
6 first of all, to the minutes and slides relating to
7 the January 16th, 2012 -- January 16th, 2012, in
8 camera meeting of Council. And the document number
9 for that is CJI9079. Could you pull it up, please?

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: Just take it
14 down a little bit, if you would, please. Thank you.
15 I notice that there is an indication, sir, that you
16 obviously were at that meeting?

17 MR. RON CLARK: Misspelled, but, yes.

18 MR. FREDERICK CHENOWETH: All right.
19 And in addition, there is -- and these -- these may
20 just be draft minutes, but there's -- underneath that,
21 there's a Mr. John, and there's no last name there.

22 I understand that may well be -- and
23 there may be further evidence with respect to this at
24 a later time in this Commission, but I understand that
25 may be John Rockx, who was with KPMG.

1 Do you have a memory of Mr. Rockx being
2 there on that occasion?

3 MR. RON CLARK: I -- I don't remember
4 him being there or -- or the meeting, but certainly
5 John Rockx was involved throughout the transaction, so
6 it -- it may well be a reference to him.

7 MR. FREDERICK CHENOWETH: If he says
8 he was there, you're not in a position to say that he
9 wasn't?

10 MR. RON CLARK: Correct.

11 MR. FREDERICK CHENOWETH: All right.
12 Thank you. And looking at the slides that are
13 attached to that -- if we could have the front page of
14 the slides, please.

15

16 (BRIEF PAUSE)

17

18 MR. FREDERICK CHENOWETH: Maybe my
19 number doesn't include the slides; I had understood it
20 did. Thank you. I appreciate it. Now, these are
21 obviously slides that you -- you prepared?

22 MR. RON CLARK: Correct.

23 MR. FREDERICK CHENOWETH: And there's
24 a series of a number of slides. And you prepared them
25 for the purpose of -- of showing to the Town Council

1 on that occasion?

2 MR. RON CLARK: Yes.

3 MR. FREDERICK CHENOWETH: And you did
4 so for the purpose of explaining the details of the
5 transaction to the Town Council?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: All right.
8 And I take it that, in addition to presenting the Town
9 Council on that occasion with slides, you also gave an
10 oral presentation that paral -- or that par --
11 paralleled the -- the notations that are made in the
12 slides?

13 MR. RON CLARK: Yes.

14 MR. FREDERICK CHENOWETH: All right.
15 Thank you. And so that either through the -- through
16 the presentation and the slide, from the slide itself,
17 or your oral presentation, there would have been an
18 opportunity for the councillors to understand what you
19 were telling them with respect to the various issues
20 represented in the slides?

21 MR. RON CLARK: Yes.

22 MR. FREDERICK CHENOWETH: Thank you.
23 Just taking you to the first -- to page -- sli --
24 slide number 3 of the slides. And I will avoid the --
25 the inevitable pull to review all of these, but I

1 think it's important to review a number of them.

2 So, there appears to be a slide as to
3 why the sale of shares of Collingwood Utility Services
4 rather than Collus or Power. You had a slide with
5 respect to that?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: And I take
8 it you -- you told the councillors that the original
9 sale concept had been to sell Collus? I'm sorry --

10 MR. RON CLARK: Yeah.

11 MR. FREDERICK CHENOWETH: -- to sell --

12 MR. RON CLARK: Yeah.

13 MR. FREDERICK CHENOWETH: -- to sell
14 Collus Power. I misspoke.

15 MR. RON CLARK: Yes, I believe that's
16 the case. Now, as to whether I was just explaining
17 things that had happened and was told that they
18 happened --

19 MR. FREDERICK CHENOWETH: Yes.

20 MR. RON CLARK: -- in other words,
21 that -- that structure from the sale of the -- the
22 regulated entity, the LDC, i.e., the subsidiary of the
23 holding company, Collus, now that -- whether that was
24 kind of something -- I don't think I was involved in
25 that. I think it had already shifted by the time I

1 became involved. Nevertheless, it still was a
2 description of kind of the rationale for that -- for -
3 - for the transaction, as it was.

4 MR. FREDERICK CHENOWETH: I'm not
5 really suggesting that you were, but clearly --

6 MR. RON CLARK: Yeah.

7 MR. FREDERICK CHENOWETH: -- you
8 explained the rationale, which appears to have been a
9 tax rationale KPMG. You explained the rationale for
10 changing the target from Collus Power to Collus?

11 MR. RON CLARK: Yes.

12 MR. FREDERICK CHENOWETH: Thank you.
13 And you explained the implications of that, as well, I
14 take it?

15 MR. RON CLARK: Yes.

16 MR. FREDERICK CHENOWETH: All right.
17 And so, you explained that -- that other entities
18 would be sold, as well, when Collus, and not Collus
19 Power, was sold, i.e., Collus Energy Corporation and
20 Collus Solutions Corporation?

21 MR. RON CLARK: Correct.

22 MR. FREDERICK CHENOWETH: All right.
23 So that, if -- if the Council members were paying any
24 attention at all, they would have understood that both
25 Collus Solutions and Collus Energy were going to be

1 sold along with Collus?

2 MR. RON CLARK: Correct.

3 MR. FREDERICK CHENOWETH: Very good.

4 And you then, I take it, began to -- looking at slide
5 4 if we could, please. You explained to them that the
6 -- the transaction rotated around two (2) major
7 agreements and the share purchase agreement and the
8 shareholders agreement were the two (2) major
9 agreements in that piece?

10 MR. RON CLARK: Yes.

11 MR. FREDERICK CHENOWETH: And you go
12 on to explain those in some detail later in your
13 presentation, as I recall it, correct?

14 MR. RON CLARK: Correct.

15 MR. FREDERICK CHENOWETH: All right.
16 Now, getting to slide number 6, you've explained the -
17 - the -- some of the financial aspects of the
18 transaction, although you have made it clear that you
19 didn't give advice with respect to the financial
20 aspects of the transaction.

21 You were clearly taking Council through
22 a little bit of history. And what you understood was
23 the present status of the transaction that you were
24 evidencing by your documents, correct?

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: All right.

2 And you indicated to Council both in your slide and in
3 your oral presentation that PowerStream will be paying
4 \$8 million for 50 percent of the shares of CUS,
5 correct?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: Right. So,
8 I take it that, if the Council members had been paying
9 any attention at all, either to your slides or to your
10 oral presentation, they would have understood that the
11 consideration for the sale of 50 percent of Collus's
12 shares was \$8 million, correct?

13 MR. RON CLARK: Yes.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And then you explained other parts of the transaction
16 and you explained a dividend that would arise to -- to
17 Collus and their -- or to the shareholder for Collus,
18 actually, because the dividend's received by the
19 shareholder, a dividend that would re -- be received
20 by the shareholder, correct?

21 MR. RON CLARK: Yes.

22 MR. FREDERICK CHENOWETH: And you
23 explained to them that it would involve the necessity
24 of realigning the debt equity ratios in the company
25 known as -- as Collus?

1 MR. RON CLARK: Yes.

2 MR. FREDERICK CHENOWETH: All right.

3 So if they were paying attention they would understand
4 the -- the dividend arose as a result of a
5 reorganization of the debt to equity ratio in that
6 company, correct?

7 MR. RON CLARK: Yes.

8 MR. FREDERICK CHENOWETH: Thank you.

9 And additionally, you discussed the
10 promissary note?

11 MR. RON CLARK: Yes.

12 MR. FREDERICK CHENOWETH: And you
13 would have told them that 1.7, and I'm looking on --
14 and slide number 7 here now, under C, 1.7 of the money
15 would arise as a result of Power repaying a -- a
16 promissory note or a debt that they had to the Town,
17 correct?

18 MR. RON CLARK: Yes.

19 MR. FREDERICK CHENOWETH: So that if
20 the Council members were paying attention either to
21 the slides or your oral presentation, they would have
22 understood the -- how the recapitalization arose and
23 that there may well be 1.7 million dollars by way of
24 repayment of the promissary note by Power to the Town?

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: Now, you --
2 while we're on the question of the recapitalization, I
3 take it in looking at -- under outstanding issues in
4 slide 15, and we're going to move around a little bit
5 because I think it's expeditious to do so, there was a
6 note of outstanding issues. And I'm looking at item 4
7 on slide 15.

8 MR. RON CLARK: Yes.

9 MR. FREDERICK CHENOWETH: And that was
10 the -- there appeared to have been an outstanding
11 issue yet to be resolved, what -- which was the
12 calculation of the recapitalization dividend
13 methodology.

14 Now, you'll have to help me with this
15 because I wasn't involved in the transaction, but you
16 indicated that -- that you weren't involved in the --
17 in the negotiation of the actual dividend itself, the
18 recapitalization dividend, you didn't negotiate that
19 number with anyone.

20 MR. RON CLARK: Correct.

21 MR. FREDERICK CHENOWETH: All right.

22 Do I take it that as part of your tasks
23 and one (1) of the tasks that was outstanding at the
24 time of the meeting was that the -- the methodology
25 for calculation of that recapitalization dividend had

1 yet to be -- yet to be firmed up between the two
2 parties?

3 MR. RON CLARK: I -- I don't know, I
4 don't have a recollection of exactly what aspect of it
5 was outstanding. I don't know that it would have been
6 the methodology altogether, as opposed to certain
7 aspects of it, that was very much a KPMG-driven aspect
8 of the transaction.

9 MR. FREDERICK CHENOWETH: Well,
10 whether it was -- it was fully or partially
11 outstanding at that point, there's no question that
12 you would have been involved in concluding the
13 methodology for the recalc -- for the calculation of
14 the recapitalization dividend?

15 MR. RON CLARK: No, I don't think so.
16 I -- I think I would have gotten the numbers from KPMG
17 and the client and I would have inserted them in the
18 agreement.

19 MR. FREDERICK CHENOWETH: All right.
20 You're talking about the numbers now?

21 MR. RON CLARK: Yes.

22 MR. FREDERICK CHENOWETH: My question
23 is about the methodology.

24 MR. RON CLARK: Yes, but methodology
25 of capitalization and dividends, et cetera, is not --

1 they're not legal aspects, they're accounting issues.

2 MR. FREDERICK CHENOWETH: All right.

3 So it didn't need you then, from what
4 you're telling me, to conclude a methodology and the -
5 - there were accounting issues --

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: -- that were
8 -- on which you understood, to that juncture in any
9 event, Collus had the benefit of the advice of KPMG.

10 MR. RON CLARK: Yes. And the Town.

11 MR. FREDERICK CHENOWETH: Thank you.

12 And looking again at slide 7, you would
13 have discussed with the Councillors that there was
14 reps and warranties --

15 THE HONOURABLE FRANK MARROCCO: I
16 wonder if maybe some of the non-finan -- I understand
17 the financial aspects and why you went through them.

18 MR. FREDERICK CHENOWETH: Yes.

19 THE HONOURABLE FRANK MARROCCO: I'm
20 wondering if some of the others, if we could agree
21 that perhaps they were discussed by Mr. Clark with the
22 Council instead of going through each one?

