



Transparency and the Public Trust

Report of the Collingwood Judicial Inquiry

VOLUME II

Associate Chief Justice Frank N. Marrocco

COMMISSIONER

VOLUME I

Executive Summary and Recommendations

VOLUME II

Part One – Inside the Collus Share Sale

VOLUME III

**Part Two – The Arena and the Pool:
The Real Cost of Sole Sourcing**

VOLUME IV

Recommendations and Inquiry Process



November 2, 2020

His Worship Mayor Brian Saunderson and Members of Town Council
Collingwood City Hall
97 Hurontario Street
Collingwood, ON L9Y 3Z5

Dear Mr. Mayor and Councillors:

With this letter I deliver my report on the Town of Collingwood Judicial Inquiry.

Yours very truly,

A handwritten signature in blue ink that reads "Frank Marrocco".

Associate Chief Justice Frank N. Marrocco,
Commissioner.

Encl.

Transparency and the Public Trust

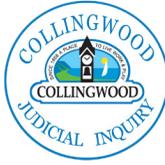
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This Report consists of four volumes:

- I *Executive Summary and Recommendations*
- II *Part One – Inside the Collus Share Sale*
- III *Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing*
- IV *Recommendations and Inquiry Process*

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ISBN 978-1-7774318-5-3 (Print) (set)

ISBN 978-1-7774318-9-1 (Print) (v.2)

ISBN 978-1-7774318-0-8 (PDF) (set)

ISBN 978-1-7774318-2-2 (PDF) (v.2)

This report is available at www.collingwoodinquiry.ca.

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VOLUME III

**Part Two – The Arena and the Pool:
The Real Cost of Sole Sourcing**

VOLUME IV

Recommendations and Inquiry Process

Acknowledgements

I owe an enormous debt of gratitude to many people who helped with the Inquiry's proceedings. When I began to compile the list of those people, I realized just how many had made significant contributions. Perhaps the best way to describe the contribution is to touch on a few key facts about the nature of the task:

- more than 440,000 documents collected;
- more than 18,000 pages of transcript created, reviewed, and analyzed;
- 61 days of evidence presented by 57 witnesses; and
- 306 resulting recommendations.

It is not easy to describe the time, energy, and effort required to turn all that information into a report that genuinely addresses the Inquiry's Terms of Reference. I want to formally recognize those most deeply involved in the hearings and the preparation of this Report. First, let me mention my counsel. Lead Counsel Kate McGrann was fundamental to leading the Inquiry team and assisting me in pulling all the information into a meaningful Report. Ms. McGrann had responsibility for the preparation of Inquiry witnesses and, in addition, led evidence before the Inquiry from approximately half the Inquiry's 57 witnesses. Ms. McGrann's competence, civility, and attention to detail set an example that was a credit to the Inquiry and a credit to herself. Without Ms. McGrann's leadership, the Inquiry would not have proceeded as smoothly as it did.

Ms. McGrann took over from Janet Leiper, who was lead counsel with the Inquiry from its inception until her appointment to the Superior Court of Justice on March 8, 2019. Justice Leiper's work in shaping and directing the initial investigation made a lasting contribution to this Inquiry.

Ms. McGrann could not have carried out our ambitious project without help. She had assistance from Associate Counsel John Mather, staff lawyer Max Libman, and Ronda Bessner, our senior legal analyst.

Mr. Mather took responsibility for approximately one-half of the witnesses heard in Part One and Part Two. This work involved not only the in-depth preparation of the witnesses but also a review of the extensive documentation that was important for those witnesses. In addition, Mr. Mather collaborated with Ms. McGrann concerning the many difficult administrative issues that arose during the course of the Inquiry.

Mr. Libman was essential to our ability to understand and to present coherently the evidence we heard. In addition, Mr. Libman also assumed significant responsibility not only for the preparation of the expert witnesses in Part Three but also for moderating Part Three expert panels.

Ms. Bessner, who has extensive experience with public inquiries, has worked on the Walkerton Inquiry, the Ipperwash Inquiry, and the Royal Commission on the Blood System in Canada, among others. In 2017, Ms. Bessner and her co-author Susan Lightstone wrote *Public Inquiries in Canada: Law and Practice* (Thomson Reuters Canada), an all-encompassing guide. Ms. Bessner, as she has for so many inquiries before mine, made a significant contribution to the policy work of the Inquiry. The individual and collective efforts of these team members were invaluable. All of them performed their duties with great skill, professionalism, and, importantly, the balance that is essential in a public inquiry. I wish to express my thanks to all of them.

I also want to acknowledge our Inquiry document management consultant, Kearren Bailey, who created the extensive document methodology used to manage more than 440,000 documents.

Also, I wish to acknowledge the considerable assistance of staff lawyer Simon Gooding-Townsend, who was with the Inquiry from August 2018 to October 31, 2019. The Inquiry was also supported and assisted by Rebecca Dervaitis Loch. Ms. Dervaitis Loch was with the Inquiry from April 2019 until completing her assignment in September 2019. Finally, I wish to acknowledge counsel to the Inquiry Kiersten Thoreson, who assisted the Inquiry from June 5 until November 30, 2018, when she completed her secondment from the Ontario Securities Commission.

Our ability to function transparently was directly related to the skills of our director of communications, Peter Rehak, who has performed this function for many of the significant inquiries that have taken place over the past 20-plus years. The purpose of the Inquiry was greatly enhanced through media coverage, and Mr. Rehak was invaluable in facilitating media involvement. He also managed the Inquiry's website, which was created and maintained by Djordje Sredojevic of Autcon.

Rogers broadcast and webcast the Inquiry's hearings at no cost, which enabled the public to view our proceedings in real time. I would like to acknowledge Paula Hodgson, who supervised the webcast and ensured that our hearings were streamed smoothly. Roger Robinson of CHS Productions managed the audio for the Inquiry's proceedings and ensured that they were clear and audible for those in the hearing room and those watching from home.

I could not have produced an Inquiry report in an appropriate form without the assistance of our professional and dedicated editors, Dan Liebman, Mary McDougall Maude, and Rosemary Shipton (Shipton, McDougall Maude Associates) and our talented designer, Linda Gustafson (Counterpunch Inc.).

Finally, the Report's value rests on its accuracy. For that, I would like to recognize our junior legal analysts, Amanda Byrd, Adam Voorberg, and Youssef Kodszy, for their diligence and attention to detail.

The Inquiry staff provided invaluable assistance. I wish to acknowledge our executive director Shelley Fuhre, who served with the Inquiry from its inception. Ms. Fuhre worked long hours under significant pressure and effortlessly provided all the administrative support necessary for the efficient functioning of the Inquiry.

I want to thank my registrar, Dawn Stewart (Atchison & Denman Court Reporting Services Ltd.), for the assistance she provided to me personally and to Inquiry witnesses. Ms. Stewart made sure the parties and witnesses felt as comfortable as possible throughout the hearings. I would also like to acknowledge our court reporter, Sue Kranz (Digi-Tran Inc.), for the timely daily delivery of transcripts.

I want to thank the municipal staff, information technology staff, and cleaning staff who the Town of Collingwood made available to us. I am

grateful to them for their professionalism, their unfailing politeness, and their timely response to our requests. I also wish to acknowledge and thank the Treasurer of the Town of Collingwood. Throughout the Inquiry, the treasurer lent us her office, which was next to the Council chamber. I can readily appreciate the inconvenience that caused her.

In planning the Inquiry, I spoke to former commissioners the Hon. Dennis O'Connor and the Hon. Denise Bellamy. Their advice greatly assisted me, and I thank them for it.

My recommendations were informed to a significant degree by the expert advice and commentary from the Hon. David Wake, the Hon. Denise Bellamy, John Fleming, Anna Kinastowski, Greg Levine, Valerie Jepson, Rick O'Connor, Mary Ellen Bench, Wendy Walberg, Marian MacDonald, Michael Pacholok, Suzanne Craig, Linda Gehrke, Robert Marleau, and former Town of Collingwood chief administrative officer Fareed Amin.

Last, but by no means least, on behalf of all the members of my team, I extend appreciation to the citizens of Collingwood and neighbouring Blue Mountain. Their friendly hospitality provided us with what came to feel like a home away from home.

Part One – Inside the Collus Share Sale

“I don’t know what is going on with COLLUS & PowerStream but it should not be something done behind closed doors. Selling off all or part of our utility is not [something] to be done lightly. It was never mentioned during the campaign and if not handled responsibly will be a very divisive local issue.”

– Email from former Mayor Ron Emo to Mayor Sandra Cooper, September 26, 2011

Collingwood in 2010: New Council and a New Chief Administrative Officer

Part One of the Inquiry examined the sale of 50 percent of the shares of Collingwood Utility Services Corporation – the holding company that wholly owned the Town of Collingwood’s electric utility, Collus Power Inc. Power-Stream Incorporated, a large utility that serviced nine municipalities, including Barrie, Markham, and Vaughan, purchased the shares. Collus Power was one of the Town’s largest assets.

The story of the share sale is complex. This chapter introduces the Town, its Council, key individuals and their relationships, and relevant laws, procedures, and practices that are discussed throughout the Report. Understanding the share sale begins with understanding these elements.

Snapshot of Collingwood

The Town of Collingwood was incorporated on January 1, 1858. Once an active shipping and grain storage hub, the local economy began to see a shift away from industry and toward tourism at the end of the 20th century. As Collingwood’s economy reoriented to recreational activities, the Town saw a 33.8 percent rise in population between 1991 and 2011 (to 19,241), close to the average increase in Ontario during the same period.

Roles and Responsibilities of Council and Staff

A nine-person elected Council governs Collingwood, with elections held every four years. The Council term with which this Inquiry is concerned spanned the period 2010–14. The roles and responsibilities of Collingwood’s

Council, councillors, and staff at this time were governed by a combination of provincial legislation, Town bylaws, and Town policies. In addition, the rulings and reports of two recent municipal judicial inquiries were available to assist them in understanding the appropriate roles of Council and staff.

PROVINCIAL LEGISLATION

The *Municipal Conflict of Interest Act* was a significant statute that applied to the Council. This *Act* required municipal councillors with “pecuniary” (financial) interests in a matter before Council to disclose their interest, recuse themselves from discussions or votes, and refrain from attempting to influence votes on the issue before, during, or after the meeting. If the Council was considering a matter in which any councillors had a financial interest during a meeting closed to the public, they were required to leave the room for that portion of the meeting. The *Act* deemed the financial interests of a councillor’s parent, spouse, or child – but not those of a sibling – to be the financial interests of the councillor.

Councillors could face both actual and apparent conflicts beyond the narrow definition of pecuniary interest provided for in the *Municipal Conflict of Interest Act*. I explore this issue later in the Report.

Collingwood Council was also subject to the Ontario *Municipal Act, 2001*, which provided municipalities with the ability to pass bylaws and to govern within their jurisdiction. This *Act* delineated roles and responsibilities for certain Council and staff positions and laid out transparency, accountability, and financial administration requirements for all Ontario municipalities. It also mandated that the Council as a whole was responsible for developing municipal policies and services and for maintaining the financial integrity of the municipality.

The “head of council” – the mayor – was the only member of the municipal Council with a legislatively prescribed role. The *Municipal Act, 2001*, required this person to act as the chief executive officer (CEO) of the municipality, preside over Council meetings, and provide leadership to Council. Despite these powers, the *Act* did not give the mayor the authority to act unilaterally on behalf of the municipality.

The wording in the *Municipal Act, 2001*, describing the mayor as the CEO of the municipality is unfortunate. The mayor does not have executive

powers akin to the CEO of a corporation. The problems presented by this imprecise language became obvious in the events before this Inquiry.

Under the *Municipal Act, 2001*, the chief administrative officer (CAO) was the senior administrator responsible for both municipal services and the staff. Although the *Act* referenced the CAO position and allowed municipalities to delegate powers to this person, it did not offer guidance on the roles and responsibilities that come with the job.

The clerk was the other municipal staff position explicitly addressed in the *Municipal Act, 2001*. Under this legislation, the clerk was responsible for recording the Council's decisions and resolutions, documenting the votes of individual councillors during recorded votes, and keeping copies of council bylaws and meeting minutes.

The 2010 version of the *Municipal Act, 2001*, permitted – but did not require – municipalities to establish a Code of Conduct for Council members and to appoint an integrity commissioner. The *Act* empowered integrity commissioners to reprimand or suspend the compensation of councillors who violated the Code of Conduct. This authority remains the same under the current version of the *Municipal Act*.

Between 2010 and April 2013, the Town of Collingwood did not have either a Code of Conduct for Council members or an integrity commissioner. It did, however, have a Code of Ethics, and in 2013 it converted its Code of Ethics into a Code of Conduct.

There are two crucial differences between these codes. First, councillors are automatically bound by the Code of Conduct, created as it was by a municipal bylaw, but they voluntarily chose to abide by the Code of Ethics when they signed the document. Second, a violation of the Collingwood Code of Ethics could not result in punitive action, whereas a breach of a Code of Conduct could result in a formal reprimand or suspension of a councillor's pay.

PREVIOUS MUNICIPAL PUBLIC INQUIRIES

Alongside provincial legislation, the rulings and reports of two recent public inquiries on municipal governance were also available to Collingwood's 2010–14 Council. These reports further elaborated on the appropriate roles and responsibilities of municipal councillors and staff.

The Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry

In 2005, the Honourable Denise Bellamy, then a member of the Ontario Superior Court of Justice, published her recommendations in *the Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report*. The report contained several helpful findings and recommendations, which were available to members of the Collingwood Council:

- Council's role is the setting of policy. Staff's purpose is to provide Council with neutral, professional advice on the objective merits of policy options and to implement resolutions made by Council. It is important that the differences between these roles are respected and that staff and Council refrain from infringing on each other's roles. Staff members should not act in a manner that unduly influences the policy choices Council has made. At the same time, councillors should not interfere with the staff's work in a manner that compromises or politicizes the impartial recommendations staff are meant to be providing to Council.
- The relationship between Council and staff is to be one of civility and trust. Councillors should be polite to staff and respectful of staff's work. In contrast, staff earn Council's trust by providing information that is fair, accurate, thorough, informative, timely, and understandable. The key to preserving this civility and trust is to ensure that councillors and staff are aware of their distinct roles and responsibilities. Staff members also have a responsibility to be civil among themselves and not berate, disparage, or ridicule each other.
- As the public face of the municipality, the mayor sets the ethical standard by which Council will operate. The mayor establishes this standard not only by governing ethically but also by hiring senior staff with reliable and ethical track records. The mayor must use her position to prevent individual councillors from disrupting proper municipal processes.
- The city manager or chief administrative officer is the leader of municipal staff, and Council should unequivocally provide the CAO with the responsibility of managing the administration of the municipality. A failure to do so undermines the CAO's effectiveness. The mayor is the political head of the municipality, and the CAO is the administrative head. Both individuals must respect each other's spheres of authority. A detailed

hierarchy of authority should be created that explicitly delineates the roles of the CAO, the mayor, and Council.

- Two forms of conflict of interest can emerge in the context of municipal governance: real conflicts of interest and apparent conflicts of interest. A real conflict of interest exists “when an individual’s independent judgment is swayed or might be swayed from making decisions in the organization’s best interests.” An apparent conflict of interest can arise when “an outside observer could reasonably conclude that an individual’s judgment is or might be swayed from making decisions in the organization’s best interests.”
- Councillors must take steps to avoid real and apparent conflicts of interest, although some real conflicts of interest will be unavoidable. When subject to a conflict of interest, the affected councillors must disclose their interest and abstain from voting or otherwise participating on matters related to the conflict.
- Public perception that a councillor or a staff member is subject to an apparent conflict of interest can erode confidence in a municipal government. Accordingly, councillors subject to an apparent conflict of interest must fully disclose their circumstances to the public, along with an explanation of how proper ethical guidelines were followed.
- Councillors and staff should avoid providing or appearing to provide preferential treatment to close friends and family. They should not conduct municipal business or encourage the municipality to contract with individuals with whom they have a close relationship.
- Councillors should not divulge confidential information to those not entitled to it or use confidential information to benefit a third party. Leaks of confidential information erode public trust in municipal governance and dissuade private businesses from working with municipalities.

(*Volume 2: Good Government*, pp 27–28, 38–43, 65–66, 70, 72, 75)

The Mississauga Judicial Inquiry

The Mississauga Inquiry also yielded helpful findings that were available to the 2010–14 Collingwood Council. During those hearings in June 2010, the Honourable Douglas Cunningham delivered a critical ruling concerning conflicts of interest. In his decision, he provided an overview of conflict of interest case law and stated:

[M]embers of a municipal council must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility. Suffice it to say that members of Council (and staff) are not to use their office to promote private interests, whether their own or those of relatives or friends. They must be unbiased in the exercise of their duties. That is not only the common law, but the common-sense standard by which the conduct of municipal representatives ought to be judged. (Mississauga Inquiry, *Updating the Ethical Infrastructure: Report*, Appendix J, p 9.)

The Honourable Mr. Cunningham published the final report of the Mississauga Inquiry on October 3, 2011. It too contained this decision on conflicts of interest (p. 380) and recommended, among other things, that municipal councillors refrain from meeting to discuss municipal business in informal settings.

INTERNAL COLLINGWOOD POLICY DOCUMENTS AND MEETING PROCEDURES

The Town of Collingwood introduced a Code of Ethics for councillors in 2006. It included provisions regarding the roles of councillors, confidential information, treatment of staff, gifts received by councillors, use of Town property, and transparency. The preamble stated that councillors were to carry out their duties in a “fair, impartial, transparent and professional manner.” Among other things, the code confirmed that all signatory councillors understood that “conflicts between the private interests of elected representatives and their public responsibilities represent an ethical challenge to maintaining an open, accountable and transparent process.”

The Collingwood Code of Ethics required councillors to adhere to “both the letter and spirit” of the *Municipal Conflict of Interest Act*. Leo Longo, a solicitor with whom the Town of Collingwood consulted during the relevant time, testified that he interpreted this provision to mean that councillors should not read the *Act*’s wording so narrowly that they exempted themselves from obligations under it when the spirit or desired outcomes of the *Act* required otherwise.

With regard to relationships between Council and staff, the code required councillors to acknowledge that only Council as a whole had the capacity to direct staff. It stated that councillors must refrain from using their position to improperly influence the work of staff members to gain an advantage for themselves or others and must not criticize staff members publicly. The code also noted that councillors might be privy to confidential information while carrying out their duties, and it prohibited them from using that information for their personal advantage or to the detriment of others.

All members of the 2010–14 Collingwood Council signed the Code of Ethics on December 6, 2010. In addition, they signed a Declaration of Office promising to truly, faithfully, and impartially exercise their office, not to receive payment related to the exercise of their office, and to disclose pecuniary interests in accordance with the *Municipal Conflict of Interest Act*.

COUNCIL MEETINGS

During the 2010–14 term, Council met on Mondays. The meetings were generally held in public, except for the discussion of certain private, or *in camera*, matters that were closed to the public and the press.

The clerk's office prepared and circulated an agenda, which was usually delivered on the Thursday evening before the meeting. The Town's CAO and the department heads reviewed the agenda before it was distributed to ensure it included items requiring Council's review and direction at that particular meeting. The agendas were also posted online and were available at Town Hall for the public to see.

As a general matter, each item on the agenda was accompanied by a staff report prepared by staff within the relevant department or departments. Staff reports contained background information, analysis, and recommended resolutions to assist Council in its deliberations and decision making. Council members could also discuss and vote on matters that were not the subject of a staff report by providing advance notice that a particular matter would be considered or decided.

Generally, a Collingwood Council vote passed with 50 percent Council support. Some matters, such as the rescinding or reconsideration of a previous Council resolution, required support from two-thirds of Council. Voting typically proceeded by show of hands, with the clerk recording only the

overall result of the vote, not individual votes by each councillor. However, any councillor could request a recorded vote, where each member's vote was recorded in the minutes.

The *Municipal Act, 2001*, contained a list of confidential or sensitive matters that Council could discuss *in camera*, including matters involving municipal property, personnel, and legal advice. It required all other issues to be discussed publicly. The *Act* permitted Council to vote *in camera* only on procedural matters or on the provision of directions to staff. All other Council votes had to be made in public.

When asked during the hearings of this Inquiry to provide examples of the limited matters that could be voted on by Council during *in camera* sessions, Sara Almas, clerk for the Town of Collingwood, testified that permitted procedural matters might include votes to receive the minutes of previous meetings or votes on a point of privilege, while the provision of directions to staff might include votes to direct staff to investigate a sensitive or confidential matter and report back to Council. Ms. Almas's general understanding of the difference between public votes and *in camera* votes was that no direction or decision to materially advance the business of the Town could be made *in camera*.

As clerk, Ms. Almas was responsible for taking minutes at all Council meetings, including during *in camera* sessions.

The Collingwood Council, 2010

On October 25, 2010, the Town of Collingwood elected a Council led by Mayor Sandra Cooper and Deputy Mayor Rick Lloyd. The other seven Council members were Town residents from a variety of backgrounds: Ian Chadwick, a journalist and former small business owner; Sandy Cunningham, a former fire chief; Dale West, a local radio host and president of a minor league hockey association; Mike Edwards, a retired industrial quality assurance manager; Kevin Lloyd, a small business owner with experience in the advertising and marketing industry; and Keith Hull and Joe Gardhouse, both real estate agents.

THE NEW MAYOR, SANDRA COOPER

Mayor Cooper led the 2010–14 Council. Her roots in the Town of Collingwood ran deep. Her father, Jack Bonwick, was a prominent member of the Collingwood business community as well as a former councillor. Her brother, Paul Bonwick, had served as a councillor and, from 1997 to 2004, as the elected Liberal member of Parliament for the riding of Simcoe-Grey, which included Collingwood.

Ms. Cooper had first been elected to Council in 1997. She became deputy mayor in 2003 and held that position until her election as mayor in 2010. Before municipal politics, she worked part time in retail and volunteered in the community.

THE DEPUTY MAYOR, RICK LLOYD

Mr. Lloyd was the most experienced member of the 2010–14 Collingwood Council. Before becoming deputy mayor in 2010, he had served as a councillor for a total of 20 years over several Council terms in the 1990s and 2000s.

During the 2010–14 term, Mr. Lloyd was also chair of the Town's Finance and Public Works committees. He testified that as the chair of the Public Works Committee, he served as a conduit between Council and the executive director of public works and engineering and also assisted the department with its budget and operations. As chair of the Finance Committee, he led committee discussions with regard to budgets, reviewed the budgets of all Town departments with Collingwood's treasurer, and attended meetings with the Town auditor.

At this time, Mr. Lloyd was the only member of the Public Works Committee. In contrast, all eight of the other members of Council sat on the Finance Committee. None of these roles gave Mr. Lloyd any additional formal powers concerning policy making or directing staff.

During his time as deputy mayor, Mr. Lloyd employed a specific governance style that he referred to in his testimony as "micromanaging." Mr. Lloyd's micromanaging commonly manifested in three ways. First, after Council directed staff on a given matter, he often followed up with the staff members responsible to make sure the Council's direction was progressing satisfactorily. Second, when Town residents alerted him to issues such as potholes or Town snowploughs blocking personal driveways, he

either rectified the issue himself or called appropriate Town staff members to ensure that remedying the problem became a priority. He said he did not feel that providing direct assistance to residents circumvented good municipal practice. Third, he sent internal Council communications to local businesses whose interests were affected by the contents. In disclosing these communications, Mr. Lloyd thought he was fulfilling one of his roles as councillor – to help local businesses succeed. He testified that he provided such assistance to individual residents who requested it and to those he felt required it.

Mr. Lloyd took a similarly “hands-on” approach to his role as chair of the Public Works Committee and the Finance Committee. He testified that staff from the Public Works and the Finance departments often asked him about a variety of topics, and he provided them with “opinions” on how to resolve these matters. He felt it was appropriate to give this advice without bringing the matters back to Council for consideration. Mr. Lloyd told the Inquiry he never received any complaints from the Town clerk, the mayor, or Human Resources about his conduct.

Collingwood Staff

THE CHIEF ADMINISTRATIVE OFFICER, KIM WINGROVE

In September 2009, Collingwood hired a new CAO, Kim Wingrove, to replace Gord Norris, who had served as a Collingwood public servant for 30 years, the last four as CAO. Ms. Wingrove was an experienced public servant with the Ontario provincial government. Immediately before arriving in Collingwood, she had served as the director of regional economic development with the Ministry of Municipal Affairs and Housing.

Before Collingwood, Ms. Wingrove had never worked for a municipality. When she was hired, Ms. Wingrove was told that the Town was seeking somebody with a broad skill set who could help advance local economic development. She welcomed the challenge. She was also excited to have a position that allowed her to live in one location with her family, unlike her work with the provincial government which required a lot of travel. Unfortunately, Ms. Wingrove’s integration into the fabric of the Town of Collingwood was more difficult than anticipated, as I discuss later in the Report.

She had particular difficulty with the 2010–14 Council, which was elected a year after she became CAO.

MS. WINGROVE'S RELATIONSHIP WITH COUNCIL

Ms. Wingrove found her time working as Collingwood's CAO to be challenging. She testified that Council and some of the staff did not respect her office; moreover, most of the councillors sought assistance from long-time senior staff members for initiatives and functions that were more appropriately dealt with by the CAO. She also stated that Council had little regard for due process and was not interested in discussing and deliberating important Town matters with her. Instead, they viewed her as somebody who was "there to do Council's bidding."

In her testimony, Ms. Wingrove said that Council's reaction to her professional advice was unpredictable: sometimes it was well received, and at other times it was unwelcome. She could never predict which response she would get. She further testified that some councillors regularly criticized her, making it difficult for her to function effectively as CAO.

MS. WINGROVE'S RELATIONSHIP WITH MAYOR COOPER

Ms. Wingrove testified that her relationship with Ms. Cooper was awkward, without the spirit of trust and collaboration that marks a functional mayor-CAO rapport. Instead of speaking with her about initiatives related to the Town, Ms. Cooper often consulted Ed Houghton, the executive director of public works and engineering. Ms. Wingrove stated that Ms. Cooper would only bring these initiatives to her when it came time to follow up on them or implement them. Ms. Wingrove noted that there was nothing inherently inappropriate about this approach except for instances in which she questioned the underlying rationale behind a decision. Ms. Wingrove explained that the information Ms. Cooper provided in response was "often very thin."

In her testimony, Ms. Cooper took the position that she had an open and informal relationship with Ms. Wingrove. She did not recall Ms. Wingrove ever raising concerns that she was being bypassed or disrespected by Council. She did, however, acknowledge that she felt more comfortable reaching out to Mr. Houghton rather than Ms. Wingrove on certain matters.

Mr. Houghton had worked for the Town for many years, she said, and the issues she discussed with him were under his purview. In addition to his director role with the Town, he was also the president and CEO of both the Town's water utility and its electric utility, Collus Power.

Ms. Cooper also noted that Ms. Wingrove, throughout her tenure as CAO, had difficulties communicating openly with Council and delegating work in a manner that would allow initiatives such as budget planning to proceed quickly. Ms. Cooper testified she told Ms. Wingrove in both informal conversations and at an April 1, 2011, formal performance review meeting that she needed to improve her working relationship with Council. However, there is no evidence that Ms. Cooper provided any practical advice or assistance to Ms. Wingrove on how to address these communication issues. Ms. Cooper admitted she didn't know what Ms. Wingrove could have done to change the fact that members of Council felt more comfortable consulting with longer-serving Town department heads with whom they were more familiar.

Although Ms. Cooper prepared a written evaluation following the April 1 performance review meeting, Ms. Wingrove never received it. Ms. Cooper testified she sent the document to one of the human resource staff members, but she did not know whether Ms. Wingrove ever saw it. She acknowledged that Ms. Wingrove could not have benefited from a performance review document without having reviewed it.

When asked at the Inquiry whether she experienced "emotional challenges" or "awkward moments" in her dealings with Ms. Wingrove, Ms. Cooper responded in the affirmative. Although pressed to elaborate on her reactions, she did not provide any specific detail other than to say that Ms. Wingrove displayed emotional frailty.

