



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood City Council Room

97 Hurontario Street

Collingwood, Ontario

October 29th, 2018

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APPEARANCES

Janet Leiper) Inquiry Counsel
Kirsten Thoreson) Associate Inquiry
) Counsel
Michael Watson) Alectra Utilities
Belina Bain) Corporation
David O'Connor) For Paul Bonwick
George Marron) For Sandra Cooper
Ravio Uukkivi (by phone)) For Timothy Fryer
Frederick Chenoweth) For Edwin Houghton
William McDowell) For Town of Collingwood
Ryan Breedon (np))
Patrick Gajos (by phone))For Collus PowerStram
)Corporation

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1 --- Upon commencing at 1:07 p.m.

2

3 THE HONOURABLE FRANK MARROCCO: Let me
4 offer a bit of an update. We have to date received
5 almost eleven thousand (11,000) documents, and for
6 that I thank everyone for their cooperation.

7 We have interviewed over sixty (60)
8 witnesses, although some of those witnesses or many of
9 those witnesses will be interviewed again as we learn
10 more and more about the matters with -- in the matters
11 that we're inquiring into.

12 What I want to do today, to start with,
13 is in a formal way get everyone committed to
14 concluding the production of documents so that we can
15 move on to the next phase. We have to decide which
16 witnesses are going to be called, what documents we're
17 going to put to them. We need to tell that to the
18 people participating to you, the participants, so that
19 you can be prepared to question those witnesses, if
20 you choose to.

21 And so that's the first order of
22 business today is to deal with that and then,
23 secondly, there are couple of matters that I recognize
24 I'll have to deal with after that. So, Ms.
25 Thoreson...?

1 MS. KIRSTEN THORESON: Well, what I
2 propose to do this afternoon is go through the
3 document productions of each participant in turn in
4 alphabetical order. For each participant I'll discuss
5 sort of five (5) main points of the documentary
6 production process; firstly, their summons if there
7 was one; their production plans; the portion of
8 documents delivered to date; the time required for any
9 outstanding items; and then, finally, whether or not
10 there's been a Certificate of Production signed by the
11 participant.

12 First up is Alectra Utilities
13 Corporation represented today by Mr. Watson and Ms.
14 Bain. They, along with many other participants, were
15 served in July with a summons for productions. Those
16 summons were produced in advance of even standing so
17 that the Inquiry process could move on quickly.

18 And so Alectra, like many participants,
19 have had about four (4) months notice of their
20 obligation to produce.

21 After standing, the participants were
22 advised of their production plan obligations and
23 Alectra delivered a production plan on August 31st.
24 In the production plan, they identified how they would
25 locate and produce documents that had a bearing on the

1 subject matter of the Inquiry. And they went on then
2 to deliver a tranche of documents.

3 So many of the participants have
4 documents in -- as they had become available, and
5 Inquiry has appreciated that. Alectra was the first
6 participant to deliver a significant amount of
7 documents. Their first tranche was delivered on
8 September 27th, 2018. There were some technical
9 issues with that production that are still being
10 resolved some metadata missing, et cetera. I believe
11 that's well on its way to a resolution.

12 Alectra was also the only participant
13 to deliver a claimed privileged list. And so, they've
14 identified a list of documents over which they're
15 claiming privilege and there's some ongoing
16 discussions with Inquiry counsel about whether those
17 certain documents identified as privilege should be
18 produced or not. And that process is also on its way
19 to a resolution.

20 In -- in that process, they've also
21 identified some further documents that are not
22 privileged and I understand that those will be
23 produced in the near future, although, the specific
24 timing is not known.

25 With respect to the second tranche of

1 productions from Alectra, there are outstanding
2 documents for the period from 2013 to 2017 that have
3 not yet been delivered to the Inquiry. There been
4 some preliminary key documents from this period that
5 have been produced, and that's been very helpful.
6 Alectra and Inquiry counsel have been discussing ways
7 to narrow the search of a large volume of data that
8 relates to that period of productions.

9 After numerous calls and meetings,
10 we've determined that the most efficient way would be
11 to collaborate on agreed search terms for that period
12 and then have Alectra produce relevant and
13 nonprivileged documents in accordance with the
14 document protocol. The timing for that production is
15 not yet confirmed.

16 There also related documents from
17 Alectra's board members. In early interviews, we
18 identified additional relevant witnesses and documents
19 related to Alectra and we understand that those
20 documents will be provided by November 9th.

21 So because of the -- the outstanding
22 items there is not yet a Certificate of Production
23 from Alectra.

24 THE HONOURABLE FRANK MARROCCO: So
25 it's the -- what do we need to confirm then as far as

1 Alectra's concern?

2 MS. KIRSTEN THORESON: What we need to
3 confirm is the -- the timing for the delivery of the
4 second tranche of production.

5 THE HONOURABLE FRANK MARROCCO: Mr.
6 Watson --

7 MR. MICHAEL WATSON: Yes --

8 THE HONOURABLE FRANK MARROCCO: Or is
9 Ms. Bain -- who's --

10 MR. MICHAEL WATSON: I'm going to be -
11 - I'm going to be dealing with this. Ms. Bain knows
12 all of the technicalities of the documents and I
13 don't, however, there's some important dates here.

14 We have been throughout our discussions
15 -- and I should point out that we have been having
16 regular discussions by telephone with Inquiry counsel
17 started back in June and continuing all the way
18 through, including two (2) last Friday on all of
19 these.

20 Early on, we were -- ms. Thoreson talks
21 about first and second tranche. We divided it into
22 the transaction period and then the post-transaction
23 period. The transaction period for which we -- and
24 Alectra and Cowling's did its search started at the
25 beginning of 2011 and went through to March of 2013.

1 Your Honour may be familiar with the
2 fact that the transaction closed in July of 2012. All
3 right and that's the transaction period.

4 Then there is the entire issue in the
5 Inquiry concerning the use of the funds which Alectra,
6 as you know, is not interested in at all.

7 And then what I'm calling sort of the
8 tag on period is from 20 -- well, 2012 on until 2017
9 and that is any additional agreements, neo-service
10 contracts and that sort of thing between the parties.