23 MR. FREDERICK CHENOWETH: I -- I
24 understand that and I think that's -- that was my
25 intent and I'll --

1 THE HONOURABLE FRANK MARROCCO: I'm --
2 I didn't know that, I'm sorry I interrupted you.

3 MR. FREDERICK CHENOWETH: Very good,
4 thank you.

5

6 CONTINUED BY MR. FREDERICK CHENOWETH

7 MR. FREDERICK CHENOWETH: And you
8 explained to them what other conditions there was of
9 closing, such as the -- a necessity to go to the
10 Ontario Energy Board, et cetera?

11 MR. RON CLARK: Yes.

12 MR. FREDERICK CHENOWETH: And you did
13 that in slide number 8, if we could move to that.

14 MR. RON CLARK: Yes.

15 MR. FREDERICK CHENOWETH: And you also
16 -- so they would have known that -- that this wasn't a
17 final agreement, that there was some conditions to be
18 satisfied, one of them being the Ontario Energy Board
19 application?

20 MR. RON CLARK: Now, there's a
21 difference between the final agreement and complying
22 with conditions precedent to the closing.

23 The agreement would have been final,
24 but the closing later would have depended on certain
25 conditions.

1 So there's a distinction between
2 entering into the share purchase agreement, which
3 would have been final at that point, and then you
4 proceed with meeting the conditions precedent and then
5 you have the actual closing.

6 So -- so the agreement can be final,
7 but the closing and the transaction hasn't happened
8 yet.

9 MR. FREDERICK CHENOWETH: All right.

10 So, what we're describing here, the OEB
11 filing an application, that's -- that's a condition
12 with respect, it has to be satisfied prior to the time
13 of the closing on July 31st?

14 MR. RON CLARK: Correct. OEB filing
15 and OEB approval.

16 MR. FREDERICK CHENOWETH: Very good.

17 And you noted -- we talked about the --
18 you talked about the service agreements with the Town
19 and the subsidiaries.

20 MR. RON CLARK: Yes.

21 MR. FREDERICK CHENOWETH: And would
22 you have been aware at the time of this -- at the time
23 of this meeting and I'm going to say at the time of
24 closing on July 31st, that the shared service
25 agreements had not yet been concluded between the

1 Collus Power and the Town and PowerStream?

2 MR. RON CLARK: Yes.

3 MR. FREDERICK CHENOWETH: All right.

4 Just with respect to that, would it be
5 fair to say that -- that that wasn't a substantial
6 issue at the time and the necessity for an
7 undertaking, because they weren't concluded, was not a
8 substantial concern in that it appeared that at that
9 time both -- probably at this time, in January of 2012
10 and at the time of closing on June 31st, would you
11 have understood that in fact all three (3) parties
12 were -- were prepared to consider entering into
13 service agreements and wished to have shared service
14 arrangements between them?

15 MR. RON CLARK: Yes.

16 MR. FREDERICK CHENOWETH: Thank you.

17 In slide 11 you reviewed the
18 shareholding agreement with the parties.

19 MR. RON CLARK: Yes. Shareholders'
20 agreement, yes.

21 MR. FREDERICK CHENOWETH: Shareholders'
22 agreement.

23 So you would have made the parties
24 aware or you would have made Council aware of the
25 guiding principles that it informed you with respect

1 to the shareholders agreement?

2 MR. RON CLARK: Yes.

3 MR. FREDERICK CHENOWETH: Thank you.

4 And those guiding principles, you would
5 also have been aware at the time that -- that the
6 government was giving consideration to requiring
7 further consolidation of the LDCs in the province?

8 MR. RON CLARK: Yes.

9 MR. FREDERICK CHENOWETH: And that you
10 were aware that -- that growth was one of the wishes
11 of both -- both Collus Power, the Town, and -- and
12 PowerStream at this time?

13 MR. RON CLARK: I'm not sure what you
14 mean by "growth."

15 MR. FREDERICK CHENOWETH: Well, there
16 was some clauses in the -- in the Shareholders
17 Agreement that suggested that one of their goals would
18 be at an early time to go out and consider the
19 acquisition of other LDCs in the area.

20 MR. RON CLARK: Yes, yes.

21 MR. FREDERICK CHENOWETH: All right.

22 MR. RON CLARK: That's -- yes, I
23 agree.

24 MR. FREDERICK CHENOWETH: And you
25 indicated at earlier times that you didn't give an

1 opinion to your clients, Collus and the Town, at that
2 time with respect to the partnership -- the propriety
3 of the partnership they were about to enter into. You
4 told us that.

5 But did you -- did you formulate an
6 opinion with respect to whether the partnership that
7 was contemplated by the Share Purchase Agreement in
8 the environment that we've talked about with
9 government changes, et cetera, that those things
10 provided an appropriate rationale for proceeding with
11 the project that was being undertaken here, i.e., the
12 partnership?

13 MR. RON CLARK: Yeah. I -- I have to
14 be careful 'cause, as you say, I wasn't involved in
15 advising on which path to pursue. If the question is,
16 was that strategic partnership a valid response to
17 industry conditions among other valid responses, the
18 answer is yes.

19 MR. FREDERICK CHENOWETH: And that was
20 your view at the time --

21 MR. RON CLARK: Yes.

22 MR. FREDERICK CHENOWETH: -- that you
23 were involved in this file.

24 MR. RON CLARK: Yes.

25 MR. FREDERICK CHENOWETH: All right.

1 And if your view was otherwise and you saw dangers in
2 this arrangement that -- that the clients didn't
3 appear to be awake to, then that would have been
4 something you would have raised with them.

5 MR. RON CLARK: Yes.

6 MR. FREDERICK CHENOWETH: And that
7 wasn't something you did through the course of this.

8 MR. RON CLARK: Correct.

9 MR. FREDERICK CHENOWETH: All right.
10 And you also reviewed governance which was covered in
11 the Shareholders Agreement?

12 MR. RON CLARK: Yes.

13 MR. FREDERICK CHENOWETH: All right.
14 So the councillors would have been aware that there
15 would have been a Board with six (6) people on it,
16 three (3) of them the Town of Collingwood people and
17 three (3) of them that were PowerStream people?

18 MR. RON CLARK: Yes.

19 MR. FREDERICK CHENOWETH: And they
20 would have been aware of the arrangements that's
21 described here in detail with respect to the co-chair
22 and thereafter chair and deputy chair arrangement that
23 was made?

24 MR. RON CLARK: Yes, I believe --
25 although I want to go onto the next slide and make

1 sure because I think that might be on the next one.

2 MR. FREDERICK CHENOWETH: All right.

3 MR. RON CLARK: Yes. There we are.

4 Yeah.

5 MR. FREDERICK CHENOWETH: Thank you.

6 And I think some of the other matters are less of a
7 concern.

8 Did you -- was there any questions --
9 and now, you've indicated you don't specifically
10 recall the questions. But I take it you would recall
11 if there was any significant expression of distaste
12 amongst the councillors for -- for the undertaking and
13 transaction that you were describing to them on that
14 evening.

15 MR. RON CLARK: Yeah. I'd agree with
16 that characterization, yeah.

17 MR. FREDERICK CHENOWETH: Thank you.
18 And you -- you didn't note any such reaction to the
19 transaction as you put forward.

20 MR. RON CLARK: I don't recollect that
21 there were any, let's put it that way. Yeah. If
22 there was -- there certainly might have been some
23 objections or some questions or some back and forth.
24 That would be usual in a Council meeting like that.

25 MR. FREDERICK CHENOWETH: Yes.

1 MR. RON CLARK: Nothing jumps out at
2 me. But I don't -- I don't have any recollection of
3 that in particular.

4 MR. FREDERICK CHENOWETH: All right.
5 And I take that going to the Town was one of the
6 things that you felt was significant because this was
7 part of what you described earlier in your earlier
8 evidence of consulting with your clients.

9 MR. RON CLARK: Yeah, absolutely.

10 MR. FREDERICK CHENOWETH: Explain the
11 transaction to them.

12 MR. RON CLARK: Absolutely.
13 Fundamental on -- in a number of respects, most
14 important of which is just a strictly legal
15 requirements that shareholder approval was required
16 and the municipal Council speaking for the
17 shareholder, yeah.

18 MR. FREDERICK CHENOWETH: But this was
19 part of keeping your client --

20 MR. RON CLARK: Yes.

21 MR. FREDERICK CHENOWETH: -- advised
22 of the circumstances.

23 MR. RON CLARK: Correct, yeah.

24 MR. FREDERICK CHENOWETH: All right.
25 And you spoke in some of your earlier remarks about

1 the fact that this was a sole shareholder situation in
2 which there was only one shareholder of Collus.

3 And you said that that was one of the
4 things that, in your mind, dulled the prospect of any
5 conflicts for a town politician, i.e., the mayor who
6 might be on the Board of Directors.

7 MR. RON CLARK: Correct.

8 MR. FREDERICK CHENOWETH: All right.
9 I take it that's -- that would be a factor that would
10 also be, in your mind, when you were considering
11 whether or not there was any prospect of conflict
12 between the Town and Collus Power with respect to the
13 transaction that you were -- you were designing, i.e.,
14 who you were going to represent.

15 MR. RON CLARK: Correct.

16 MR. FREDERICK CHENOWETH: Thank you.
17 And as a result of the fact that there was in fact
18 only one shareholder, I take that would have assisted
19 you in coming to the conclusion that the parties, as
20 you saw it at the time, didn't require separate
21 counsel.

22 MR. RON CLARK: Correct. There was an
23 identity of interests, yeah.

24 MR. FREDERICK CHENOWETH: All right.
25 And I take it, you commented earlier about it not

1 mattering whether or not it was the -- it didn't
2 matter -- I think was the phrase you used which
3 initially surprised me -- but on reflection, it didn't
4 really matter because there was this similarity of
5 interest between the Town and Collus Power.

6 MR. RON CLARK: Correct.

7 MR. FREDERICK CHENOWETH: Thank you.
8 And with respect to that, it's clear from what you've
9 told us that --

10 MR. RON CLARK: If I can back up one
11 (1) second.

12 MR. FREDERICK CHENOWETH: Yes.

13 MR. RON CLARK: So the -- let's pull
14 that apart a little bit. Again, I'll go back to
15 the -- the interest of the Town though. Again,
16 it's -- it's the one that's selling the shares.

17 MR. FREDERICK CHENOWETH: Yes.

18 MR. RON CLARK: The -- the -- Collus
19 is the asset that's being sold. Collus doesn't care
20 what the reps and warranties are essentially. It's
21 giving its own, but in the main, it's between the two
22 (2). It doesn't care what the purchase price, et
23 cetera, generally speaking as long as it's not, you
24 know, bankrupting itself through the dividend.

25 It -- it has -- it's -- there's a level

1 of concern of Collus itself, but the deal is between
2 the shareholders -- is between the purchaser and the
3 vendor and the shareholders enter into the
4 Shareholders Agreement. So it's not only that there's
5 more or less an identity of interest, but there's --
6 there's -- the bulk of the work is about protecting
7 the interest of the Town.

8 MR. FREDERICK CHENOWETH: That's --
9 that's very helpful to me. So there was -- there
10 seems to have been a little to-ing and fro-ing between
11 yourself and Longo at later times in the piece as to
12 who acted on behalf of the Town and whether the Town
13 was represented. And that issue seems to have been
14 raised by Mr. Brown at later times in 2015, and you
15 were part of the exchanges with respect to that.