MS. WINGROVE'S RELATIONSHIP WITH DEPUTY MAYOR LLOYD

Ms. Wingrove testified she also encountered professional difficulties with Mr. Lloyd. She said he spoke to her only when he felt it was necessary, and their conversations were usually restricted to his telling her what action the Town should take on a given matter. Ms. Wingrove also stated she was chastised several times by both Mr. Lloyd and Ms. Cooper for speaking with members of the public who had an interest in issues that might come before

Council. As a public servant, she felt it was her duty to engage with stakeholders as one way to ensure that the staff reports put before Council contained sufficient detail. She testified that, during these reprimands, Mr. Lloyd and Ms. Cooper indicated that engaging with the public in this way undermined Council's authority. Ms. Wingrove said she found this criticism confusing because it often followed discussions she had with residents on matters that had not yet come before Council.

In her testimony, Ms. Wingrove also noted she was uncomfortable in Mr. Lloyd's presence because she had seen him act unkindly toward others. This sentiment was echoed by Ms. Almas, who stated that Mr. Lloyd intimidated and bullied Ms. Wingrove in instances where she disagreed with Council's approach to a matter or failed to give priority to an issue that interested Council.

For his part, Mr. Lloyd testified he had concerns about Ms. Wingrove's ability to fulfill the role of CAO successfully. He indicated that Ms. Wingrove did not have any municipal governance experience and did not fully understand Collingwood's municipal procedures. He also noted she was very "emotional." When asked to be specific about her improper conduct, Mr. Lloyd testified that Ms. Wingrove usurped Ms. Cooper's role as Council's public spokesperson and occasionally infringed on Ms. Almas's responsibility by providing direction on the wording of municipal bylaws.

With regard to his conduct toward Ms. Wingrove, Mr. Lloyd stated he treated all Town staff members in the same manner because he was extremely busy; he was "direct" with staff so he could fulfill his responsibilities. He acknowledged having a discussion with Ms. Wingrove in which he told her it was inappropriate for her to speak to members of the public about matters before Council. In his view, these discussions did not constitute a reprimand. He denied bullying Ms. Wingrove, stating that, although he could be demanding of staff, his encounters with them were always respectful.

Ms. Wingrove testified she also had difficulty in creating a functional professional relationship with Mr. Houghton in all his multiple roles in the Town of Collingwood. I address this issue later in the chapter.

THE TOWN CLERK, SARA ALMAS

Ms. Almas was appointed as clerk for the Town of Collingwood in 2007 and remained in that position throughout this Inquiry. In 2010–12, she carried out the responsibilities of a clerk as legislatively required by the *Municipal Act, 2001*, and also had a number of other duties, including managing business and lottery licensing; maintaining vital statistics; ensuring bylaw enforcement; managing parking control, crossing guards, and records; executing Town communications; and overseeing freedom of information and protection of privacy legislation.

THE MAN WITH MYRIAD ROLES, ED HOUGHTON

Mr. Houghton is a third-generation resident of Collingwood. At the time of the 2010 election, he was already well known as the long-standing leader of the Town's electric and water utilities as well as the Town's executive director of public works and engineering. He joined Collingwood's combined water, wastewater, and electricity public utility service board in 1978 and slowly rose through the ranks. In 2000, Collingwood's electric utility was separated from its water utility and became an Ontario business corporation, Collus Power Corporation (see Part One, Chapter 2).

When Collingwood's electric utility was incorporated, Mr. Houghton assumed the position of president and CEO of both Collus Power and its holding company, Collingwood Utility Services Corporation. Around this time, he also became president and CEO of the Collingwood Public Utilities Service Board (CPUSB), which provided water and wastewater services to the Town. In addition to overseeing the Town's utilities, Mr. Houghton served as the Town's executive director of public works and engineering from 2000 until 2013. In this position, he was responsible for the Town's roads, wastewater, and engineering portfolios.

Mr. Houghton was the only department head with an "executive director" title. Others were typically called "director." On his résumé, he listed his role with the Town as "Executive Director of the Town of Collingwood." This position was not identified on the Town's organizational chart. Eventually, he was appointed acting CAO of Collingwood, following the sudden termination of Ms. Wingrove's tenure in April 2012 (see Part One, Chapter 9). Mr. Houghton was generally well regarded by his colleagues and employees,

as well as within the broader Ontario electricity industry. Ms. Cooper testified he was the most influential of the Town's department heads – one of the facts that placed him at the centre of the events that constitute the focus of this Inquiry.

Mr. Houghton's multiple roles with the Town and the Town's electric and water utilities involved a complicated compensation structure (see Part One, Chapter 2). In short, because he fulfilled the role of president and CEO for both entities, Mr. Houghton's salary was paid for in part by Collus Power and in part by the CPUSB. He was not formally paid any wages by the Town for his work as Collingwood's executive director of public works and engineering. Rather, compensation for this work was included within the amount he received from his position with the water utility. Paying Mr. Houghton in this way was described by Tim Fryer, the chief financial officer of the Town's electric and water utilities, as an "in-kind service" or benefit provided by the water utility to the Town. The Inquiry received conflicting evidence as to whether Mr. Houghton's work for the Town was provided free of charge or whether the compensation he received from the water utility was an amount that reflected the value of Mr. Houghton's services to both the water utility and the Town.

As the president and CEO of the electric and water utilities, Mr. Houghton reported to the boards of directors of those corporations. As executive director of public works and engineering for the Town, he was also accountable to the head of municipal staff, the CAO. Mr. Houghton, however, did not see himself as an employee of the Town, despite his position there. In his testimony he stated: "I was never an employee of the Town of Collingwood. I was virtually a volunteer that was seconded."

MR. HOUGHTON'S RELATIONSHIP WITH MS. WINGROVE

Ms. Wingrove testified that, during her time as CAO of Collingwood, all the Town's staff departments reported to her except for Mr. Houghton – due to "unique circumstances." When asked to explain, she referenced a complicated "matrix sort of relationship" between Mr. Houghton's role as the Town's executive director of public works and engineering and his role as president and CEO of the Town's electric and water utilities. She said that the mayor previous to Ms. Cooper told her when she was first hired as CAO

that Mr. Houghton's work as executive director of public works and engineering was beyond the purview of the Town's CAO. Ms. Wingrove testified that Ms. Cooper repeated that instruction after the 2010 election.

In further testimony, Ms. Wingrove said that, under the leadership of Mr. Houghton, the Town's Department of Public Works and Engineering was subject to a "vener" of accountability because, similar to other Town departments, it too submitted staff reports to Council whenever it was seeking approval for public works initiatives and, in addition, one of its representatives attended department head meetings with the CAO. However, Ms. Wingrove also stated that Mr. Houghton was the only one of the Town's department heads who would not provide her with detailed briefings about his department's activities. She testified that she attempted to set meetings with him to clarify his reporting relationship with her, but he often aborted or rescheduled these appointments. Ms. Wingrove further noted that when she was able to meet with or speak to Mr. Houghton, he was not responsive to her desire for clarity in their working relationship.

Ms. Wingrove said that Mr. Houghton's independence from the CAO meant she was disconnected from initiatives undertaken by the Department of Public Works and Engineering – a core Town department. She also testified that this separation resulted in problems that could have been prevented if there had been a proper reporting relationship. Ms. Wingrove believed that, once these problems did arise, they were interpreted as reflecting negatively on her performance as CAO.

In his testimony, Mr. Houghton refuted the notion that he did not make himself available to meet with Ms. Wingrove. He did not address any of her statements about the Town's reporting structure as it applied to him other than to say that the balance of Ms. Wingrove's evidence on this point was "totally incorrect."

Mr. Houghton's executive assistant, Pam Hogg, who was responsible for setting Mr. Houghton's schedule between 2010 and 2012, testified that Mr. Houghton did not cancel any meetings with Ms. Wingrove. She said Ms. Wingrove and Mr. Houghton met between six and 10 times per year, and Ms. Wingrove never had any difficulty in arranging meetings with Mr. Houghton.

Brian MacDonald, who served as Collingwood's manager of engineering

services in 2011 and 2012, also testified on these points. He confirmed he attended six to 10 meetings where Mr. Houghton and Ms. Wingrove were also present. In his opinion, the interactions he witnessed between them were “businesslike,” and he was not aware of any tensions. He could not recall any instances in which Mr. Houghton cancelled a meeting with Ms. Wingrove, but he agreed that cancellations may have occurred. With regard to their reporting relationship, Mr. MacDonald said he understood that Mr. Houghton reported to Ms. Wingrove, but he did not have any knowledge of how this reporting took place. Mr. MacDonald did not refer to any instances where Ms. Wingrove was noticeably emotional.

Mr. Houghton’s closing submissions contested Ms. Wingrove’s evidence on his availability for meetings. Otherwise, they did not address whether Mr. Houghton appropriately respected the authority of Ms. Wingrove’s position. Mr. Houghton asserted that Ms. Wingrove’s evidence was not persuasive because she was emotionally unstable during her time as CAO and embittered by the Town’s eventual termination of her employment.

Given the senior positions held by both Ms. Wingrove and Mr. Houghton, I am satisfied they met at specific points to discuss their working relationship. I also accept that Ms. Wingrove would have preferred to have had more meetings with Mr. Houghton. She cared about the Town residents she served and legitimately wanted to make Collingwood a better place in which to live and do business. The only negative feeling Ms. Wingrove had about her termination was regret that she let down the residents of Collingwood and her staff. She was troubled by her inability to clarify her working relationship with Mr. Houghton. This distress was driven by a sense that the tensions in her relationship with Mr. Houghton had made it difficult for her to do her job and serve the people of Collingwood.

I accept Mr. MacDonald’s and Ms. Hogg’s evidence that they understood Mr. Houghton reported to Ms. Wingrove and that they did not personally observe any tensions between the two. However, Mr. MacDonald acknowledged he had no direct knowledge of the way Mr. Houghton reported to Ms. Wingrove. I am also satisfied there were interactions between Ms. Wingrove and Mr. Houghton which Mr. MacDonald and Ms. Hogg did not witness.

Mr. Houghton’s evidence disputing the notion that he did not respect Ms. Wingrove’s authority was limited: during his testimony, he made a

blanket statement that Ms. Wingrove's evidence was incorrect; and, in his closing submissions, he argued that Ms. Wingrove was upset about her termination and also emotionally unstable.

I do not accept Mr. Houghton's evidence that Ms. Wingrove was unfit to serve as CAO and that her evidence was not credible because she was too emotional. Ms. Wingrove presented herself in a thoughtful professional manner. The only emotion she showed was a genuine sense of regret and frustration that she was unable to find a way to work with Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton.

THE TOWN SOLICITOR, LEO LONGO

The Town of Collingwood did not have a lawyer on staff. Instead, after 1998, it relied on the Toronto-based law firm Aird & Berlis to provide legal advice and services to the municipality. Two Aird & Berlis partners, Leo Longo and John Mascarin, were available to assist the Town on an as-needed basis. They charged an hourly rate for their services. Mr. Mascarin provided general municipal law advice to the Town and drafted agreements and bylaws, while Mr. Longo dealt with land-use issues and assisted with smaller day-to-day legal matters. Mr. Longo testified that he usually took instructions from the Town's CAO, clerk, or director of planning. He occasionally received instructions from the Town's councillors, but he would inform the CAO or the clerk when that occurred.

Ron Clark, another lawyer at Aird & Berlis, was retained in 2011 to prepare the transaction documents for the share sale that is the subject of Part One of this Inquiry. The nature of this work, and how it related to the services Mr. Longo provided, are explored in Part One, Chapters 8 and 10, of this Report.

Paul Bonwick: Personal and Professional Relationships with Town Council and Staff

Paul Bonwick is a central figure in the events before this Inquiry. Like his sister, Mayor Sandra Cooper, Mr. Bonwick's roots in the community ran deep. In the 1990s, he owned a furniture business in Collingwood and, in 1992, served as a board member of the Collingwood Downtown Business Improvement

Association. In 1995, he was elected as a member of the Town Council. Two years later, he was elected as the Liberal member of Parliament for the riding of Simcoe-Grey. Mr. Bonwick lost his seat in the 2004 federal election and returned to Collingwood. Among other ventures, he founded Compenso Communications Inc., a communications and government relations firm. He also registered as a provincial lobbyist. Mr. Bonwick believed his relationships and experience in the Collingwood political arena and in provincial and federal politics helped him provide high-value services to his clients.

In the years 2010–14, Mr. Bonwick was an active member of Collingwood’s political and business community.

RELATIONSHIP WITH MAYOR COOPER

Mr. Bonwick described himself in his testimony as one of Ms. Cooper’s trusted political advisors. He wrote her inaugural address and provided guidance on various issues facing Council. Both Mr. Houghton and Mr. Lloyd knew he was counselling his sister. They testified that, in certain instances where they wanted Ms. Cooper to take a specific direction, they asked Mr. Bonwick to recommend that course to her.

During her testimony, Ms. Cooper sought to minimize her brother’s role as an advisor. She testified that Mr. Bonwick provided her with suggestions and advice, but stated in her closing submissions that she never took direction from him in relation to her role as mayor.

I am satisfied that Mr. Bonwick served as an advisor to Ms. Cooper. Given his experience both as an elected official and as a political consultant, I find that he understood the importance of fairness and transparency when serving in public office. He therefore would have been alive to the optics and implications flowing from his interactions with the Town of Collingwood Council, including his sister and staff representatives.

RELATIONSHIP WITH DEPUTY MAYOR LLOYD

Mr. Bonwick also had a professional and personal relationship with Rick Lloyd. As close family friends, they socialized together. Mr. Bonwick’s parents were godparents to Mr. Lloyd’s wife, and her parents were godparents to Mr. Bonwick. Mr. Lloyd’s father and Mr. Bonwick’s father also worked in management positions at the Collingwood shipyard.

In addition, Mr. Bonwick and Mr. Lloyd were former business associates. In 2008–9, Mr. Lloyd, who was not on Council at the time, agreed to manage a gravel pit controlled by Mr. Bonwick. In return, Mr. Bonwick agreed to use Mr. Lloyd’s construction company exclusively to haul gravel from the pit. The arrangement was informal. Mr. Lloyd received payment for hauling gravel, but he did not draw a salary for his management services.

After Mr. Lloyd was elected as deputy mayor, he continued to assist Mr. Bonwick with his business ventures. He generally kept him apprised when Council was dealing with matters related to Mr. Bonwick’s consulting clients, and, on request, provided him with Town information related to his clients. Together, on occasion, they sent letters to public entities in support of Mr. Bonwick’s clients: Mr. Bonwick drafted the letters, Mr. Lloyd reviewed them and signed them in his capacity as deputy mayor, then sent them to the relevant public offices.

Mr. Lloyd also provided Mr. Bonwick with internal Council correspondence. He generally sent Mr. Bonwick any internal Council information he felt was relevant to the interests of Mr. Bonwick’s clients. In one instance, he forwarded Mr. Bonwick an email involving Mr. Lloyd, Ms. Cooper, and Mr. Longo which related to an Ontario Municipal Board matter in which one of Mr. Bonwick’s clients was participating. In another, when a client was interested in purchasing a parcel of land, he sent Mr. Bonwick Council correspondence regarding an offer that the Town was making to purchase the adjoining piece of property. Mr. Lloyd felt that sharing this information with Mr. Bonwick was appropriate because it helped local businesses such as Mr. Bonwick’s consulting firm succeed and, at the same time, efficiently resolved matters before Council. He did not consult with Council before forwarding this correspondence to Mr. Bonwick.

Mr. Lloyd did not appear to be concerned that Mr. Bonwick’s relationship with Ms. Cooper rendered his interactions with Mr. Bonwick problematic. When asked at the Inquiry whether, in providing commercial assistance to Mr. Bonwick, he was conferring a benefit on the mayor’s brother, he responded that the *Municipal Conflict of Interest Act* does not include the interest of a sibling as a conflict of interest. He insisted he treated Mr. Bonwick in the same way he treated other Town residents or businesses that asked for his assistance. He testified that although he didn’t see anything

wrong with this behaviour at the time, he now understands it might have been cause for concern if the public had discovered he was sending Council information to third parties.

The Collingwood Code of Ethics required councillors to convey information concerning Council's adopted policies, procedures, and decisions openly and accurately. The code also explicitly required councillors to respect the status of confidential information and not use it to benefit others.

RELATIONSHIP WITH MR. HOUGHTON

Paul Bonwick also had a personal and professional relationship with Ed Houghton. Both Mr. Houghton and Mr. Bonwick testified that they were friends. Mr. Houghton and Mr. Bonwick also had interwoven family histories: Mr. Bonwick's father had employed many members of the Houghton family at one point or another.

Mr. Houghton and Mr. Bonwick worked together both formally and informally on several active and prospective business ventures. Mr. Bonwick acted as a consultant for Collingwood's ethanol plant, Amaizeingly Green Products (AGP), which was experiencing financial difficulties. He helped the company secure government funding and negotiated with the company's creditors. Meanwhile, as president and CEO of the Town's electrical utility, Mr. Houghton had an interest in ensuring that one of the utility's larger consumers did not go out of business. Mr. Bonwick helped Mr. Houghton organize meetings between Town representatives and government officials who might be able to provide AGP with grant funding. He also drafted briefing notes that Mr. Houghton used to seek public funding for AGP. Finally, Mr. Houghton consulted with Mr. Bonwick for advice on matters concerning the Town's relationship with AGP, including tax collection and responding to resident complaints about layoffs at the company.

Mr. Bonwick also owned a company called Gemba Environmental Services Ltd. In June 2011, he sent Mr. Houghton a draft proposal to have Gemba inspect the Town's fuel tanks. The proposal was addressed to Mr. Houghton in his position as executive director of public works and engineering for the Town, and before he returned it, Mr. Houghton made some minor edits. Mr. Bonwick also passed information about Gemba to Marcus Firman,

the manager of water and wastewater services at the Town's water utility, indicating that the company could be of assistance with the utility's water tanks. Mr. Firman went on to hire Gemba to inspect the tanks and also forwarded this information to some of the Town's staff members, who also hired Gemba.

Mr. Lloyd, too, was involved in promoting Gemba. Although he may not have played a role in Gemba securing a contract from the Town itself, he sent an email to the Town's procurement manager and Mr. Houghton in January 2012 indicating that both Collus Power and the water utility had already hired Gemba and it would make sense to have the Town hire Gemba as well. Mr. Lloyd confirmed in his testimony that he discussed Gemba with Mr. Houghton and suggested the Town hire Gemba for consistency reasons. He insisted he did not know that Mr. Bonwick owned Gemba.

Mr. Bonwick and Mr. Houghton also consulted each other on potential future business opportunities. In 2010, they began discussing opportunities in the electricity industry, which I explore in Part One, Chapter 3 of the Report.

Commencement of the 2010–14 Council Term

COUNCIL'S AUSTERITY PLATFORM

Mayor Cooper and Deputy Mayor Lloyd campaigned on platforms of cutting expenditures and reducing Town debt, although, before they took office, neither raised the sale of all or part of Collus Power as a way to achieve this goal. In any event, after the election of the 2010–14 Council, it soon became apparent that the new Council felt it had a mandate to reduce spending, decrease debt, and lower taxes. In her inaugural speech, drafted mainly by Mr. Bonwick, Ms. Cooper stated she would initiate a review of Town spending. Mr. Bonwick actively advised and encouraged Ms. Cooper's efforts to reduce spending.

Shortly after her inauguration in December 2010, Ms. Cooper met with department heads and challenged them to find methods of reducing costs. On Mr. Bonwick's advice, she repeated the challenge at budget meetings in January 2011. Mr. Bonwick then provided her with policy suggestions in advance of Council's budget meeting in March 2011, as well as draft remarks that, she testified, she "more or less" used at the meeting.

One of Council's primary targets for cost reduction was fees paid to lawyers and other outside consultants. In her inaugural address, Ms. Cooper specifically identified legal fees as an expense to be reduced.

COUNCIL ORIENTATION AND TRAINING

The 2010–14 Council received two orientation sessions at the beginning of its term. Both of these sessions prepared the mayor, deputy mayor, and councillors for their respective responsibilities at the Town of Collingwood. The first, on November 25 and 26, 2010, was a general orientation session led by CAO Kim Wingrove. The second, on January 6 and 7, 2011, was held at Collingwood Town Hall. During this session, Ms. Wingrove made a presentation on the municipality's corporate structure, strategic plan, and Code of Ethics and explained the role of the CAO.

The January orientation also featured a presentation from Clerk Sara Almas on the services provided by the Town clerk. The Ministry of Municipal Affairs and Housing also gave one on the appropriate roles of Council and staff and the relationships between them. Finally, John Mascarin and Leo Longo of Aird & Berlis made slide presentations on the basics of municipal law, defamation, and the *Municipal Conflict of Interest Act*.

The presentation by Mr. Longo on the *Municipal Conflict of Interest Act* provided councillors with an overview of the legislation. He noted that the financial interests of a councillor's sibling, unlike those of a parent, spouse, or child, were not deemed by the legislation to belong to a councillor. He also defined conflicts of interest in general terms: "A situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or a professional." Mr. Longo indicated that a conflict of interest under the *Municipal Conflict of Interest Act* was "not nearly as broad as the general public likely thinks it is." If councillors were unsure whether they were subject to a conflict of interest, he cautioned they should seek independent legal advice from their own lawyer. Aird & Berlis could not provide such advice to individual councillors because the firm had been retained to represent Council as a whole. If it advised both Council and an individual councillor on the same matter, the firm would be put into a conflict of interest.

Mr. Longo testified he was not aware that councillors received any

additional conflict of interest training beyond the *Municipal Conflict of Interest Act*. He noted, however, that they had sworn their Declaration of Office only one month before the January 2011 orientation sessions. Their duty to faithfully and impartially exercise their office, disclose pecuniary interests in accordance with the *Act*, and not receive payment related to their office would have been fresh in their minds regardless of whether conflict of interest was directly addressed at the orientation.

Although Mr. Longo did not recall discussing the treatment of confidential information with Council during the orientation, he believed it would have been addressed at some point because it was a standard feature of most Council orientation sessions in which he had participated during his career. Moreover, on the first day of the January session, Ms. Wingrove made a presentation on the Code of Ethics, and the code included a provision prohibiting councillors from using confidential information for their personal advantage or to the detriment of others.

I find that the orientation sessions for the 2010–14 Council conveyed to councillors not only that they needed to abide by the requirements of the *Municipal Conflict of Interest Act* but also that they must be sensitive to any situation in which their private interests or the private interests of close friends and relatives might compromise their ability to execute their office impartially. The orientation sessions were also sufficient to convey to councillors that they should seek legal advice if they thought they might be subject to a conflict of interest.

During his presentation, for example, Mr. Longo provided an in-depth overview of the *Municipal Conflict of Interest Act* as well as a broad, general definition of what constitutes a conflict of interest. The day before Mr. Longo's presentation, Ms. Wingrove presented the Code of Ethics to Council. The code required councillors to carry out their duties in a "fair, impartial and transparent" manner and noted that "conflicts between the private interests of elected representatives and their public responsibilities represent an ethical challenge to maintaining an open, accountable and transparent process." As stated above, the code also required councillors to abide by the "letter and spirit" of the *Municipal Conflict of Interest Act*.

I am satisfied that Ms. Wingrove's and Mr. Longo's presentations, as well as the wording of the Code of Ethics, conveyed to the 2010–14 Collingwood

Council the need to avoid or disclose conflict of interest situations beyond the circumstances contemplated by the *Municipal Conflict of Interest Act*.

In their closing submissions, both Mr. Houghton and Ms. Cooper took the position that Mr. Longo's training to Council on conflicts of interest was inadequate. In support of this argument, they cited Mr. Longo's failure to refer to the Honourable Mr. Cunningham's ruling on conflict of interest from the Mississauga Judicial Inquiry during his presentation on the *Municipal Conflict of Interest Act*. Mr. Houghton argued that Mr. Longo's failure to educate Council on the Cunningham decision contributed to the creation of this Inquiry. Ms. Cooper admitted in her closing submissions that, during the 2010–14 term, she had a “one-dimensional view” of conflicts of interest that was limited to the wording of the *Municipal Conflict of Interest Act* – one she attributed to Mr. Longo's failure to convey the Cunningham decision to Council and the fact that the Collingwood Code of Ethics restricted councillors' conflict of interest considerations to the provisions of the *Municipal Conflict of Interest Act*. Ms. Cooper appeared to contend that, had she known about the Cunningham decision, she would have approached the events under review by this Inquiry differently.

I do not accept Mr. Houghton's or Ms. Cooper's submissions in this regard. The spirit and principles of the Cunningham decision were adequately communicated to Council during their orientation session through Mr. Longo's presentation on the *Municipal Conflict of Interest Act* and Ms. Wingrove's presentation on the Council Code of Ethics. The 2010–14 Council should have understood the underlying principles of the Cunningham decision even if they did not have the decision itself.

I also cannot accept Ms. Cooper's argument that the Collingwood Code of Ethics restricted councillors' conflict of interest consideration to the provisions of the *Municipal Conflict of Interest Act*. The code's emphasis on the need for councillors to govern impartially and on the dangers of conflicts between the private interests of elected representatives and their public responsibilities, as well as its reference to the “spirit” of the *Municipal Conflict of Interest Act*, all indicated to the 2010–14 Council members that they were subject to conflict of interest obligations that extended beyond the specific wording of the *Act*.

I acknowledge Ms. Cooper's argument that the inability of individual

councillors to confer with Mr. Longo or other Aird & Berlis counsel on conflict of interest concerns placed those confronted by a conflict with a difficult choice between paying for their own expensive legal advice or dealing with the conflict on their own. This obstacle has since been remedied: in December 2013 the Town hired an integrity commissioner who can advise councillors on conflict issues.

Although the 2010–14 Council may not have had all the resources that today's Council has to identify and address conflict of interest concerns, I find that Ms. Cooper and Mr. Lloyd received sufficient information throughout their orientation to understand they might be subject to a conflict of interest in any situation in which their private interests or the private interests of individuals with whom they were close appeared to influence their ability to carry out their responsibilities as elected officials.

Ms. Cooper and Mr. Lloyd also received sufficient information during their orientation to know that, when unsure whether they were subject to a potential conflict, they should seek legal advice. I'm further satisfied they had enough information to appreciate that disclosure was an effective way of dealing with real and apparent conflicts.

Conclusion

By the beginning of 2011, Collingwood's Council and staff consisted of several people who had generational, interwoven relationships with each other and diverse leadership styles. Ms. Cooper led Council while consulting with her brother, Paul Bonwick, on policy matters. Mr. Lloyd and Mr. Houghton also had long-standing personal and business relationships with Mr. Bonwick. Meanwhile, Ms. Wingrove was a recent arrival to the Town who struggled to understand these complex relationships and gain the respect of senior Town politicians and public servants.

After receiving training and orientation in late 2010 / early 2011, Council and staff began searching for ways to respond to Ms. Cooper's call to reduce debt. This challenge also extended to Collus Power, one of the Town's most valuable assets.

Collus Power: A Valuable Town Asset

The Collus share sale was complex in large part because the distribution of electricity in Ontario is a highly regulated industry. Collus Power Corporation itself was also involved in complex, interwoven, and varying relationships with affiliated companies, the Town's water utility, as well as the Town itself. This chapter provides background on the structure of the Collus group of companies, key executives and officers, the relationship with the Town, and the role of the Ontario Energy Board (OEB) as a regulator. The chapter also looks at the environment for municipal electricity distributors in 2010. Although complicated, Collus Power's place within the Town and the electricity industry is central to the story of the share sale.

Ontario's electricity sector underwent a significant regulatory overhaul in the first decade of the 21st century. New legislation in 1998 changed power generation and distribution, which compelled the Town of Collingwood's electric utility to change its corporate structure. A further set of legislated requirements followed in 2009 and 2010. Struggles to meet these requirements and the impending loss of staff members and significant revenue sources created a sense among the electric utility's leadership that Collus Power Corporation would need to pursue new strategic directions to remain viable.