11 What we proposed in our document
12 production plan was that we would produce documents
13 for the transaction period, concentrating on that
14 first, from certain specific custodians which was
15 accepted.

16 With respect to the post-transaction
17 period, it was agreed between counsel -- and we've got
18 a book of documents, all of the email exchanges here,
19 if there's any dispute. It was agreed that the post-
20 transaction documents would be deferred for a period
21 of time until witness interviews were conducted, until
22 Inquiry counsel determined what was required.

23 Then as Ms. Thoreson said, September
24 27th, we produced over four thousand (4000) documents
25 and -- and then the question was: What documents then

1 are going to be produced for the second period of
2 time.

3 And this is -- and this came about then
4 when the Certificate of Production was sent around and
5 party -- and -- and Inquiry counsel asked, well, when
6 are you going to be signing your certificates of
7 production.

8 We immediately replied and said, Well,
9 for Alectra the Certificate of Production says, you've
10 complied with the summons obligation. The summons
11 obligation is to produce everything in -- in the
12 summons and that includes for the post-production
13 period.

14 And I reminded Inquiry counsel who
15 said, oh, yes, good point. I reminded Inquiry counsel
16 that we had deferred the entire post-transaction
17 period for some time. This is into October now and
18 then they said, okay, fine, this is the second week of
19 October, all right, well, this is what we want for the
20 post-production period.

21 What we had agreed is this: That --
22 and -- and -- and I just need to back up for a moment.
23 This is going to take a couple of minutes because
24 there are -- what they're seeking is is emails of
25 documents -- essentially, emails searching back to

1 2011, for nine (9) custodians.

2 As you're probably familiar with, the
3 Collingwood transaction for PowerStream, the entire
4 entity, was -- with all due respect to the
5 transaction, a very small item. They were dealing
6 with all sorts of other possible acquisitions and
7 their entire business.

8 The PowerStream custodians, now
9 Alectra, did not segregate all of their emails into
10 various business groups, Collingwood and all -- all of
11 the others. They're all in together, and so what has
12 to happen is that we asked for the PSTs, the PSTs
13 being the overall grouping amalgam of all of the
14 emails that are delivered in a file format of tens of
15 gigabytes. Search -- all of those are ingested into a
16 database, then search terms are done in order to
17 extract from that anything that may have any possible
18 relevance.

19 And as it turned out, when we did that
20 internally for the Gowling's documents and the Alectra
21 documents for the transaction period for the three (3)
22 main custodians of the -- of the -- all of the
23 documents that were produced, tens of thousands of
24 them, there were four thousand (4,000) documents, only
25 about 10 percent, that had anything to do with

1 Collingwood and that were privileged and that's what
2 we've turned over to the -- to the Inquiry.

3 Now what is being asked for is, instead
4 of three (3) custodians, nine (9) custodians and for
5 now a four (4) year period, almost twice as long and
6 for three (3) times as many custodians.

7 What that probably means is that
8 instead of forty thousand (40,000) documents we're
9 going to end up with somewhere between one hundred
10 (100) and two hundred thousand (200,000) documents,
11 all of which have to be ingested into a database and
12 all of which have to be searched in order to -- to
13 extract what may be relevant documents, sort of a
14 needle in a haystack for -- for Collus in the post-
15 transaction period where what is being searched for is
16 any other commercial relationships other than
17 transaction.

18 Okay, fine, if that's what they want,
19 we were told that in October, fine, you can get that.
20 But what we had offered early on what was accepted is
21 -- and we got instructions to do this -- rather than
22 trying to do it internally ourselves, because it is
23 massively expensive to do this, just for the first
24 part of what we did the transaction period, the three
25 (3) custodians, it was enormously expensive. We said,

1 we will turn over the entire PSTs to you because, in
2 fact, that's what they've been wanting, and we had
3 been told back in August, in fact August 14th, we had
4 a meeting afterwards, after the standing hearing, and
5 we were told, well, listen, determining relevance is,
6 you know, is up to us, we'll determine that. You send
7 us the documents.

8 Fine, we'll turn them over. All we
9 said is, we need a protocol so that you will go
10 through them, you'll determine what is relevant, from
11 that -- and I'm using their term now -- from all of
12 those documents, however many there are going to be, I
13 don't know, a hundred (100), a thousand (1,000), two
14 thousand (2,000) out of, what, a hundred -- a hundred
15 and fifty thousand (150,000), who knows, what is
16 material, what you think you will want to place before
17 the Commission and what you consider to be non-
18 privileged. You give us that, give us some time to
19 look at it and we'll say, yeah, we agree with that, we
20 don't agree with that and we'll figure it out at that
21 point.

22 That's what we have been discussing,
23 including on the weekend, Friday, Saturday and Sunday
24 in exchange of emails. It has not yet been determined
25 or agreed upon because there have been changes in

1 position as to who is going to do that and -- and, you
2 know, this is not a motion to determine that, but
3 these discussions are ongoing, so it is not yet been
4 determined who is actually going to do it.

5 At first it was accepted, fine,
6 Alectra, great, you turn over the PSTs to us and we'll
7 do all the searching. We're fine with that, as long
8 as a protocol is put in place and we've been
9 negotiating the terms that provide for a review for
10 privilege before it's suddenly, you know, made public.

11 Along the lines of the existing Rule 17
12 and the Rules that deal exactly with that, because now
13 since -- since this voluminous number of documents are
14 sought to be produced, our client's okay with that,
15 but we all have to recognize that the vast, vast
16 majority will be irrelevant to anything to do with
17 Collingwood, number 1, and it will contain a lot of
18 privileged documents as between Gowlings and -- and
19 PowerStream/Alectra and as between the in-house
20 counsel and PowerStream/Alectra.

21 We know we're going to be turning that
22 over. So, you know, you're going to be getting a lot
23 of irrelevant and privileged documents. They're going
24 to be winnowed out. You're going to do, we know, in
25 good faith, winnowing all of that out, but there may

1 be disagreements as to privilege.