16 Surely, forgetting for the moment about
17 the to-ing and fro-ing on the issue, the reality is
18 that the greater majority of your efforts, because of
19 the circumstances, were, as a practical matter, put in
20 to protect the interest of the Town.

21 MR. RON CLARK: Correct.

22 MR. FREDERICK CHENOWETH: Thank you.
23 And that's --

24 THE HONOURABLE FRANK MARROCCO:
25 I'll -- sorry -- I was just going to say I'm going

1 to -- I was going to take the break, but you were
2 going to say?

3 MR. FREDERICK CHENOWETH: I'm content
4 you take the break if you care to, Your Honour.

5 THE HONOURABLE FRANK MARROCCO: You
6 were about to say something. Was it another question,
7 or were you about to say something else?

8 MR. FREDERICK CHENOWETH: I had
9 another question.

10 THE HONOURABLE FRANK MARROCCO: All
11 right. Well, we'll take -- we'll take the break.

12 And now, approximately how much longer
13 do you think you'll be?

14 MR. FREDERICK CHENOWETH: I wouldn't
15 think any more than fifteen (15) to twenty (20)
16 minutes, Your Honour.

17 THE HONOURABLE FRANK MARROCCO: All
18 right. Thank you.

19 MS. KATE MCGRANN: Just before we take
20 the break for the purpose of the record, the slides
21 that were being discussed, just to get the doc ID in
22 so we can all find them later, were TOC531801.

23 MR. FREDERICK CHENOWETH: Thank you.

24

25 --- Upon recessing at 3:29 p.m.

1 --- Upon resuming at 3:39 p.m.

2

3 THE HONOURABLE FRANK MARROCCO: Before
4 Mr. Chenoweth continues his cross-examination, my plan
5 is to complete Mr. Clark's evidence today so that he
6 doesn't have to come back here. I appreciate it's a
7 Friday and we may be here for a few minutes, but I
8 just think you all should know that.

9 MR. FREDERICK CHENOWETH: Thank you,
10 Your Honour.

11

12 CONTINUED BY MR. FREDERICK CHENOWETH:

13 MR. FREDERICK CHENOWETH: Now, Mr.
14 Clark, you indicated in your earlier evidence to
15 Inquiry counsel that, in terms of obtaining
16 instructions or creating dialogue with respect to the
17 documents you were dealing with and the transaction
18 you were dealing with, you had a habit of widely
19 disseminating these things.

20 You went to Council, et cetera, and it
21 was an opportunity for input from a whole variety of
22 different people?

23 MR. RON CLARK: Correct.

24 MR. FREDERICK CHENOWETH: Thank you.
25 One (1) of those people would have been Mr. McFadden,

1 I take it?

2 MR. RON CLARK: Yes.

3 MR. FREDERICK CHENOWETH: Thank you.

4 And I'm going to take you to a document known as
5 ALE1183. Could we pull it up, please?

6

7 (BRIEF PAUSE)

8

9 MR. FREDERICK CHENOWETH: Now, this is
10 a document forwarded by Corrine Kennedy to Robert
11 Hull, who's PowerStream's lawyer. Are you at all
12 familiar with this document?

13 MR. RON CLARK: This is the first time
14 I've seen it in years.

15 MR. FREDERICK CHENOWETH: Yes.

16 MR. RON CLARK: That's the best I can
17 do.

18 MR. FREDERICK CHENOWETH: But it's not
19 outside of your anticipations --

20 MR. RON CLARK: Correct.

21 MR. FREDERICK CHENOWETH: -- that
22 Corrine Kennedy would have been forwarding, in this
23 case, the shareholders agreement and the -- the share
24 purchase agreement on to Mr. Hull for his -- his
25 comment?

1 MR. RON CLARK: Correct.

2 MR. FREDERICK CHENOWETH: All right.

3 I notice that the -- the copies on that are yourself,
4 obviously?

5 MR. RON CLARK: Yes.

6 MR. FREDERICK CHENOWETH: Thank you.

7 And I notice that the copies are Mr. McFadden --

8 MR. RON CLARK: Yes.

9 MR. FREDERICK CHENOWETH: -- as well?

10 All right. And so, I take it that on this -- this
11 would appear to be one (1) of the first rotations of
12 the -- of the shareholders agreement and the share
13 purchase agreement between the various parties.

14 Is that -- would that appear to be the
15 case?

16 MR. RON CLARK: Yes, because,
17 otherwise, it would have said revised drafts or
18 something along those lines.

19 MR. FREDERICK CHENOWETH: I
20 understand. And on this first ro -- on this early
21 rotation -- I won't say first rotation. I'm going to
22 say early rotation. On this early rotation of the
23 documents, they were forwarded to Mr. McFadden?

24 MR. RON CLARK: Yes.

25 MR. FREDERICK CHENOWETH: And you

1 would have been aware at that time that Mr. McFadden
2 was a lawyer?

3 MR. RON CLARK: Yes.

4 MR. FREDERICK CHENOWETH: And you were
5 aware that he -- he was on the Board of Collus Power
6 and --

7 MR. RON CLARK: Yes.

8 MR. FREDERICK CHENOWETH: -- was an
9 appointee of the Town and, therefore, you've described
10 him as being a representative of the Town? I think
11 that's what your earlier testimony was.

12 MR. RON CLARK: Yeah. It's -- it's a
13 little -- I mean, having the same interests of the
14 Town. Technically representative, I don't know, but
15 certainly part of the group of people that would have
16 been appointed to advise the Town on -- on the
17 transaction.

18 MR. FREDERICK CHENOWETH: All right.
19 So, this would have given Mr. McFadden an opportunity
20 to -- and he told us that that was an opportunity that
21 he understood he had in his testimony before this
22 commission, to discuss and/or provide instructions
23 with respect to that draft of the share purchase and
24 the shareholders agreement, correct?

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: All right.

2 And I notice that, at least with respect to the share
3 purchase agreement and the shareholders agreement,
4 this wasn't circulated to Ed Houghton?

5 MR. RON CLARK: Yeah. And -- and
6 that's curious to me because I would have expected him
7 to CC'ed. I -- and -- and I can take a educated guess
8 at why that was the case if it -- if it's relevant to
9 the question.

10 MR. FREDERICK CHENOWETH: Well, it
11 would seem --

12 THE HONOURABLE FRANK MARROCCO: I
13 actually think the point that appears from the
14 document is that it wasn't circulated to Mr. Houghton
15 and moving on.

16 MR. RON CLARK: Okay.

17 MR. FREDERICK CHENOWETH: Thank you.

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH: So, the
21 opportunity for instructions and comments was given to
22 Mr. McFadden, it appears, at the time that these two
23 (2) documents were presented?

24 MR. RON CLARK: Yes.

25 MR. FREDERICK CHENOWETH: Thank you.

1 I'm going to ask that you next look at a further
2 document, which is ALE1260, if you would, please.
3 Could we pull that up?

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And this
8 appears to be a document that is sent by Dennis Nolan
9 and who appeared to be doing some of the negotiating
10 and the preparation of the documents from the
11 PowerStream side of things. Is that accurate?

12 MR. RON CLARK: No, I don't think it
13 is. I think what this is is that Dennis Nolan was
14 CC'ed on an email from Robert Hull to my associate,
15 Corrine Kennedy, and so he's just printing this out
16 for his own records.

17 MR. FREDERICK CHENOWETH: All right.
18 I notice attached to it there's a -- there's a memo
19 which was dated December 20th, 2011, and it seems to
20 have a sli -- a different number, which is ALE1261.
21 Could we pull that up, please?

22 Just before leaving that -- that
23 existing document, I note that there is the email
24 below that, the lower email -- thank you. Go down.
25 Thank you very much. Just go up a little bit. Thank

1 you.

2 This is an email from Robert Hull. And
3 this is -- appears to be Mr. Hull responding to
4 Corrine Kennedy with respect to the documents he was
5 earlier sent, correct?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: And his memo
8 with respect to those documents is attached?

9 MR. RON CLARK: Yes.

10 MR. FREDERICK CHENOWETH: All right.
11 And -- and the -- the documents that were -- and I
12 notice you're copied on that?

13 MR. RON CLARK: Yes.

14 MR. FREDERICK CHENOWETH: And the
15 documents that -- that the -- the email and the
16 attached memo are with respect to -- and we'll come to
17 the attached memo in a moment.

18 But at least the -- the documents that
19 are referred to in the email appear to be with respect
20 to a memo relating to the draft share purchase
21 agreement, the reps and warranties, and a markup of
22 the draft unanimous share agreement --

23 MR. RON CLARK: Yes.

24 MR. FREDERICK CHENOWETH: -- correct?
25 And again, this is a matter that was -- appears to

1 have been copied to the lawyer of mi -- the lawyer
2 being Mr. McFadden in this matter?

3 MR. RON CLARK: So, Mr. McFadden, I
4 believe, was copied in his capacity, on the one hand,
5 as director of Collus. But, as I've made clear, I
6 think in -- in this sense, he was acting as kind of
7 transaction advisor, which would be a slightly
8 different role, I would argue.

9 So, you know, I don't know that he was
10 acting as legal advisor as such, but as kind of
11 transaction advisor, you know, based on his existing
12 role on the Board but kind of a bit beyond that, as
13 well.

14 MR. FREDERICK CHENOWETH: I -- I
15 accept that.

16 THE HONOURABLE FRANK MARROCCO: But
17 wasn't Mr. McFadden's evidence that he wasn't the
18 lawyer?

19 MR. FREDERICK CHENOWETH: It was his
20 evidence that he wasn't the lawyer, and I'm not
21 disputing that. I just indicated to the witness that
22 I accept that characterization.

23 THE HONOURABLE FRANK MARROCCO: All
24 right.

25

1 CONTINUED BY MR. FREDERICK CHENOWETH:

2 MR. FREDERICK CHENOWETH: And your
3 characterization with respect to Mr. McFadden was as
4 transaction advisor?

5 MR. RON CLARK: Something along those
6 lines --

7 MR. FREDERICK CHENOWETH: Thank you.

8 MR. RON CLARK: -- yeah.

9 MR. FREDERICK CHENOWETH: All right.
10 And I notice -- so, this -- again, Mr. McFadden
11 indicated to us that being in the loop with respect to
12 these documents, being the shareholders agreement and
13 the unanimous -- and the share purchase agreement,
14 gave him the opportunity to discuss and provide
15 instructions with respect to those documents?

16 MR. RON CLARK: Yes.

17 MR. FREDERICK CHENOWETH: Thank you.
18 I notice that -- that Mr. Houghton is not included in
19 this document and, again, doesn't appear to have been
20 brought into the loop with respect to these various
21 drafts of the share purchase agreement and the
22 unanimous shareholders agreement?

23 MR. RON CLARK: Correct.

24 MR. FREDERICK CHENOWETH: So, the --
25 these documents, in any event, don't afford him an

1 opportunity to either discuss or make comment on or
2 provide instructions with respect to the shareholders
3 agreement and/or the unanimous -- or and/or the share
4 purchase agreement, correct?