Collingwood, like most Ontario municipalities, owned its electric utility. If the Town wished to reduce debt and increase its fiscal efficiency, it would inevitably need to consider one of its most significant and valuable assets: its electric utility, Collus Power.

Electricity Distribution in Ontario

The Basics

Electricity is typically delivered to Ontario's households and businesses in three stages. First, electricity is generated using nuclear, hydro, wind, or solar power, or fossil fuels. Second, electricity is transmitted from generation sites to geographic areas where customers are located. Third, electricity is transferred from the transmission system to local networks of electricity lines that distribute electricity to individual customers at a suitable voltage. The poles and wires that distribute electricity to local customers are installed and maintained by electric utility companies, also known as local distribution companies (LDCs). This Inquiry is primarily concerned with this third distribution stage.

History of Electricity Distribution

For most of the 20th century, electricity in Ontario was generated and transmitted to local communities by a single company known as Hydro-Electric Power Corporation and then Ontario Hydro. Distribution to local customers was the responsibility of municipal electrical utilities, which were departments within municipal governments, with Ontario Hydro regulating the rates and terms of service. In the mid-1990s, there were 307 municipal electricity utilities in Ontario.

In 1998, the Ontario Government passed the *Energy Competition Act* and the *Electricity Act*. The *Energy Competition Act* created new entities to separate the generating and transmitting of electricity in Ontario: Ontario Power Generation became responsible for power generation, and Hydro One its transmission. The *Energy Competition Act* also required all municipal electrical utilities to become business corporations under the *Ontario Business Corporations Act (OBCA)*. These new corporations are referred to as local distribution companies.

At this time, many of the province's municipal utilities chose to merge or amalgamate with larger utilities rather than transform themselves into *OBCA* corporations. The *Energy Competition Act* temporarily lifted a 33 percent

transfer tax that applied to the sale of municipal utilities, which encouraged some municipalities to sell their utilities. Hydro One also absorbed 88 smaller utilities.

Other utilities merged when the municipalities controlling them merged into larger cities. Utilities created as a result of these municipal mergers included Toronto Hydro, Hamilton Hydro, and Hydro Ottawa. By 2010, there were fewer than 100 LDCs in Ontario. Most were either wholly owned by a single municipality or jointly owned by several municipalities. The diffused state of Ontario's electricity sector was unique in Canada; provinces such as Quebec, Manitoba, and British Columbia generally had a single, vertically integrated utility handling the vast majority of generation, transmission, and distribution in their respective provinces.

Regulation of Electricity in Ontario

The Ontario Energy Board (OEB) has regulated the province's electricity industry since 1998 in accordance with the *Electricity Act* and the *Ontario Energy Board Act*. The Ontario Energy Board has three categories of core functions: licensing distribution, setting electricity rates, and overseeing distribution. The licensing function is straightforward; the other two are more complicated. All LDCs must obtain a licence from the OEB before beginning operation. These licences specify the territory in which they have the exclusive right to distribute electricity.

Setting Electricity Rates

LDCs can only charge rates approved by the Ontario Energy Board. An LDC proposes the rates it wishes to charge, and the OEB determines whether these rates are appropriate. In determining whether a rate is appropriate for a given LDC, the Energy Board assesses whether the rate is fair and reasonable for both the consumer and the LDC, and whether the rate will allow the LDC to maintain effective customer service and operations while remaining financially viable.

When assessing LDC rates, the OEB uses a measurement known as the

“debt-to-equity ratio.” An LDC’s debt-to-equity ratio is calculated by dividing the LDC’s total liabilities by the shareholders’ equity in the utility. The ratio essentially indicates the proportions of equity and debt the company is using to finance its assets. Maintaining higher equity levels as compared to debt leaves an LDC with the capacity to acquire additional cash in the future by assuming more debt. Maintaining higher debt levels allows an LDC to have more cash on hand, but also increases risk, because of the increased financial obligations related to its loans.

As of 2010, the Ontario Energy Board determined appropriate rates for electric utilities on the assumption that all LDCs in Ontario maintained a capital structure of 60 percent debt and 40 percent equity. Using the same deemed ratio for every LDC helped ensure electricity rates were relatively consistent throughout Ontario.

Even though the Ontario Energy Board’s calculation of appropriate rates was based on the assumption that all electric utilities maintained 60/40 debt equity ratios, LDCs were permitted to maintain different capital structures unless the board determined that the structure entailed too much financial risk.

Oversight of Distributors, Affiliated Entities, and Mergers and Acquisitions

The Ontario Energy Board’s third primary function is to oversee electric utilities’ conduct and performance. Generally, the Energy Board accomplishes this by enforcing codes of conduct and publishing performance scorecards on its website so that consumers can compare the performance of their local LDC with others in the province.

One of the Ontario Energy Board’s main focuses is overseeing the relationships between LDCs and affiliated entities. These affiliated entities could include the municipality that owns the LDC, holding companies established by municipalities that in turn own the LDC, or external corporations that provide the LDC with services, such as billing. The *Affiliate Relationships Code for Electricity Distributors and Transmitters* (Affiliate Relationships Code) governs these relationships and one of its primary objectives is to prevent inappropriate cross-subsidization between an LDC and any entity

affiliated with it. The Code includes rules prohibiting LDCs from selling services to affiliated companies for below market value or purchasing services from such a company for above market value. All services that flow between LDCs and affiliated entities must be set out in Ontario Energy Board-approved service agreements. The Ontario Energy Board generally reviews service agreements once every four or five years at the time of the LDC's rate application. Although the agreements are generally considered from the perspective of how they may affect rates, the Energy Board can investigate compliance with the Affiliated Relationships Code if evidence suggests a violation.

The Affiliate Relationships Code also contains rules to ensure that LDCs do not force their ratepayers to use the services of an affiliate when there are other competitors on the marketplace offering the same service. The Code also prohibits LDCs from providing affiliates with customer information not publicly available.

As specified in the Code, one-third of the directors on an LDC board must be "independent" in that they are not also board members of any affiliated companies. The purpose of this policy is to avoid conflicts of interest and to ensure that a minimum number of directors of each electric utility are obligated exclusively to the best interests of the LDC.

Part of the Ontario Energy Board's oversight function also includes regulating instances in which there is a change in control of an LDC. LDCs must obtain approval before they sell or divest assets or amalgamate with another entity by filing an application to merge, acquire, amalgamate, or divest (MAADs application) with the Energy Board. Any company seeking to purchase more than 10 percent of the voting securities in an LDC must file a MAADs application

Generally, the Energy Board will approve a MAADs application where the parties can show that the transaction will not harm the new LDC's underlying cost structures, reliability, or quality of service, and not harm the cost effectiveness, economic efficiency, and financial viability of the electricity distribution sector. When evaluating a MAADs application, the Energy Board generally does not consider the purchase price of the transaction, the process by which the seller decided to sell its utility, or whether an alternative transaction would be more beneficial. The Energy Board examines these factors

only where there is concern that one might harm the LDC or its ratepayers. Most MAADs applications received by the Energy Board are approved.

Electricity Distribution in Collingwood

In the late 1990s, the Town of Collingwood's electric utility underwent structural changes similar to those experienced by other Ontario electricity providers. Before 2000, electricity and water services were provided to Collingwood residents by a single utilities commission, the Collingwood Public Utilities Commission. When the *Energy Competition Act* and *Electricity Act* were passed, the Town's electric utility was required by law to become an *OBCA* corporation.

In 1999, partners John Herhalt and Jonathan Erling from the consulting and accounting firm KPMG and Peter Budd of the law firm Power Budd made a presentation to the Collingwood Public Utilities Commission about converting the electric utility to an *OBCA* corporation. On March 27, 2000, the Town of Collingwood Council passed a bylaw approving the incorporation of several *OBCA* corporations to meet the requirements of the *Electricity Act*. Approximately three weeks later, four new affiliated corporations were created: Collingwood Utility Services Corporation, Collus Power Corporation, Collus Solutions Corporation, and Collus Energy Corporation, each controlled by its own board.* The boards' members included industry leaders, electric utility employees, and current and former Town councillors.

The New Family of Collus Corporations

Collingwood Utility Services Corporation

Many municipalities in Ontario established holding companies at this time to own and control their electric utility as well as any affiliated businesses. The Town of Collingwood took this approach and established Collingwood

* The Collingwood Public Utilities Commission continued to provide water services to the residents of Collingwood.

Utility Services Corporation as a holding company with the Town as the sole shareholder. Collingwood Utility Services then was the sole shareholder of three other companies: Collus Power Corporation, Collus Solutions Corporation, and Collus Energy Corporation. The holding company did not own any other assets.

Collingwood Utility Services was subject to a shareholder direction from the Town mandating that the board of the corporation consist of seven directors, two being members of Council and one of these two directors being the mayor or the mayor's delegate. Dean Muncaster, a person of extensive business experience, chaired the Collingwood Utility Services board. He spent the majority of his career at Canadian Tire Corporation, where he held the position of president and CEO from 1966 until his retirement in 1985. Mr. Muncaster had also held director positions at other large corporations, including Ontario Hydro and Bell Canada.

Joan Pajunen served as vice chair of the Collingwood Utility Services board as well as chair of the company's human resources committee. Mayor Cooper and Collingwood councillor Mike Edwards served as directors and Council representatives on the Collingwood Utility Services board. Doug Garbutt, a former Collingwood mayor and town councillor, was also a board member.

Collus Power Corporation

As of April 2000, Collus Power Corporation (Collus Power) was the licensed LDC that distributed electricity to residents and businesses within the Town of Collingwood. The shareholder direction required that a board of three directors, chosen from the seven directors of the holding company, manage each of the Collingwood Utility Services subsidiaries. The only exception to this rule was Collus Power. The Ontario Energy Board's Affiliate Relationships Code required that one-third of every LDC's directors be independent of any company affiliated with the LDC. One of the three Collus Power board members was thus required to be independent of Collingwood Utility Services or any affiliated entity.

Mr. Muncaster also served as the chair of the Collus Power board, while David McFadden was the board's independent director. Mr. McFadden was a leader in Ontario's energy sector, serving as the chair of the National

Energy and Infrastructure Industry Group for the law firm Gowling WLG. Mayor Sandra Cooper was the third director on the Collus Power board.

Collus Solutions Corporation

The other active company owned by Collingwood Utility Services was Collus Solutions Corporation. Before the passage of the *Energy Competition Act* and the *Electricity Act*, when Collingwood Public Utilities Commission provided the Town's electric and water services, some staff members performed work for both utilities. After Collus Power was created, all staff who provided services to both the Town's electric and water utilities were placed in a new corporation called Collus Solutions Corporation (Collus Solutions) and were paid by Collus Solutions. Collus Solutions did not operate to earn a profit. Its sole purpose was to pay employees who performed work for the Town's power and water utilities. It held only enough cash assets to pay these individuals' salaries, and otherwise operated on a "break even" basis. The money Collus Solutions used to pay the salaries was provided by both Collus Power and the Town's water utility under shared services agreements detailed below. Joan Pajunen was the chair of the Collus Solutions Board, with Doug Garbutt and Mike Edwards also serving as directors.

Collus Energy Corporation

The final corporation in the group was Collus Energy Corporation (Collus Energy), which was originally intended to be a marketing company but was inactive during the events examined by the Inquiry. Doug Garbutt chaired its board, with Mike Edwards and Dean Muncaster serving as directors.

Collus Corporations Staff

As mentioned in Part One, Chapter 1, Ed Houghton was president and chief executive officer (CEO) of Collus Power during the time examined by the Inquiry. He was also the president and CEO of Collingwood Utility Services, Collus Solutions, and Collus Energy. The chief financial officer (CFO) of the company, Tim Fryer, reported directly to Mr. Houghton. The rest of

the Town's electric utility employees reported to him through the director of operations and information technology services, Larry Irwin.

When Collingwood's electric utility incorporated in 2000, Mr. Fryer became the CFO of all the Collus corporations. He had worked for the Town's electric and water utilities since 1979 and was the utilities' primary financial professional. Mr. Fryer and Mr. Houghton joined Collingwood's utilities within a year of each other and worked together for 33 years. They had a good working relationship but no personal relationship.

Mr. Fryer retired from these positions on September 30, 2012, roughly two months after the completion of the Collus share sale. He was replaced as CFO by Cindy Shuttleworth. During 2011 and 2012, Pam Hogg worked as executive assistant to Mr. Houghton while also serving as the manager of human resources and board secretary for all of the Collus companies.

Collingwood Public Utilities Service Board

As discussed, before 2000 Collingwood's residents received both electric and water services from the Collingwood Public Utilities Commission. After the Town's electric utility was incorporated pursuant to the *Electricity Act*, the Town needed to decide how to structure its water utility services. According to the *Energy Competition Act*, OBCA corporations such as Collus Power could not assume water utility assets. This prohibition left the Town with a choice: keep the assets of its water utility within a utilities commission or transfer the assets directly to the Town.

After the incorporation of Collingwood's electric utility, the Town's water operations continued for four years as the Collingwood Public Utilities Commission. In 2004, changes to the *Municipal Act, 2001*, required the Town to convert its water utility commission to a municipal services board. The Town completed this conversion in February 2004 and changed the name of its water utility from the Collingwood Public Utilities Commission to the Collingwood Public Utilities Service Board (CPUSB). As a municipal services board, the CPUSB was a separate entity from the Town but remained a body corporate and agent of the municipality. Assets held by the CPUSB were legally held in trust for the Town.

Dean Muncaster was the chair of the CPUSB board, with Mayor Cooper and Doug Garbutt serving as directors. As with the Collus companies, Ed Houghton served as the president and CEO of CPUSB in 2010. Tim Fryer served as CFO. When Mr. Fryer resigned as CFO of the Collus corporations in September 2012, he also left his position with CPUSB. At that point, Cindy Shuttleworth also took over from Mr. Fryer as CFO of the CPUSB. The reporting structure within CPUSB was also the same as that within the Collus corporations. All staff of the Town's water utility staff, except the CFO, reported to Mr. Houghton through the director of operations and IT services, Mr. Irwin. The CFO reported directly to Mr. Houghton.

Every single executive and director of CPUSB also served as a board member or executive for either Collus Power or Collingwood Utility Services, both *OBCA* corporations that were legally distinct from the Town. This intermingling of leadership roles between the Town and its electric utility would be the subject of criticism by the Town's professional advisors in the years following the share sale transaction, as I discuss in Part One, Chapter 10. Although the CPUSB was legally an agent of the Town, there was a disparity in the evidence at the Inquiry as to the extent to which the Town controlled the actions of the water utility. Tim Fryer and Cindy Shuttleworth believed that the Town controlled the water utility. However, Clerk Sara Almas testified that the Collus companies in practice controlled the water utility. Similarly, Kim Wingrove testified that when the Town of Collingwood hired her as the chief administrative officer (CAO), Mayor Cooper and others at the Town told her that, even though the CAO was the head of the Town's administration and CPUSB was a body corporate of the Town, she was not to concern herself with the water utility.

Relationship Between the Town and the Collus Corporations

A shareholder direction, issued October 25, 2000, governed the relationship between the Town as shareholder and the Collus corporations as Town assets and set requirements for the internal governance of the corporations,

including membership on the board of directors. The direction identified the Town's objectives for its relationship with Collingwood Utility Services and Collus Power. The primary objective was that the Collingwood Utility Services Corporation's board of directors manage the corporation's affairs in a manner that:

- a) ensured the value of the corporation and its subsidiaries was maintained or increased;
- b) protected the Town's investment by developing a planning process and risk management strategies for Collus Power;
- c) provided the Town with its desired rate of return subject to Ontario Energy Board regulations;
- d) provided adequate reporting to the Town;
- e) established and maintained appropriate financial and capital structures for Collingwood Utility Services and all subsidiaries subject to Ontario Energy Board regulations; and
- f) provided energy services in an environmentally friendly manner.

The shareholder direction also required the directors and officers of all Collus corporations to ensure that no confidential information regarding the Town or any of the Collus companies was disclosed except when disclosure was required by law, was necessary for the performance of an obligation held by the Town or one of the Collus corporations, or was part of the public domain. The shareholder direction specified actions the Collus companies could not take without approval from the Town of Collingwood Council, including amalgamating, merging, consolidating, reorganizing, or selling any asset that was material to the operation of Collus Power. Council was to approve these actions by a resolution passed at a Council meeting after providing notice to Collingwood Utility Services, which in turn was required to supply Council with any information necessary to allow it to make an informed decision on the matter.

The direction also required Collingwood Utility Services to provide the Town with a three-year consolidated business plan before the final 60 days of each fiscal year. The business plan was to detail the corporation's strategic direction, any new business initiatives planned, and any material variances

from the current business plan that had already been taken. The direction required the Collus companies to conduct their business following the plan. The direction also obligated Collingwood Utility Services to report major business developments to Town Council as the board considered appropriate.

The Collus Companies and the Collingwood Public Utilities Service Board

The relationship between the Collus companies and the CPUSB was governed by a complex network of arrangements and contracts. Some agreements obligated the Collus companies to pay CPUSB for certain services, while others involved Collus Solutions providing services to both the Town's water and power utilities. The execution of some of these agreements also involved what certain Inquiry witnesses referred to as "in-kind" services. These in-kind services did not consist of two entities providing corresponding services to one another but were instead services provided to the Town that were paid for by one of the Collus companies or by the CPUSB. Some of these agreements were financially beneficial to the Town.

Collus Power Shared Services Agreements

Collus Power was a party to two agreements under which it paid the CPUSB for the provision of services. In particular, Collus Power rented office space from the CPUSB under a shared facilities agreement. As the CPUSB was a service board and agent of the Town, and service boards were not legally allowed to own assets, Collus Power paid the rent for its office space to the Town. The shared facilities agreement was created in November 2000, and the most recent amendment to the agreement before the share sale was on January 31, 2011. Under the amended agreement, Collus Power leased its office space for \$216,000 per year.

Collus Power also paid the Town via CPUSB for the use of its computers and IT systems. Collus Power initially rented computer hardware and

software from the CPUSB under the shared facilities agreement referenced above, but a separate computer rental agreement was created in 2003. The most recent version of this agreement signed before the share sale was on January 31, 2011, under which Collus Power paid CPUSB \$80,000 per year.

Collus Solutions Shared Services Agreements

Collus Power and Collus Solutions were parties to a contract whereby Collus Solutions provided Collus Power with several services, including billing, collections, accounting, management, customer service, and inventory maintenance. This agreement was created on December 12, 2002, and amended on December 17, 2003. The amended agreement came into effect on January 1, 2004, and remained in force until the Collus share sale.

Collus Solutions was party to a similar contract with the CPUSB. The agreement, signed on January 1, 2003, was amended on November 4, 2004, to reflect the conversion of the water utility to a municipal services board. A central service provided under both these contracts was the labour of Collus Solutions employees who worked for both the Town's electric and water utilities.

As stated above, Collus Solutions was created to employ staff who carried out work for both Collus Power and the CPUSB. Collus Solutions' employees generally performed services for some combination of the Collus companies and the CPUSB. Ed Houghton and Tim Fryer were among those remunerated by Collus Solutions, as they served as CEO and CFO, respectively, for all the Collus companies and CPUSB. Although Collus Solutions paid these individuals, the company itself did not provide any services or produce revenue. Thus, under shared services agreements, Collus Solutions billed Collus Power and the CPUSB for the work Collus Solutions employees carried out for each company. Collus Power and CPUSB then compensated Collus Solutions, and it used this income to pay its employees' salaries.

The shared services agreements initially contemplated that Collus Power and the CPUSB would pay specific amounts to Collus Solutions for services provided. Starting around 2010, the process by which Collus Solutions' costs were allocated came to differ from the cost allocation process contemplated in the agreements. The cost of the services provided by a Collus Solutions

employee or department to Collus Power or the CPUSB would be allocated based on an estimate of the time the employee or department spent providing the service. Collus Solutions then charged each company for the proportionate amount of the employee's salary plus a small markup to ensure that Collus Solutions could break even and provide its employees with benefits. Before the Collus share sale, Tim Fryer oversaw this allocation. Mr. Fryer testified that in 2011 he began to update the agreements to outline more precisely how costs were being allocated.

Mr. Fryer testified about this cost allocation. He said that, in 2012, 55 percent of the costs related to the labour of Collus Solutions employees who worked in the finance departments of the Town's electric and water utilities were deemed to be related to Collus Power, while 40 percent was allocated to the CPUSB. Collus Solutions thus billed Collus Power for 55 percent of the employees' salaries and billed the CPUSB for the other 40 percent. Collus Solutions paid the remaining 5 percent to account for administrative matters such as benefit pay. At the end of each year, the total costs charged by Collus Solutions to Collus Power and the CPUSB were examined to ensure the costs did not exceed the amount contemplated in the shared services agreements. The cost allocations and other transactions made under these agreements were audited and documented in the Collus Power and Collus Solutions financial statements. They were also recorded in the Collingwood Utility Services Annual Report and Business Plan, presented to Council.

The Ontario Energy Board also reviewed the shared services. Thus, every fourth or fifth time Collus Power applied to the board to set its rates, the Energy Board reviewed the shared services agreements to determine how they would impact rates. If, during this review, the Energy Board uncovered anything to indicate that the agreements did not abide by the Affiliate Relationships Code (ARC), the Energy Board could take action. The Ontario Energy Board has never launched an ARC-related compliance action against Collingwood's electric utility. In 2013, a study commissioned by Collus Solutions found that the process used to allocate costs to Collus Power, CPUSB, and the Town adhered to the Affiliate Relationships Code.*

* This study is discussed further in Part One, Chapter 10.

Collus Solutions also had a shared services agreement with the Town of Collingwood whereby Collus Solutions employees provided IT services to the Town and billed it for these services.

In-kind Services

In some instances the Town received services from Collus Solutions employees that were paid for by either CPUSB or Collus Power. These services were referred to by certain Inquiry witnesses as “in-kind” services. Describing these services as in-kind was somewhat misleading, as the term normally describes a money-less transaction in which one party pays another for a service by providing a service of roughly equivalent value. Rather, the “in-kind” services detailed before the Inquiry involved Collus Solutions employees providing services to the Town with the costs of these services being allocated to and paid for by the CPUSB or Collus Power. The Town did not reimburse the CPUSB or Collus Power for these services in any way.

One of the most prominent in-kind services provided to the Town was Mr. Houghton’s work as executive director of public works and engineering for the Town of Collingwood. Collus Solutions paid Mr. Houghton’s compensation for his combined work as the Town’s executive director of public works and engineering, president and CEO of the Collus corporations and president and CEO of CPUSB. Collus Solutions then allocated 55 percent of the costs related to Mr. Houghton’s compensation to Collus Power for his work for the electric utility. Forty percent of his compensation was allocated to the CPUSB, and 5 percent of the costs were paid for directly by Collus Solutions to cover employee benefits.

The CPUSB, however, was not a legally distinct entity from the Town but rather was an agent of the Town. Thus, the 40 percent of Mr. Houghton’s labour costs paid by the CPUSB to Collus Solutions was considered to cover both Mr. Houghton’s work as president and CEO of CPUSB and his work as executive director of public works and engineering for the Town. As a result of this arrangement, the Town never directly paid for Mr. Houghton’s work as executive director but rather classified his work as a cost related to the water utility. Both Mr. Fryer and Mr. Houghton considered this arrangement to constitute an in-kind service under which Collus Solutions allocated costs

to the CPUSB that covered not only Mr. Houghton's duties for the water utility, but also as executive director of public works and engineering.

The extent to which the Town saved any money or received any "free" services as a result of this in-kind service is unclear. Mr. Fryer, who oversaw the allocation process, believed that, when Collus Solutions allocated costs to the CPUSB to cover a portion of Mr. Houghton's salary, these costs were to cover the full value of Mr. Houghton's work for both the CPUSB and the Town, as the CPUSB was an arm of the Town. Mr. Houghton, however, testified that the Town was never billed for his wages. Mr. Houghton took the position that the Town did not employ him despite his role as executive director of public works and engineering. He said in his testimony at the Inquiry: "I was never an employee of the Town of Collingwood. I was virtually a volunteer that was seconded."

The cost allocation system used by the Town, the Collus companies, and CPUSB was extremely complex. Although I am satisfied Mr. Fryer understood the allocations, the fact that Mr. Houghton and Mr. Fryer could not even agree on whether Mr. Houghton was being paid for his work at the Town indicates to me that this system was difficult to grasp.

Another example of these in-kind services can be seen in the case of Collus Solutions employee Brian MacDonald. During 2011 and 2012, Mr. MacDonald served as the Town of Collingwood's manager of engineering services and worked exclusively for the Town. He was employed, however, by Collus Solutions and his entire salary was allocated to and paid for by the CPUSB even though he provided no services to the water utility. The water utility was thus deemed to have paid for the entirety of Mr. MacDonald's work as an in-kind service to the Town.

In-kind services between the Collus companies and the Town also included administrative services. For example, the Town of Collingwood occasionally asked for pamphlets related to municipal affairs to be printed and included in the same envelopes as the electricity bills sent to Collus Power ratepayers. As an in-kind service, Collus Power covered the costs of the pamphlets and sought no compensation from the Town. Cindy Shuttleworth ended the practice of in-kind services when she became CFO of the Collus entities and the CPUSB in September 2012, testifying that the Town should have been billed for the services it received.

Collus Power and Other Local LDCs

During the years leading up to the share sale, Collus Power was a member of the Cornerstone Hydro Electric Concepts Association, referred to as the CHEC group. The CHEC group, formed in 2000 with the help of Ed Houghton, consisted of 12 small and mid-sized electric utilities that operated as a co-operative to help each other respond to regulatory changes in the Ontario electricity industry. The local distribution companies within the CHEC group sought to reduce their costs by working together to develop conservation and demand management initiatives, share regulatory costs and office support resources, and jointly purchase new technologies and consulting services.

Members of the group included Centre Wellington Hydro, Innisfil Hydro, Lakefront Utilities, Lakeland Power Distribution, Midland Power, Orangeville Hydro, Parry Sound Power, Rideau St. Lawrence Distribution, Wasaga Distribution, Wellington North Power and West Coast Huron Energy. As of 2011, Collus Power had the highest number of ratepayers and third highest value of all the CHEC LDCs. CHEC continues to operate with a membership of 19 small and medium-sized Ontario LDCs.

Collus Power's Financial Practices

During its first decade as an *OBCA* corporation, Collus Power implemented certain practices with regards to debt, capital structure, and dividends.

Promissory Note to the Town

On June 10, 2002, Collus Power issued a promissory note to the Town. The note essentially constituted a loan of \$1,710,169 from the Town to Collus Power. According to the promissory note, the Town could demand repayment of the full note at any time. As long as the note remained unpaid, Collus Power made annual interest payments of 7.25 percent to the Town (approximately \$124,000). The possibility of the Town's LDC issuing debt to

the municipality had been raised by KPMG when it was advising the Town on electric utility restructuring options in 1999.

The interest rate on this promissory note was the maximum allowed by the Ontario Energy Board (OEB) for debts of that nature. Witnesses testified that the Town annually reviewed the note to determine whether to recall the debt or sign a waiver indicating that it would not recall the debt over the coming year. The promissory note remained in place at the time of the 2010 Town of Collingwood Council election.

Collus's Capital Structure

As mentioned, the Ontario Energy Board set rates for electric utilities based on the assumption that all electric utilities in Ontario maintained a capital structure of 60 percent debt and 40 percent equity. Notwithstanding this assumption, LDCs could maintain a debt-to-equity ratio of their choosing subject to Energy Board approval.

When Collus Power was incorporated in 2000, it maintained a debt-to-equity ratio of approximately 50-50, typical of other LDCs created around that time. Collus Power's debt consisted of the \$1.7 million promissory note issued to the Town and a \$3.3 million loan Collus Power took to purchase the electric utilities of nearby municipalities Thornbury, Creemore, and Stayner.