2 Once you come back with your -- once
3 you come to your set, Inquiry counsel, that you say
4 you want to use in the Inquiry, great, give us some
5 time to look at it, we'll determine what, if anything,
6 we dispute. If we don't dispute anything, fine, it
7 all goes out to everybody, but there may be some
8 disputes and we're proposing a protocol that is pretty
9 much exactly the same as the existing rule 16 that
10 you, Sir, and Inquiry counsel put together.

11 So that's where we are right now and we
12 have been engaged, as I say, weekly or bi-weekly in
13 telephone conversations with Inquiry counsel to
14 advance all of this. Thank you.

15 THE HONOURABLE FRANK MARROCCO: We
16 have the -- the Honourable Sidney Letterman, who the
17 Inquiry's retained to resolve privilege disputes on --
18 on my behalf. So that won't tie things down or slow
19 things up.

20 But I think you're going to have to
21 resolve what documents you are prepared to produce,
22 and we need to know that. Otherwise, what's going to
23 happen is we're going to proceed ahead and then
24 documents are going to be produced while we're in the
25 middle of proceeding, and it's going to just cause us

1 to have to go back and we can't -- we can't do that
2 that way so --

3 MR. MICHAEL WATSON: Your Honour, we
4 completely --

5 THE HONOURABLE FRANK MARROCCO: --
6 you're going to figure that out, Mr. Watson.

7 MR. MICHAEL WATSON: Your Honour, we
8 completely agree with that, but I don't think there is
9 anything I said has indicated that we're not prepared
10 to do that. We, in fact, are prepared to produce
11 everything we've got on a timely basis for that period
12 of time. It's just a question of who is actually
13 going to, you know, go through all of that to winnow
14 away --

15 THE HONOURABLE FRANK MARROCCO: I
16 don't see why you couldn't do both. I don't see why
17 you can't produce the PST files on the one hand, and
18 continue to do your own due diligence because you have
19 an obligation to put -- according to the summons, to
20 produce what's relevant and then we will do the
21 searches that we want to do on the entire file and
22 give you the opportunity to claim privilege on the
23 results --

24 MR. MICHAEL WATSON: Well -- and, Your
25 Honour --

1 THE HONOURABLE FRANK MARROCCO: -- that
2 seems to me to be the best way to go about it.

3 MR. MICHAEL WATSON: This is exactly
4 what we have been discussing over the last three (3)
5 weeks with Inquiry counsel.

6 THE HONOURABLE FRANK MARROCCO: Well,
7 let's -- let's assume that we've now discussed it and
8 that's what we're going to do. You're going to
9 produce the PST file, we'll go through it, you're
10 going to go through it at the same time because the
11 obligation to produce is on -- it's -- it's your
12 obligation to produce pursuant to the summons.

13 But we'll go through it, we'll run the
14 searches we want to run and if we uncover documents
15 we'll let you know which documents they are so you can
16 tell us whether there's a privilege issue and if
17 there's a privilege issue then Ju -- the Honourable --
18 I keep wanting to keep calling him Justice Letterman -
19 - he's retired -- The Honourable Mr. Letterman take a
20 look at it and give you the benefit of his views and
21 give me the benefit of his views.

22 MR. MICHAEL WATSON: Very well, Your
23 Honour.

24 THE HONOURABLE FRANK MARROCCO: Thank
25 you. Next...?

1 MS. KIRSTEN THORESON: Next, we move
2 on to Mr. Paul Bonwick, represented today by Mr. David
3 O'Connor.

4 THE HONOURABLE FRANK MARROCCO: Good
5 afternoon, Mr. O'Connor.

6 MR. DAVID O'CONNOR: Good afternoon,
7 Your Honour.

8 MS. KIRSTEN THORESON: Mr. Bonwick was
9 served with a summons on July 3rd for production of
10 his relevant documents. He responded in mid-August
11 through counsel that his -- his production plan was
12 essentially that he had no documents in his possession
13 and in light of his funds, he'll not be taking steps
14 to produce any documents that are currently in the
15 custody of third parties, such as his banks.

16 He has, therefore, no documents to
17 produce. Mr. Bonwick has advised that he does not
18 maintain records for several years after his company
19 is no longer providing consulting services to a client
20 and we understand that Mr. Bonwick has previously
21 discarded, deleted or destroyed all documents that are
22 relevant to the Inquiry.

23 Therefore, there are no outstanding
24 productions and there has been no claim privilege list
25 delivered either. There's also been no Certificate of

1 Production as of yet so that would be where Mr.
2 Bonwick would swear that he has completed his -- a
3 diligence search and has produced everything that is
4 in his possession.

5 THE HONOURABLE FRANK MARROCCO: Is he
6 -- is he in a position to provide the Certificate, Mr.
7 O'Connor?

8

9 (BRIEF PAUSE)

10

11 MR. DAVID O'CONNOR: There you go,
12 how's that? Yeah, I'll get him to sign that, Your
13 Honour.

14 THE HONOURABLE FRANK MARROCCO: Thank
15 you. And we'll come back to this question of funding,
16 I haven't forgotten about it.

17 MR. DAVID O'CONNOR: I hope so.

18 THE HONOURABLE FRANK MARROCCO: Mr. --
19 go on.

20 MS. KIRSTEN THORESON: Next is Mr. Ian
21 Chadwick. He's in a slightly different category
22 because his participation rights were limited to the
23 delivery of a written timeline of events, so he was
24 not required to do their full production plan.

25 He was served with a summons in

1 September. He has provided the written timeline of
2 events that he suggested he would deliver. There are
3 no outstanding issues with -- with respect to Mr.
4 Chadwick.

5 THE HONOURABLE FRANK MARROCCO:
6 Next..?

7 MS. KIRSTEN THORESON: Moving on to
8 Collus PowerStream Corporation. I believe we have a
9 representative from McCarthy's on the phone.

10 MR. PATRICK GAJOS (by phone): Yes,
11 that's right. It's Patrick Gajos.

12 MS. KIRSTEN THORESON: Thank you. So
13 they, along with many of the other participants were
14 served a summons in -- July 3rd. They produced their
15 production plan and identified how they would locate
16 and produce their documents.