5 MR. RON CLARK: Correct.

6 MR. FREDERICK CHENOWETH: Thank you.
7 Do you have -- and, again, with respect to the
8 memorandum that's attached to this -- and we should
9 just pull it up very quickly. It's ALE1261.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: And you can
14 -- if you could give the witness an opportunity to
15 scroll through this, if you would, please.

16

17 (BRIEF PAUSE)

18

19 THE HONOURABLE FRANK MARROCCO: I
20 think actually in that agreement, in that memo, there
21 is some reference to discussions with Mr. Houghton.
22 Did you see it?

23 MR. FREDERICK CHENOWETH: There --
24 there -- there may well be.

25 THE HONOURABLE FRANK MARROCCO: Right

1 in the first paragraph.

2 MR. FREDERICK CHENOWETH: And the -- I
3 -- I see that and I --

4 THE HONOURABLE FRANK MARROCCO: You're
5 aware we had the opportunity to have an initial
6 discussion with Mr. Houghton and McFadden last --

7 MR. FREDERICK CHENOWETH: Thank you, I
8 appreciate it. I'm aware of that reference, sir.

9

10 CONTINUED BY MR. FREDERICK CHENOWETH

11 MR. FREDERICK CHENOWETH: In any
12 event, it's clear that the memo is Mr. Hull's eventual
13 comments with respect to those two documents, being --

14 MR. RON CLARK: Yes.

15 MR. FREDERICK CHENOWETH: -- the
16 shared purchase agreement and the unanimous
17 shareholder's agreement.

18 MR. RON CLARK: Yes.

19 MR. FREDERICK CHENOWETH: And again,
20 Mr. McFadden is copied on it?

21 MR. RON CLARK: Yes.

22 MR. FREDERICK CHENOWETH: Again, in
23 some capacity as transaction advisor or something of
24 that nature?

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: All right.

2 And Mr. -- Mr. Houghton isn't?

3 MR. RON CLARK: Correct.

4 MR. FREDERICK CHENOWETH: Thank you.

5 Do you have any recollection of
6 discussing the -- the share purchase agreement or the
7 unanimous shareholders agreement with Mr. Houghton?

8 MR. RON CLARK: No.

9 MR. FREDERICK CHENOWETH: Do you have
10 a specific recollection of it?

11 MR. RON CLARK: No, I don't.

12 MR. FREDERICK CHENOWETH: Thank you.

13 Do you have any specific recollection
14 of discussing the exit clauses or shotgun provisions?
15 Do you have any specific memory of discussing that
16 with Mr. Houghton?

17 MR. RON CLARK: No, I don't.

18 MR. FREDERICK CHENOWETH: All right.

19 Do you have any specific memory of
20 discussing governments provi -- governance provisions
21 with Mr. Houghton?

22 MR. RON CLARK: No.

23 MR. FREDERICK CHENOWETH: Thank you.

24 I just wanted to explore for a moment
25 the involvement of Mr. Longo in various aspects of

1 this transaction.

2 I notice -- if we could turn for the
3 moment to ALE2196. And on this occasion I see that
4 Corrine Kennedy had been keeping Mr. Longo in the loop
5 on the various documents that -- that had been created
6 by Mr. Ventresca.

7 Mr. Longo is copied in this document?

8 MR. RON CLARK: Yes.

9 MR. FREDERICK CHENOWETH: Thank you.

10 And is it -- is it fair to say that you
11 would have, on an ongoing basis, both yourself and
12 Corrine Kennedy, kept Mr. Longo in the loop as this
13 matter progressed?

14 MR. RON CLARK: Yes, I'll -- I'll
15 revert to my characterization of that this morning. I
16 don't know that we had regular and ongoing discussions
17 with Mr. Longo to keep him in the loop on a daily or
18 even a weekly basis, but there were touch points at
19 certain times where -- where he was updated on the
20 transaction.

21 MR. FREDERICK CHENOWETH: All right.
22 And you wanted to do that because he had, to some
23 extent, the initial relationship or had an ongoing
24 relationship with one of your existing clients, being
25 the Town?

1 MR. RON CLARK: Yes.

2 MR. FREDERICK CHENOWETH: And you
3 wanted to -- and I notice at later times you took
4 advantage of that relationship and asked him to do a
5 variety of things relating to meetings with the mayor
6 and signing of documents, et cetera.

7 MR. RON CLARK: I don't know that came
8 at my request, but he did do that, yes.

9 MR. FREDERICK CHENOWETH: All right.
10 And I take it that occurred because
11 both you and Corrine Kennedy would have been familiar
12 with his relationship with the Town?

13 MR. RON CLARK: Yes.

14 MR. FREDERICK CHENOWETH: And if we
15 could pull up, just very briefly, document AB6. This
16 appears to be an email dated the 10th of January,
17 2012, from Mr. Longo to Corrine Kennedy.

18 Do you have any familiarity with --
19 have you seen this before?

20 MR. RON CLARK: I may have seen it
21 before.

22 MR. FREDERICK CHENOWETH: All right.
23 Is it -- is it -- just take a second to read this
24 document if you would.

25 Is it -- is it fair to say that it

1 appears that Mr. Longo was performing the function
2 here of keeping at least Corrine Kennedy, providing to
3 her information that he obtained from the Town
4 relevant to the concerns of the Town with respect to
5 the transaction?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: And here
8 he's relying some issues that had been raised to him
9 by the CAO of the Town?

10 MR. RON CLARK: Yes.

11 MR. FREDERICK CHENOWETH: So he's
12 acting as a bit of a liaison in that regard, with the
13 Town and its officials?

14 MR. RON CLARK: Yes.

15 MR. FREDERICK CHENOWETH: Thank you.

16

17 (BRIEF PAUSE)

18

19 MR. FREDERICK CHENOWETH: And I'm
20 going to refer to a further document, that's AB129.

21 And without the necessity of going
22 through all of the documents, could you scale -- could
23 you scroll down to the -- the next email from Leo
24 Longo, thank you.

25 It appears that the Mayor had a wish to

1 have a discussion with Leo at 3 PM on that day, being
2 January 11th, 2011.

3 MR. RON CLARK: 2012.

4 MR. FREDERICK CHENOWETH: I'm sorry,
5 2012.

6 And he is -- he sends this email along
7 to -- to Corrine Kennedy and to yourself, correct?

8 MR. RON CLARK: Yes.

9 MR. FREDERICK CHENOWETH: All right,
10 scroll up if you would.

11 And again, Corrine indicates that both
12 she and Ron may well be able to make themselves
13 available for that -- what I think eventually became a
14 phone conversation on January 11th, 2012.

15 MR. RON CLARK: Yes.

16 MR. FREDERICK CHENOWETH: Do you have
17 any memory of -- of that phone conversation? I think
18 the Mayor and I believe the Deputy Mayor were in
19 attendance on that call.

20 MR. RON CLARK: No, I don't -- no, I
21 don't recall.

22 MR. FREDERICK CHENOWETH: I anticipate
23 that other evidence will indicate that this meeting
24 was for the purpose of -- of reviewing the
25 documentation that had been developed to that date.

1 Is that your general sense of that
2 meeting?

3 MR. RON CLARK: That would not
4 surprise me.

5 MR. FREDERICK CHENOWETH: All right.

6 And on this occasion, the Mayor and
7 others would have had the benefit of the -- of the
8 views of Mr. Longo with respect to that documentation,
9 and in addition, assuming for the moment that you
10 attended and maybe you can tell me whether you did or
11 didn't, if you did attend, as Corrine Kennedy
12 indicated you would, and Corrine would attend, then
13 they would have had the benefit also of Corrine and
14 your comments with respect to the documents at issue?

15 MR. RON CLARK: Yes. There are a few
16 hypotheticals in that one.

17 So I'd -- I'd want to -- to the extent
18 there's kind of a record or something that says that
19 that call happened, then absolutely, that would make
20 sense to me. That part would be true.

21 I -- I think it's important to
22 understand Leo's position here, liaison, I think, may
23 capture it, although I'll let him speak for himself in
24 terms of what he thinks his role is.

25 But also that he's, as we've said

1 before, that you know, coming at it from the municipal
2 side, so on the corporate documents you would have
3 kind of a less of an in-depth understanding of -- of
4 the documentation and he would have relied on mine and
5 Corrine's advice as to the contents.

6 MR. FREDERICK CHENOWETH: All right.
7 I note a later document, and I think we've seen it at
8 earlier times, it may not be necessary to pull it up,
9 there's a February 29th memorandum in when -- in which
10 Michael Ventresca forwards the documents to Leo Longo
11 with an explanation of the documents, he identifies a
12 document, he says the purpose of the document, and he
13 describes what signatures need to be occasion to be
14 put on that document.

15 So that in addition to possibly the
16 explanations of the document that occurred on
17 January 11th, again Mr. Ventresca sent this to
18 Leo Longo, and he was tasked with the obligation of
19 taking the various signators through those documents
20 shortly after the date of the memo being
21 February 29th, 2012?

22 MR. RON CLARK: Okay. So is that --
23 I'm not seeing this on the screen.

24 MR. FREDERICK CHENOWETH: That's the
25 date of the memo we already looked at.

1 MR. RON CLARK: That's the one from
2 Ventresca that we saw earlier?

3 MR. FREDERICK CHENOWETH: It is.

4 MR. RON CLARK: Yeah, yeah. So
5 I'll -- I agree with all of that, yes.

6 MR. FREDERICK CHENOWETH: All right.
7 And would you know whether -- and you're copied on
8 that memo -- would you know whether or not that
9 meeting at which Leo Longo explained those documents
10 to the signators in fact occurred at a time shortly
11 after the date of the memo being February 29th?

12 MR. RON CLARK: I -- I don't
13 recollect.

14 MR. FREDERICK CHENOWETH: All right.
15 And we'll leave that to others to talk about.

16 But in any event, at least that was the
17 intention at that time. Is that fair to have Leo
18 Longo -- 'cause he's copied on the memo -- explain
19 these things to the parties?

20 MR. RON CLARK: Yes. It appears that
21 way.

22 MR. FREDERICK CHENOWETH: Thank you.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: And I note
2 another document. This is AB14. Could we pull it up
3 briefly?

4

5 (BRIEF PAUSE)

6

7 MR. FREDERICK CHENOWETH: And this is
8 an email from you, sir, dated January 16th, 2012 to
9 Leo Longo and copied to Corrine Kennedy.

10 MR. RON CLARK: Yes.

11 MR. FREDERICK CHENOWETH: And again,
12 is it fair to say you were keeping him in the loop
13 with respect to issues that were arising in the Share
14 Purchase Agreement and the Unanimous Shareholders
15 Agreement with respect to your descriptions of those
16 issues in numbered paragraph 1 and 2 of that email?

17 MR. RON CLARK: Yes.

18

19 (BRIEF PAUSE)

20

21 MR. FREDERICK CHENOWETH: I also ask
22 you to pull up a further document. That's AB108.

23

24 (BRIEF PAUSE)

25

1 MR. FREDERICK CHENOWETH: And could
2 you scale up just a little bit so we can see
3 Corrine Kennedy's email? Thank you.