In the years that followed, Collus Power generally paid down its debt without taking on new debt. This practice caused the LDC's equity levels to increase while its debt decreased. In the year leading up to the share sale, Collus Power maintained a capital structure of 30 percent debt and 70 percent equity. Seven of the 12 electric utilities within the CHEC group maintained relative debt levels between 28 percent and 44 percent. Both Mr. Houghton and Mr. Fryer – as CEO and CFO of Collus Power, respectively – testified that the utility kept a 30/70 debt-to-equity ratio to maintain its ability to borrow additional funds to pay for future projects.

Mr. Houghton testified that he did not generally consult Council with regards to Collus Power's capital structure. He noted, though, that he would take direction from Council on the matter if direction was provided. When asked whether he agreed that decisions regarding the capital structure of the utility were Council's to make, Mr. Houghton replied:

My – my job is to look after the corporation, which I did, and – and if – if Council came back to us and said specifically we want you to bring us cash out of the company, we would have done that. My job, my fiduciary responsibility is to Collus and that's what we did.

No Declared Dividends

Collus Power also followed the practice of not declaring dividends. From the time it was incorporated until the share sale in 2012, the company issued no dividends to its owner. Although the company did not issue any dividends to the Town before the share sale, Mr. Houghton and Mr. Fryer maintained that Collus Power provided a number of other benefits to the Town that should be considered as dividends. Mr. Houghton took the position that the shared services agreements under which Collus rented its facilities and computer system from the CPUSB constituted a dividend to the Town, as the CPUSB was an agent of the Town. Mr. Fryer expressed a similar view regarding the Collus Power–CPUSB rental agreements. Mr. Fryer also indicated that Collus Power considered the interest payments it made to the Town on the promissory note to be a form of dividend.

January–September 2010: Concerns over Collus's Strategic Direction

In 2010, several developments within Collus Power and in the LDC sector caused the utility's leadership to doubt whether Collus Power could continue operations as it had over the past decade.

New Regulations

As I discussed above, from 2000 to 2010, mergers and acquisitions in the LDC sector in Ontario reduced the number of municipally owned electric utilities from 307 to fewer than 100. In 2010 and 2011, many in the electricity industry thought that decreasing the number of Ontario's LDCs while

increasing the size of the remaining utilities could improve efficiency in the province's electricity sector. This perceived improved efficiency contributed to a sense within the industry that LDC consolidations would continue, whether voluntarily or by legislative compulsion.

Although no legislation mandated consolidation, new regulatory requirements placed smaller LDCs such as Collus Power in a position of having to provide modern, environmentally oriented electricity services to its ratepayers. In 2009, the Ontario government passed the *Green Energy Act*, which required all LDCs to help consumers reduce their electricity consumption. Among the initiatives required by the *Act* was the installation of smart meters on all consumers' homes to provide real-time information on energy usage.

The environmental initiatives required by the *Act* were difficult for small LDCs such as Collus Power. They were costly to implement and, once successfully put in place, they reduced energy usage, which in turn reduced the electric utility's billings.

Internal Pressures: Loss of Staff and Revenue

In addition to experiencing difficulties common to most small Ontario LDCs, Collus Power's internal issues lent further credence to the notion that maintaining the status quo was not an option. Several of the Town's large industrial electricity consumers were also reducing their demand because of environmental initiatives or financial difficulties. Some large consumers were in such dire financial straits that they were unable to pay their electricity bills.

Collus Power was also experiencing staffing issues. A number of senior management employees had either retired or were slated to retire over the next several years. The LDC was also having trouble employing sufficient technical workers such as linemen, because it could not offer a salary competitive with those offered by larger electric utilities.

Concerns over the viability of the utility's business model were discussed by the utility's directors and management during a Collus strategic retreat in January 2010 and at a gathering of small and mid-sized Ontario LDCs the following September.

Collus Retreat, January 2010

On January 14, 2010, the boards and senior management of the Collus corporations assembled for a strategic retreat, at which Collus Power board member David McFadden gave a presentation. Mr. McFadden discussed recent changes in the Ontario LDC industry and the challenges faced by LDCs in light of new legislatively mandated environmental initiatives. He noted that Collus Power needed to consider whether the utility as constituted was in a position to meet these challenges.

Witnesses had differing recollections as to the specific options put forward in the presentation. Mr. Houghton remembered coming away from the presentation with the belief that Collus Power could not continue with the status quo and would need to change if it wanted to continue providing high quality services to ratepayers. He recalled specific discussion of Collus Power proceeding under a “multi-utility” model that would tie Collus Power in with the CPUSB to achieve further synergies. He stated in his testimony and his closing arguments that the presentation yielded detailed discussions of potential changes that Collus Power might make in its scope and scale, but he did not specify what was discussed other than the multi-utility model mentioned above.

For his part, Mr. McFadden recalled comprehensive consideration of ownership options both before and after his presentation. He testified that he had discussions with Mr. Houghton and Mr. Muncaster before the retreat, during which both spoke of the changes taking place in the industry and indicated that Collus Power would need to “look maybe at doing something different.” It was in the context of these discussions that Mr. McFadden recalled their request that he present at the January 2010 retreat.

Mr. McFadden recalled that, after his presentation, three options for Collus Power were discussed: maintaining the status quo, selling the utility, or pursuing a strategic partnership in which an investor would purchase part of the company but also provide the utility with expertise and resources. Mr. McFadden was careful to note that he did not recommend any one option, but rather described the state of the industry and left the choice up to the Town as Collus Power’s owner.

Mr. McFadden stated that discussions of the various options followed his presentation, but that no decisions or resolutions were made at this point.

He also recalled having the impression that maintaining the status quo and selling the entire utility were undesirable and that the preferred scenario was one in which the Town retained at least 50 percent of its utility and brought in a partner to provide additional expertise and resources. He also recalled the words “50/50” or “strategic partnership” written on the blackboard in the room where he presented.

There is some confusion in the evidence about the discussion of ownership options. In a September 2011 email to a former mayor of Collingwood, Mayor Sandra Cooper noted that the sale of all or part of the utility was not discussed before the Town’s October 2010 election. Mayor Cooper similarly testified that discussions of a potential strategic partnership began only in June 2011. Mr. Houghton also gave detailed evidence at the Inquiry that the notion of a strategic partnership was not conceived until a June 4, 2011, meeting among himself, Mr. Muncaster, and Mr. McFadden. He further testified that Collus Power merging with a larger electric utility was not on his mind in the fall of 2010.

Regardless of this confusion, I do accept that Mr. McFadden’s January 2010 presentation left the Collus Power directors and management with thoughts that a shift in strategic direction might be required if the LDC was to adapt to the changing electricity industry. These changes would again be discussed in the fall of 2010.

Georgian Bay LDCs and the Future of the Industry, September 2010

The future of Collus was raised a second time in 2010 at a conference for LDCs in the Georgian Bay region. Ed Houghton, Dean Muncaster, David McFadden, Joan Pajunen, and Doug Garbutt attended from the Collus companies. One of the presentations at the conference focused on what the provincial government might do with LDCs in the future, including the possibility of forced consolidation. There was also discussion of the challenges facing small to medium-sized LDCs.

Mr. Houghton testified that, at this meeting, he spoke with a representative of Barrie Hydro, which had recently merged with PowerStream, a large LDC that provided electricity services to nine municipalities, including Barrie, Markham, and Vaughan. He recalled having an enjoyable conversation

with Barrie Hydro staff about their integration into PowerStream's corporate structure. Mr. Houghton also testified that, at some point during the conference, Doug Garbutt told him that Collus needed to "fish or cut bait," meaning that it should consider its options before being forced to consolidate. In an affidavit, Mr. Garbutt confirmed that he had a discussion with Mr. Houghton along those lines, although he did not recall using those exact words.

I accept that this meeting further contributed to a sense among Collus Power's directors and management that a change in strategic direction would be needed.

Conclusion

From 2000 on, Collingwood's power utility underwent a substantial overhaul and took on the status of an *OBCA* corporation as a result of legislated changes to Ontario's electricity industry. This change in status required the utility to reorient its relationships with the Town of Collingwood – its owner and sole shareholder – as well as with the Town's water utility. Collus Power also created a new relationship with newly formed Collus Solutions through shared services agreements.

After adapting to this new reality at the beginning of the 2000s, at the end of the decade, Collus Power began to confront additional regulatory burdens and issues with revenue and staffing. By winter 2010, Collus Power president and CEO Ed Houghton had become convinced that the utility could not continue as it had, and he began exploring potential new directions.

The Origins of the Collus Power Sale

The origins of the share sale for Collus Power Corporation can be traced to a series of unofficial conversations and meetings. Throughout 2010, Collus Power president and chief executive officer (CEO) Ed Houghton and Paul Bonwick discussed the electricity industry and the potential for business opportunities in that sector. Mr. Houghton suggested that Mr. Bonwick contact Brian Bentz, the president and CEO of PowerStream Incorporated – a local distribution company (LDC) for nine municipalities, including Barrie, Markham, and Vaughan.

In November 2010, Mr. Houghton reached out to Mr. Bentz directly and advised him that Collus Power was considering a sale. The two men subsequently met for breakfast, and Mr. Houghton informed Mr. Bentz that a request for proposal (RFP) might be forthcoming. In January 2011, Mr. Bonwick contacted Mr. Bentz and, supported by a recommendation from Mr. Houghton, offered to help PowerStream acquire Collus Power. Mr. Houghton and Mr. Bonwick then collaborated on preparing a letter for Mayor Sandra Cooper, Mr. Bonwick's sister, to send to Collus Power directing the utility to undertake a valuation and an analysis of potential ownership options, including a sale. With that letter in hand, Mr. Houghton retained KPMG to complete a valuation and options analysis, the first formal step in the sale process.

Even though the Town of Collingwood owned Collus Power, these developments transpired without Council's knowledge. While Mayor Cooper knew about her letter, Council effectively had no input into the decision to explore a potential sale of one of its most valuable assets.

Initial Sale Discussions

Mr. Houghton and Mr. Bonwick testified they had two or three conversations in mid-2010 about the electricity industry and whether there were any business opportunities in that sector for Mr. Bonwick. During these conversations, Mr. Bonwick asked Mr. Houghton to recommend a “mover and shaker in the industry” for him to contact. Mr. Houghton suggested Brian Bentz at PowerStream, who had recently completed a merger with Barrie Hydro and was known to be interested in acquiring other LDCs in the industry. Mr. Bentz testified that at this time, PowerStream had been looking at four or five different mergers before the Collus Power opportunity arose. Mr. Houghton provided Mr. Bonwick with Mr. Bentz’s email address.

As part of these conversations, Mr. Houghton mentioned a possible sale of Collus Power. In his testimony at this Inquiry, Mr. Houghton said he told Mr. Bonwick he preferred that he (Mr. Bonwick) not become involved in any potential deal with Collingwood. Mr. Houghton explained he was concerned about the optics of Mr. Bonwick, the mayor’s brother, working for PowerStream, a prospective purchaser. In response, Mr. Bonwick said he understood the concern – a reply Mr. Houghton interpreted as a promise not to raise the potential sale of the Collingwood utility if Mr. Bonwick spoke with Mr. Bentz.

Following these conversations, both Mr. Houghton and Mr. Bonwick separately contacted Mr. Bentz to discuss the prospect of a Collus Power share sale. Mr. Bonwick’s and Mr. Houghton’s conversations about opportunities in the LDC industry marked the beginning of the Collus Power share sale.

Early Communications with PowerStream

Ed Houghton and Brian Bentz

Mr. Houghton emailed Mr. Bentz on November 23, 2010, to ask if he was available for a “confidential discussion.” The two men spoke on the phone the next day. Mr. Bentz testified that this initial call was brief, but when

Mr. Houghton raised a potential sale of Collus Power, the topic immediately grabbed his attention.

In his testimony, Mr. Houghton said he approached Mr. Bentz in confidence after speaking with Dean Muncaster, chair of the Collus Power board of directors, about the possibility of consolidation in the industry.* Mr. Houghton stated both he and Mr. Muncaster considered that the status quo was no longer an option: Collus Power needed the perspective of a large utility with regard to possible further consolidation among LDCs. He did not recall specifically why he told Mr. Bentz the discussion was confidential, but thought it was to prevent Collus Power employees from learning that a sale was under consideration. Mr. Houghton testified that, when he reported to Mr. Muncaster after his initial call with Mr. Bentz, the board chair directed him to speak with Mr. Bentz again to obtain additional information about his views on consolidation in the industry.

I do not accept that Mr. Houghton informally discussed the likelihood of consolidation with Mr. Muncaster before contacting Mr. Bentz. I am satisfied that, by this time, Mr. Houghton believed there would be a consolidation of LDCs. He was active in the electricity industry and was no doubt aware of the reduction in number that had already occurred among these companies. I also do not accept that Mr. Houghton met with Mr. Bentz in late 2010 to get the perspective of a large utility about likely further consolidation. Rather, I am satisfied that, by this time, Mr. Houghton had decided that Collus Power should merge, in some form, with another utility. He reached out to Mr. Bentz in late 2010 because he knew PowerStream might be interested.

One of the reasons I do not accept that Mr. Houghton spoke with Mr. Muncaster is that the initial contact with PowerStream was improper. The Town owned Collus Power. Whether to explore potential sale options was an issue for Council to address as part of its strategic planning, not one to be determined by the CEO or the chair of the asset. David McFadden, a member of the Collus Power board of directors, understood this distinction, noting in his testimony that, as a director, he had no power to tell the shareholder whether it should buy or sell its asset. It was up to the Town of Collingwood to decide. Mr. Muncaster, an experienced business executive, would have understood this issue as well.

* Mr. Muncaster passed away in early 2012.

A week after the initial phone call with Mr. Bentz, Mr. Houghton emailed him again and asked to meet in person. The two men had breakfast at the Sunset Grill in Vaughan on December 3, 2010. Their recollections of the conversation that day are different.

Mr. Bentz's memory was informed by notes he made in the spring of 2011 for a presentation he made to PowerStream's Audit and Finance Committee about a potential Collus Power sale. The following passage from the notes offers a window into the breakfast discussion.*

Talked about situation with Collus: more demands from industry, harder to keep up. Staff turning over CFO leaving for example has _____

Also in his role as Executive Director of the Town of Collingwood basically runs Municipal Deputy [*sic*] there has a lot of clout.

Talked about fiscal situation in Collingwood, \$20M in debt, last Council spent a lot and got thrown out.

Talked about how he observed what we did in Barrie.

...

Exploring path of what to do in LDC – preliminary discussion @ Collus Board at Town to look at options

> RFP with multiple bidders

> had breakfast with him shortly thereafter

Talked about process and value range

Said back of envelope \$15–\$20M on EV [Enterprise Value] less debt.

Mr. Bentz testified that, during the breakfast meeting, Mr. Houghton informed him that the Collus Power board was considering options, including a sale, because of the Town's fiscal challenges and the increasing regulatory burden small utilities faced. He indicated that the sale would proceed by way of RFP and asked if PowerStream would be interested if an RFP moved forward.

In reply, Mr. Bentz said he asked Mr. Houghton about the size and rate base of Collus Power in order to obtain a general sense of its value.

* Mr. Bentz's original notes were written by hand. He transcribed the notes for the Inquiry and confirmed in his testimony that the transcription was accurate. The quote that follows is taken from Mr. Bentz's transcription.

Mr. Houghton responded that the Collus Power enterprise value was \$15 million to \$20 million.

Mr. Bentz was concerned that the Town had apparently not been engaged in discussions about the sale. In the past, PowerStream had invested time in potential transactions that never materialized because, while the utility was inclined to proceed with a deal, the municipal council was not. As an example, Mr. Bentz pointed to his experience with the Town of Orangeville in 2007, explaining, “I wasted a lot of time on that transaction.” Mr. Bentz said he shared this concern with Mr. Houghton at the breakfast meeting.

I pause here to note that Mr. Bentz’s apprehension highlights the point that the interests of a municipality and the corporations it owns may not always align. For that reason, it is important that the municipality, as owner, have control over decisions regarding ownership.

Mr. Bentz testified that, over breakfast, he advised Mr. Houghton that PowerStream would be interested in participating in an RFP, if one were announced. He told Mr. Houghton that Collus Power could serve as a stepping stone to broader consolidation in the region. He asked Mr. Houghton to keep him informed, saying that PowerStream might be interested. He also told Mr. Houghton that, if the sale proceeded, he “would have to go through the proper channels” to obtain approval for PowerStream’s participation in the RFP process.

Mr. Houghton, in his testimony, downplayed the importance of the conversation at the December 2010 breakfast. He framed it as a general discussion about the LDC industry and Mr. Bentz’s views on whether the government would require LDCs to amalgamate. Mr. Houghton said he may have told Mr. Bentz that Collus Power was taking a serious look at options as a result of the mayor’s direction. He also acknowledged that he referenced an RFP in his discussions with Mr. Bentz. Mr. Houghton did not remember speaking with Mr. Bentz about the potential value of Collus Power and denied providing Mr. Bentz with any form of valuation. In his words, he would not have had “the foggiest notion.”

I accept Mr. Bentz’s evidence. It was corroborated by the notes he made later, when the events were fresh in his mind. Moreover, I also do not accept that Mr. Houghton, an experienced executive, would not have any sense of

the value of his company, especially at a time when, as he testified, he had a potential sale in mind.

At the Inquiry hearings, Mr. Houghton said he spoke with Mr. Muncaster after the breakfast meeting. Among other things, he recalled they discussed how obtaining a valuation would be the first step if Collus Power was considering a sale. They decided, he said, to let the conversation “simmer and brew in our brains.” Mr. Houghton added that not much happened until they received a letter from the mayor directing them to undertake a valuation (see below).

Mr. Houghton’s discussions with Mr. Bentz about the potential sale of Collus Power undermined the Town’s ability to oversee the share sale transaction: before Council became aware that a sale of the Town’s asset was being contemplated, Mr. Houghton provided PowerStream with a competitive advantage over any other interested party. The fairness of the process was compromised before the sale got underway. This initial contact also gave PowerStream an advantage in any potential procurement, simply because it had the opportunity to take early steps to prepare for the RFP, including hiring Mr. Bonwick as its consultant. This advantage would be the first of many for PowerStream.

No Council Involvement

On January 6, 2011, Mr. Houghton spoke during the orientation session for the new Town councillors, who had been elected in the fall of 2010 (see Part One, Chapter 1). His slide presentation did not mention any potential ownership changes for the Town’s electrical utility, nor did he say he had met with Mr. Bentz of PowerStream. Sandra Cooper, who was mayor of Collingwood at the time, testified she had no idea then that a Collus Power sale was on the horizon.

If Mr. Muncaster and Mr. Houghton had been focused on change, as Mr. Houghton argued in his submissions, there was no reason not to raise this issue with Council during the January orientation session. Instead, Council did not learn about the sale prospect until six months later. Mr. Houghton said in his evidence that he did not want to present Council with a “half-baked” project. It was Council, however, that had the exclusive authority to determine whether even to begin the sale process. Because Council was left

out, the Town's interests and goals were not prioritized in the decision of what, if anything, to do with Collus Power.

Paul Bonwick and PowerStream

On January 10, four days after Mr. Houghton spoke to the new Council, Mr. Bonwick sent Mr. Bentz an introductory email, writing:

I am not sure if we have met during our travels so I will take a brief minute to introduce myself. I will hopefully have an opportunity in the near future to expand on that introduction.

I live in the Town of Collingwood operating a Government Relations & Communications firm servicing Clients in Canada and the USA.

I formerly served as a Member of Parliament for several years and prior to that served as a Municipal Councillor for Collingwood.

Throughout this period of time I have had to [sic] pleasure of building a [sic] extensive network of individuals / friends / colleagues throughout the Municipal, County, Provincial and Federal Governments. This network has proved invaluable in representing Clients and their needs.

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

I can be reached via e-mail or feel free to call ...

Before he received this email, Mr. Bentz had never heard of Mr. Bonwick. The fact that Mr. Bonwick contacted Mr. Bentz within a month of Mr. Houghton's meeting with Mr. Bentz is, however, no coincidence. The timing flowed from the conversation during the December breakfast meeting that Mr. Bentz and Mr. Houghton had together. At that meeting, Mr. Bentz raised his concern about whether the Town had the political will to proceed with a sale. I am satisfied that, in response, Mr. Houghton spoke with his friend Mr. Bonwick, who then offered to assist Mr. Bentz with the very concern he had raised with Mr. Houghton.

When he received the email, Mr. Bentz immediately saw an opportunity to avoid another wasted effort in his plan to consolidate more local distribution companies within PowerStream. He believed Mr. Bonwick might well know whether the Town of Collingwood was amenable to a transaction, though, at this point, he was not aware that Mr. Bonwick was the mayor's brother. He arranged to meet Mr. Bonwick two days later, on January 12.

Mr. Houghton's Emotional Allergy

After Mr. Bonwick sent Mr. Bentz his introductory email, he forwarded it to Mr. Houghton with the comment "FYI." Later that day, Mr. Houghton emailed Mr. Bonwick and asked to speak to him about Mr. Bentz. In his testimony, Mr. Houghton said he made this request because, in the email Mr. Bonwick sent to Mr. Bentz, he specifically referenced the potential sale of Collus Power, despite having promised – at least in Mr. Houghton's mind – to avoid Collingwood in his discussions with Mr. Bentz.

At the Inquiry, Mr. Houghton described his concern about Mr. Bonwick working with PowerStream on a Collus Power sale as an "emotional allergy," though he had difficulty explaining the nature of this allergy. At one point, he testified that "Collingwood's a very small community. Mr. Bonwick is a very high profile person. And as a result of that, sometimes he attracted attention." Later, he explained that he "wanted to make sure that what we did was above reproach" and that there might have been a sensitivity from an "optics perspective" to Mr. Bonwick advising PowerStream. He suggested that "other people" might have "draw[n] conclusions," even if incorrect.

As questions continued at the hearings, Mr. Houghton resisted the suggestion that his concerns arose from Mr. Bonwick's sibling relationship with Ms. Cooper. He asserted that public perception issues with Mr. Bonwick were more about "jealousy" than his sister's role as mayor. However, he did agree that, in hindsight, there was a potential conflict issue. Although Mr. Houghton stopped short of saying so directly, it is apparent he recognized that, if the mayor's brother worked on a potential purchase of Collus Power, this involvement could create the perception of a conflict of interest. He was correct.

Mr. Houghton also correctly recognized that the perception of conflict could impede a potential sale. He testified that it was not for him to judge whether an actual conflict of interest would arise if Mr. Bonwick consulted on matters involving Collingwood while his sister was the mayor. Rather, he said, he was concerned about the prospect that others might perceive a conflict, and, in his words, he wished to explore a sale without "any kind of white noise around me." This explanation demonstrates that Mr. Houghton understood the effect of both real and apparent conflicts of interest.

According to Mr. Houghton, he raised his concerns with Mr. Bonwick during their phone conversation. Mr. Bonwick, in turn, offered not to include Collingwood as part of any proposal he made to PowerStream. He said that Mr. Bonwick, to provide reassurance and comfort, also offered to share his proposal with Mr. Houghton. Mr. Houghton stated he was confident Mr. Bonwick understood he did not want him working on any matters involving the Town of Collingwood. However, he did not ask Mr. Bonwick to make a commitment to refrain from working on such initiatives.

Mr. Bonwick, for his part, did not recall offering to let Mr. Houghton review his proposal as part of this conversation. He testified that Mr. Houghton was "okay" with his eventually working for PowerStream on a Collus Power transaction, but not at this early stage when the utility had not yet decided how to proceed. Despite Mr. Houghton's concerns, Mr. Bonwick mentioned a potential Collus Power sale in his initial email to Mr. Bentz because he saw the possible sale of Collus Power as a good opportunity for PowerStream.

Mr. Houghton's Recommendation

Before meeting with Mr. Bonwick on January 12, 2011 Mr. Bentz phoned Mr. Houghton to ask if he knew Mr. Bonwick. Mr. Bentz testified he told Mr. Houghton that PowerStream was interested in learning more about the deliberations of Council and wondered if Mr. Bonwick could assist. According to Mr. Bentz, Mr. Houghton responded that he and Mr. Bonwick were friends and that Mr. Bonwick was a “good guy” with solid standing in the community. Mr. Houghton also said that Mr. Bonwick could be useful to PowerStream, particularly in responding to an RFP for Collus Power.

In his testimony, Mr. Houghton denied he told Mr. Bentz that Mr. Bonwick could assist with an RFP. He explained that, at this point, he did not yet know what Collus Power was going to do. He maintained that the conversation was about Mr. Bonwick generally, not a potential RFP for Collus, and added: “[H]e didn’t say Collingwood and I didn’t say Collingwood.” Mr. Houghton also questioned Mr. Bentz’s ability to remember a conversation that was eight or nine years old. Mr. Houghton testified he told Mr. Bentz that Mr. Bonwick was a former member of both Parliament and Collingwood Council and also that his sister was the mayor and his father a local business icon. He described Mr. Bonwick as a strategic thinker who had been involved in many developments in Collingwood and regularly helped the community in various ways.

I accept Mr. Bentz’s evidence and find that Mr. Houghton did advise Mr. Bentz that Mr. Bonwick could assist with a potential RFP for Collus Power. By Mr. Houghton’s own admission, he highlighted Mr. Bonwick’s connections to Collingwood during the call with Mr. Bentz. There would be no other reason to focus on Mr. Bonwick’s family and his work in the Town unless he was recommending that PowerStream retain Mr. Bonwick to assist with matters in Collingwood.

Mr. Houghton was aware that Mr. Bentz wanted a better understanding of whether Council had the political will to proceed with a sale. He put Mr. Bonwick in contact with Mr. Bentz to assist PowerStream with that specific concern.

The Meeting Between Mr. Bonwick and Mr. Bentz

When Mr. Bonwick and Mr. Bentz met in person on January 12, Mr. Bonwick explained more about his company, Compenso Communications Inc. Mr. Bentz expressed his uncertainty as to whether Council supported a sale and mentioned that, perhaps, Mr. Bonwick could assist with this issue. Mr. Bonwick disclosed that his sister was the mayor, but he assured Mr. Bentz that this relationship did not create a conflict under the *Municipal Conflict of Interest Act*.

Mr. Bentz testified that the sibling relationship immediately caused him concern, although he did not believe it would be a “showstopper.” He told Mr. Bonwick that, if PowerStream was to engage Mr. Bonwick, he would need approval from the company’s Audit and Finance Committee and full disclosure would be required. Disclosure, he said, would be foundational to any engagement going forward.

As the discussion progressed, Mr. Bentz asked Mr. Bonwick to provide a draft proposal. He also asked him to advise Mr. Houghton that PowerStream was considering engaging Compenso. Finally, he asked if Mr. Bonwick could provide support for his assertion that a sibling relationship did not constitute a conflict of interest under the *Municipal Conflict of Interest Act* (see Part One, Chapter 4).

As I note above, because Mr. Houghton gave PowerStream an early indication that Collus Power was considering a sale, Mr. Bentz was able to begin to make arrangements for a potential RFP, including exploring a retainer with a local lobbyist who was also the mayor’s brother. The other bidders in the eventual RFP would not learn of the potential sale until July 2011, six months later. John Glicksman, the chief financial officer (CFO) of PowerStream, confirmed in his evidence that this tipoff was an advantage. He testified that one of the main reasons he believed PowerStream should retain Mr. Bonwick was to prevent him from consulting with a competitor about Collingwood:

He came to us first. Well, if we would say no and not hire him, he might have gone to somebody else, like Horizon, or Veridian,* who have hired

* Horizon and Veridian were two of the bidders in the Collus Power share sale RFP.

consultants in the past, and they would have then hired him. And then not only wouldn't – we had [sic] his knowledge, but one (1) of our potential competitors would have had his knowledge.

Valuator Recommendations Requested

On January 14, two days after Mr. Bonwick met with Mr. Bentz, Mr. Houghton phoned Mr. Bentz and asked if PowerStream had any recommendations for a valuator for Collus Power. In his testimony, Mr. Houghton maintained he called Mr. Bentz because both he and Mr. Muncaster were “not sure” who could perform the valuation of a utility.