17 They produced a small tranche of
18 documents in -- on October 18th, and just this morning
19 I understand that they have delivered a one drink --
20 one (1) drive link to Collus's outstanding
21 productions. We have not had the opportunity to
22 review them yet but we understand that there's no
23 remaining productions identified as outstanding at
24 this time. They have also delivered no claim
25 privilege list.

1 THE HONOURABLE FRANK MARROCCO: All
2 right. Is that correct?

3 MR. PATRICK GAJOS (by phone): That's
4 right, yes.

5 MS. KIRSTEN THORESON: And -- and no
6 Certificate of Production either yet.

7 THE HONOURABLE FRANK MARROCCO: So
8 then the only thing that's outstanding is a
9 Certificate of Production.

10 MR. PATRICK GAJOS (by phone): That's
11 right, and -- and both are coming.

12 THE HONOURABLE FRANK MARROCCO: All
13 right. Thank you.

14 MS. KIRSTEN THORESON: Next is Mayor
15 Sandra Cooper represented by Mr. George Marron. They
16 were -- she was served with a summons July 3rd, 2018.
17 She delivered a production plan, and delivered her
18 productions on October 25, 2018, just last week.

19 There are no remaining productions
20 identified at this time and she has sworn a
21 Certificate of Production.

22 THE HONOURABLE FRANK MARROCCO: All
23 right. And -- and Mr. Marron, I'll come back to this
24 question of funding.

25 MS. KIRSTEN THORESON: Mr. Councillor,

1 (sic) Tim Fryer is next, represented by Mr. Uukkivi,
2 who may be on the line.

3 MR. RAVIO UUKKIVI (by phone): I am.

4 MS. KIRSTEN THORESON: He was not
5 served with a summons, but his production requirements
6 are further to the rules. His production plan is that
7 no documents will be delivered, as he has no documents
8 to produce.

9 Anything previously in his possession
10 has been returned to others. So there are no
11 remaining productions identified as outstanding at
12 this time, and there's no clip -- claimed privilege
13 list either but there's also no Certificate of
14 Production as of yet.

15 THE HONOURABLE FRANK MARROCCO: So,
16 Mr. Uukkivi, you'll -- you'll give us the Certificate
17 of Production?

18 MR. RAVIO UUKKIVI: That's correct,
19 Your Honour.

20 THE HONOURABLE FRANK MARROCCO: Okay.

21 MS. KIRSTEN THORESON: Next is Mr. Ed
22 Houghton, represented by Fred Chenoweth.

23 He was likewise not served with a
24 summons, but his production obligations are pursuant
25 to the rules.

1 His production plan was that he had no
2 documents, he possessed nothing other than some
3 documents that were given to him by a nonparticipant.
4 We asked that he, nonetheless, provide those documents
5 that had been provided to him and he did so on October
6 19th.

7 There are no remaining production
8 identified as outstanding at this time, no claim
9 privilege list and he has sworn a Certificate of
10 Production.

11 THE HONOURABLE FRANK MARROCCO: Thank
12 you, Mr. Chenoweth, thank you for that.

13 MS. KIRSTEN THORESON: And finally is
14 the Town of Collingwood, represented by Mr. Wil
15 McDowell.

16 They were served --

17 THE HONOURABLE FRANK MARROCCO: Good
18 afternoon, Mr. McDowell.

19 MS. KIRSTEN THORESON: They were
20 served with a summons on July 3rd. They've not
21 deliver a production plan and no formal productions
22 under the exchange protocol, but they have delivered
23 background documents, initially, and some documents
24 have been provided by individual employees during the
25 interview process.

1 We understand that a first tranche of
2 documents is expected by the end of this month and the
3 remaining documents are expected towards the end of
4 November. It's unknown what percentage will come in
5 what tranche as of yet.

6 THE HONOURABLE FRANK MARROCCO: Mr.
7 McDowell...?

8 MR. WILLIAM MCDOWELL: Commissioner.
9 So, that's -- that's correct. The first tranche we
10 now have in hand in our office. We're just going to
11 do a quick check of it. And that is about forty-two
12 hundred (4200) documents.

13 I think the next tranche will be a bit
14 bigger than that. I'm not sure exactly how many
15 because we're going through the de-duplication
16 process, but we expect that within three (3) weeks,
17 approximately.

18 THE HONOURABLE FRANK MARROCCO: So
19 that's -- when you say within three (3), is that firm?
20 As far -- I mean, can we ---

21 MR. WILLIAM MCDOWELL: Well that --
22 that's the representation from the -- the document
23 management company that -- that we have, but these
24 things are not under oath, as you can appreciate, so.

25 But the estimate on the first tranche

1 was essentially accurate, that it was going to be two
2 weeks, it may have slid by a few days, but just a few
3 days.

4 THE HONOURABLE FRANK MARROCCO: As you
5 can appreciate, the Town's documents are -- are
6 important from our perspective.

7 MR. WILLIAM MCDOWELL: I do, yes.

8 THE HONOURABLE FRANK MARROCCO: All
9 the documents are important, but the Town's documents
10 are of particular interest.

11 MR. WILLIAM MCDOWELL: Yes.

12 THE HONOURABLE FRANK MARROCCO: So, we
13 can expect those documents by the end of November?

14 MR. WILLIAM MCDOWELL: Yes, I think
15 so.

16 THE HONOURABLE FRANK MARROCCO: Should
17 be finished with this.

18 MR. WILLIAM MCDOWELL: The other thing
19 I should say is that the -- and I'll speak off-line to
20 Ms. Leiper about this, but the Town has come to a
21 landing with respect to waiver of privilege, which I
22 won't elaborate here, but that will shorten up a lot
23 of these processes.

24 THE HONOURABLE FRANK MARROCCO: Well,
25 that -- that's helpful to know that, but that's why --

1 that's why I engaged Mr. Letterman, just so that that
2 process will move quite quickly once the documents are
3 identified and people -- he'll -- he'll make a
4 determination and then it's subject to whatever review
5 people want to make of it but...