4 And, Mr. Clark, you're copied on this
5 email?

6 MR. RON CLARK: Yes.

7 MR. FREDERICK CHENOWETH: Thank you.
8 And I think Corrine Kennedy explains that she expects
9 shortly to receive a document from John Rockx of KPMG.
10 Take a moment to read this if you care to.

11

12 (BRIEF PAUSE)

13

14 MR. RON CLARK: Yes.

15 MR. FREDERICK CHENOWETH: And
16 Corrine Kennedy is explaining to Mr. Longo, 'cause
17 that's who the email is directed to, that she expects
18 to shortly receive from Mr. Rockx of KPMG an
19 explanation that the newly circulated financials for
20 the Collus entities show lower numbers than expected
21 and accordingly, the dividend to be declared will be
22 less than originally contemplated at \$5.6 million.
23 She's expecting to receive that memo shortly.
24 Correct?

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: And in the
2 next paragraph, she indicates that she's giving him
3 this information so that he can advise the mayor and
4 others about the prospect that, in fact, the dividend
5 received may be less than what was originally
6 anticipated.

7 MR. RON CLARK: Yes.

8 MR. FREDERICK CHENOWETH: All right.
9 And again, Mr. Longo is drummed into service to
10 deliver that message and be a liaison between the
11 mayor and others at the Town and in this case
12 yourselves with respect to this financial aspect of
13 things.

14 MR. RON CLARK: Yeah. I -- I'm not --
15 I'm not going to agree with that characterization.
16 I'll say that the email seems to indicate that there
17 was an expectation that there would be contacts
18 between Leo and the mayor.

19 MR. FREDERICK CHENOWETH: And that's
20 why he was going to be going to be getting the memo
21 from Rockx.

22 MR. RON CLARK: Yes.

23 MR. FREDERICK CHENOWETH: So he could
24 communicate it to the mayor and others.

25 MR. RON CLARK: Yes.

1 MR. FREDERICK CHENOWETH: Thank you.

2

3 (BRIEF PAUSE)

4

5 MR. FREDERICK CHENOWETH: Those are
6 all my questions of this witness, Your Honour. Thank
7 you.

8 THE HONOURABLE FRANK MARROCCO: Thank
9 you, Mr. Chenoweth. Mr. Marron? Or are you -- what's
10 the order?

11 MR. GEORGE MARRON: Yeah. I've
12 indicated Mr. Breedon if he wants to ask the final
13 area of questions.

14 THE HONOURABLE FRANK MARROCCO: Oh,
15 did you want to follow up?

16 MR. RYAN BREEDON: Sure. I can do
17 that, Your Honour. Can we actually put that document
18 that we just had up on the screen back up? It's
19 ARB108. And scroll down to Ms. Kennedy's email,
20 please.

21

22 CONTINUED CROSS-EXAMINATION BY MR. RYAN BREEDON:

23 MR. RYAN BREEDON: So, Mr. Clark, we
24 were talking earlier about the last paragraph in which
25 she is referring to a side letter.

1 And you testified that you thought you
2 knew what that was a reference to, and then we tried
3 to turn up the attachment, and it turns out we don't
4 have the attachment. But if we look at the document
5 ALE2230, please?

6

7 (BRIEF PAUSE)

8

9 MR. RYAN BREEDON: And just scroll
10 down so the witness can read it. Are you familiar
11 with this, Mr. Clark?

12 MR. RON CLARK: I don't know if
13 "familiar" is the right word. I'm seeing it again
14 after however many years. It's kind of consistent
15 with what I understood the situation to be at the
16 time.

17 MR. RYAN BREEDON: Is this the side
18 letter that you thought was referred to in
19 Ms. Kennedy's email?

20 MR. RON CLARK: Yes.

21 MR. RYAN BREEDON: Okay. And do you
22 know who negotiated this agreement on behalf of the
23 Town?

24 MR. RON CLARK: No, I don't.

25 MR. RYAN BREEDON: Okay. And do you

1 know what consideration the Town received for this
2 agreement?

3 MR. RON CLARK: I don't know -- I
4 thought there was some reference in the Share Purchase
5 Agreement to these arrangements, so the consideration
6 would have been the total consideration involving the
7 Share Purchase Agreement, and this wouldn't have
8 been -- I think this was a -- a covenant or a
9 implementation of a -- an existing obligation of the
10 Share Purchase Agreement. I don't know if it can be
11 divorced from the -- the general transaction.

12 MR. RYAN BREEDON: Okay. All right.
13 Thank you very much. Those are my questions.

14 MR. GEORGE MARRON: I have no
15 questions. Thank you.

16

17 CROSS-EXAMINATION BY MS. BELINDA BAIN:

18 MS. BELINDA BAIN: Mr. Clark, I'm
19 Belinda Bain. I represent Electra, formerly
20 PowerStream.

21 So as has been evident from your
22 evidence today, you've had significant involvement
23 with many transactions in part of the sale of some or
24 all of municipal LDCs in Ontario. Correct?

25 MR. RON CLARK: Yes.

1 MS. BELINDA BAIN: And I think your
2 evidence was earlier that in the deals that you've
3 been involved in, it's ordinary practice for the
4 purchaser or the counterparty to have involvement in
5 drafting the municipal bylaw authorizing the sale.
6 Correct?

7 MR. RON CLARK: It -- it wouldn't
8 strike me as unusual.

9 MS. BELINDA BAIN: Okay. So it's
10 nothing out of the ordinary in that.

11 MR. RON CLARK: Correct.

12 MS. BELINDA BAIN: And I think you
13 actually said that input might be important to make
14 sure that the bylaw accurately reflects the underlying
15 transaction. Correct?

16 MR. RON CLARK: Yes.

17 MS. BELINDA BAIN: And you've learned
18 that Dennis Nolan and PowerStream had input in
19 drafting the bylaw which authorized the PowerStream
20 and Collus Power Transaction, correct?

21 MR. RON CLARK: Yes.

22 MS. BELINDA BAIN: And that doesn't
23 surprise you?

24 MR. RON CLARK: No.

25 MS. BELINDA BAIN: There's nothing

1 nefarious in that?

2 MR. RON CLARK: No.

3 MS. BELINDA BAIN: And it doesn't
4 cause you any concern?

5 MR. RON CLARK: No.

6 MS. BELINDA BAIN: Could we pull up,
7 please, paragraph 494.

8

9 (BRIEF PAUSE)

10

11 MS. BELINDA BAIN: You were taken to
12 this paragraph of the Foundation Document earlier
13 today, Mr. Clark, and it reads that on January 18th,
14 2012, at 12:22 p.m., that timing becomes relevant,
15 just about afternoon, on January 18th, Dennis Nolan,
16 PowerStream Executive Vice President, corporate
17 services, the secretary sent Ed Houghton a revised
18 version of Mr. Longo's draft bylaw.

19 And then this paragraph breaks down the
20 four (4) amendments that Mr. Nolan made to the draft
21 bylaw. And in particular, he input 'whereas' clauses,
22 replaced the -- the requirement that the share
23 purchase agreement and unanimous shareholders
24 agreement be in a form and content to the satisfaction
25 of the Town solicitor, with that requirement being to

1 the satisfaction of the mayor, removed the requirement
2 that Town staff and solicitor report back to Council,
3 and then added a clause allowing the authorization for
4 execution of the documents by the mayor and the Town
5 clerk.

6 If we could please go to ALE1517.

7

8 (BRIEF PAUSE)

9

10 MS. BELINDA BAIN: And this is the
11 draft that Mr. Nolan prepared at 12:22, and he has,
12 "Insert the 'whereas' clauses."

13 If you just take a -- a look at that
14 and let me know that, in your view, these 'whereas'
15 clauses accurately reflected the underlying
16 Transaction, or the circumstances surrounding the
17 underlying Transaction.

18

19 (BRIEF PAUSE)

20

21 MR. RON CLARK: Yes, although it's
22 always a -- a little nitpick of mine that "wholly
23 owned" doesn't need a hyphen.

24 MS. BELINDA BAIN: Okay, but in terms
25 of -- in terms of content --

1 THE HONOURABLE FRANK MARROCCO: Thank
2 -- thank you for that contribution to the Inquiry.

3

4 CONTINUED BY MS. BELINDA BAIN:

5 MS. BELINDA BAIN: In terms of
6 content, though, Mr. Clark, you have no quibbles with
7 the 'whereas' clauses that Mr. Nolan added?

8 MR. RON CLARK: I do not.

9 MS. BELINDA BAIN: Could we go back,
10 please, to paragraph 494 of the Foundation Document.

11 The next change that Mr. Nolan made to
12 the draft bylaw was amending it such that the two (2)
13 central agreements be in a form and content to the
14 satisfaction of the mayor.

15 And I think you'll agree with me that
16 it's important in a commercial transaction for
17 everyone to have confidence that there will be someone
18 who has authority to execute the documents on behalf
19 of the municipality, correct?

20 MR. RON CLARK: Yeah, I mean the --
21 the key issue here is, well, two (2) things. One (1)
22 is I don't know that there is a Town solicitor as
23 such, and maybe that's what drove it, although I'll
24 have to ask Mr. Nolan about that, but the second and
25 more important thing is that as I mentioned before,

1 the -- the Council -- the documents before Council are
2 -- are pretty close to final, but not absolutely
3 final. So there has to be a mechanism so that the
4 Council approval is not negated by any given change,
5 so there has to be some wiggle room built into that
6 approval, and that's what this is.

7 MS. BELINDA BAIN: Okay. And then
8 also -- and I think that maybe dovetails into what is
9 presented at Item C of paragraph 494, removing the
10 requirement that Town staff and the Town solicitor
11 report back to Council before the closing of the
12 transaction.

13 And as I understand your evidence, the
14 point is the parties want approval to be granted for
15 the Transaction. You don't want to have to come back
16 multiple times to get approval. Is that right?

17 MR. RON CLARK: Correct.

18 MS. BELINDA BAIN: Thank you. And
19 finally, the last clause, just adding, again, the
20 authorization of the mayor and the Town clerk to
21 execute any documents, again going back to the
22 practical reality of granting authority to have the
23 Transaction authorized, correct?

24 MR. RON CLARK: Yes.

25 MS. BELINDA BAIN: So again, nothing

1 nefarious. This is presenting an effective and
2 efficient way for the Transaction to be carried out,
3 correct?

4 MR. RON CLARK: Yes.

5 MS. BELINDA BAIN: Can we pull up,
6 please, ABB234.

7

8 (BRIEF PAUSE)

9

10 COURT OPERATOR: ARB?

11 MS. BELINDA BAIN: No, I think it's
12 ABB.

13

14 (BRIEF PAUSE)

15

16 MS. BELINDA BAIN: I'm sorry, it's
17 just AB.

18 MS. KATE MCGRANN: Just for the
19 record, I think it is ARB, so we can find the doc
20 later. Thank you.

21 THE HONOURABLE FRANK MARROCCO: All
22 right. It's ARB. Yes. Okay. Fine.

23 MS. KATE MCGRANN: References that Mr.
24 Chenoweth made to documents with an AB doc ID are all
25 references to ARB.

1 THE HONOURABLE FRANK MARROCCO: Is --
2 is that the document you were looking for, Ms. Bain?

3 MS. BELINDA BAIN: It's not. The
4 document I'm looking for is a January 18th, 2012 email
5 from Mr. Longo to Ms. Cooper. I have it with
6 AB0000234.