I do not accept this evidence. To the extent that Mr. Houghton did not have this knowledge, despite his extensive experience in the industry, he could have asked Collus Power director David McFadden, an expert in the electricity industry and in mergers and acquisitions. Mr. Muncaster would also have understood that recommendations, if truly needed, could be obtained from Mr. McFadden.

The only reasonable conclusion is that Mr. Houghton called Mr. Bentz to signal that the prospect of a sale was moving forward. Mr. Houghton disclosed his interest in finding a valuator to PowerStream before anyone brought the idea of a sale to Collingwood Town Council.

Mr. Bonwick's Draft Proposal

On January 19, Mr. Bonwick sent Mr. Houghton a copy of his proposal to PowerStream, writing: “Have a look. Tried to clean up the billings section.” The next day, Mr. Houghton replied, “I reviewed and made a few minor changes.” At the Inquiry, Mr. Houghton testified that his review was limited to fixing typos and confirming that the proposal did not mention Collingwood, as he had requested in his earlier discussion with Mr. Bonwick.

Mr. Bonwick's proposal did not mention Collingwood or Collus Power explicitly but stated more generally that Mr. Bonwick would assist PowerStream to identify and pursue opportunities to “bid on Utility Corporations” in Ontario. It highlighted Mr. Bonwick's experience on “Municipal Council,” without expressly identifying Collingwood Council. The proposal also

stated that Mr. Bonwick's office was "in constant contact with the Municipal government" – again, without expressly stating it was Collingwood.

Mr. Houghton testified he was not bothered by the fact that the proposal discussed acquisitions of LDCs in Ontario. He said he assumed the proposal pertained only to LDCs other than Collus Power. When he was asked whether, in relation to the proposal, Mr. Bonwick had specifically promised not to assist PowerStream with any potential Collus Power sale, Mr. Houghton replied that Mr. Bonwick did not "owe" him a commitment, despite the fact that Mr. Houghton earlier testified that, in 2010, Mr. Bonwick did promise, at least in Mr. Houghton's mind, not to assist PowerStream with anything involving Collingwood. Mr. Houghton maintained he was satisfied that Mr. Bonwick had said he understood his [Mr. Houghton's] concerns.

Mr. Houghton's evidence that he was concerned about the optics of Mr. Bonwick assisting PowerStream on a Collus Power RFP is inconsistent with his actions at the time. At most, Mr. Houghton's efforts to keep Mr. Bonwick away from a potential Collus Power sale amounted to ensuring that the word "Collingwood" did not appear in Mr. Bonwick's proposal. Mr. Houghton advised both Mr. Bonwick and Mr. Bentz about the potential sale of the utility, and then he introduced Mr. Bonwick to Mr. Bentz.

On January 20, Mr. Bonwick sent Mr. Bentz a copy of his proposal (see Part One, Chapter 4). In the covering email, he wrote that Mr. Houghton and he had "detailed discussions relating to the overall proposal that I have prepared in the context of involvement and timing."

A Valuation of Collus Power

The Collus Power board of directors met on January 31. On the evening of January 30, Mr. Houghton sent Mr. Bonwick a draft letter to be sent by Mayor Cooper. The letter requested Collus Power to undertake a valuation and consider a sale of the utility. It read in part:

As you know, my Council was elected to get our spending and our municipal debt in control. I have asked our CAO [chief administrative

officer] and our Department Heads to look for opportunities within their areas of responsibility to reduce costs and still offer similar levels of service.

I would like to ask that Collus looks [*sic*] for similar opportunities to help reduce our debt ...

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

...

This request and your review must be kept in strictest confidence. I must also say that this is not a "done deal" that Collus will be sold. If after the review we are asked about selling Collus[,] we can provide the details that suggest the contrary if that is the right thing.

Mr. Houghton testified that he drafted this letter following a conversation with Ms. Cooper about how Collus Power could meet the mayor's challenge to find efficiencies. As part of these conversations, Mr. Houghton said he told Ms. Cooper that he and Mr. Muncaster had been discussing Collus Power's future, including a potential sale. He also testified that he advised Ms. Cooper about his meeting with Mr. Bentz. In her own testimony before the Inquiry, however, Ms. Cooper denied knowing about this meeting and agreed with counsel for the Town that Council should have been informed before Mr. Houghton discussed a potential sale with Mr. Bentz.

In further testimony, Mr. Houghton said he explained to Ms. Cooper that the next step in considering a sale was to obtain a valuation of the utility. He suggested that the mayor, as "CEO" of the Town of Collingwood, send a letter directing Collus Power to obtain a valuation and assess options. He offered to draft the letter. Ms. Cooper agreed, he said, and directed him to share a draft of the letter with Mr. Bonwick because she wanted it to be consistent with her election platform.

At this point, Mr. Houghton did not inform Ms. Cooper that Mr. Bonwick

had already been in contact with PowerStream about a potential retainer – in his words, he “didn’t think about it actually.” Mr. Houghton testified that it was “not really for me to talk to the Mayor and tell her what her brother is doing.”

Despite saying in the letter that the matter was confidential, Mr. Houghton also testified that he was not concerned about sending the letter to Mr. Bonwick, a third party, because the confidentiality language was designed to prevent Collus Power staff from learning about the review. Mr. Houghton explained he did not consider that Mr. Bonwick might discuss the direction with PowerStream because his recent proposal to Mr. Bentz had not mentioned Collingwood. He said he did not have “that sort of conspiratorial thinking process.”

Ms. Cooper believed she asked Mr. Houghton to draft a letter directing Collus Power to look at opportunities for efficiencies. It was unclear from her testimony whether she specifically requested that the letter call for a valuation or whether it was a more general request for Collus Power to find cost-saving opportunities, a request she had made of other departments at the Town. In any event, Ms. Cooper testified she did not know that Mr. Houghton had sent a copy of the draft letter to Mr. Bonwick, and I accept her evidence in that regard.

I find in the case of Mr. Houghton that he prepared the letter because he wanted to continue exploring options for a potential sale. He consulted with Mr. Bonwick on the letter because he knew Mr. Bonwick was one of the mayor’s advisors.

In the case of Mr. Bonwick, I am satisfied he was content to discuss the letter and the next steps in the sale process with Mr. Houghton so he could use the information to assist in his efforts to secure a retainer with PowerStream.

In this regard, Ms. Cooper testified that, at the Council orientation session in the beginning of January 2011, she had no idea that a Collus Power sale could be on the horizon. The draft letter suggests that, by the end of the month, she was prepared to instruct Collus Power formally to explore a sale. I do not accept that Ms. Cooper came to this conclusion on her own in so short a time.*

* In an email Ms. Cooper sent in September 2011 to former Collingwood mayor Ron

Four contemporaneous emails bear out the conclusion that Ms. Cooper's direction for a valuation originated with Mr. Houghton and Mr. Bonwick. First, on February 1, Mr. Bonwick wrote Mr. Bentz:

In the interest of time, I had to initiate the beginning of the process we discussed. Unfortunately the next committee meeting was not scheduled for another two months[,] which would have caused some timing challenges if process [*sic*] was not initiated this week.

As a result, the Chairperson and Executive Director have now received direction to commence a valuation of the Utility ...

The plain reading of this email is that Mr. Bonwick informed Mr. Bentz that he had initiated the request for a valuation (see Part One, Chapter 4).

Second, Mr. Houghton emailed Mr. Bonwick the draft letter for the mayor on the evening of January 30. He sent the letter as part of an email chain that began with Mr. Houghton writing to Mr. Bonwick: "We have a Board Meeting tomorrow morning and I was wondering if we should chat?" Mr. Bonwick responded: "Good idea[.] I will call you in few minutes if that works." Mr. Houghton then sent Mr. Bonwick the draft letter. Although Mr. Bonwick testified he did not recall receiving the draft letter or discussing it with Mr. Houghton, this email suggests otherwise. It indicates that Mr. Houghton and Mr. Bonwick discussed the next steps in a potential Collus Power sale – a topic they had talked about before – and Mr. Houghton then sent Mr. Bonwick a draft letter for Ms. Cooper to send to Collus.

Third, on January 30, as part of the same email chain, Mr. Houghton told Mr. Bonwick that "it is so important that Rick does not know what I am doing." Mr. Bonwick responded, "No kidding ... that applies to absolutely everyone."

Mr. Houghton and Rick Lloyd, who was deputy mayor at the time, testified that these comments related to an ongoing controversy regarding the picture of former mayor Chris Carrier which had been hung in Town Hall. The picture was in colour. All the other former mayors' pictures were black and white, a difference that, they said, had upset some Council members.

Emo, she suggested that the idea of a sale was brought forward during budget deliberations, which took place in March after the letter was sent.

There was talk of removing the colour picture. Mr. Houghton testified that he thought he could mediate and wanted to find out whether Mr. Bonwick had discussed the issue with Ms. Cooper before he himself raised it with her at the board meeting the next day.

I do not accept this evidence. Mr. Houghton did not need to wait until a Collus Power board meeting to speak with Ms. Cooper about the portrait. According to his own evidence, he was in regular contact with the mayor. It is clear from the evidence that the comment about Mr. Lloyd related to Mr. Houghton's and Mr. Bonwick's discussions about the draft letter sent to the mayor. It is not surprising that Mr. Houghton would want to keep the matter secret from Mr. Lloyd because, as deputy mayor, he had the capacity to derail the process at this early stage if he did not agree with the idea of a sale of Collus Power.*

Fourth, Mr. Bonwick emailed Ms. Cooper directly on January 31 and wrote:

I got your message re budget. You will need to be very clear with Department Heads on your expectations [sic]

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

When I spoke to you a few weeks ago about this type of direction[,] Ed thought his Board would be supportive of the request.

Mr. Bonwick and Mr. Houghton testified that this email reflected the fact they had spoken with each other about Ms. Cooper's challenge to department heads to find efficiencies, and that the challenge extended to Collus Power. The natural extension of that conversation would be the direction to have Collus Power undertake a valuation and consider a sale, as that is how Mr. Houghton believed Collus Power should respond. The day after Mr. Houghton sent the draft letter to Mr. Bonwick, Ms. Cooper sent a revised draft to her executive assistant for review and formatting. The revised January 31 draft read:

* I discuss Mr. Lloyd's approach to governance in Part One, Chapter 1, and throughout Part Two.

As you may know, our new council was partly elected to get our spending and our municipal debt under control.

As a result, I have asked our CAO, Ms. Wingrove and our department heads to look for opportunities within their areas of responsibility to explore cost reduction [sic] opportunities and still offer similar levels of service.

I would [sic] like to ask that Collus look for similar opportunities in part to help reduce our debt and create greater efficiencies for Collingwood residents. I recognize the input during budget presentation [sic].

My specific request is that chair Muncaster direct Mr. Houghton to undertake a valuation of Collus examining all potential opportunities that might benefit Collingwood residents and that a report containing recommendation [sic] be presented to Council by May 30, 2011.

I would appreciate this review being treated with confidence until myself and council have an opportunity to be presented with a report.

The revised draft contained two important changes from the initial draft Mr. Houghton sent Mr. Bonwick. First, it directed Collus Power not only to look for opportunities to reduce debt but also to “create greater efficiencies.” Second, it no longer directed Collus to “look at the positives and negatives” of selling Collus, but, rather, to examine “all potential opportunities that might benefit Collingwood residents.” The effect of these changes was to broaden the mandate to focus not only on a sale but on any and all opportunities that could benefit the Town.

The Inquiry was not provided with a final version of Ms. Cooper’s letter. Mr. Houghton testified that it was delivered to Mr. Muncaster in hard copy.

The minutes of the January 31 Collus Power board meeting do not reflect that the mayor’s letter was discussed at all. When asked to explain the reason, Mr. Houghton suggested that Ms. Cooper’s fiduciary duty to the company as a director would have somehow impeded that discussion. He said the direction needed to come from Ms. Cooper in her capacity as mayor and that a letter was the best way to deliver it.

I do not accept this explanation as a valid excuse for not discussing the mayor’s direction at the Collus Power board meeting. The Collus Power board had three directors: Dean Muncaster (the chair), Mayor Cooper, and

David McFadden. At this point, only Mr. McFadden was unaware of the mayor's letter. Throughout the Inquiry, Mr. Houghton testified he relied on the insight and experience of Mr. McFadden, and, at this point, there was no reason not to inform him so he could provide any views he might have had on the process. Instead, Mr. Houghton continued to control who was aware of the possible sale, keeping Council out of the loop.

Authority to Initiate a Valuation

Mr. Houghton testified he considered Mayor Cooper's letter to be his "marching orders" from the Town to obtain a valuation and to explore sale options. He said he told Ms. Cooper it was appropriate for her to send the letter as the "CEO of the Community." Mr. Houghton testified that it was also appropriate for the mayor to make such a request because it was merely a direction to look at options, not a direction to sell the utility. I do not accept this purported distinction. The mayor had no independent authority to direct Collus Power to undertake a valuation.

Council as a whole is responsible for developing municipal policies and services and for maintaining the financial integrity of the municipality (see Part One, Chapter 1). Although section 226.1 of the *Municipal Act, 2001* describes the head of Council, or the mayor, as the "chief executive officer" of a municipality, the mayor cannot act unilaterally on behalf of the municipality and does not have power akin to that of the CEO of a corporation.

Further in his testimony, Mr. Houghton stated that, if it was not appropriate for Ms. Cooper to send the letter without Council's approval, Council would have said so at the June 27, 2011, meeting. At that meeting, Mr. Houghton first notified members of Council that Collus Power had been exploring a potential sale. This argument misses the point. Waiting for an objection was not an appropriate approach. Mr. Houghton should have sought the Town's instructions before taking the first steps toward the potential sale or transaction involving Collus Power.

KPMG's Valuation and Options Analysis

On February 6, 2011, Mr. Houghton telephoned John Herhalt, a partner at KPMG. Mr. Herhalt had advised the Town in the early 2000s when the *Electricity Act* required all electricity distributors to become corporations under the *Ontario Business Corporation Act*. He worked with Mr. Houghton on that project and had crossed paths with him at various industry events. During the call, Mr. Houghton advised Mr. Herhalt that Collus Power wanted to analyze its options in light of potential consolidation and, in conjunction with that, prepare a valuation. Mr. Houghton testified that he described Ms. Cooper's letter on the call but never provided Mr. Herhalt or KPMG with a copy of the letter.

The following week, on February 14, Jonathan Erling, a managing director at KPMG, sent Mr. Houghton a draft engagement letter. The fee estimate in the letter was \$30,000. Mr. Houghton forwarded the proposal to Mr. Muncaster. In his reply, Mr. Muncaster noted that the estimate was higher than Mr. Houghton's authorization limit, raising "the tactical question about the involvement of the other COLLUS Power directors." He continued:

Because Mayor Cooper has been involved in the previous consideration of having this valuation done[,], that should not be a difficulty and I would suspect that we will be relying on her judgement about the involvement of the shareholder.

The point at which David McFadden is introduced to the issue is an interesting one, but I would think that sooner is better than later if that does not cause you or the Mayor undue difficulty from a political point of view, because he has the obligations and responsibilities of a director.

Other than these tactical issues, I believe that the project is well launched.

Later that day, Mr. Houghton emailed Mr. Herhalt and asked if anything could be done to bring the proposal within his \$20,000 spending limit. Mr. Herhalt replied that the valuation would cost \$30,000–\$50,000 "out of the gate." Mr. Herhalt explained that a more comprehensive valuation with greater certainty would have cost more money.

Collus Power eventually agreed to the \$30,000 fee estimate. Mr. Houghton

testified he did not speak with Ms. Cooper directly regarding the fee; rather, he stated, Mr. Muncaster spoke to her, and she in turn approved the fee.

The amount to spend on professional advice about the value of Collus Power and on future options for the utility was a question for the shareholder, the Town, not for the asset, Collus Power.

Mr. Houghton never advised Council about KPMG's retainer. Although Mr. Muncaster's email suggested that Collus Power would rely on Ms. Cooper's judgment "about the involvement of the shareholder," Ms. Cooper testified she relied on Mr. Muncaster's and Mr. McFadden's experience and knowledge as to when it was appropriate to notify the Town. Mr. McFadden, for his part, testified he was not consulted on either the retainer of KPMG or the appropriate time to inform the Town Council.

Mr. Houghton testified that Mr. McFadden was not involved because the board needed only a majority vote to approve KPMG's retainer. He added that, at the time Mr. McFadden was informed of the retainer after the fact, he did not have any concerns. However, Mr. McFadden testified he thought Council had requested that a consultant be retained. Tim Fryer, Collus Power's CFO, who became involved in KPMG's work, also believed that Council had provided the direction.

Because Council did not know about KPMG's work, it was unable to convey its priorities and goals to KPMG in regard to options for Collus Power.

No Communication Between KPMG and the Town

On February 24, 2011, KPMG sent Mr. Houghton a retainer agreement, which he signed on March 11. The retainer letter stated that KPMG was "pleased to submit this proposal to Collus Power ('Collus' or 'Client') to help you and your shareholder, the Town of Collingwood." Mr. Herhalt and Mr. Erling testified they understood that Collus Power was the client, though the work was being done for both Collus Power and the Town of Collingwood. In completing the assignment, no one at KPMG ever spoke with anyone at the Town other than Mr. Houghton.

The retainer provided that KPMG would undertake two primary tasks. First, it would complete an analysis of the potential sale value of Collus Power. Second, it would prepare a summary of the advantages and disadvantages

of various ownership options “from the perspective of the Town, of utility ratepayers, and local ratepayers.” The retainer further provided that KPMG would summarize its findings in a PowerPoint report it would present to the “relevant stakeholders.”

Mr. Herhalt testified that KPMG had prepared an options analysis for municipalities and their utilities on many occasions. He explained it was not uncommon for KPMG to be retained by either the distributor or the Town, and sometimes both. In either case, Mr. Herhalt recognized it was the owner, the shareholder municipality, that would ultimately decide how to proceed. KPMG’s work for Collingwood was no different.

In further testimony, Mr. Herhalt said that KPMG did not approach the work from the perspective of the Town’s objectives. It conducted a review of the options generally available to any LDC. Similarly, he said that the pros and cons analysis was undertaken from the perspective of a municipality generally, and not necessarily Collingwood. For this reason, he said KPMG was not concerned it had no meetings with Town officials. He also stated that KPMG was not asked its opinion about the best strategic option or to rank the options or provide any advice on which option to select.

As I discuss below, Mr. Houghton narrowed the scope of KPMG’s work. The Town, as a result, was effectively deprived of the benefit of receiving KPMG’s advice on all potential options for Collus Power. Council was not presented with the option to recapitalize Collus Power, for example, following the mayor’s direction to find ways to reduce debt. At the time, Collus Power maintained a debt-to-equity ratio of 30 percent debt and 70 percent equity (see Part One, Chapter 2). Most LDCs, however, maintained a ratio of 60 percent debt to 40 percent equity. As I discuss in further detail in Part One, Chapter 8, as part of the share sale to PowerStream, Collus Power did increase its debt to 60 percent, which resulted in a dividend to the Town of approximately \$4.5 million. The Town, however, could have received this dividend without proceeding with a share sale. Mr. Houghton testified he decided that Collus Power should not increase its debt to ensure that the company would have funds available for large projects. This decision was not Mr. Houghton’s to make. Rather, it was a matter for Council to determine after it had been informed of the pros and cons by staff – who, in turn, could consult with an expert advisor such as KPMG.

If KPMG had been retained by the Town to advise on how best to achieve its goals, Council may well have decided to remain with the status quo. Mr. Herhalt testified that, in his experience, many municipalities, and the smaller ones in particular, elected to maintain the status quo when presented with KPMG's options analysis. One factor, he noted, was that municipalities generally wished to retain 100 percent ownership of the utility's income stream. While individuals within Collus Power, such as Mr. Houghton, may have believed that the status quo was no longer viable, Council was never given an opportunity, with the assistance of professional advisors, to assess independently whether this attitude was true for the Town. As noted above, according to Mr. Bentz, the municipality of Orangeville opted to hold onto its utility, despite the utility's own view that a change was needed.

The Narrow Scope of KPMG's Review

In 2011, Mr. Herhalt was KPMG's global leader of its government and infrastructure group, a role that required him to be overseas about 80 percent of his time. As a result, he delegated the substance of KPMG's retainer to John Rockx, a certified business valuator with KPMG, and Jonathan Erling, a managing director at KPMG with expertise in the Ontario electricity industry. Mr. Rockx was responsible for the valuation, and Mr. Erling for the options analysis.

After the engagement was finalized, Mr. Houghton and Mr. Erling arranged a phone call for March 11. Mr. Erling remembered only two details from that call: first, that Collus Power considered it was time to conduct a review of the Town's ownership position in the utility; and, second, that the valuation should be done as part of that exercise.

From the outset, Mr. Erling wanted to know details of the shared services arrangements among Collus Power, the water utility (Collingwood Public Utilities Service Board, or CPUSB), and the Town. In his testimony, he stated that any potential sale could affect the shared services arrangements, specifically the services that the various Collus corporations provided to the Town (see Part One, Chapter 2). He had therefore sought to obtain a better understanding of the cost consequences if a purchaser was not interested in continuing to provide services to the Town and the CPUSB.

In order to comprehend how the shared services were structured, Mr. Erling had asked Mr. Fryer, the utility's CFO, several questions about them. He found it difficult, however, to obtain answers, noting at one point in an email that he did not think Mr. Fryer was "on board" with KPMG's assignment. In a telephone conversation during the project, Mr. Houghton told Mr. Erling that Mr. Fryer was opposed to a potential sale and was "scrambling." Mr. Erling did not recall the specific date of that conversation.

Mr. Fryer testified he was busy during this period but tried to answer Mr. Erling's questions as best he could with the resources he had available. He was not aware that KPMG had concerns about the nature of his responses and did not believe there was any issue in the assistance he was providing.

Before this matter could be resolved, Mr. Houghton intervened to prevent Mr. Erling from seeking further information about the shared services from Mr. Fryer. On May 9, after leaving Mr. Herhalt a voicemail, Mr. Houghton emailed him: "This is becoming very time sensitive and we need to get to a conclusion very soon." Mr. Herhalt testified that when he received this message, he was not aware of any particular deadline that needed to be met. Rather, he thought that Mr. Houghton merely wanted to see the matter moving faster.

Mr. Herhalt responded to Mr. Houghton's email, writing:

I don't think things have gone off the rails. Some of Jonathan's queries are related to the part of the assignment that was to explore other potential options and the quantitative and qualitative pros and cons.

My suggestion is that we first focus on getting the valuation done and clear up any information on that. For the other options and pros and cons piece[,] let's talk about the high level approach to that and some of the parameters so we don't go into too much detail.

Mr. Erling and Mr. Rockx met with Mr. Houghton and Mr. Muncaster on May 12. This meeting was the only in-person contact between KPMG and any individual from Collus Power. Before the meeting, Mr. Herhalt told Mr. Erling that the purpose was to explore the depth that Mr. Houghton was looking for in the options analysis, noting: "[M]y sense is he wants that piece at a pretty high level."

Mr. Erling did not have a strong recollection of the discussions that took place at this meeting. He recalled, however, that by the end, it had been agreed that KPMG would not incorporate an assessment of the shared services agreements into its valuation.

Mr. Rockx took notes at the meeting. Among other things, these notes stated, “New Council ... Mandate – reduce level of debt.” During his examination-in-chief, Mr. Rockx testified he did not recall discussing Council’s mandate to reduce debt levels beyond the fact that it was included in his notes. When he was cross-examined by Mr. Houghton’s counsel, Mr. Rockx testified that one of either Mr. Houghton or Mr. Muncaster told him at the meeting that a new Council had been elected and that one of its mandates was to reduce debt.

To the extent that Council’s mandate to reduce debt was discussed with Mr. Rockx, I am satisfied that these discussions were not substantial and did not have a meaningful impact on KPMG’s analysis.

As noted above, Mr. Herhalt testified that KPMG did not approach its work on the review of options through the lens of the Town’s specific objectives but, rather, from the perspective of a municipality generally. This approach was evident in the eventual options analysis report produced by KPMG, which did not mention the Town’s need to reduce debt.

Mr. Erling testified that, on May 13, the day after the meeting, he advised Mr. Herhalt that KPMG and the Town had agreed to “stay away from the detailed operational impacts of losing synergies between the water and electricity operations.” Mr. Erling explained they decided KPMG would not try to “disentangle” the shared services and put a dollar impact on the potential loss of synergies if they did not continue. The potential impact, he said, would need to be addressed later in the process because, at this point, they did not know whether a potential purchaser would be willing to continue the shared services arrangement.

Mr. Erling further stated that it would be unusual for a purchaser to continue to provide services to the Town, though it was “not out of the question.” He also confirmed that KPMG had analyzed shared services between a utility and affiliated entities with other clients, but he described the analysis as more involved.

Mr. Houghton testified he decided to direct KPMG not to analyze the

shared services agreements because both the Town and Collus Power wanted to continue with them. He said he knew Ms. Cooper liked these arrangements. However, Mr. Houghton did not consult with the mayor or the Town Council about whether KPMG should consider the shared services agreements as part of its review.

In further testimony, Mr. Houghton explained there was a rush to complete KPMG's work because Ms. Cooper's letter had requested a report by May 30, 2011. He was unable, however, to explain why she gave that deadline, and he said he had never discussed it with her. He also did not ask her at any time whether KPMG should be given more time to complete its analysis.

As a result of Mr. Houghton's direction, KPMG did not analyze the potential impact of the sale on the shared services. These services were a significant issue to the Town. In one email, Mr. Rockx estimated that the Town could be receiving \$250,000 in free services annually from the Collus group. This amount was not confirmed because of Mr. Houghton's later instructions to KPMG.

At the Inquiry, Mr. Erling indicated that quantifying shared services would not fundamentally change the approximate value of the utility. At the same time, he said that undertaking the analysis was not difficult, remarking: "It just ... takes a bit of effort." He testified that, once the value of the shared services was quantified, their impact on the Town after a sale would depend on who purchased the company and the terms of sale. Although that may well be accurate, whether to take the first step of quantifying the value of the shared services agreement to the Town at this stage was clearly a question for Council.

KPMG Analysis Not Shared with Town

KPMG delivered a draft valuation document and options analysis to Collus Power on May 24, 2011. It valued the company at between \$14.1 million and \$16.3 million. Mr. Houghton never asked KPMG to finalize the draft.

The options analysis came in the form of a slide presentation, as contemplated by the retainer agreement. The PowerPoint report considered the pros and cons of three different ownership options: full ownership (the status quo) and both the full sale or a partial sale of a majority or a minority

interest. KPMG did not discuss and was never asked to consider a 50 percent share sale, the option the Town ultimately pursued.

The analysis included one slide about shared services. The slide stated that any transaction could affect the Town and the water utility, and it noted that any such impact would “ultimately need to be examined as part of the financial analysis, from the Town’s perspective, of any proposed transaction.” As I discuss later in this Report, this analysis was not completed prior to the closing of the share sale transaction. After the sale, the issue of the shared services contributed to tensions between the Town of Collingwood and PowerStream.

Despite being expressly contemplated in the retainer, Mr. Houghton did not ask KPMG to present its valuation or options analysis to anyone at Collus Power or the Town. Instead, he took KPMG’s work, made significant changes to it, and presented the analysis himself to Town Council on June 27, 2011 (see Part One, Chapter 4).

The Strategic Partnership and the Role of Paul Bonwick

At the start of January 2011, PowerStream Incorporated's president and chief executive officer (CEO), Brian Bentz, had never heard of Paul Bonwick. By June 2011, PowerStream had retained Mr. Bonwick's company to assist in a potential request for proposal (RFP) for Collus Power Corporation.

During these six months, Mr. Bonwick previewed the value he could bring to PowerStream by sharing the confidential information he had obtained about the early stages of the Collus sale process. PowerStream, in turn, wanted to engage Mr. Bonwick but recognized the actual and apparent conflict of interest issues raised by hiring the mayor's brother to assist in purchasing the local utility. PowerStream's stated solution was to insist Mr. Bonwick make full disclosure to his sister and the Town's clerk about his role as a consultant. Mr. Bonwick, however, did not make the required disclosure. Mr. Bentz and PowerStream chief financial officer John Glicksman, who Mr. Bonwick was negotiating his retainer with, did not confirm that the required disclosure had been made. What resulted was only a veneer of disclosure.