6 MR. WILLIAM MCDOWELL: Right, there --
7 there may be very, very few from the Town in that --
8 in that category so.

9 THE HONOURABLE FRANK MARROCCO: And
10 some may be, obviously, privileged. There may not be
11 a dispute about it.

12 MR. WILLIAM MCDOWELL: No, I think
13 that's right.

14 THE HONOURABLE FRANK MARROCCO: Okay,
15 thank you.

16 So that takes us back then to the --
17 there are some funding issues. Mr. O'Connor...?

18 MR. DAVID O'CONNOR: Do you want me to
19 go first? I thought Mr. Marron had his application
20 first. I think he'll be shorter, Your Honour. I'm in
21 your --

22 THE HONOURABLE FRANK MARROCCO: Mr.
23 Marron...?

24 MR. GEORGE MARRON: Well, I'm prepared
25 to address Your Honour. I'll be very short.

1 Yes, I'm prepared to address, Your
2 Honour, and I've had the benefit of looking at an
3 excellent brief that's been prepared by Mr. McDowell
4 and I received it over the weekend and I corresponded
5 by email last evening with Commission Counsel and with
6 Mr. McDowell and indicated that I was going to
7 discontinue my request for a summons for --

8 THE HONOURABLE FRANK MARROCCO: Thank
9 you, I did see the email. Thank you very much for
10 telling us that.

11 MR. GEORGE MARRON: The application
12 was founded on the reasons that were provided in
13 writing by Mr. Amin back in August the 28th and there
14 were certain areas that raised concerns on my part.
15 They were identified in some subsequent emails which
16 were filed on the application.

17 And as a result of discussions I've
18 had, I'm prepared to basically abandon the application
19 at this point in time, but perhaps on notice that I'll
20 be returning.

21 I -- I set out what I considered to be
22 a bit of an inadequate funding given the indication of
23 the time of hearing and, of course, we are still in
24 the difficult position of assessing the number of
25 documents that are going to be coming down the -- on

1 us. But it's a considerable thing.

2 So I -- I think that this is the point
3 in time to defer this, to go forward on the funding as
4 it presently is, and approach this matter later down
5 for any further recommendation that I may wish to
6 obtain or request of Your -- of Your Honour.

7 THE HONOURABLE FRANK MARROCCO: I
8 appreciate that. I think that's a prudent thing to
9 do.

10 I should say, Mr. McDowell, for the
11 benefit of your client, that for -- from my
12 perspective the Mayor, or former mayor, it is -- is in
13 a -- it presents a policy question because the person
14 has the office and they become embroiled in something
15 that arises out of when they were in the office and
16 occupied the office.

17 It -- it seems to me that whoever the
18 mayor is needs to know that the Council will stand
19 behind them, at least absent some finding of
20 impropriety, and there's been, obviously, nothing of
21 that nature here.

22 Secondly, so -- so it seemed to me that
23 accepting the funding -- I think you've come to this
24 conclusion. It seemed to me that accepting the
25 funding that was offered would be without prejudice to

1 the right to go back.

2 Account for the funds received and I --
3 and then explain why it isn't adequate and it -- it
4 shouldn't be held against the Mayor that council
5 accepted the first funding.

6 It's kind of with the understanding
7 that they may be back. And it's without prejudice if
8 they come back, but of course, in the end, it's up to
9 the Town to decide what it's going to do.

10 And it seems to me like both of you
11 have kind of come to that. And I would be -- if -- if
12 an assessment -- if it became necessary to assess the
13 account for the -- to -- that deals with the -- the --
14 the first amount of money, I'd be prepared to nominate
15 someone to assess the account so that we could do that
16 expeditiously to everybody's satisfaction, rather than
17 trying to force you to go back through the assessment
18 process or some -- some form -- formal -- some process
19 that might not be as timely.

20 MR. GEORGE MARRON: I appreciate your
21 remarks on that and, as you know, I -- there was in
22 the correspondence an offer for me to do exactly that,
23 submit accounts in a timely basis.

24 So I appreciate your remarks and we'll
25 go forward.

1 THE HONOURABLE FRANK MARROCCO: Mr.
2 McDowell, anything about that?

3 MR. WILLIAM MCDOWELL: Well, in the
4 authorities I --

5 THE HONOURABLE FRANK MARROCCO: I read
6 the memo.

7 MR. WILLIAM MCDOWELL: Right. And I -
8 - I've set out -- it's not covered in the memo, but in
9 the authorities, in particular the Cunningham
10 Commission -- I'll just look at this quickly, which is
11 the Mississauga one.

12 So if you turn up Tab 16, though I'll
13 probably touch on this again with Mr. O'Connor, but
14 essentially in -- in Mississauga Peter McCallion was
15 at the centre of those proceedings, and the
16 Commissioner recommended that he receive funding, he
17 received funding; that funding was exhausted and then
18 there was a comeback to the Commissioner.

19 And I've got a -- a few others, the
20 Walkerton Inquiries at, I think, the previous tab so.

21 THE HONOURABLE FRANK MARROCCO: I
22 think Mr. Trudell (phonetic) in that Inquiry was in a
23 similar position.

24 MR. WILLIAM MCDOWELL: That's right,
25 that he found that he needed a junior, so there was a

1 return to the commission.

2 So I echo what you've said, that I
3 think in all of these things it's an iterative thing
4 that, you know, funding is never appropriately
5 regarded as being carved in stone at the outset,
6 because you don't how long things are going to go and
7 how complex they are and so on.

8 So I have -- I have advised the Town in
9 accordance with that reality.

10 THE HONOURABLE FRANK MARROCCO: All
11 right. I -- I think we're all on the same page, then.

12 Mr. O'Connor, I guess that's just --
13 that leaves you then, and Mr. Bonwick.

14 MR. DAVID O'CONNOR: Yes. Thank you,
15 Your Honour.

16 I don't know quite where to start.
17 I've -- I've asked or I expected that Mr. Amin would
18 be made available to give evidence, and that's an
19 issue that arises at the outset.