7 MR. RYAN BREEDON: It is probably in
8 that document, but further down that. That particular
9 document includes a number of documents that for some
10 reason are scanned together --

11 MS. BELINDA BAIN: Okay, if you scroll
12 down --

13 MR. RYAN BREEDON: -- so if you scroll
14 down, you may be able to find what you're looking for.

15 THE HONOURABLE FRANK MARROCCO: Thank
16 you.

17 MS. BELINDA BAIN: Thank you.

18

19 (BRIEF PAUSE)

20

21

22 CONTINUED BY MS. BELINDA BAIN:

23 MS. BELINDA BAIN: Here it is. Thank
24 you. So this is an email from Leo Longo, dated
25 January 18th at 3:18. So after Mr. Nolan has provided

1 his input to the draft bylaw.

2 This is Mr. Longo sending this email to
3 Ms. Cooper, Mr. Lloyd, Ms. Wingrove, Ms. Almas, and Ed
4 Houghton, copied to the three (3) of you at Aird &
5 Berliss about the draft bylaw:

6 "To all, further to our conference
7 call this afternoon, please see the
8 revised draft that incorporates much
9 of what was discussed."

10 And then if we can scroll down, there
11 should be the draft attached. So this is the draft,
12 as I understand it, that Mr. Longo circulates at 3:18
13 p.m. And you'll see there the 'whereas' clauses that
14 Mr. Nolan inserted are there, correct?

15 MR. RON CLARK: Yes.

16 MS. BELINDA BAIN: Yeah. If we can
17 scroll down further, please. And so the other changes
18 that Mr. Nolan had suggested are there, and that
19 paragraph 2 now indicates that agreements are in a
20 form and content to the satisfaction of the mayor,
21 correct?

22 MR. RON CLARK: Yes.

23 MS. BELINDA BAIN: And that the mayor
24 and clerk be authorized to take necessary steps to
25 execute all the documents, correct?

1 MR. RON CLARK: Yes.

2 MS. BELINDA BAIN: Okay. And so at --
3 at 3:00 p.m., Mr. Longo is forwarding a draft version
4 of the bylaw that includes the changes that Mr. Nolan
5 had suggested, correct?

6 MR. RON CLARK: Yes.

7 MS. BELINDA BAIN: Other than the
8 number -- paragraph 4, and will get to there, but
9 certainly, then, it appears from this that Mr. Longo,
10 on behalf of Aird & Berlis, had an opportunity to
11 review and consider the changes that were suggested by
12 Mr. Nolan, correct?

13 MR. RON CLARK: Yes.

14 MS. BELINDA BAIN: Thank you. And
15 could we scroll back up to Mr. Longo's email.

16

17 (BRIEF PAUSE)

18

19 MS. BELINDA BAIN: In the last line,
20 Mr. Longo says, "I have left in section 4 of the
21 bylaw," and sorry, if we could just scroll down again
22 to the draft bylaw, and section 4 reads that
23 appropriate Town staff and the Town solicitor report
24 back to Council as required. So that's that
25 requirement with respect to reporting back.

1 You see that?

2 MR. RON CLARK: Yes.

3 MS. BELINDA BAIN: And that's what Mr.
4 Nolan had removed in -- in his draft, correct?

5 MR. RON CLARK: Yes.

6 MS. BELINDA BAIN: And could we scroll
7 back up. And Mr. Longo's saying:

8 "I've left in the section for the
9 bylaw. If it is felt that such
10 provi -- provision is unnecessary or
11 undesirable, you can remove it."

12 Do you see that?

13 MR. RON CLARK: Yes.

14 MS. BELINDA BAIN: So certainly, Mr.
15 Longo appears to be of the view that -- that section
16 of the bylaw could be removed if necessary?

17 MR. RON CLARK: Yes.

18 MS. BELINDA BAIN: Thank you. Could
19 we go, please, to ALE2084.

20

21 (BRIEF PAUSE)

22

23 MS. BELINDA BAIN: So we've talked
24 about this memo a few times today. So the February
25 29th, 2012 memorandum. The last time you were taken

1 to it, I'm not sure you had an opportunity to review
2 it in any detail.

3 If we could scroll down, please. So,
4 in the memo it's indicated:

5 "Leo: The following is a summary of
6 the documents to be signed, some
7 details with respect to the timing
8 required of the execution."

9 And then there's a table that sets out
10 eight (8) different documents, it appears. There is a
11 column setting out the purpose of each document and
12 the signatures needed.

13 Just take a minute to look at that, if
14 you will.

15

16 (BRIEF PAUSE)

17

18 MS. BELINDA BAIN: Certain it -- it
19 appears to me so that the first two (2) documents are
20 --

21 THE HONOURABLE FRANK MARROCCO: Before
22 you ask your question --

23 MS. BELINDA BAIN: Thank you.

24 THE HONOURABLE FRANK MARROCCO: --
25 it's -- it's only at one (1) and two (2). Can you

1 scroll up so that Mr. Clark can see what --

2 MS. BELINDA BAIN: Just giving the
3 witness an opportunity to see the full document.

4 THE HONOURABLE FRANK MARROCCO: So he
5 can see the -- all eight (8), before you start asking
6 him --

7 MS. BELINDA BAIN: Thank you.

8 THE HONOURABLE FRANK MARROCCO: --
9 questions.

10

11 (BRIEF PAUSE)

12

13 CONTINUED BY MS. BELINDA BAIN:

14 MR. RON CLARK: Okay.

15 MS. BELINDA BAIN: Okay. And so
16 certainly one (1) of these documents is the share
17 purchase agreement. The parties had been working on
18 drafts of that in the weeks and days leading up to the
19 transaction, correct?

20 MR. RON CLARK: Yes.

21 MS. BELINDA BAIN: Okay. And if we
22 can go back up to the beginning. The first two (2)
23 documents appear to be shareholder and director
24 resolutions, which are memo notes in a matter of good
25 corporate housekeeping.

1 Can we scroll down? The other
2 documents appear to be shareholder resolutions
3 allowing authorization for execution of the various
4 agreements in the transaction, correct?

5 MR. RON CLARK: Four (4), yes; three
6 (3) is the Articles of Amendment, which is slightly
7 different. It's -- well, it's an ancillary document,
8 but it looks like it changes the -- the number of
9 directors to I guess allow the -- the -- the structure
10 that was contemplated in the share purchase agreement
11 and the shareholders' agreement.

12 MS. BELINDA BAIN: So largely these
13 are housekeeping documents in order --
14 administratively to provide authorization for the
15 transaction to go through. Is that correct?

16 MR. RON CLARK: Yes.

17 MS. BELINDA BAIN: Okay. And all the
18 memo does is identify the documents and give a brief
19 explanation of the purpose, correct?

20 MR. RON CLARK: Yes.

21 MS. BELINDA BAIN: And it identifies
22 who needs to sign them?

23 MR. RON CLARK: Yes.

24 MS. BELINDA BAIN: So there's no
25 significant legal analysis in this memo, you'll agree

1 with me?

2 MR. RON CLARK: Yes.

3 MS. BELINDA BAIN: There's no
4 strategic advice being relayed in this memo?

5 MR. RON CLARK: That's true for this
6 memo, yes.

7 MS. BELINDA BAIN: Yeah, okay. Really
8 all it's doing is identifying documents and who needs
9 to sign them.

10 MR. RON CLARK: yeah.

11 MS. BELINDA BAIN: Would you have any
12 significant concern if someone on the other side of
13 the transaction were to see this?

14 MR. RON CLARK: No, no.

15 MS. BELINDA BAIN: Thank you. Those
16 are all my questions.

17 MR. FREDERICK CHENOWETH: Were you
18 going to say something else, Mr. Clark, or not?

19 MR. RON CLARK: Yeah. Well, I was --
20 no, I just thinking through, because from the opposite
21 perspective, there is a question about whether this
22 was solicitor-client privilege.

23 So I guess that's kind of two (2) sides
24 of the same coin in a way, and I said at the time
25 there were some documents that were in public, but

1 there's a difference between public and produced to
2 the other side, so I want to make that clear.

3 THE HONOURABLE FRANK MARROCCO: Okay,
4 thank you. Thank you, Ms. Bain.

5 Mr. Fryer...?

6 MR. TIM FRYER: I have no questions,
7 Your Honour.

8 THE HONOURABLE FRANK MARROCCO: Mr.
9 Bonwick...?

10 MR. PAUL BONWICK: Thank you, Your
11 Honour.

12

13 CROSS-EXAMINATION BY MR. PAUL BONWICK:

14 MR. PAUL BONWICK: Mr. Clark, my name
15 is Paul Bonwick and I'm a participant at the hearing.

16

17 (BRIEF PAUSE)

18

19 MR. PAUL BONWICK: Mr. Clark, you've
20 informed the Inquiry in terms of your legal
21 experience, your background, your education.

22 Is it fair to say of equal if not
23 greater importance is the level of integrity you bring
24 to every transaction which you're involved with?

25 MR. RON CLARK: Yes.

1 MR. PAUL BONWICK: That was a lawyer's
2 question.

3 Based on that response, is it then
4 reasonable to state that if there was something that
5 you felt was not benefiting your client in any
6 significant way, or your clients -- I'm going to refer
7 it sort of holistically and say client. To me that's
8 Collingwood and Collus and the other subsidiaries.

9 If there was something that caused you
10 concern in terms of this process or if there was any
11 language, just generally speaking, anything that would
12 have raised a red flag in your mind, I'm going to
13 assume -- is it fair to assume that you would have
14 raised this issue with other parties?

15 MR. RON CLARK: Yes.

16 MR. PAUL BONWICK: You've referred to
17 your history with Collus, and its former incarnation,
18 and when Collingwood set it up through the
19 restructuring that was directed by the province, and
20 subsequently in 2011/2012 in terms of helping the
21 Municipality create the documents necessary to
22 formalize this -- this transaction, but you spoke
23 about having some relationship with Mr. Houghton back
24 in the incorporation days of 2000.

25 And then there's sort of a, for

1 argument sake, a ten-year gap in there where you
2 weren't engaged with Collus but you had interactions
3 with Mr. Houghton on any number of different occasions
4 at industry events, conferences, seminars. Was -- was
5 I understanding that correctly?

6 MR. RON CLARK: Yes.

7 MR. PAUL BONWICK: And so is it
8 reasonable to assume that you would have, to a
9 reasonable extent, had an on and off again experience
10 -- on and off again experiences with Mr. Houghton
11 throughout that ten-year period?

12 MR. RON CLARK: Yes.

13 MR. PAUL BONWICK: During your time
14 working with Collus in 2000, during the time you had
15 interaction with Mr. Houghton throughout that next
16 decade, and through your time working through the
17 creation of these documents and providing the advice
18 necessary for this deal to move forward to the OEB,
19 how would you describe Mr. Houghton's character?