Meanwhile, Collus Power's CEO, Ed Houghton, continued to push the company in the direction of a sale at a heightened pace. After KPMG completed its analysis of Collus Power's strategic options at the end of May 2011, Mr. Houghton arranged a meeting with two of Collus Power's three directors to discuss what option the company would recommend to the Town. The third director, Mayor Sandra Cooper, was not invited. Mr. Houghton testified that the three men discussed the idea of a "strategic partnership," through which another utility would both purchase an interest in Collus Power and provide the company with resources. As I will discuss, the strategic partnership ultimately materialized in a 50 percent share sale. After the meeting, Mr. Houghton prepared a presentation for Council recommending

that it establish a task team to explore the strategic partnership further. Mr. Houghton created the presentation by taking KPMG's report, removing the firm's name, and adding a strategic partnership as the "recommended option." KPMG never reviewed the presentation or the new analysis. It also did not participate in the presentation. Rather, Mr. Houghton delivered the presentation to Council *in camera* on June 27, 2011, following which Council decided to strike a task team, as suggested.

Two days later, on June 29, PowerStream met with the mayor, the deputy mayor, and the Town's chief administrative officer (CAO) to introduce PowerStream and discuss Mr. Bonwick's role with the company. Again, Mr. Bonwick's work on a potential RFP was not raised. This lack of disclosure left the Town on a path to selling a 50 percent interest in Collus Power while the mayor and senior staff were unaware that the mayor's brother was working for a potential bidder.

Negotiation of Paul Bonwick's Retainer

As I explain in Part One, Chapter 3, Mr. Houghton had had discussions with Mr. Bonwick in late 2010 about potential opportunities for him in the local distribution company (LDC) industry. Mr. Houghton suggested that Mr. Bonwick get in touch with Mr. Bentz, and the two arranged a meeting for January 12, 2011. At that meeting, Paul Bonwick and Brian Bentz discussed the apparent conflict presented by Mr. Bonwick's relationship to the mayor. Mr. Bonwick advised Mr. Bentz that a sibling relationship was not a conflict under the *Municipal Conflict of Interest Act*. Mr. Bentz asked Mr. Bonwick to provide support for his assertion that there was no conflict. He requested that Mr. Bonwick advise Mr. Houghton that PowerStream was considering retaining Compenso Communications Inc., Mr. Bonwick's company. He also asked Mr. Bonwick to provide a draft work proposal.

It is unclear to me why Mr. Bentz would insist that Mr. Bonwick confirm that retaining Mr. Bonwick to assist PowerStream in its pursuit of an interest in Collus Power would not place his sister, Mayor Sandra Cooper, in a conflict of interest. PowerStream had the sophistication and resources to answer the conflict question on its own, and it did so.

After he met with Mr. Bonwick, Mr. Bentz consulted with the mayors of Vaughan, Barrie, and Markham, who sat on PowerStream's Audit and Finance Committee, about hiring the mayor's brother to consult on the acquisition of a Town's utility and the potential conflict posed by such a retainer. Mr. Bentz testified that the mayors did not see a conflict so long as PowerStream was "very transparent about disclosure" to Mayor Cooper. The rationale, Mr. Bentz explained, was that Mayor Cooper could then consider the potential conflict for herself and determine whether it required disclosure and recusal from Council discussions and decisions regarding Collus Power. According to Mr. Bentz, the mayors did not discuss disclosure to anyone other than Mayor Cooper or the details of what information should be disclosed.

Mr. Bentz was not an expert in conflicts of interest. It followed that he would seek advice from the three mayors on the Audit and Finance Committee, who would be familiar with the obligations of a mayor when it came to a potential conflict of interest.

Mr. Bentz also sought advice from PowerStream's internal legal counsel on this issue, who in turn discussed the matter with PowerStream's external legal counsel. PowerStream declined to disclose the legal advice it received to the Inquiry.

I accept Mr. Bentz's evidence that the mayors agreed the decision to disclose information and recuse herself was Mayor Cooper's decision to make, assuming she was made aware of the full scope of Mr. Bonwick's engagement.

I do not accept Mr. Bentz's evidence that there was no consideration of the content of the required disclosure or disclosure to a broader audience.

I am satisfied that the mayors determined that, if PowerStream hired Mr. Bonwick to work on an acquisition involving Collus, this needed to be publicly disclosed to enable Mayor Cooper to consider the apparent conflict and whether to recuse herself. It would also arm the Town's councillors and staff with the information they required to determine how they should interact with Mr. Bonwick.

Mr. Bentz's decision to consult with the mayors and legal counsel was a vigilant start to a transparent potential engagement with Mr. Bonwick. Unfortunately, Mr. Bentz's vigilance did not continue.

Deputy Mayor Seeks Information on Conflicts of Interest

Mr. Bonwick took steps to confirm that a sibling relationship did not give rise to a conflict of interest under the *Municipal Conflict of Interest Act*, as Mr. Bentz had requested. Ironically, Mr. Bonwick's approach to this question was anything but transparent. Rather than seeking out a professional opinion on the conflict issue, he sought the assistance of his friend, Deputy Mayor Rick Lloyd.

On January 17, 2011, Deputy Mayor Lloyd emailed Sara Almas, the Town clerk, stating that his brother was considering bidding on some work for the Town. Deputy Mayor Lloyd asked Ms. Almas to confirm his understanding that this relationship would not put him in a conflict of interest under the "Conflict of Interest Act," saying that he knew the clerk could not give advice on the matter.* Ms. Almas replied, confirming her understanding that the *Municipal Conflict of Interest Act* did not deem a councillor to be in a conflict if the financial interest in question was that of a sibling.

Three days later, on January 20, Mr. Bonwick emailed Mr. Bentz, noting that the "Town's solicitor provided a legal opinion to the Deputy Mayor clarifying that there is no breach [sic] of conflict of interest guidelines in this situation." As I note later in this chapter, Mr. Lloyd testified that he never told Mr. Bonwick that he had obtained a legal opinion from the Town's solicitor.

Regarding concerns about a conflict of interest, Mr. Bonwick proposed in the same email that

PowerStream consider engaging my company ... on a much broader level eliminating the potential accusation that our business relationship is somehow predicated on family contacts ... This approach would in no way detract from [the] LDC [local electricity distribution company] opportunity presently being discussed.

Mr. Bonwick's January 20 email to Mr. Bentz was a red flag that Mr. Bentz failed to identify or address. Mr. Bonwick proposed blurring the nature of Compenso's true engagement with PowerStream; namely, to work with

* The deputy mayor's reference to the "Conflict of Interest Act" in his email was an error. There is no act called the "Conflict of Interest Act." In her response, the clerk identified the relevant legislation: the *Municipal Conflict of Interest Act*.

PowerStream in responding to any opportunities to acquire an interest in Collus Power. This proposal was antithetical to the advice of the three mayors that disclosure was required so Mayor Cooper could address the potential conflict of interest issues posed by PowerStream's retainer of her brother. As Mr. Bentz would learn shortly, there was also no legal opinion from the Town solicitor.

Mr. Bentz kept notes documenting his early interactions with Mr. Bonwick. These notes recorded that Mr. Bonwick's initial representation that his retainer by PowerStream would not put the mayor in a conflict of interest began to erode under scrutiny. Mr. Bentz's notes indicated that he asked Mr. Bonwick about the source of the opinion that the mayor would not be in a conflict of interest. They stated that Mr. Bonwick "[s]aid it came from City Clerk on advice of Council that if the interest is of a sibling then the elected official does not have a conflict. Said the request came from Deputy Mayor not Mayor."

Mr. Bonwick and Mr. Bentz spoke by telephone on January 25, 2011. Mr. Bentz's notes from his early discussions with Mr. Bonwick recorded that, during this call, Mr. Bentz asked Mr. Bonwick to provide documentation to support that a sibling relationship did not create a conflict of interest.

On January 27, Deputy Mayor Lloyd forwarded his January 17 email exchange with Clerk Almas to Mr. Bonwick. Mr. Bonwick, in turn, forwarded an altered version of that email chain to Mr. Bentz on January 29. In the covering message, Mr. Bonwick wrote that the deputy mayor had "informed [me] that it was a legal opinion. That said, the Clerk is the person responsible for the interpretation of the Municipal Act [*sic*] for Council."

The alteration that Mr. Bonwick made to the deputy mayor's email correspondence with the clerk is telling. Mr. Bonwick removed the deputy mayor's email to Clerk Almas, providing Mr. Bentz only with the clerk's response. In omitting the deputy mayor's email, Mr. Bonwick removed the context of the clerk's response. He also removed the deputy mayor's acknowledgement that Clerk Almas could not provide advice on the issue of conflicts.

In his evidence, Mr. Bentz described the effect of this omission. He understood Clerk Almas's email responded to the question of whether Mr. Bonwick's work for PowerStream on Collus Power would put Mayor Cooper in a conflict of interest. Mr. Bentz testified that PowerStream wanted

Mr. Bonwick to disclose the specific situation to the clerk. Mr. Bentz acknowledged that he “might have” had questions about why Mr. Bonwick chose to remove Deputy Mayor Lloyd’s email from the email chain containing the clerk’s response, had he known about it.

Mr. Bonwick enlisted the deputy mayor to obtain confirmation from the clerk about the status of siblings under the *Municipal Conflict of Interest Act*. By working through Deputy Mayor Lloyd, Mr. Bonwick avoided dealing directly with Clerk Almas. He therefore avoided any questions about his work for PowerStream that may have flowed from that conversation.

Mr. Bonwick and Deputy Mayor Lloyd each provided different explanations for this email correspondence. Mr. Bonwick testified that he was unaware of the deputy mayor’s January 17 email correspondence with Clerk Almas when he emailed Mr. Bentz on January 20. Mr. Bonwick said he emailed Mr. Bentz following a conversation with Deputy Mayor Lloyd about Mr. Lloyd’s experience in dealing with potential conflicts relating to his brother. The latter operated a construction company that bid on Town projects from time to time.

More specifically, Mr. Bonwick testified that he told the deputy mayor that he was “pursuing work” with a “company outside the community” that may be engaging with the municipality. In that context, Mr. Bonwick asked about the deputy mayor’s experience in dealing with the clerk about whether sibling relationships gave rise to a conflict of interest. Mr. Bonwick testified that the deputy mayor responded the issue had arisen on several occasions, and he had always been provided an opinion that a sibling relationship did not create a conflict. Mr. Bonwick testified that he misunderstood his conversation with the deputy mayor and was left with the impression that the deputy mayor had obtained a legal opinion from the Town’s solicitor.

Mr. Lloyd’s recollection was different. He testified that he sent his January 17 email to the clerk shortly after arguing at a bar with his brother and Mr. Bonwick and “a bunch of other guys.” According to the deputy mayor, the group was needling him about his brother bidding on Town projects and insisting that it gave rise to a conflict of interest. Mr. Lloyd testified he was “pretty cheesed off” by the conversation. He emailed the clerk within days of the argument to confirm a sibling relationship did not amount to a conflict. Then, he said, he forwarded the clerk’s response to Mr. Bonwick

on January 27 “so he could show these other characters that I didn’t have a conflict.”

Mr. Lloyd denied speaking with Mr. Bonwick about his communications with the clerk before he forwarded the email exchange with her on January 27. He did not mention a conversation in which Mr. Bonwick advised him about a potential new retainer.

I do not accept Mr. Lloyd’s version of events.

Deputy Mayor Lloyd did not forward Clerk Almas’s email to Mr. Bonwick until January 27, at least two weeks after the alleged offending conversation with Mr. Bonwick and their mutual friends. If Deputy Mayor Lloyd was so upset by the conversation that he asked the Town clerk for her view of his brother’s situation, he would have forwarded her responding email immediately on receiving it and not 10 days later.

Finally, Deputy Mayor Lloyd’s email forwarding Ms. Almas’s response made no mention of the “other characters,” and he did not ask Mr. Bonwick to show the email to anyone.

I am satisfied that Mr. Lloyd forwarded Ms. Almas’s email to Mr. Bonwick to assist him, as he had on many other occasions.

I am also satisfied that Mr. Bonwick removed the deputy mayor’s email from that email chain to create the false impression that the Town clerk had confirmed Mr. Bonwick’s retainer by PowerStream would not put the mayor in a conflict of interest.

The Houghtons’ Review of the Draft Proposal

While PowerStream was considering the implications of retaining Paul Bonwick to assist in its intended investment in Collus Power, Mr. Bonwick worked to convince PowerStream to hire him, leveraging his relationship with Mr. Houghton in the process.

Mr. Bonwick prepared a document setting out the mergers and acquisitions–related services he proposed to offer to PowerStream through his company, Compenso. The proposed services included identifying key decision makers, maintaining political and bureaucratic relationships related to the transaction, and acting as an “early-warning system” that gathered intelligence to enable PowerStream to respond to any potential critical challenges that arose.

On January 19, 2011, Mr. Bonwick sent copies of his draft PowerStream proposal to Ed Houghton and his wife, Shirley Houghton, by separate emails.

Mr. Bonwick asked Ms. Houghton to provide comments on the draft proposal. Ms. Houghton was surprised by Mr. Bonwick's request and did not know why Mr. Bonwick asked for her assistance. She had not done any work for Mr. Bonwick before. She called Mr. Bonwick and advised that he had sent her the document in error. According to Ms. Houghton, Mr. Bonwick replied: "Sorry about that, but while I've got you on the line, would you mind taking a look at it for me?" Ms. Houghton reviewed the draft proposal for typographical errors. She could not recall how she communicated her comments on the draft to Mr. Bonwick.

Ms. Houghton recalled advising Mr. Houghton that Mr. Bonwick had emailed her the proposal for her review. She forwarded the email to Mr. Houghton at his request. Mr. Houghton couldn't recall if he was aware of Mr. Bonwick's communications with Ms. Houghton.

The next day, Mr. Bonwick offered Ms. Houghton a paid position with Compenso, editing documents and assisting with "matters related to the Lobbyist Registrar at both the Federal and Provincial level" at a rate of 20 dollars an hour. Ms. Houghton was not working full time and agreed to work part time, providing administrative support for Compenso. Over the following 20 months, Ms. Houghton received \$27,390 from Compenso. One payment Compenso made to her, totalling \$19,350, is discussed in Part One, Chapter 5.

I am satisfied Mr. Houghton knew that Mr. Bonwick asked Ms. Houghton to work for him and review his proposal.

As I discuss in Part One, Chapter 3, Mr. Bonwick also sent his draft proposal to Mr. Houghton. Mr. Houghton responded and said he had "reviewed and made a few minor changes".

On January 20, 2011, Paul Bonwick sent Brian Bentz the proposal. In his covering email, Mr. Bonwick told Mr. Bentz that he had engaged in "detailed discussions" with Mr. Houghton about the proposal, stating: "As a result of my assessment of the situation I constructed the proposal in a manner that address *[sic]* any potential concerns." In other words, Mr. Bonwick advised Mr. Bentz that he had the ear and the assistance of the target utility's CEO.

Ultimately, on January 25, Mr. Bonwick and Mr. Bentz discussed Mr. Bonwick's proposal. During that conversation, Mr. Bentz advised Mr. Bonwick that PowerStream's Audit and Finance Committee would have to review the proposal.

Confidential Information Provided During Retainer Discussions

Paul Bonwick supplied PowerStream with confidential information about Collus Power while he was negotiating his retainer with PowerStream. On February 1, Mr. Bonwick emailed Mr. Bentz, writing:

In the interests of time, I had to initiate the beginning of the process we discussed. Unfortunately the next committee meeting was not scheduled for another two months which would have caused some timing challenges if process was not initiated this week[.]

As a result, the Chairperson and Executive Director have now received direction to commence a valuation of the Utility ...

The plain reading of this email is that Mr. Bonwick informed Mr. Bentz that he had initiated a process which resulted in Collus Power undergoing a valuation by KPMG. The implication of this message would be apparent to Mr. Bentz: Mr. Bonwick wielded significant influence within the municipality, and that influence would be an asset to PowerStream.

Mr. Bentz testified that he interpreted Mr. Bonwick's email differently. He understood the "process" Mr. Bonwick mentioned in the email was PowerStream's hiring process.

The email cannot reasonably bear that meaning.

Mr. Bonwick, for his part, testified that he was unable to recall what he was intending to communicate with this email.

Meanwhile, the day before Mr. Bonwick sent this email to Mr. Bentz, he sent an email to Mayor Cooper advising her to promote austerity measures among the Town's department heads.

On February 13, 2011, Mr. Bonwick sent Mr. Bentz three reference letters, including a letter from Mr. Houghton dated 2005. In the covering email, Mr. Bonwick specifically explained that he had "... contacted Ed to secure

his approval of providing this letter to you. It was my opinion that requesting a more current letter from Ed could put him in a conflict situation.”

Mr. Bonwick testified that his comment about conflict of interest related to his earlier discussions with Mr. Houghton about Mr. Bonwick potentially assisting PowerStream with a transaction involving Collus. He believed that having Mr. Houghton provide a current letter of reference would heighten Mr. Houghton’s concerns.

I am satisfied that Mr. Bonwick told Mr. Bentz about his conversation with Mr. Houghton with Mr. Houghton’s consent. The purpose of the communication and the reference letter was to impress on Mr. Bentz and PowerStream that the CEO of the company they wanted to buy was in favour of PowerStream retaining Mr. Bonwick.

Presentation to PowerStream’s Audit and Finance Committee

PowerStream’s Audit and Finance Committee considered retaining Mr. Bonwick in early March 2011 after a presentation about Collus Power as a potential merger or acquisition target. Members of that committee were Markham Mayor Frank Scarpitti; Vaughan Mayor Maurizio Bevilacqua; Barrie Mayor Jeff Lehman; Dan Horchik, a lawyer and the independent board member from Markham; and Gino Rosati, a regional councillor from Vaughan. The political experience of this committee is evident.

The slideshow presented to the Audit and Finance Committee in early March stated that, “[t]hrough informal discussions with Senior Employees of Collus Power, it was suggested that PowerStream explore the potential of hiring Paul Bonwick as a consultant.” Mr. Bentz, who confirmed the reference was to Mr. Houghton, said that this suggestion was likely explained to the Audit and Finance Committee during the presentation. The slideshow also indicated that Mr. Bonwick was the brother of Collingwood’s mayor.

The presentation further indicated that “Mr. Bonwick would assist PowerStream in figuring out how best to work with the Town of Collingwood’s Council, if an acquisition opportunity were to arise.” PowerStream’s Audit and Finance Committee concluded that retaining Mr. Bonwick was possible if there was no conflict and if “we were very transparent about disclosure.”

Concerns at PowerStream

PowerStream executives shared the concerns of its Audit and Finance Committee regarding the potential retainer of Mr. Bonwick. In particular, Dennis Nolan, the company's general counsel and corporate secretary, told the Inquiry that he was skeptical about retaining Mr. Bonwick from the beginning and remained concerned about the potential conflict of interest. Mr. Nolan testified that he questioned the value flowing from the retainer throughout Compenso's relationship with PowerStream. Mr. Nolan saw the importance of being transparent about the retainer.

PowerStream's management and the Audit and Finance Committee knew it was dealing with an apparent conflict of interest. It knew it would look suspicious if PowerStream was the successful bidder and it was subsequently discovered that the mayor's brother had assisted PowerStream. Management and the Audit and Finance Committee understood what it would be like to see this coincidence revealed for the first time and explored in the media.

The Need for Disclosure of Mr. Bonwick's Involvement to the Town

PowerStream arranged a meeting on April 13, 2011, with Mr. Bonwick, Mr. Bentz, and the three mayor members on PowerStream's Audit and Finance Committee. At the meeting, the mayors communicated the necessity for transparency and disclosure concerning PowerStream's intention to hire Mr. Bonwick to assist on a Collus Power RFP as a prerequisite to any such retainer. In his testimony, Mr. Bentz could not recall any discussion about Mr. Bonwick disclosing his fees or the kinds of services he would provide. Still, he believed the three mayors told Mr. Bonwick that he needed to disclose that PowerStream had retained him concerning a potential Collus RFP.

Mr. Bonwick told the Inquiry that, at the April 13 meeting, he emphasized the need for disclosure should PowerStream retain him. Mr. Bonwick testified that, to him, full disclosure meant full disclosure to the mayor so she understood the potential services Compenso would provide to PowerStream. It also involved a disclosure meeting with senior staff members at Collus Power and the municipality to ensure they had a thorough understanding of the services Compenso would provide to PowerStream.

Following his April 13 meeting with the three mayors, Mr. Bonwick sent Mr. Bentz a memo headed with the following warning: “CONFIDENTIAL: THIS BRIEFING CONTAINS COMMERCIALY SENSITIVE INFORMATION AND MUST BE TREATED ACCORDINGLY.” Mr. Bonwick’s memo referenced the Audit and Finance Committee’s position on the “optics concerning Collus and the Town of Collingwood” and proposed a meeting with Ed Houghton, Collus board chair Dean Muncaster, Chief Administrative Officer Kim Wingrove, Mayor Cooper, Deputy Mayor Lloyd, and Clerk Almas “[i]f the RFP scenario unfolds.”

I do not accept Mr. Bonwick’s evidence that he advocated for the need to disclose Compensor’s relationship with PowerStream to the Town during the April 13 meeting with the PowerStream mayors.

The evidence of Mr. Bonwick’s conduct during early 2011 establishes a pattern: Mr. Bonwick made the bare minimum disclosure at every stage. In his initial discussions with Mr. Bentz, outlined above, Mr. Bonwick misrepresented the nature of the information he had about the potential conflict of interest. First, he indicated that the Town solicitor had advised the deputy mayor that there was no conflict. Then, when pressed to produce that opinion in writing, Mr. Bonwick forwarded some, but not all, of the deputy mayor’s correspondence with Ms. Almas, removing the crucial initial email from the deputy mayor setting out the context for the inquiry and his acknowledgement that the clerk could not provide legal advice. Mr. Bonwick’s approach to disclosure did not change as events unfolded.

POWERSTREAM’S DISCLOSURE REQUIREMENT

PowerStream and Mr. Bonwick signed a retainer agreement on June 7, 2011. The agreement stated that Mr. Bonwick would

- identify “potential opportunities for the purchase, merger or other business combinations with LDCs”;
- prepare “detailed briefings identifying key decision makers related to a particular opportunity”;
- “[a]ssist in the preparation of any Proposals that PowerStream intends to submit”; and

- “[a]ssist with any other duties required as it relates to PowerStream’s M&A [mergers and acquisition] activity.”

The agreement stated that Compenso was “in constant contact with the Municipal Government Leaders” and that it would “provide PowerStream with ... [a] detailed verbal brief of tactics and recommended approaches for proceeding.”

The retainer agreement provided that PowerStream would pay Compenso monthly fees of \$10,000 and expenses of \$1,000. There was no provision for any success fee.* Mr. Bonwick had initially sought a monthly \$9,500 fee plus expenses and a 2.5 percent success fee.

The retainer agreement included a section entitled “Disclosure,” which provided that,

Bonwick agrees to make all necessary and prudent disclosure of his/CCI’s engagement with PowerStream. Any such disclosures shall be discussed and authorized by PowerStream in advance. Specifically, with respect to any authorized activity on PowerStream’s behalf, relating to COLLUS Power, Bonwick represents and warrants that he has disclosed the scope of his services and his retainer by PowerStream to the Mayor and Clerk of the Town of Collingwood, and shall provide written evidence of such disclosure to PowerStream. Further, with respect to COLLUS Power, CCI shall, after consulting with PowerStream, make any additional disclosure(s) that may be prudent or required by applicable law, during the course of this engagement, or any extension thereof ...

LETTER DRAFTED IN THE MAYOR’S NAME

On May 18, 2011, Mr. Bonwick sent Mr. Bentz a copy of a letter that he had drafted in the name of the mayor. The letter, addressed to Mr. Bentz, stated that Mr. Bonwick had disclosed to his sister the work he would do for PowerStream, though it made no reference to Mr. Bonwick assisting PowerStream in its pursuit of an interest in Collus Power. In fact, Mr. Bonwick had not made this disclosure to the mayor.

* For this Report, a “success fee” is a payment made when a defined result is achieved.

In his covering email, Mr. Bonwick explained that he drafted the letter “with the thought of public disclosure if ever required.” The letter included a vague description of the services Mr. Bonwick would provide to PowerStream, including “strategic advice in matters related to Public Relations, Strategic Planning, Acquisitions and Media Relations ... these responsibilities could potentially incorporate advice related to the Town of Collingwood subject to certain conditions unfolding in the coming months.”

This letter, which the mayor did sign and send on June 2, made no mention of Mr. Bonwick’s intended involvement in PowerStream’s response to the Collus RFP or his involvement in any Collus Power sale.

DISCLOSURE OF KPMG’S VALUATION OF COLLUS

Mr. Bentz and John Glicksman, PowerStream’s chief financial officer, met with Mr. Bonwick on May 24. After this meeting, Mr. Bonwick forwarded to Mr. Glicksman his January proposal along with two letters of reference. Despite his correspondence with Mr. Bentz in February, Mr. Bonwick did not provide Mr. Glicksman with Mr. Houghton’s 2005 letter of reference.

In the covering email, Mr. Bonwick advised Mr. Bentz that KPMG had completed its valuation of Collus, a fact that had not been disclosed to Collingwood Town Council. Council did not even know that a change in ownership was contemplated. This information was presented to the PowerStream board of directors before Council learned that a change in the ownership of its electric utility was contemplated or that a valuation analysis of the company had been undertaken. Mr. Bonwick learned that the valuation analysis was complete from Mr. Houghton, who knew Mr. Bentz was concerned with Council’s level of commitment to a potential sale. The disclosure also demonstrated to PowerStream the value that Mr. Bonwick could bring as a consultant.

The information advantaged PowerStream because it provided this company alone with notice that the sale was likely to proceed. No other potential bidder had such information at this time.

MISREPRESENTATION OF HIS DISCLOSURE

On May 31, Mr. Glicksman sent Paul Bonwick a draft consulting agreement. Among other things, the agreement required Mr. Bonwick to provide

written evidence that he had disclosed to the mayor and the clerk the scope of his services under the retainer. This requirement presented a problem for Mr. Bonwick. As a result of Mr. Bonwick's communications to date, particularly his treatment of the January 17 email exchange between Deputy Mayor Lloyd and Clerk Almas, PowerStream believed this disclosure had already occurred. Mr. Bonwick knew it had not.

Mr. Bonwick responded to Mr. Glicksman's email saying he needed to make "one small correction," which was that he had "not formally engaged with the Clerk or any other municipal staff on this matter at this time." His response caught PowerStream by surprise. Mr. Glicksman responded:

There still seems to be some apparent "misunderstanding" of the disclosures Brian thought you had made to-date to him with respect to both the Mayor and the City Clerk. He was under the impression that you had made disclosure to and received clearance from, the City Clerk, that under the Municipal Act [*sic*] there was no conflict for you to do work for us leading to or on a potential RFP of Collus and that you had received written confirmation of same from the City Clerk.

Mr. Bonwick now undertook to make the disclosure, with written confirmation, that PowerStream thought he had made previously. As before, he did so in a manner that was less than straightforward and with the bare minimum of disclosure the circumstances would allow.

Mayor Cooper and Mr. Bonwick met to discuss the disclosure letter that Mr. Bonwick had drafted for her to send to Mr. Bentz. Mr. Bonwick testified that he could not recall if he specifically discussed a potential Collus Power RFP with his sister. Ms. Cooper told the Inquiry that Mr. Bonwick did not discuss all the services described in the disclosure letter. She did not understand that PowerStream would be retaining Mr. Bonwick to work on a potential Collus RFP. In particular Ms. Cooper did not understand what "acquisitions" meant, and she did not ask. She testified that she did not ask Mr. Bonwick to provide her with a copy of his retainer agreement with PowerStream because she felt it was none of her business.