20 In terms of the evidence that he -- he
21 would give, to begin with, unlike Mr. Marron I -- I
22 didn't produce any documents to -- to support my
23 motion, based on the fact that I'm here pro bono on
24 behalf of my client. He's got no money, and I -- I
25 felt that there was no need to since Mr. Amin would be

1 here and produce the documents, the emails back and
2 forth from him and I, and the email in particular
3 where he indicated that the Town would not provide my
4 client with any funding whatsoever.

5 I've got a client, Your Honour, that
6 has been subjected to all kinds of ridicule, personal
7 affronts, people watching him at his doorstep and so
8 on as a result of the bad publicity that has arisen as
9 far back as five (5) years ago, and more recently in -
10 - in the spring when the CBC produced a document that
11 the police had had.

12 As a result of that his reputation has
13 suffered, his business has been devastated and so on.
14 He's under a police investigation and now he's one (1)
15 of the prime subjects of your Inquiry and -- and --
16 and yet, as a result of the -- all the material I
17 produced to the Town, and as a result of your
18 recommendation, they appear to have ignored it and
19 have indicated to my client that they're not funding
20 him whatsoever.

21 And I think that that's totally unfair.
22 I don't know if, Your Honour, I've got -- I can read
23 you the emails that I -- I sent Mr. Amin, the CAO of
24 the Town.

25 But it started more recently, I think,

1 in terms of time with a back-and-forth I had with Mr.
2 McDowell.

3 And I -- quite frankly, Your Honour, I
4 -- I have a big problem with this Inquiry, in the
5 sense that I -- I'm beginning to wonder who's running
6 it, whether it's you or Mr. McDowell. This -- this
7 Inquiry is supposed to be fundamentally fair and --
8 and I expected and I know that your -- Your Honour
9 would want it to be that way.

10 But Mr. McDowell has provided an
11 imbalance in the Inquiry that is just nothing but fair
12 in the sense that how can my client, who has no funds
13 whatsoever, compete or -- or -- or be present in a --
14 a real sense of any kind at this Inquiry without any
15 funding and availability of -- of counsel. He's not
16 going to be able to participate as a result of that.
17 And that -- as a result of the advice that Mr.
18 McDowell has been giving the CAO, Mr. Amin of this
19 Town.

20 Mr. -- Mr. McDowell was responsible for
21 prompting this Inquiry. He was asked by the former
22 CAO to give advice to the Town, and the Council, in
23 terms of whether one (1) was needed. He gave that
24 advice. He came here and provided in-camera advice to
25 the councillors of the time about whether they should

1 have it as a result of that, the -- after the in-
2 camera meeting they came out with a resolution that
3 prompted this Inquiry. And it was as a result of the
4 advice that he gave them.

5 And then he -- he becomes to -- to be
6 the counsel for the Inquiry. And not only that, but
7 he also is counsel for the Town. And as -- as counsel
8 for the Town, he is giving advice to Mr. Amin, the
9 CAO, about who should get funding.

10 I indicated to him that I thought that
11 it was a conflict involved in -- in all of the hats
12 that he wore. He didn't seem to think so, but to me
13 it's a logical conflict, even if it's not a
14 figuratively a legal conflict, it certainly appears to
15 be.

16 And here's a -- here's a person who
17 gave the -- the -- the Town advice to have an Inquiry
18 where my -- my client is one (1) of the prime
19 suspects, if you want to put it that way, with respect
20 to the -- the -- the different transactions that were
21 involved that Your Honour's going to be inquiring
22 about.

23 And my -- my friend Ms. Lieper is going
24 to -- is investigating it, and it was on -- on his
25 advice where my client is one (1) of the persons most

1 likely involved in these transactions. The -- the --
2 the person who gave the advice to investigate this is
3 the same person who turns around and -- and says,
4 well, the people that we're investigating the -- in
5 particular one (1) of the main ones, we're not going
6 to give him any money. And I -- I just think that
7 there's a -- some kind of a conflict there, apparent
8 one if not a -- a real one. And I have a problem with
9 that.

10 And so without Mr. Amin here I'm left
11 with -- reading your -- Your Honour his response to my
12 request for funding on your recommendation, and it --
13 it comes with no meaningful reasons for -- for not --
14 not providing with funding.

15 We had a back-and-forth through emails
16 about what information he required and -- and every --
17 everything he asked for was given to him. He didn't
18 ask for anything more. And at the end of the day he
19 said, basically, that we're not providing funding and
20 I don't think that all of the information that I need
21 to make a decision is -- is available.

22 And we -- we had a conversation after,
23 I said what are you talking about? He said, well, Mr.
24 Bonwick came in to see me about other issues that he -
25 - where he was acting for people and he named a couple

1 of them; one (1) was the Monocle development in
2 downtown Collingwood that he was involved in. And I
3 said, well, that -- that's nice that you mention that
4 because as a result of the bad publicity that he's
5 gotten, the partners that he had in Monocle told him
6 that they didn't want to have anything further to do
7 with him and that they were going to buy him out, and
8 in fact, they did for a dollar a share. That's --
9 that's what this -- this whole thing has done to my
10 client. That's an example.

11 And on the other example that was
12 raised, that he came and speaking on behalf of the
13 people that he was being -- acting as a consultant for
14 at the airport, I advised him yes, he's -- he's
15 working for them and he -- I think the amount that
16 he's being paid at the present time is twenty-five
17 hundred (\$2,500) a month.

18 And I said that's reflected in his tax
19 returns, that you've got and -- and his tax returns
20 say it all. The tax returns indicate the amount of
21 money that he made last year, and that's it. And --
22 and to say that -- that all of the information that he
23 -- he requires is not available, using those two (2)
24 examples, is an insult to my client.

25 What -- what he's alleging is that my

1 client is making an income somewhere that isn't
2 reflected in the material that he was provided. And I
3 asked him to -- I suggested to him that he owed my
4 client an apology for making that kind of an
5 allegation.