20 MR. RON CLARK: Professional,
21 dedicated.

22 MR. PAUL BONWICK: Would it be
23 reasonable to say that Mr. Houghton always had the
24 best interest of the Municipality in terms of anything
25 that he was doing in relationship to your contact?

1 MR. RON CLARK: I had no reason to
2 think otherwise.

3 MR. PAUL BONWICK: Can you share in
4 your professional opinion, personal opinion, what the
5 -- what the perception of, in your opinion -- of Mr.
6 Houghton was out within the industry over that ten-
7 year period?

8 MR. RON CLARK: Sure. He was a member
9 of the Market Design Committee, for example, appointed
10 by, I think the Minister of Energy, the Provincial
11 Government, to design the electricity market in the
12 year 2000, so -- and then he was a member of I think
13 other boards of directors, industry organizations.

14 To be honest, he punched above his
15 weight coming from Collingwood in a way, so he -- he
16 was a well-known industry figure.

17 THE HONOURABLE FRANK MARROCCO: There
18 might be some dispute about that statement.

19 MR. RON CLARK: I can re-characterize
20 that. I'll withdraw that metaphor, if it's -- it's
21 appropriate.

22 THE HONOURABLE FRANK MARROCCO: That
23 metaphor won't find its way into the report I can --

24

25 CONTINUED BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: Is it reasonable to
2 state with the various emails that were copied on --
3 and I'm not going to go through them in the interest
4 of time -- but there seems to be a fairly broad cross-
5 section of people copied on many of these emails.
6 Some of them are legal, some of them are Town staff,
7 Mayor, Deputy Mayor Mr. McFadden, Board member. It
8 appears to be quite a healthy cross-section of people
9 that are copied on most of this correspondence.

10 Is that a fair statement?

11 MR. RON CLARK: Yes.

12 MR. PAUL BONWICK: At any time during
13 any of these communications, in your mind would they
14 have -- would any of the people that are copied on
15 this have any reservation in reaching out to you if
16 they have any questions or wanted to make any
17 suggestions or comments?

18 MR. RON CLARK: I wouldn't have
19 expected that they would have any reservations, no.

20 MR. PAUL BONWICK: You're familiar
21 with the Board Chair, Mr. McFadden?

22 MR. RON CLARK: Yes.

23 MR. PAUL BONWICK: You're familiar
24 with his history, his work history?

25 MR. RON CLARK: Yes.

1 MR. PAUL BONWICK: You're familiar
2 with Mr. McFadden, his work history?

3 THE HONOURABLE FRANK MARROCCO: Did
4 you say "McFadden" twice?

5

6 CONTINUED BY MR. PAUL BONWICK:

7 MR. PAUL BONWICK: Sorry. Sorry, my
8 apologies. Mr. Muncaster was first.

9 MR. RON CLARK: Oh. It's getting late
10 in the day. Mr. -- Mr. McFadden I had known for quite
11 some time. Mr. Muncaster I didn't know before the
12 deal.

13 MR. PAUL BONWICK: Did you find -- and
14 we've heard testimony from several witnesses that Mr.
15 Muncaster was a true leader in terms of, not only this
16 matter and helping facilitate this particular
17 transaction, but, generally speaking, towards Collus
18 in terms of the benefits based on his corporate
19 background and the level of integrity he brought to
20 the table.

21 Did you find him to be an active
22 participant or did you have dialogue or communication
23 with him on an on and off again basis?

24 MR. RON CLARK: I believe I did. I
25 can't recall specific instances, but certainly he was

1 involved at various times in the transaction.

2 MR. PAUL BONWICK: There's been some
3 si -- discussion about the shotgun clause or what I
4 always prefer to se -- refer to as the buy/sell
5 provision. Based on earlier testimony, to some
6 degree, or more so past, back in 2011 and continues
7 today, I believe and would like you to confirm, this
8 is a fairly unique and complex industry as we look at
9 the LDC world?

10 MR. RON CLARK: Sorry, the LDC
11 industry is complex or --

12 MR. PAUL BONWICK: The LDC sector,
13 generally speaking --

14 MR. RON CLARK: Yeah.

15 MR. PAUL BONWICK: -- is a fairly
16 complex industry. It's heavily regulated. There's a
17 lot of -- there's a lot of fingers in the pie, so to
18 speak, the Province, the OEB.

19 And so, it's an ever cha -- it -- it
20 seems to be an ever changing world. Is that a fair
21 representation?

22 MR. RON CLARK: Yes.

23 MR. PAUL BONWICK: And so, recognizing
24 that Collingwood was effectively becoming a partner
25 with a much larger entity, PowerStream, now Alectra,

1 and understanding that the ever changing industry
 2 could present all kinds of surprises three (3), four
 3 (4), five (5) years down the road, could you imagine a
 4 scenario where the Town of Collingwood would not want
 5 to be protected by having some sort of buy/sell
 6 provision based on some unknown change that may occur
 7 which could have an adverse impact on their ability to
 8 stay in the game?

9 MR. RON CLARK: Now, the buy/sells are
 10 funny things because they're generally -- you see them
 11 quite a bit. They're rarely actually used. They're -
 12 - they're a last resort kind of provision where the
 13 relationship between the shareholders is really and
 14 truly broken down and there's no other way out.

15 So, it's -- in a way, they're there to
 16 incent a negotiated solution to any -- any problem.
 17 Can I envision a situation where they're -- you know--

18 MR. PAUL BONWICK: Where --

19 MR. RON CLARK: -- I can envision lots
 20 of situations. It's a viable and valid provision to
 21 have in an agreement. It's also valid for it not to
 22 be in an agreement at times depending on how the
 23 shareholders come out.

24 MR. PAUL BONWICK: Thank you. I'm
 25 jumping around here trying to get done as quickly as I

1 can. In your earlier testimony you were speaking
2 about the inherent differences between a local
3 distribution corporation and a municipality both in
4 terms of governments and while what's a hundred
5 percent owned by the municipality.

6 They have different operating models,
7 if -- if I could -- if I understood you properly.

8 MR. RON CLARK: Yeah.

9 MR. PAUL BONWICK: Is it reasonable to
10 say that when you have municipal involvement, it would
11 tend to be more political, there's more opportunities
12 for elected officials to be engaged in day-to-day or -
13 - or senior staff within the municipality, namely a
14 CAO, to be engaged on a day-to-day activity and that
15 perhaps complicates or does not necessarily always
16 lend value to the strictness of a corporate structure
17 like an LDC?

18 MR. RON CLARK: Yeah, I -- I don't
19 know if I'd agree with it doesn't lend value. I -- I
20 will -- I will agree with your characterization that,
21 yeah, the municipal -- municipal affairs take place in
22 a more politicized environment.

23 And the goal in fact of many governing
24 structures is to try to insulate the LDC from
25 politics.

1 MR. PAUL BONWICK: When -- thank you.
2 When -- I want to address the use of the word 'value'
3 that came up earlier on that you were being asked
4 questions about, a director's responsibility.

5 Is it accurate to state that a director
6 of a corporation would afford full or perhaps even
7 greater weight to matters related to cultural
8 synergies, historical past, prospect for future growth
9 when assessing a future partner versus simply the cold
10 calculation of what they're prepared to pay?

11 MR. RON CLARK: Yes, especially in a
12 situation where the shareholder's sticking around and
13 it's not an outright sale.

14

15 (BRIEF PAUSE)

16

17 MR. PAUL BONWICK: Many of these
18 things have been covered off, so I just don't want to
19 repeat myself because I can see His Honour's looking
20 at me there.

21 THE HONOURABLE FRANK MARROCCO: But
22 you're right.

23 MR. PAUL BONWICK: No, I -- no, I --
24 no, just trying a little levity. You've been most
25 kind that way.

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. PAUL BONWICK: I'd like to...

3

4 (BRIEF PAUSE)

5

6 MR. PAUL BONWICK: In your experience
7 in dealing with these kinds of transactions and
8 helping -- take -- taking the lead in putting together
9 the required documents in order to facilitate the
10 transaction, when you have several lawyers involved,
11 as well as elected officials and senior staff, in your
12 experience, can these things get bogged down sometimes
13 in terms of scheduling, trying to advance it in a
14 reasonably, timely fashion?

15

16 (BRIEF PAUSE)

17

18 MR. RON CLARK: I'm going to say that
19 that consideration, to the extent there is considered
20 to be a need for independent counsel, that would far
21 out weigh any kind of perceived being bogged down when
22 -- when there's --

23 MR. PAUL BONWICK: I --

24 MR. RON CLARK: -- a real need for it.

25 MR. PAUL BONWICK: I mean --

1 MR. RON CLARK: So, I -- I don't --
2 because I -- I think there -- you'd rarely -- if there
3 was a real need for independent counsel, it wouldn't
4 be, as I say, outweighed by the possibility of
5 additional delays in -- in preparing the documents.

6 MR. PAUL BONWICK: Thank you, and --
7 and completely agree. But I maybe misworded the
8 question because that wasn't what I was trying to get
9 at. Where I was going was, where there are several
10 lawyers involved, and staff and elected officials,
11 based on coordinating schedules --

12 MR. RON CLARK: M-hm.

13 MR. PAUL BONWICK: -- and trying to
14 facilitate calls and set up meetings --

15 MR. RON CLARK: M-hm.

16 MR. PAUL BONWICK: -- do you find
17 sometimes, when you have that many people, that the
18 process can get bogged down?

19 MR. RON CLARK: Yeah. Yes. Yes. But
20 that's -- that's -- yes. Okay, I'll -- I'll go with
21 yes. I mean, it's a -- in the abstract, it's hard to
22 respond because it depends on the issue. There may be
23 times when you do need wide stakeholder input. And
24 there may be times on more administrative issues where
25 people -- you know, it's best to have one (1) point of

1 contact. But that can vary depending on the issue,
2 the importance of the issue, the document in front of
3 you, et cetera.

4 MR. PAUL BONWICK: In hindsight,
5 you've already established, based on your
6 understanding, you were not aware of my involvement in
7 this particular matter, correct?

8 MR. RON CLARK: Correct.

9 MR. PAUL BONWICK: Yes. Thank you.
10 But in -- having reviewed the court documents or the
11 Foundation Documents and followed this to some extent,
12 you now are aware that in fact I was engaged by
13 PowerStream?

14 MR. RON CLARK: yes.

15 MR. PAUL BONWICK: Would it seem
16 reasonable, as a member of the PowerStream team, once
17 the partnership -- in your mind, would it seem
18 reasonable that once the partner had been chosen, that
19 in fact one (1) of the people helping out with the
20 government relations side of the equation would be
21 trying -- very respectfully, but trying to make sure
22 that meetings are coordinated in a timely fashion?

23 MR. RON CLARK: Yes.

24

25 (BRIEF PAUSE)

1 MR. PAUL BONWICK: Is it reasonable in
2 your mind, again, as a person that is part of the
3 PowerStream team, if one was envisioning potential
4 issues that may arise, that it would be only
5 reasonable that you would provide recommendations to
6 your client in terms of how they might address those
7 issues?