I accept Ms. Cooper's evidence in this regard. Her testimony is consistent with Mr. Bonwick's insincere attitude toward full disclosure.

On June 2, Mr. Bonwick sent Mayor Cooper an email, with a copy to Mr. Bentz, providing her with Mr. Bentz's email address. In doing so, Mr. Bonwick showed Mr. Bentz that he could put him in direct contact with the mayor of the Town of Collingwood. Later that day, Mayor Cooper's office sent Mr. Bentz a signed copy of the disclosure letter that Mr. Bonwick had drafted.

Mr. Bonwick's communications with Mayor Cooper fell well short of the transparent disclosure insisted on by PowerStream's Audit and Finance Committee.

Mr. Bentz candidly acknowledged in his evidence that Mr. Bonwick's letter could have been more explicit and that PowerStream did not follow up with the Town to confirm that Mr. Bonwick had made the appropriate disclosure. If Mr. Bentz knew PowerStream wanted to ensure that the mayor was aware of the scope of Mr. Bonwick's retainer, he should have informed her of it in writing. Mr. Bentz is more than sophisticated enough to understand the importance of such communication. Mr. Bentz decided not to inform the mayor himself.

Ms. Cooper's unquestioning acceptance of Mr. Bonwick's draft letter was not satisfactory. As mayor of the Town of Collingwood, she should have better informed herself before making representations to third parties using the authority of the mayor's letterhead.

After meeting with his sister, Mr. Bonwick met with the Town's clerk, Sara Almas, on June 2 to discuss his potential work for PowerStream. Ms. Almas testified that, at the meeting, Mr. Bonwick disclosed that he had made a proposal to a company called PowerStream to provide public relations and community outreach services in relation to the CHEC group of local distribution companies (LDCs). Ms. Almas's contemporaneous notes from the meeting are consistent with her recollection of what Mr. Bonwick told her. Mr. Bonwick then advised the clerk that PowerStream's CEO had a concern about a potential conflict of interest, given that Mr. Bonwick was the mayor's brother. Mr. Bonwick asked Ms. Almas to email Mr. Bentz confirming that a sibling relationship did not create a conflict under the *Municipal Conflict of Interest Act*. Ms. Almas declined and advised that she could not give legal advice. Mr. Bonwick then proposed he would send an email to Mr. Bentz with a copy to Ms. Almas about their conversation. Ms. Almas said that would be fine, so long as Mr. Bonwick confirmed in the email that she was not providing legal advice.

Following their meeting, Mr. Bonwick emailed Mr. Bentz, copying Ms. Almas, and wrote:

I had the opportunity to meet with the Clerk of the Town of Collingwood, Ms. Sara Almas this morning. During the meeting I described the services my company would be providing to PowerStream [*sic*] throughout the Region as well as specific to Collingwood. Ms. Almas was kind enough to offer an interpretation (opinion) of the “Provincial Conflict of Interest Act” as it relates to my sister being a member of Municipal Council. Ms. Almas was quite clear that there is no conflict of interest based on my company’s relationship with PowerStream [*sic*].

Ms. Almas testified that she was frustrated with Mr. Bonwick’s email because he had included the word “opinion,” but otherwise thought the email was generally accurate based on her understanding that Mr. Bonwick was providing public relations and community outreach services to PowerStream. She discussed responding to his email to correct the opinion statement with the CAO. Together, they decided she should not.

Mr. Bonwick sent a second email to Mr. Glicksman and Brian Bentz on June 3, in which he advised that he had “thoroughly briefed” the clerk.

This statement was not accurate.

This email is illustrative of Mr. Bonwick’s approach to disclosing his relationship with PowerStream. He was more than prepared to understate or obfuscate the facts PowerStream required him to disclose, while overstating the disclosure he had made when reporting to PowerStream.

Ms. Almas testified that Mr. Bonwick did not disclose at the meeting that he would be providing services beyond public relations and community outreach. She had no idea Mr. Bonwick’s work might involve consulting on acquisitions, including a potential transaction involving Collus. Mr. Bonwick testified that they must have discussed Collus, although he did not have a specific recollection of what he said.

I accept Ms. Almas’s evidence about this meeting and subsequent email exchange.

I am satisfied that Ms. Almas believed Mr. Bonwick was asking about a potential conflict arising from his providing to PowerStream public relations

and community outreach services in relation to the CHEC group, not as a consultant on an acquisition of Collus Power. Nothing in Mr. Bonwick's vague confirmatory email suggested that his services would extend beyond what Ms. Almas said he had described at the meeting.

On the other end, Mr. Bentz and Mr. Glicksman did not know that Mr. Bonwick had failed to disclose the full scope of his services, although they also failed to ask Mr. Bonwick for specifics. The approach Mr. Bentz and Mr. Glicksman took to disclosing Mr. Bonwick's retainer to the Town clerk did not reflect the importance that PowerStream's Audit and Finance Committee placed on transparent disclosure.

The best way to ensure the disclosure recommended by PowerStream's Audit and Finance Committee took place was for Mr. Bentz to make written disclosure to the clerk. Failing that, Mr. Bentz should have clarified the disclosure made to the clerk through direct communication with her.

He did neither.

MEETING WITH CAO WINGROVE

On June 7, PowerStream signed the retainer letter and a non-disclosure agreement with Paul Bonwick's company, Compenso Communications Inc. (Compenso). Shortly after signing the retainer agreement, Mr. Bonwick emailed the Town's chief administrative officer, Kim Wingrove, to "discuss a company that I have recently started to provide services. The purpose of the meeting is to provide disclosure as well as [propose] an additional meeting." Mr. Bonwick forwarded this email to Deputy Mayor Lloyd with the message, "Hey Bubba, let me know if you have time to discuss this."

Mr. Bonwick met with Ms. Wingrove on June 14 for approximately 10 minutes. Ms. Wingrove's evidence was that after the meeting she had a vague understanding Mr. Bonwick would be providing communications advice to a neighbouring utility. She was concerned Mr. Bonwick had arranged the meeting so he could later claim he had spoken with her about his work for PowerStream. During her evidence, Ms. Wingrove candidly acknowledged that, with the benefit of hindsight, it "would have been prudent" for her to ask Mr. Bonwick more questions about the work he would be doing.

Ms. Wingrove also testified that the meeting "made your antenna go up." When asked how she addressed this concern, she explained:

It was my experience that I didn't have solid outlets – solid places to be able to communicate those kinds of concerns. Who was I going to tell? ... where I had a specific situation and – and sufficient detail to have a meaningful conversation, I would reach out to our legal representatives and have a conversation with them but things like this that were ill defined, subjective based on ... just my own gut instinct, I didn't really have a place to take those or an ability to do very much with them. It was more that I had to wait and see if something more came of it ... in a more substantive [way so] that I would then have a reason ... to bring in legal counsel or – or, you know, speak to specifics.

After the meeting with Mr. Bonwick, CAO Wingrove did not know that Mr. Bonwick would be assisting PowerStream to respond to a Collus RFP. The CAO, like Mayor Cooper, understood Mr. Bonwick would be providing communications advice to PowerStream.

Mr. Bonwick told the Inquiry that his June 14 meeting with Ms. Wingrove was his second attempt to meet with the CAO. Mr. Bonwick testified that a previously scheduled meeting did not take place, as the CAO had left the office before the appointed time, apparently “very upset” and “emotional.” He said this was why he reached out to Deputy Mayor Lloyd via email regarding his meeting with CAO Wingrove. Deputy Mayor Lloyd did not recall receiving the email to which Mr. Bonwick referred.

Mr. Bonwick painted Ms. Wingrove as unprofessional, telling the Inquiry that “[t]his seemed a bit bizarre in terms of any normal interaction in a business environment.” He also said that his June 14 meeting with Ms. Wingrove ended because she took a call during the meeting and grew so upset that she left the room. Mr. Bonwick elicited evidence supporting his version of these events from Deputy Mayor Rick Lloyd. Ms. Wingrove had no memory of the purported aborted first meeting or of her brief meeting with Mr. Bonwick ending as he described.

I do not accept that Ms. Wingrove was an unstable, ineffective, or unprofessional public servant.

Ms. Wingrove's efforts to maintain appropriate boundaries between Council and staff, and to operate the Town following accepted governance practices, were unsuccessful. A pre-existing web of relationships contributed

to her challenges. Part One, Chapter 9, addresses in greater detail Ms. Wingrove's abrupt termination of employment in April 2012.

The Strategic Partnership Option

Ed Houghton scheduled a June 4, 2011, meeting with two of the three Collus Power directors, David McFadden and Dean Muncaster. The third director, Mayor Cooper, was not invited to the meeting. Mr. Houghton explained that the purpose of the meeting was for him and Mr. Muncaster to discuss the KPMG valuation and options analysis with Mr. McFadden. Neither Mr. McFadden nor Mr. Houghton knew why the mayor was not told of the meeting. (The KPMG valuation and options analysis is discussed in the previous chapter.)

The meeting focused on the sale of all or part of Collus Power. Between May 31 and June 2, Mr. Houghton exchanged emails with Mr. McFadden requesting a meeting but did not attempt to include Mayor Cooper.

Mr. Houghton told the Inquiry that, at the June 4 meeting, the three men decided to recommend a strategic partnership. He explained that he, Mr. Muncaster, and Mr. McFadden owed a duty to Collus Power to strengthen the company. Mr. Houghton said Mayor Cooper had indicated that the Town was not interested in a full sale. The three men agreed that continuing with the status quo was not an option and that, while an investor would give "cash to the Town," it would do nothing for the company. A "strategic partner" would provide resources to strengthen the company while also providing "some cash" to the Town, "which helps check that box of what [the mayor] was really getting at." They also discussed putting together a group of people to pursue a strategic partner, with representation from Collus Power and the Town. After the June 27 Council meeting, a group was formed called the Strategic Partnership Task Team.

Mr. McFadden testified that he did not recall the contents of the discussion at the meeting.

Mr. Houghton said they decided to bring the mayor into the conversation at the conclusion of the meeting, "as the other Board member and ... as our representative of the shareholder."

The Collus Power board of directors met on June 10. The meeting's minutes do not reflect any discussion of the KPMG report or potential ownership options for Collus Power, nor do they reflect that any *in camera* discussions occurred during that meeting.

Mr. Houghton told the Inquiry that he, Mr. McFadden, and Mr. Muncaster met with Mayor Cooper after the Collus Power board meeting on June 10. At that meeting, Mr. Houghton provided Mayor Cooper with a copy of the KPMG presentation and the men advised her about their June 4 discussions. They also considered who should sit on the Strategic Partnership Task Team.

Mr. McFadden also did not recall the June 10 meeting with the mayor, and Mayor Cooper did not have a clear or detailed recollection of how the strategic partnership option became the recommended one. Following this meeting with the mayor, Mr. Houghton appropriated KPMG's slide presentation, making key and misleading alterations that presented the strategic partnership as the "preferred" ownership option for the Town. I discuss Mr. Houghton's alterations to the KPMG slide deck in greater detail below.

Mr. Houghton did not consult KPMG about the strategic partnership option or his alterations to KPMG's slides. He told the Inquiry that no discussions took place between him and the Collus Power board of directors about consulting KPMG about the strategic partnership concept.

KPMG's John Herhalt testified that a 50 percent share sale, which is ultimately how the Town structured the strategic partnership, raised governance concerns not presented by the sale of a minority interest.

Mr. Houghton testified that the Collus board of directors discussed governance issues regarding a strategic partnership and felt that the strategic partnership reduced governance risks.

No information about governance issues posed by the strategic partnership was included in the slides Mr. Houghton presented to Council. Mr. Houghton testified that the governance concerns related to a partial sale that KPMG had identified were left out of the strategic partnership slides in error.

Mr. McFadden told the Inquiry that he did not know what legal advice the Town had received about governance concerns, and that Collus Power

did not need legal advice because it would be acting on instructions from its shareholder, the Town of Collingwood.

On June 14, 2011, Mr. Houghton sent Mr. McFadden an email with the subject “Confidential Council Presentation,” asking Mr. McFadden to “review the attached and see if I have captured what we discussed and been sensitive in the areas of ‘sale?’” The Inquiry was not provided with a copy of the attachment Mr. Houghton sent to Mr. McFadden.

Mr. McFadden responded to Mr. Houghton, providing comments and advising, “I am concerned about the timing of the RFP. It might be prudent to do it after the Provincial Election since we will want to have some idea about the future direction of govt. policy. Concern about this could deter potential investors / partners ...” Mr. Houghton agreed to incorporate Mr. McFadden’s points into the presentation. However, the slide deck presented to the Town contained no such warning; instead, it cautioned that “[t]iming is critical considering the upcoming election, possible provincial policy changes, upcoming town budget deliberations and current value.” Mr. Houghton’s presentation did not include Mr. McFadden’s caution about not issuing the RFP until after the provincial election.

KPMG’s Work Edited

Mr. Houghton made a number of changes to KPMG’s Review of Options slide deck. He did not provide his revisions to KPMG for their review or comment.

Mr. Houghton inserted the strategic partnership as the preferred restructuring option, without identifying that he had not consulted KPMG about that option. Mr. Houghton recast three of the five disadvantages that KPMG had identified for the partial sale option as advantages of the strategic partnership option. Mr. Houghton ignored the potential for loss of local employment in the strategic partnership scenario, illustrated in Table 4.1.

Table 4.1: Strategic Partnership Scenario

<i>Partial sale disadvantage</i>	<i>Strategic partnership advantage</i>
Loss of control. The Town loses partial control of the utility and its decisions with respect to levels of customer service, promotion of economic development, and rate setting (although these remain constrained by OEB oversight).	Control. The Town retains joint-control of the utility and its decisions with respect to levels of customer service, promotion of economic development, rates, subject to OEB oversight.
Operating synergies with the Town. The Town may lose the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.	Operating synergies with the Town. The Town retains the ability to obtain operating cost synergies through the integration of support functions with the water utility and IT.
Loss of local employment. The Town may lose some local employment if a buyer reduces costs by centralizing some functions at its head office.	[not addressed]
Loss of partial income stream. The Town will receive a smaller future dividend stream based on the equity ownership in the new owner's LDC.	Retains an income stream. The Town may earn a future dividend stream based on equity ownership in the new partner's LDC.

Sources: KPMG's Collingwood Utility Services Review of Options, May 24, 2011; Collus Confidential Review of Options, June 27, 2011.

The only disadvantage the slides listed for the strategic partnership option was the payment of a transfer tax, which turned out to be inapplicable.

Exclusion of the CAO from Discussions

From January to June 2011, Ms. Wingrove was not involved in the discussions about obtaining a valuation and examining the Town's ownership options. Her absence was consistent with her evidence about the interactions she generally had with Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton. Ms. Wingrove appeared as a witness at the Inquiry. She straightforwardly presented her evidence and identified where her memory failed her. She provided an apology to the Inquiry and the Town for the errors she felt she had made during the material time.

Ms. Wingrove was a credible witness.

CAO Wingrove's relationship with Mayor Cooper was stilted and awkward. Ms. Wingrove testified that the mayor preferred to consult about Town business with Ed Houghton, a lifelong Town employee and a close friend of her brother, Paul Bonwick.

Ms. Wingrove found it difficult to work with the 2010–14 Council. She testified that Council did not consistently communicate its directions to staff through the CAO. Instead, individual councillors went directly to staff members at the Town, seeking information and providing direction. CAO Wingrove resorted to consulting department heads to understand what staff was doing to comply with the various demands emanating from Council and the individual councillors. Ms. Wingrove commented in her evidence on the lack of trust and respect she experienced in her dealings with Mayor Cooper. As well, her observations of the deputy mayor being unkind to people caused her concern, and she felt he spoke with her only when it was necessary. The mayor and deputy mayor reprimanded her “on a number of occasions” for speaking with members of the public interested in Town matters. Ms. Wingrove also stated that Councillor Ian Chadwick was a significant critic of hers who “spent a lot of time just sending me emails and asking for clarification and critiquing my work.”

Both Sandra Cooper and Rick Lloyd gave evidence about working with Kim Wingrove. Although it was clear they had issues with Ms. Wingrove's work as the Town CAO, it was less clear what those issues were. Ms. Cooper gave evidence that Ms. Wingrove was “emotionally frail.” She felt Ms. Wingrove needed to have “better communication with [Mayor Cooper] and Council” and that Ms. Wingrove did not deal with certain issues as promptly as Council would have liked. The deputy mayor told the Inquiry that Ms. Wingrove did not understand the municipal process and she was “very emotional.”

Mayor Cooper conducted a performance review meeting with CAO Wingrove in April 2011. After the meeting, the mayor filled out an “Overall Evaluation” template. Although that document reflects Ms. Cooper's evaluation of Ms. Wingrove, neither Mayor Cooper nor anyone else showed it to Ms. Wingrove.

The “background and current Town process of evaluating the CAO's performance” was discussed at the December 5 Council meeting, where “[i]t

was suggested that such reviews be conducted annually and early in each calendar year.” At that meeting, Council carried a motion introduced by Councillor Chadwick to ask the Town’s manager of human resources to “bring back a report to Council suggesting a process to undertake the annual performance reviews of the Town’s CAO.”

Council abruptly terminated CAO Wingrove’s employment in April 2012.

Ms. Wingrove had tried to improve the working environment. She reached out to colleagues from the province, other CAOs, and the Ontario Municipal Administrators’ Association to try to understand better how to do the job. Her efforts were unsuccessful, and the situation continued to worsen. Ms. Wingrove indicated that she could not predict whether Council would accept her input and professional expertise, or whether she had “stepped on a landmine.” Overall, her impression was that her advice was not welcome.

Ms. Wingrove testified that she found it next to impossible to work with Mr. Houghton, who was head of the Public Works Department, held the title of “executive director, engineering and public works,” and was president and CEO of Collus Power.

Ms. Wingrove told the Inquiry that it was made clear to her that Mr. Houghton would not be reporting to Council through her. She said that when she raised the matter with Mayor Cooper, she learned the situation was not going to change.

Ms. Wingrove said she attempted to discuss improving her working relationship with Mr. Houghton in the fall of 2011, but he was having none of it. Mr. Houghton provided her with only the information he felt she needed to know.

No one told Ms. Wingrove about the exploration of alternative Collus Power ownership options until June 2011. Mr. Houghton came to her office at that time and advised her that work was underway. The CAO was surprised to learn the process was as advanced as it was without her knowing about it. Quite justifiably, as it turned out, she was very concerned Mr. Houghton “would be seeking an arrangement with another utility company and essentially going out and having conversations about this in the absence of any sort of formal process.” Ms. Wingrove told Mr. Houghton that the Town needed external assistance to ensure it was proceeding appropriately. She

explained that, given the regulatory environment and the intricate arrangements between Collus Power and Collingwood, the Town had to ensure that it properly managed any sale and the resulting financial implications. The CAO also emphasized the necessity to protect the public perception of the process. Mr. Houghton indicated he would consider the CAO's comments.

No one provided any further information to Ms. Wingrove until the June 27 Council meeting, when Mr. Houghton presented the strategic partnership as the preferred option to Council.

In Camera Report and the Formation of the Strategic Partnership Task Team

At the June 27 Council meeting, Mr. Houghton made an *in camera* presentation recommending that the Town of Collingwood pursue a strategic partner for Collus Power. The slides that Mr. Houghton presented warned Council that "confidentiality is critical." Ms. Cooper told the Inquiry that confidentiality was critical to ensure the Town obtained the best price for the utility.

Mr. Houghton advised Town Council that Collus had reviewed potential alternative ownership options for the Town "as Collus' ongoing approach to ensure that the Municipality is receiving the most value for its dollar."

This statement was inaccurate and misleading.

As I discuss in Part One, Chapter 3, KPMG was retained to provide "an objective assessment of the ownership options open to the Town and their likely financial and business implications." KPMG was not asked and never stated how the Town could maximize its returns from Collus.

Mr. Houghton told the Inquiry that he, Mr. Muncaster, and Mr. McFadden's focus was on strengthening the company.

Mr. Houghton testified that he did not provide Council with KPMG's slide presentation and that Council was not provided with the option of receiving a report from KPMG. He did not tell Council that he told KPMG to ignore the shared services among Collus Power, the Collingwood Public Utilities Service Board, and the Town. No contemporaneous evidence indicates that the Town was advised that KPMG had been retained to do any work on the ownership options analysis.

Although KPMG's retainer stated that the firm would provide a presentation of its report to relevant stakeholders, KPMG was not asked to and did not present its work to the Town. No one provided Town Council with a copy of KPMG's report.

Mr. Houghton's evidence was that he, Mr. Muncaster, and Mr. McFadden determined it was appropriate for Mr. Houghton to make and provide his presentation. Mr. Houghton could not recall if Mayor Cooper was involved in that decision. In his closing submissions, Mr. Houghton argued that the mayor's January 2011 letter "authorized Muncaster and Houghton, and in essence, the Collus Power Board, to proceed and report back to Town Council."

I do not accept Mr. Houghton's evidence that he, Mr. Muncaster, and Mr. McFadden decided together to withhold KPMG's report and advice from the Town. There is no good reason for this decision. The Town paid for half of KPMG's fee. The fee included the presentation. Mr. McFadden indicated, and I accept his evidence, that he thought the request for the valuation and options analysis came from the Town and that KPMG was working for the Town. He would hardly agree under those circumstances that Mr. Houghton withhold KPMG's report from the Town.

I also reject Mr. Houghton's argument that the mayor's January 30 letter (see previous chapter) prevented KPMG from presenting to Council. That letter, which Mr. Houghton drafted, cannot bear the responsibility for withholding professional information and advice from Council.

Because Mr. Houghton rather than KPMG presented the ownership options to the Town, Council did not have the opportunity to consider the best objective advice and information about how Collus Power could be used to aid the Town in reducing its debt.

In fact, the sale to PowerStream did not reduce Collingwood's debt by one cent.

Before the strategic partnership, Collus Power generally retained its earnings and maintained a debt-to-equity ratio lower than the Ontario Energy Board's recommended levels of 60/40. After the sale, the strategic partnership resulted in changes to the utility's debt policy, forcing Collus Power to take on debt and pay dividends to its shareholder. However, Town debt did not decrease. None of the proceeds of the share sale went to reducing debt. Further, if Collus PowerStream Inc., the entity created by the

Collus Power share sale, had pursued the regional growth strategy promoted by Mr. Houghton and Mr. Bentz, the Town would have had to continue to invest money in Collus PowerStream to maintain its 50 percent stake in Collus PowerStream.

In short, the justification for the share sale was a debt reduction fantasy.

The Inquiry did not receive any evidence indicating that Mr. Houghton disclosed to Council that KPMG had prepared a valuation of Collus Power. In his closing submissions, Mr. Houghton argued that it would have been imprudent to advise Council about the indicative valuation.*

This argument is difficult to understand. It would have been prudent to provide the utility's owner with complete information about the value of the asset so that the owner could properly consider a sale of all or part of that asset. A municipal council must deal with confidential, commercially sensitive information in the course of running the business of the municipality. It is, and must be, part of its job.

The Town Council had a fundamental decision to make. Collingwood was the utility's sole owner. KPMG's indicative valuation was important information for Council to gauge the potential value of proceeding with an RFP or maintaining sole ownership of Collus Power, using the 60/40 debt-to-equity ratio permitted by the Ontario Energy Board and applying the resulting funds to pay down the Town's debt.†

KPMG was not asked to express an opinion on this fundamental decision. Mr. Houghton did not place this option before Town Council. Council did not have the opportunity to receive KPMG's advice on this option, even though it was considering a sale of half the utility.

The slideshow that Mr. Houghton presented to the Town identified the following five next steps:

1. It would be the intention to identify and investigate potential parties interested in the opportunities surrounding the Strategic Partnership

* John Herhalt explained that an indicative valuation was a calculation of value as opposed to a more formal comprehensive valuation, which would have required more work and cost more.

† The debt-to-equity ratio is discussed in detail in Part One, Chapter 2.

- Option. President & CEO, Ed Houghton should speak with potential Strategic Partners to determine / stimulate levels of interest.
2. (Possible Step) Prepare an Expression of Interest.
 3. Establish a Team comprised of the Collus Power Board (Dean Muncaster, Mayor Sandra Cooper & Independent Director David McFadden), Ed Houghton, Tim Fryer, CAO Kim Wingrove and a Council Representative to meet with all interested Strategic Partners to outline needs, wants and desires.
 4. Prepare a Request for Proposal by the end of August.
 5. Call the RFP for the end of October, 2011.

Paul Bonwick and Ed Houghton discussed the membership of the Strategic Partnership Task Team before the Council meeting took place. On June 27, Mr. Houghton emailed Mr. Bonwick, writing: "Sounds like mike is trying to hijack the process. Wants to speak to Council without COLLUS." Mr. Bonwick replied: "Can't ... has a responsibility to Collus!!! You should let Sandra know that clearly and now!!!!!!!" "Mike" is Councillor Mike Edwards, who at this time was also a director of Collingwood Utility Services Corporation, the parent company of Collus Power. According to Mr. Houghton and Mr. Bonwick, Mr. Edwards wanted the last position on the Strategic Partnership Task Team.

Mr. Houghton's June 27 email raises a critical question: Why was Mr. Houghton discussing the membership of the Strategic Partnership Task Team with Mr. Bonwick, a paid representative of PowerStream?

Mr. Houghton claimed he sent the email to Mr. Bonwick out of frustration.

Mr. Bonwick did not recall this email correspondence and advised the Inquiry that he did not learn about the Strategic Partnership Task Team until later. However, Mr. Houghton's evidence about his email correspondence about Councillor Edwards undermines that evidence, and I do not accept Mr. Bonwick's evidence in that regard.

Deputy Mayor Rick Lloyd filled the final spot on the Strategic Partnership Task Team.

The minutes from the *in camera* portion of the Council meeting recorded the following:

Mr. Ed Houghton, President and CEO of COLLUS provided an update for Council's information on a study that Collus Power is undertaking to investigate their strategic opportunities. Mr. Houghton and Mr. Fryer, CFO addressed questions from Council, including concerns with valuations, partnerships, assets, staffing, shared resourced [sic], and high use customers.

Mr. Houghton confirmed that following the completion of the study, a detailed report would be provided to Council.

At neither the *in camera* nor the public portion of the Council meeting did Council vote to form the Strategic Partnership Task Team or to pursue a strategic partner. The minutes do not indicate that Council was asked to make any decisions regarding Collus Power's pursuit of a strategic partnership. Mr. Houghton testified that Council's direction to proceed was implied.

Mr. Bonwick learned after the June 27 Council meeting that the Town would be issuing an RFP. He could not recall from whom he learned this information. Mr. Bonwick promptly advised John Glicksman, PowerStream's CFO, about the RFP. Once again, Mr. Bonwick provided PowerStream with non-public information about Collus Power and the Town's plans for its ownership of the utility.

PowerStream's Introduction to Town and Collus Representatives

Two days after Mr. Houghton presented the strategic partnership option to Collingwood Town Council, PowerStream met with representatives of the Town and Collus Power. Even though the apparent purpose of the meeting was to disclose that PowerStream had retained Mr. Bonwick to assist in its efforts to acquire shares in Collus Power, that fact was not disclosed at the meeting. PowerStream did take the opportunity to profile its company to the attendees, three of whom were on the Strategic Partnership Task Team. After the meeting, PowerStream's CEO and one of the members of its Audit and Finance Committee golfed with Mr. Houghton and Mr. Bonwick.

Meeting with Town Representatives and the Collus Board Chair

Mr. Bonwick, through Mayor Cooper, scheduled a June 29 meeting between PowerStream and representatives of Collus Power and the Town. The mayor, deputy mayor, Mr. Muncaster, CAO Wingrove, Mayor Lehman, and Mr. Bentz attended the meeting. Mr. Bonwick did not attend.

Sandra Cooper testified that the meeting was Mr. Bonwick's idea and the purpose was to introduce Brian Bentz and to discuss PowerStream's plans for the future. Mr. Bentz told the Inquiry that the meeting's purpose was to ensure disclosure of Mr. Bonwick's retainer.