6 And so it was on that basis that my
7 client was refused funding and, in my respectful
8 submission, it was on the basis of the advice that My
9 Friend here was giving him, and who caused the Inquiry
10 or at least was instrumental in causing the Inquiry to
11 begin with in the first place.

12 And so, as a result of the Inquiry
13 being called, my client has been put to certain
14 expenses. He's got no money to continue further and
15 he won't be able to participate.

16 And I'm here to ask Your Honour to
17 recommend to the Town that they reconsider the
18 position that they've taken with respect to my client.
19 And it's as simple as that.

20 THE HONOURABLE FRANK MARROCCO: Mr.
21 McDowell...?

22 First of all, as -- you need not
23 respond to the suggestion that -- it's not about the
24 suggestion that there are conflicts and so on. I'm --
25 I'm interested in the funding issue.

1 MR. WILLIAM MCDOWELL: I wondered if I
2 needed my own counsel there for a second.

3 But on the funding issue, we have not
4 put the correspondence before you, Commissioner,
5 because we have treated that as being confidential, as
6 we've treated the financial information received as
7 confidential.

8 The decision which was made is a
9 decision of Mr. Amin. It's not my decision. I have
10 given advice, as I have in another aspects of the
11 matter, but it's not my decision.

12 This isn't a judicial review of --

13 THE HONOURABLE FRANK MARROCCO: I
14 don't have the jurisdiction to review it. The
15 divisional Court maybe does, but I don't.

16 MR. WILLIAM MCDOWELL: Right. So let
17 me suggest a way through this, and I thought this was
18 in the authorities, and I see that it -- it's an
19 additional decision from the Mississauga Inquiry.

20 So as I said, ultimately, Mr. McCallion
21 received funding, and there's a ruling on the initial
22 funding which is not before you, but it's March 10th,
23 2010, and you can find it at MississaugaInquiry.ca and
24 under the legal documents.

25 But there was a dispute as to the means

1 of Mr. McCallion to -- to participate without funding,
2 but Associate Chief Justice Cunningham said:

3 "The financial information presently
4 put forward by Peter McCallion is of
5 little assistance to me, and I agree
6 with the City submissions.

7 I propose that Peter McCallion swear
8 an affidavit with respect to his
9 financial circumstances; that this
10 affidavit be provided to the
11 Commission. It will not form part
12 of the record. It would then be the
13 responsibility of Commission Counsel
14 to fully cross-examine Mr. McCallion
15 on his affidavit. [and then he said]
16 I will make a further
17 recommendation."

18 And that's what happened.

19 So, I think the way through this logjam
20 is to do that, to get an affidavit under oath, exactly
21 as to what assets are available to Mr. Bonwick, what
22 his income is, attaching the documents and then have
23 Ms. Lieper examine him on that information on an
24 expedited basis.

25 You make a recommendation, I can assure

1 you that that recommendation will be taken seriously.
2 But this is a discretionary decision of the Town. The
3 Town council has delegated that to Mr. Amin. Mr. Amin
4 made a decision. It seems to me that that's the only
5 practical way forward.

6 THE HONOURABLE FRANK MARROCCO: Does
7 that seem like a practical way forward to you, Mr.
8 O'Connor?

9 MR. DAVID O'CONNOR: Not at all, Your
10 Honour, it's an insult to my client.

11 No one else that was recommended by you
12 to have funding had to swear an affidavit under oath,
13 and it's -- and be cross-examined on it. It's like
14 they're saying at the very outset of this Inquiry that
15 my client might be a liar.

16 THE HONOURABLE FRANK MARROCCO: It's
17 something that they did in the Mississauga Inquiry.

18 MR. DAVID O'CONNOR: I don't care
19 where they did it. Why -- why -- why won't the --
20 other --

21 THE HONOURABLE FRANK MARROCCO: Well,
22 I mean --

23 MR. DAVID O'CONNOR: -- why don't the
24 other -- why don't the other --

25 THE HONOURABLE FRANK MARROCCO: Now,

1 just a minute.

2 MR. DAVID O'CONNOR: Excuse me, Your
3 Honour.

4 THE HONOURABLE FRANK MARROCCO: It's
5 something that was done in another inquiry where there
6 was an impasse over funding.

7 I don't see why it means that there is
8 some special target on Mr. Bonwick. It's just a --
9 following the precedent that was set in an earlier
10 inquiry for trying to resolve a logjam.

11 MR. DAVID O'CONNOR: Well, I might
12 have another way out of it that I suggest, Your
13 Honour, and I made this offer to Mr. Amin and I -- I
14 wrote this. I -- after he refused the funding on
15 October 14th I sent him an email and I said:

16 "Thank you for your email of October
17 10th. My client and I were very
18 disappointed, to say the least, in
19 your decision not to grant any
20 funding to Mr. Bonwick in order to
21 allow -- to allow him to participate
22 at the inquiry. As a result of your
23 decision, I can advise you that my
24 client will not be participating.
25 Immediately after receiving your

1 decision, I called your office in an
2 attempt to set up a meeting between
3 you, my client and I. Your
4 voicemail indicated you would be out
5 of the office until October the
6 25th."

7 He made the decision and then -- and
8 then I wasn't able to get him immediately afterwards,
9 until October 25th, which is last Thursday.