8 And perhaps I could be more specific to
9 help you in your response.

10 MR. RON CLARK: Yeah. I'm finding a
11 lot of these questions are quite hypothetical and it
12 would depend on various circumstances. And in the
13 absence of surrounding circumstances, you know, we're
14 creating a very kind of narrow universe where there
15 are very few variables, and it gets me uncomfortable
16 about responding to these kinds of questions, and --
17 and they're all hypothetical.

18 MR. PAUL BONWICK: Fair enough. Fair
19 enough. Could you bring up 507, please, in the
20 Foundation Document?

21

22 (BRIEF PAUSE)

23

24 MR. PAUL BONWICK: You've already
25 reviewed this. I just wanted to reference it once

1 again for your benefit. If you want to go down a
2 little further, you're welcome to do so.

3

4 (BRIEF PAUSE)

5

6 MR. PAUL BONWICK: Scroll down a bit
7 more.

8

9 (BRIEF PAUSE)

10

11 MR. RON CLARK: Okay.

12 MR. PAUL BONWICK: I'm thinking more
13 specifically the -- the second last statement or
14 question, proposed question in the last paragraph.

15 So I was thinking could we identify a
16 minimum cap versus a maximum cap to give some sense of
17 surety to Council that they kind of had a hard number
18 that they were going to work with.

19 The -- the reason I bring this up is if
20 in fact I was aware that there may be concerns about
21 where the number was going to land and that in turn
22 Councillors may be concerned about where the number
23 was going to land, would it seem reasonable to propose
24 this as a possible solution?

25 MR. RON CLARK: I guess, it's not a

1 legal question, I mean, you know, the -- whether it's
2 5.1 million or 5.5 million is not something, you know,
3 someone would come to their legal advisor to say what
4 do you think it -- well, I mean, you know, maybe, but
5 not as a legal advisor.

6 So you know, I'm -- I'm -- from where I
7 sit it's difficult to comment on these kinds of
8 issues.

9 MR. PAUL BONWICK: Fair enough.

10 As we've reviewed throughout the day
11 the many emails, and I've written down number after
12 number after number of references, and I won't bother
13 asking to bring them all up because you have had an
14 opportunitie -- opportunity to review many of them, but
15 it basically starts with your confirmation that Aird &
16 Berlis, and more specifically Mr. Longo, had a long-
17 standing retainer relationship with the municipality,
18 correct?

19 MR. RON CLARK: Yes.

20 MR. PAUL BONWICK: And you'll confirm
21 that there appears to be a fairly large number of
22 email communications that have directly involved Mr.
23 Longo or, in fact, been precipitated by Mr. Longo or
24 Mr. Longo has responded to them, correct?

25 MR. RON CLARK: Yeah, I don't know

1 what a large number is, but there are a number, yes.

2 MR. PAUL BONWICK: Okay, fair enough,
3 I'll try to be more specific.

4 And there appears to be requests to Mr.
5 Longo to be active on the file at certain points, and
6 in fairness there appears to be evidence that would
7 suggest Mr. Longo is providing input from the
8 Municipality on the process.

9 Is that a fair assessment?

10 MR. RON CLARK: Mr. Longo is providing
11 input from the Municipality, yes, at different points,
12 yes.

13 MR. PAUL BONWICK: Yes. Is it
14 reasonable to assume that Mr. Longo would have been
15 billing the Municipality for these interventions,
16 these times that he's engaged in emails, reviewing
17 documents, helping give advice to the Mayor?

18 MR. RON CLARK: Well, he may have been
19 in contact with and receiving instructions and
20 communicating with the Municipality, I suspect that
21 wouldn't have changed the invoice going to the LDC.

22 MR. PAUL BONWICK: Again, I sort of
23 like you, look at as one (1) entity.

24 Is it reasonable to assume that Mr.
25 Longo was billing for these interactions that he was

1 having?

2 MR. RON CLARK: Yes.

3 MR. PAUL BONWICK: Thank you.

4

5 (BRIEF PAUSE)

6

7 MR. PAUL BONWICK: Bear with me for
8 one moment, Your Honour, please, and I'll try to get
9 this cleaned up as quick as I can.

10

11 CONTINUED BY MR. PAUL BONWICK

12 MR. PAUL BONWICK: I'm counting
13 somewhere in the neighbourhood of four (4) to five (5)
14 lawyers that were involved, simply on the municipal
15 side and I'm going to count the municipal as Collus
16 and the Town of Collingwood, providing various areas
17 of expertise based on helping to facilitate this
18 process, is that fair?

19 MR. RON CLARK: With Aird & Berlis?

20 MR. PAUL BONWICK: Yes.

21 MR. RON CLARK: Probably more than
22 that. If that's -- that's certainly at least that
23 number have come up just today, yes.

24 MR. PAUL BONWICK: Right. Thank you.

25 And so would it be reasonable to assume

1 with these various levels of expertise being brought
2 to the table by any number of four (4) to five (5) and
3 perhaps more, that if any significant issues had of
4 arose as a result of their review, they would have
5 brought that to your attention?

6 MR. RON CLARK: Yes.

7 MR. PAUL BONWICK: Was there
8 significant issues brought to your attention?

9 MR. RON CLARK: Beyond what's been
10 discussed, not that I recall, no.

11 MR. PAUL BONWICK: When I go through
12 the correspondence, I see that at the time there was
13 one reference from Mr. Longo that I could find that
14 was specific to who was receiving appropriate
15 representation at the time, and I think it was more
16 specific to warranties and things of that regard.

17 But he was just raising an issue in my
18 mind that sort of said -- when I was reading it and
19 confirm with me if you would -- that the Town needs to
20 address the issue of do they really have full
21 representation or should they look at getting
22 additional.

23 Is that a reasonable representation of
24 where he was coming from but in -- sort of in a very
25 friendly sort of way?

1 MR. RON CLARK: Yeah. I think
2 that's -- that's right. It's just making sure that
3 the Town was being represented and you know -- I
4 think -- either we had a conversation, or he got
5 comfortable.

6 MR. PAUL BONWICK: Right. And so
7 would you find that throughout this entire process
8 that it was a very civil discord? Everybody seemed to
9 be professional, everybody seemed to be rooting for
10 the same thing, and that was the best interest of the
11 municipality?

12 MR. RON CLARK: Very much so.

13 MR. PAUL BONWICK: And so when I fast
14 forward to 2014 and I'm reviewing the emails, the
15 emails have taken on a very different tone at the
16 point in time. Would you agree?

17 MR. RON CLARK: Emails from who?

18 MR. PAUL BONWICK: Mr. Brown,
19 Mr. Longo.

20 MR. RON CLARK: Yes.

21 MR. PAUL BONWICK: Did you follow the
22 transaction after the OEB approved it in terms of the
23 relationship that had been developed as a result of
24 that approval, namely Collus-PowerStream and the
25 entity of how it moved forward over the course of the

1 new year?

2 MR. RON CLARK: Not really, no. I may
3 have been very busy. I -- I would have been
4 interested. But I didn't -- it doesn't -- nothing
5 sticks in my mind as to kind of how things were going,
6 et cetera. Maybe in a very general way I heard things
7 were okay, maybe. But I don't remember having
8 thoughts or hearing things or keeping up with how the
9 relationship was developing.

10 MR. PAUL BONWICK: I'll ask the
11 question in a different way. And thank you very much
12 'cause that answer was helpful.

13 Did you hear anything over the course
14 of the next year in all of your travels about this
15 being a bad transaction, that something inappropriate
16 had occurred, that this thing wasn't working out over
17 the course of that next year?

18 MR. RON CLARK: No.

19 MR. PAUL BONWICK: Thank you.

20

21 (BRIEF PAUSE)

22

23 MR. PAUL BONWICK: At the end of the
24 process once the OEB had approved this, based on you
25 and the level of engagement your colleagues had as

1 well as the feedback you were getting from others, did
2 you feel that the Town of Collingwood had achieved the
3 desired effect and that a good result had been
4 provided to the ratepayers and the taxpayers of
5 Collingwood at the end of this process once OEB was --
6 had finalized its decision?

7 MR. RON CLARK: Yes. And -- and the
8 OEB did, too, presumably.

9 MR. PAUL BONWICK: I have no further
10 questions, Your Honour.

11 THE HONOURABLE FRANK MARROCCO: Thank
12 you. Ms. Ritacca, any questions?

13 MS. LUISA RITACCA: I just have one
14 (1) question to help clarify something that was
15 confusing for me, and I don't know if it was for
16 others.

17

18 EXAMINATION BY MS. LUISA RITACCA:

19 MS. LUISA RITACCA: Mr. Clark, in one
20 of her last questions to you, Ms. McGrann took you
21 back to the March 2007 retainer letter, which is
22 ARB1740.

23 And you agreed with her that it was the
24 retainer letter agreement that you had made reference
25 to in an earlier answer you gave in the morning. You

1 recall that?

2 MR. RON CLARK: Yes.

3 MS. LUISA RITACCA: And Commission
4 counsel asked you why did you think that this retainer
5 letter would cover the work you were doing for the
6 Collus entity and the Town in relation to the sales
7 transaction in 2011.

8 You recall that she gave you that --
9 she asked you that question?

10 MR. RON CLARK: Yes.

11 MS. LUISA RITACCA: All right. And I
12 just want to be clear. In the fall of 2011 when you
13 opened the matter for this sale transaction, had you
14 seen the retainer letter that's up on the screen?

15 MR. RON CLARK: No.

16 MS. LUISA RITACCA: All right. And
17 when's the first time you saw the retainer letter?

18 MR. RON CLARK: Recently in the past
19 couple of weeks maybe.

20 MS. LUISA RITACCA: In preparation for
21 this hearing?

22 MR. RON CLARK: Yes.

23 MS. LUISA RITACCA: And at the time
24 that you opened the new matter for the Collus-
25 PowerStream transaction, what was your understanding

1 of your firm's relationship to the Town of
2 Collingwood?

3 MR. RON CLARK: It was a longstanding
4 relationship. Our firm has a particularly well-known
5 municipal practice, and I understood that Collingwood
6 had been a client of the firm for -- for many years.

7 MS. LUISA RITACCA: And did you have
8 any understanding of whether there were outstanding
9 matters or files open for the Town of Collingwood in
10 the fall of 2011?

11 MR. RON CLARK: Yeah. I -- I
12 suppose -- I -- I got to turn my mind to it. I don't
13 know if I thought about it in terms of -- I mean,
14 there would have been many -- a number of files open
15 for the Town of Collingwood, yeah, with the firm.
16 Yeah.

17 MS. LUISA RITACCA: Even in the fall
18 of 2011?

19 MR. RON CLARK: Likely, yes.

20 MS. LUISA RITACCA: Thank you.

21 THE HONOURABLE FRANK MARROCCO: Thank
22 you. Re-examination?

23 MS. KATE MCGRANN: No. Thank you.

24 THE HONOURABLE FRANK MARROCCO: Thank
25 you all very much. Mr. Clark, thank you for your

1 assistance.

2 We're adjourned until 10:00 on Monday.

3

4 --- Upon adjourning at 4:50 p.m.

5

6 Certified Correct,

7

8

9

10 _____

11 Wendy Woodworth, Ms.

12

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