10 "Your voice message -- I will make
11 my client -- I will make my client
12 available at your convenience in
13 order for you to question him about
14 the state of his finances and
15 confirm that he has no available
16 funds to retain a lawyer to
17 represent him at the Inquiry. I
18 have no doubt that he will be able
19 to satisfy you in that regard.
20 Justice Marrocco recommended funding
21 provided that Mr. -- provided that
22 Bonwick give you details of the
23 assets and liabilities of this
24 company. This has been done. In
25 addition, you required his 200 --

1 2017 personal income tax returns, as
2 well as those of his companies,
3 Compenso and Greenleaf. These were
4 given to you. Terminating his
5 recommendations for funding, Justice
6 Marrocco considered, among other
7 factors, an inability to participate
8 in the Inquiry without funding for
9 representation. He went on to add
10 that the Town should establish
11 compensation for counsel for the
12 purposes of this Inquiry, which
13 should include reasonable time for
14 preparation by counsel, as well as
15 for attendance at hearings. It is
16 my position that you gave little or
17 no consideration to Justice
18 Marrocco's recommendation for
19 funding, nor his further comments.
20 I do not understand the meaning of
21 your words when you say quotes 'I
22 have been unable to determine just
23 what Mr. Bonwick's present financial
24 circumstances are based upon -- they
25 are based upon the information

1 provided it to me.' end of quote.
2 I've given you all the information
3 you requested, and all the
4 information he has with respect to
5 this present financial situation.
6 It clearly shows he has no available
7 funds with which to retain counsel
8 to represent him at the Inquiry. It
9 is not, quotes 'limited financial
10 information' as you suggest in your
11 email. Mr. Bonwick has no other
12 income from quotes 'important
13 positions he has occupied in
14 relation to substantial business
15 enterprises operating in Collingwood
16 or elsewhere.' Any income he has
17 made in the years 2015 through to
18 2017 is reflected in his tax returns
19 provided to you for those years. To
20 suggest otherwise, as you have, is
21 an insult to my client and you owe
22 him an apology. The report you
23 wrote to counsel dated April 30th,
24 2018 concerning the financial cost
25 for the Inquiry said at page 6,

1 under the heading 'Counsel For Other
2 Parties, quotes, 'The Commissioner
3 cannot order the Town to provide
4 funding. However, in order to
5 ensure that all parties, staff and
6 Council members are treated in a
7 fair and unbiased manner, the Town
8 should consider funding these
9 costs.' [end of quotes] Based on
10 your very weak rejection of my
11 client's request for funding, I
12 suggest that to date you have not
13 followed your own advice. I am
14 requesting that you reconsider your
15 decision and I am prepared to meet
16 with you at your earliest
17 convenience with my client, who I
18 know will be able to answer any of
19 your concerns with respect to his
20 present financial position. And
21 I've alerted Commission Counsel in
22 the event that the Town continues to
23 refuse to fund my client and I will
24 be bringing a motion before Justice
25 Marrocco on October 29th. I will

1 wait to hear from you."

2 I -- he took off immediately after
3 refusing my client, wasn't able to contact him until
4 Thursday. I phoned him on Thursday and asked him if I
5 could bring my client in, my client would be available
6 on Friday. And I thought if I could work something
7 out with Mr. Amin, and -- and he had the chance to
8 speak to my client, that I wouldn't need to be here.

9 And so he refused to see me or my
10 client. And here we are.

11 But the suggestion I make, counter to
12 My Friend's suggestion is just -- what's the problem
13 of bringing my client in. He's given him all his tax
14 returns and ever -- everything he needed. If he
15 thinks that he's making further income somewhere else,
16 perhaps he can ask my client that face-to-face, rather
17 than have him go under oath and be cross-examined and
18 -- and put in a position, like that's humiliating.
19 He's been humiliated enough already, Your Honour.

20 THE HONOURABLE FRANK MARROCCO: I'll -
21 - I'll consider what everybody said and I'll issue a
22 written ruling in the next little while.

23 MR. WILLIAM MCDOWELL: Can I just make
24 one (1) observation, and that is that a number of
25 other people seeking funding did, in fact, provide

1 affidavits.

2 So there's nothing novel in that. So
3 you have my position.

4 THE HONOURABLE FRANK MARROCCO: Thank
5 you.

6 MR. DAVID O'CONNOR: And I -- I did --
7 I did too, Your Honour, provided you an affidavit
8 under oath about -- about his financial circumstances
9 and he -- as everybody else, they had to. And -- and
10 nobody was cross-examined on that and...

11 THE HONOURABLE FRANK MARROCCO: Well,
12 I'll -- I'll deal with it. I'll reflect on what
13 you've said and I'll deal with it in short order.

14 So, I think, you know, part of the
15 reason that I wanted to do this this way was so that
16 the community would have some sense of the status of
17 this matter, and it just seemed to me that it was
18 difficult, because while I knew that all of us work --
19 or all of you were communicating with Inquiry counsel
20 in an effort to kind of bring this around, it -- it
21 just seemed to me that it wasn't clear, publicly,
22 exactly the efforts that everybody was making.

23 So I will hold -- I will hold you to
24 the time frames that we've discussed and -- and I -- I
25 will schedule -- if -- if those time frames are met

1 and if the PST files provided you do your searches and
2 Counsel will do theirs, then it may not be necessary
3 for us to meet again for a while, but if not, then
4 sometime toward the end of November we'll be doing
5 this again to -- to try to demonstrate that we're
6 attempting to bring this home within a reasonable
7 period of time, because that controls the expense, and
8 there's not much point in conducting an Inquiry into
9 matters that -- when people can't remember why they
10 called the inquiry in the first place.

11 So we we do have some obligation to
12 proceed with dispatch. I recognize the magnitude of
13 it more now than a month or month and a half ago
14 because we're into it now.

15 But -- but we will meet again if we can
16 -- and if -- if for some reason the time frames that
17 we've talked about have not been -- have not been met.

18 As far as the funding issue goes, I'll
19 issue -- I'll issue reasons. In the end, I -- I don't
20 -- I can't compel funding. I can only express an
21 opinion or a recommendation and I will -- I will do
22 that.

23 In terms of the non -- the failure to
24 produce in a timely way documents and so on, I can
25 draw a negative inference if it comes to that. I

1 don't really want to do that, but I can and that
2 carries with it the reputational implications that it
3 does. So hopefully everybody sees the need to deal
4 with this administrative part of it within a
5 reasonable period of time.

6 And I want to finally not leave this, I
7 want to thank all of you for the cooperation to date,
8 notwithstanding even the disagreements, but at least
9 everyone's dealing with this in a timely way, and I
10 thank you all for that. We're adjourned.

11

12 --- Upon adjourning at 2:00 p.m.

13

14

15 Certified Correct,

16

17

18 _____

19 Sean Coleman, Mr.

20

21

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