The representatives from the Town were not in a good position to address the conflict presented by Mr. Bonwick's relationship with PowerStream: CAO Wingrove was not influential, Mayor Cooper was Mr. Bonwick's sister, and Deputy Mayor Lloyd was Mr. Bonwick's friend.

Ms. Wingrove recalled that an introductory discussion about PowerStream took place. Other than her understanding that Mr. Bonwick would advise PowerStream on communications, she did not have a clear recollection of the meeting.

Mr. Houghton did not attend the meeting. He testified that Mayor Cooper had explained to him in advance that PowerStream would be disclosing that it was engaging Mr. Bonwick in "some way, shape or form." Mr. Houghton stated that he told Mr. Muncaster on the morning of June 29 that he was not comfortable attending the meeting because of his ongoing "emotional allergy" to the Bonwick / PowerStream situation (see Part One, Chapter 3). I note that Mr. Houghton's emotional allergy had not prevented him from assisting Mr. Bonwick in pursuing the PowerStream retainer. Mr. Houghton also testified that he did not want to influence the other attendees; he felt his attendance would be inappropriate because he had referred Mr. Bonwick to Mr. Bentz.

Mr. Houghton testified that Mr. Muncaster told Mr. Houghton that he need not attend the meeting and that Mr. Muncaster would subsequently report to him on the meeting's contents.

Mr. Bentz told the Inquiry that Mayor Cooper opened the meeting. The mayor referenced the letter she had sent indicating she was aware that PowerStream was engaging her brother and she mentioned that such a retainer would not contravene the *Municipal Conflict of Interest Act*. The

mayor also stated that the decision to hire Mr. Bonwick was PowerStream's.

From PowerStream's perspective, part of the purpose of the meeting was to increase the company's profile in the community and to communicate its interest in a potential RFP. Mr. Bentz disclosed some basic facts about PowerStream, and Barrie's mayor, Mr. Lehman, spoke about the merger of his city's electricity utility with PowerStream. PowerStream used the meeting to promote itself to the key decision makers on Council, on Town staff, and at Collus Power. More than half of the Strategic Partnership Task Team attended this meeting. No other utility was provided with this opportunity. This meeting was excluded from all subsequent reports to the Town about the search for a strategic partner.

Mr. Bentz testified that he and Mayor Lehman formally disclosed that PowerStream had engaged Mr. Bonwick and that, if there were an RFP, he would assist them in that regard.

It is worth reviewing the evidence that Inquiry witnesses provided about the disclosure made at the June 29 meeting.

Mr. Bentz was quite precise in his evidence. In response to a question from Commission Counsel Kate McGrann concerning what he specifically remembered Mayor Lehman saying about Mr. Bonwick's retainer, Mr. Bentz replied, "just that if the RFP was going to proceed that he ... would maybe [be] of assistance to us in that regard." Mr. Bentz was more specific when talking about a later discussion about the meeting with Mayor Lehman, stating: "I think we thought it was a good meeting. It accomplished our objectives, and, you know, we had disclosed the relationship."

Mr. Bentz also explained:

I remember where the meeting was held, and I do remember ... Deputy Mayor Lloyd saying you can't prevent a man from earning an income. And I do remember – as I said, it was either Mr. Lloyd or Mr. Muncaster saying if anything, it would improve the quality of his response. And we're talking about the response to the RFP. I remember those two things distinctly.

And I know that Jeff Lehman was there because he was talking about – as he had before with the Mayor around his experience with the Barrie Hydro merger. So those things I – I do remember.

I am satisfied that Mayor Lehman and Mr. Bentz disclosed Mr. Bonwick's retainer in generalities at the June 29 meeting.

I am also satisfied that Mayor Lehman and Mr. Bentz were under the impression Mr. Bonwick had already made the required disclosure outlined in the retainer agreement and that this impression coloured the approach they took to discussions about Mr. Bonwick's work in the June 29 meeting. I am also satisfied that this colours Mr. Bentz's present-day memory of discussions at the meeting about Mr. Bonwick's retainer.

Ms. Cooper told the Inquiry that the June 29 meeting was Mr. Bonwick's idea. She described it as an introductory meeting. She could not recall if there was discussion about Mr. Bonwick's retainer. Significantly, Mayor Cooper did not understand that her brother would be working on the Collus Power RFP.

Mr. Lloyd provided inconsistent accounts of this meeting and his understanding of Mr. Bonwick's work for PowerStream. He told the Inquiry that, at the meeting, Mr. Bentz briefly mentioned Mr. Bonwick's work for PowerStream, but that Mr. Bonwick's work on the Collus Power RFP was not specifically mentioned.

In his closing submissions, Mr. Lloyd wrote that, in October 2011, he was "unaware of the details of [Mr. Bonwick's] work for [PowerStream] or whether he was involved with the bid process." However, he also told the Inquiry that the attendees of the June 29 meeting were advised that Mr. Bonwick's work for PowerStream would include speaking to individual councillors, the Strategic Partnership Task Team, and Collus about the RFP, and that he understood Mr. Bonwick would help PowerStream with the RFP bids.

I find Mr. Lloyd's various inconsistent versions of the disclosure unreliable.

Mr. Glicksman indicated that the disclosure he thought Mr. Bonwick had made to the mayor and the clerk would be duplicated, but to a broader audience. However, Mr. Glicksman did not attend the meeting.

Mr. Lloyd said that Mr. Muncaster commented at the end of the June 29 meeting that "if Bonwick can help with the sale ... of Collus to the benefit of Collingwood, God bless him." Mr. Houghton gave evidence that Mr. Muncaster said something similar to him when Mr. Muncaster subsequently described the meeting to him.

I do not accept the evidence of Mr. Houghton or Mr. Lloyd concerning this comment attributed to Mr. Muncaster.

On June 29, there was no reason to believe there would be any difficulty selling Collus Power or a portion of it. Deputy Mayor Lloyd did not believe there would be any difficulty selling the utility. Mr. Houghton said he already believed PowerStream was interested. Mr. Bentz's only concern was that Collingwood Town Council would ultimately refuse to sell. There was every reason to believe other potential purchasers would be interested.

I am satisfied that, at the June 29 meeting, the clear disclosure required by PowerStream's Audit and Finance committee was not achieved.

Golf Game with Messrs. Houghton, Bonwick, Bentz, and Lehman

Following the June 29 meeting, Mr. Bonwick arranged for Mr. Bentz and Mr. Lehman to play golf with him and Mr. Houghton. Mr. Bentz told the Inquiry that the men discussed the disclosure at the meeting, but the golf game was "mostly social."

Mr. Houghton recalled there was discussion that the meeting had gone well and that everyone was content with the outcome. They also discussed the "multi-utility model," in which the water and electric functionalities are in a single utility. Mr. Bentz wanted to know more about the concept. Mr. Houghton explained that, although the water utility would not form part of the RFP, Collus Power was effectively operating under a multi-utility model owing to the service agreements. This topic was raised again in a meeting Mr. Houghton had with Mr. Bentz and other PowerStream representatives in August 2011.

Conflicts, Confidential Information, and Unfair Advantages

After the June 27, 2011 Council meeting, Ed Houghton, chief executive officer (CEO) of Collus Power Corporation, and Dean Muncaster, chair of its board of directors, arranged meetings with five potential bidders for the strategic partnership opportunity. The stated purpose of the meetings was to give each bidder the same message – that Collus Power might proceed with a request for proposals (RFP). In fact, the messages were far from consistent. One bidder, PowerStream Incorporated, was offered the opportunity to publicly partner with Collus Power in the Solar Strategic Alliance, a pilot project for a new green-energy product – the solar-powered attic roof vent – which was intended to reduce home energy costs. This partnership opportunity was not offered to the other potential bidders.

The partnership was a boon not only to PowerStream but also to businessman Paul Bonwick, Mayor Sandra Cooper's brother, who had entered into a profit-sharing arrangement with the vent company. Mr. Houghton, moreover, was repeatedly invited to share in the vent sale profits.

Meanwhile, the Strategic Partnership Task Team held its first two meetings and conducted confidential meetings with the bidders. Mr. Bonwick obtained confidential information about the bidder meetings and shared it with his client, PowerStream (see Part One, Chapter 4). Mr. Houghton knew about this leak, but he did nothing meaningful to stop Mr. Bonwick from passing on the information.

At the end of September 2011, Collus Power retained the consulting and accounting firm KPMG to assist with the RFP. Although KPMG sought to prepare an RFP that would allow for a fair process, PowerStream had already received unfair advantages.

The Solar Strategic Alliance

Between May 2011 and January 2012, in light of the upcoming RFP, Mr. Houghton and Mr. Bonwick sought to create an opportunity for Collus Power and PowerStream to partner in a promotion of the solar vents – a partnership they dubbed the “Solar Strategic Alliance.” Mr. Bonwick also benefited financially from the solar attic vent sales.

Mr. Houghton and the Solar Attic Vent Project

In the spring of 2011, Mr. Houghton was contacted by Peter Budd, a former colleague, for advice on a solar-powered attic roof vent his company was developing. This new product was designed to be installed on residential roofs. Using a solar-powered fan, the vent was intended to emit hot air from the home’s attic or upper floor. In this way, it purportedly reduced the load on the home’s air conditioner and, in turn, decreased the owner’s electricity bill. Mr. Budd’s business partner, Tom Bushey, had invented the product.

A former energy regulatory lawyer, Mr. Budd had been speaking with some of the local distribution companies (LDCs) about the vents, and he asked Mr. Houghton whether Collus Power would be interested in the product. Mr. Houghton thought the concept was “brilliant.” He immediately introduced the product to Mr. Bonwick, who saw it as a business opportunity. By May 24, Mr. Bonwick had proposed to Mr. Budd that he and Mr. Houghton become shareholders in the vent initiative. Mr. Houghton, meanwhile, planned to sell the vents to Collus Power.

On June 9, Mr. Bonwick suggested he and Mr. Budd use Mr. Houghton’s personal Gmail address, and Mr. Houghton agreed. Both Mr. Bonwick and Mr. Houghton denied that their purpose was to hide Mr. Houghton’s involvement in the vent company from his employer, Collus Power – which soon became a purchaser of the vents.

In his testimony, Mr. Houghton said the reason he had not produced any email correspondence from his Gmail account was because it contained no relevant correspondence. He testified he had forwarded all vent-related correspondence from his Gmail account to his Collus Power account, and then

had probably deleted the emails from his Gmail account. Neither Mr. Budd nor Mr. Bonwick produced any email correspondence related to the vent initiative.

Mr. Budd's original business plan for the vents had been to sell them to a number of LDCs. He needed to generate profits and data about the efficacy of the vents for sales and marketing purposes. Mr. Houghton, however, wanted to pilot the program in Collingwood through Collus Power, and then to extend the opportunity to participate to the potential bidders for Collus Power. Mr. Budd deferred to Mr. Houghton and agreed to his plan.

Mr. Houghton advanced the solar attic vent business by creating and administering a pilot program partially funded and staffed by Collus Power. He presented a prototype of the vent at the June 10 Collus Power board meeting and proposed that Collus Power "become a pilot community and run a beta test, and then approach the other LDCs." At that point, Mayor Sandra Cooper, who was also a director of the utility, left the meeting (no reason was recorded for her departure), and the board went on to approve the initiative.

Glenn McAllister, a finance and conservation analyst at Collus Power, researched available programs and subsidies for Mr. Houghton and ran the pilot program. When he presented the proposed vent program at the July 8 Collus Power board meeting, he said the net cost to the utility would be approximately \$90,000. Deputy Mayor Rick Lloyd attended this meeting as a guest. The Collus Power board of directors, including Ms. Cooper, voted unanimously to proceed with the pilot project.

Four days later, Mr. Budd and Mr. Bushey incorporated a company called International Solar Solutions Inc. Discussions about Mr. Houghton's and Mr. Bonwick's financial interest in the solar attic vents continued through January 2012. Collus Power invested \$113,650 in purchasing vents.

PowerStream and the Solar Attic Vent Project

In July 2011, Mr. Houghton and Mr. Muncaster had introductory meetings with five utilities they thought they might invite to bid on a Collus Power RFP: PowerStream, Hydro One Incorporated, Veridian Corporation, Horizon Utilities Corporation, and St. Thomas Energy Services Inc. The meetings

took place before the first meeting of the Strategic Partnership Task Team. The team was later told that the purpose of these meetings was to identify and investigate parties who might be interested in a strategic partnership and that a consistent introduction had been used at each meeting. The meetings were not, in fact, consistent.

At the PowerStream meeting on July 7, Mr. Houghton and Mr. Muncaster invited PowerStream to become Collus Power's partner in advancing the solar attic vent pilot project through the Solar Strategic Alliance. This alliance was described in a memorandum subsequently prepared by Mr. Bonwick which explained that Collus Power and PowerStream would jointly launch the vent program in late July or early August. Each utility would spend \$77,500 on purchasing 500 attic vents, and a further \$7,500 on advertising and promotion.

Brian Bentz, PowerStream's president and CEO, recalled having a telephone discussion with Mr. Bonwick in July 2011 about the opportunities presented by the Solar Strategic Alliance. During this call, Mr. Bonwick recommended that PowerStream participate in the solar attic vent project to boost its own profile in the Collingwood community. This move would, in turn, help PowerStream in its response to a Collus Power RFP. A contemporaneous email suggests that this conversation happened shortly before the introductory meeting. Mr. Bentz testified that this initiative was the only one Mr. Bonwick recommended to enhance PowerStream's profile. Notably, Mr. Bonwick did not disclose he was also negotiating a personal interest in the vent business.

PowerStream agreed to join the Solar Strategic Alliance and take the opportunity to raise its profile in the Town. Among other things, the marketing campaign featured PowerStream's logo. Mr. Bentz attended the August launch event in Collingwood, which resulted in local media coverage discussing the fruitful cooperation between Collus Power and PowerStream.

The other bidders were not invited to join the alliance at their introductory meetings with Mr. Houghton and Mr. Muncaster. Veridian and Horizon were offered a limited opportunity to purchase the vents at a higher cost than PowerStream paid and without the marketing and profile-building opportunities. Hydro One was not invited to participate at all.

Mr. Houghton testified that the solar attic vent project was a “litmus test” he devised with Mr. Muncaster to see how well a prospective strategic partner would pick up on a project advanced by Collus Power, the smaller-sized partner.

I do not accept this evidence. As a starting point, Mr. Houghton told the Inquiry he understood that the litmus test would work only if the prospective strategic partner did not know the importance of participating in the initiative. However, PowerStream knew the importance of participation. Besides, a litmus test would be informative only if all the potential bidders were offered the same opportunity. They were not. Finally, although three other LDCs also participated in the vent launch – Orangeville Hydro, St. Thomas Energy Services Inc., and Wasaga Distribution Inc. – they were not invited to bid on the Collus Power RFP, despite having agreed to work with Collus Power on the project.

Mr. Houghton told the Inquiry he chose not to invite Hydro One to participate because he did not know which person should receive the invitation. This explanation is not credible for at least two reasons. First, Mr. Budd testified he had contacts within Hydro One. Second, Mr. Houghton and Mr. Muncaster met with Hydro One representatives on July 20, as part of the initial meetings they conducted with all the potential bidders. The offer to participate in the pilot project could easily have been extended at that time.

I find, based on the evidence, that Mr. Houghton did not extend the same invitation to Veridian, Horizon, and Hydro One as was offered to PowerStream. As a result, PowerStream gained an unfair advantage. The company knew it was being evaluated when it agreed to join the alliance. This advantage further undermined the fairness of the Collus Power RFP.

In addition to increasing PowerStream’s local profile, the Solar Strategic Alliance created the opportunity for an ongoing conversation between Collus Power and PowerStream through the summer of 2011, including meetings between Mr. Houghton and PowerStream staff. The other potential bidders did not have these opportunities. For example, Mr. Houghton hosted Mr. Bentz in his home around the time of the solar attic vent launch. In his August 16 thank you email to Mr. Houghton, Mr. Bentz wrote that the launch event was “a great initiative for each of

our organizations ... I look forward to many more.” He had “really come to appreciate our friendship even more over the past while as we have had time to connect on a personal and professional level on initiatives like the one we had last week.”

Another Meeting with Mr. Bentz

Mr. Houghton met with Mr. Bentz again on August 24, along with Mr. Bonwick and PowerStream executive Mark Henderson. Mr. Bentz told the Inquiry they discussed the solar attic vent initiative and essential considerations for Collus Power in the RFP process, particularly that the company wanted to retain its autonomy and independence. They also discussed the water utility and the possibility of accommodating a multi-utility model that included electric distribution along with other utilities. Mr. Houghton did not offer a similar meeting to any of the other potential bidders.

This August 24 meeting of Mr. Houghton, Mr. Bentz, and Mr. Henderson was problematic for three reasons. First, because PowerStream was the only RFP proponent offered a meeting with the Collus Power CEO at this time, it contributed to the uneven playing field that persisted throughout the RFP process. Mr. Houghton’s decision to attend the meeting with PowerStream further undermined the fairness of the RFP before it had even been issued. The preferential treatment accorded to PowerStream undermined the fairness of the Collus Power bidding process.

Second, in his invitation to the solar attic vent launch event, which was sent to the Collus Power board and all members of Collingwood Town Council, Mr. Houghton described the initiative as “a testament to the collaborative efforts and vision for each of our Alliance Partners.” The press release for the launch event featured a quotation from Mr. Bentz: “We are grateful to Mr. Houghton and the Town of Collingwood for bringing this opportunity to us ... We expect this partnership to be of benefit to all our utilities.” In its response to the Collus Power RFP, PowerStream highlighted its involvement with the solar attic vents as an example of collaboration between Collus Power and PowerStream.

Further, Mr. Houghton and PowerStream coordinated a joint marketing

campaign that included the launch event and a billboard campaign. Collus Power and PowerStream also shared the costs of a billboard campaign for the vents. The billboards, which were on display through the fall of 2011, prominently featured the logos of Collus Power and PowerStream. Eric Fagen, PowerStream's director of communications, explained the benefit of these billboards in a contemporaneous email to Dennis Nolan, the company's general counsel and corporate secretary: "Although this primarily promotes the solar power attic vent program for Collus Power, the fact that the billboard is co-branded with the PowerStream logo, will help to build our brand awareness in the area."

Neil Freeman, Horizon's vice-president business development and corporate relations at the relevant time and currently a consultant to utility energy companies, said in his evidence at the Inquiry that the billboards struck him as "a transparent sort of promotion – of Collus and PowerStream in the middle of an RFP." The cynicism concerning the solar attic vent initiative and the fairness of the Collus Power RFP is captured in an email about the billboards from Max Cananzi, president of Horizon, on November 23, 2011:

This is basically a community advertisement to pave the way for a Collus / PowerStream [*sic*] deal for the utility. Gone are the other 3 three [*sic*] utilities that have also participated in this launch.

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

The fix is in. PowerStream will be declared the winner of the competition.

In his evidence, Mr. Houghton said he did not consider whether this billboard campaign would have an impact on the integrity of Collingwood's RFP process. I do not accept this evidence. Mr. Houghton was an experienced executive. His approach to marketing the solar attic vents demonstrated that he understood the importance and the impact of public marketing and

messaging. He would have been well aware of the positive effect that marketing a co-branded initiative would have on the public perception of PowerStream as the right partner for Collus Power.

Disbursement of Solar Attic Vent Profits

Mr. Houghton's involvement in the solar attic vent project went beyond arranging for Collus Power to purchase vents from International Solar Solutions. As I set out below, Mr. Bonwick and Mr. Houghton were instrumental in shaping and implementing the company's business plan and marketing the vents to end consumers. Contemporaneous correspondence among Mr. Houghton, Mr. Budd, and Mr. Bonwick suggests that Mr. Houghton had a financial interest in the vents, yet all three denied any such interest.

Mr. Houghton testified he could not have been involved in International Solar Solutions because he was working for the Town of Collingwood and too busy with commitments he already had. He testified that the vent project was something he was "trying to do for Collingwood, for the [Ontario Power Authority] ... for the people of Ontario." He said he could not be paid for his work on the vents while he was employed with Collus Power, though he was unable to articulate why. He did not rule out the possibility of becoming involved in the company after he retired from Collus Power. The documents disclosed to the Inquiry show, however, that Mr. Houghton was involved in many aspects of the solar attic vent business. He helped to shape International Solar Solutions' business plan; introduced the project to potential collaborators; worked to further vent testing; helped to plan and execute the launch event in Collingwood; and was also involved in staffing discussions.

Although the evidence before the Inquiry, including Mr. Houghton's testimony, was that the parties never finalized a shareholder arrangement, on September 12, 2011, International Solar Solutions provided Mr. Bonwick's consulting company, Compenso Communications Inc., with a statement showing its percentage of the profits from the sale of vents to Collus Power and PowerStream. The statement showed payment of \$35,001.75 owing to Compenso and identified it as 35 percent of the "Gross Profit for Disbursement" and set out how it was calculated.

Table 5.1: ISSI Statement Issued to Compenso Communications Inc., September 12, 2011

<i>Quantity</i>	<i>Item description</i>	<i>Cost per unit</i>	<i>Gross total</i>
1,000	NP – Solar roof vents Purchased Jointly by Collus and PowerStream for Pilot Project	\$155.00	\$155,000.00
1,000	Cost of units	\$60.00	-\$60,000.00
–	Warranty fund	–	-\$2,500.00
–	Assembly facility Rent, Utilities, Office Admin. (Aug.)	–	-\$2,000.00
–	Assembly facility Rent, Utilities, Office Admin. (Sept.)	–	-\$2,000.00
35% Nature's Power	Gross profit for disbursement Compenso Communications 35% HST Disbursement to Compenso		\$88,500.00
35% Compenso Communications			\$30,975.00
30% Budd Energy			\$4,026.75
			\$35,001.75

Source: September 12, 2011, invoice issued by International Solar Solutions Inc. to Compenso Communications Inc.

On September 28, Compenso then issued an invoice to International Solar Solutions for “Consulting Services related to LDC’s” for a total of \$35,001.75. A handwritten note stated, “Sales commission paid.” Compenso deposited \$35,001.75 into its bank account on October 3, 2011.

Three days later, Compenso paid Mr. Houghton’s wife, Shirley Houghton, \$19,350. Ms. Houghton, Mr. Houghton, and Mr. Bonwick all told the Inquiry that this payment was for two items: \$1,350 in compensation for Ms. Houghton’s work for Compenso, and \$18,000 for Mr. Bonwick’s rental of the Houghton’s Florida property. I discuss this payment in more detail below.

For the next four months, until early 2012, email correspondence among International Solar Solutions and Mr. Houghton and Mr. Bonwick showed that Mr. Bonwick’s and Mr. Houghton’s financial interest in the solar attic vents remained a topic of discussion.

In September 2011, Mr. Budd proposed to Mr. Bonwick and Mr. Houghton that they take a \$50 “flat fee per unit reflecting your 35 percent.” Mr. Houghton forwarded Mr. Budd’s proposal to his wife’s Gmail account. Ms. Houghton testified that Mr. Houghton periodically forwarded his

emails to her Gmail account because he liked using her computer, though he did not do so often. Mr. Houghton explained that he forwarded the email because he wanted to look at it on a computer screen, not his Blackberry screen, and Ms. Houghton had her computer open.

Shortly thereafter, Mr. Budd copied Mr. Houghton and Mr. Bonwick on an email to his accountant. Referring to them as “our two LDC marketer [*sic*] partners,” Mr. Budd asked his accountant to let Mr. Houghton and Mr. Bonwick “[adjust] the spreadsheet to reflect their sales projections to the company.” Mr. Bonwick, Mr. Houghton, and Mr. Budd testified that Mr. Bonwick and Mr. Houghton never met with Mr. Budd’s accountant, but the contemporaneous email correspondence suggests otherwise.

In a November 3 email to Mr. Houghton and Mr. Bonwick, Mr. Budd sought to “step up our discussions respecting the expectations of the participants in the proposed [International Solar Solutions marketing corp.]” Mr. Budd wrote:

[B]efore you both, the LDC marketers[,] joined, the deal was 70/30 TB/PB on everything from sales, costs, mktg, etc.

Then, with Paul and Ed, with the inaugural LDC deal in sight, we established an amended sharing arrangement: 35/35/30 for TB/EH/PB/PB. That worked well. Tom agreed to it. Cash was fully distributed to Compenso and partially to PB/TB.

Mr. Budd went on to propose that the International Solar Solutions marketing corporation “be owned and shared 33.3/33.3/33.3 for EH/PB/PB.” Despite this email correspondence, Mr. Budd denied that Mr. Houghton shared in the proceeds from the solar attic vents. About a week later, Abby Stec, who worked with Mr. Bonwick, sent Mr. Houghton a draft business plan for the International Solar Solutions marketing company and asked for his feedback.

In early December, Mr. Houghton corresponded with Mr. Budd and Mr. Bonwick about a hiring decision Mr. Budd had made. In the course of that correspondence, Mr. Bonwick wrote:

I didn't realize when we spoke that you had hired an additional person to work on regulatory matters related to the solar initiative. The three of us need to meet asap to reaffirm the approach we discuss [*sic*] several weeks ago.

I was under the impression we had agreed on an approach...

Let's try to coordinate a call early tomorrow if Ed is available.

Mr. Houghton emailed Mr. Budd directly to schedule a call with him to discuss the hiring issue: "Can we chat later tonight about this issue? I see both sides of the story but I need to understand the rationale better before our conversation with Paul tomorrow."

On January 21, 2012, Mr. Budd emailed Mr. Houghton and Mr. Bonwick about the "new era" International Solar Solutions and to schedule a meeting "to discuss the structural issues surrounding ISSI and the marketing successes and general company plans for 2012." Mr. Budd wrote:

1. There will be a separate marketing company established, funded and owned presumably and exclusively by Ed and Paul ('EPCO').
- ...
7. All units will be sold by ISSI to EPCO at a predetermined price, which shall be adjusted to whatever makes sense according to the decision of EPCO and ISSI.
8. EPCO will earn a minimum of \$30 to a maximum of \$50 per unit above the wholesale price.

Mr. Bonwick responded that he was looking forward to "sitting down with everyone to cement relationship that will produce significant wealth for all involved."

Mr. Houghton testified that he called the meeting off once he became aware that his financial participation in International Solar Solutions would be discussed at the meeting. Mr. Bonwick and Mr. Budd testified they could not recall the meeting. Mr. Bushey stated in his affidavit that he attended the meeting along with Mr. Budd, Mr. Bonwick, and Mr. Houghton. No one sought to cross-examine Mr. Bushey on his affidavit, and Mr. Budd didn't take issue with or dispute Mr. Bushey's statement. Mr. Houghton testified he

did not recall this email exchange.*

I am satisfied the meeting took place.

Mr. Houghton, Mr. Bonwick, and International Solar Solutions did not work together on the solar attic vents for much longer. Although Mr Houghton, Mr. Budd, Mr. Bonwick, and Mr. Bushey gave differing evidence about the end of the relationship, they all testified that it came to an end in 2012.

Shirley Houghton's Payment

As I discuss above, three days after International Solar Solutions paid Compensio \$35,001.75 for Mr. Bonwick's share in the solar attic vent initiative profits, Mr. Bonwick wrote Ms. Houghton a cheque for \$19,350.

Ms. Houghton swore an affidavit in which she explained that on or around September 30, 2011, she visited Mr. Bonwick at Compensio's offices to deliver a \$1,350 invoice for work she had completed for him. During their conversation, Mr. Bonwick enquired about renting the Houghtons' property in Naples, Florida, for the upcoming winter. Ms. Houghton told Mr. Bonwick they would charge him \$4,500 a month, the "typical rate" they charged renters. Mr. Bonwick agreed to rent the property for four months. On the spot, he wrote her a cheque for \$19,350, representing \$1,350 for her work and \$18,000 for the rental.

The sum of \$18,000 is approximately half the \$35,001.75 that International Solar Solutions paid Compensio for the solar attic vent initiative, consistent with the profit-sharing arrangement among International Solar Solutions, Mr. Bonwick, and Mr. Houghton that Mr. Budd described in his emails.

Mr. Bonwick and Mr. Houghton testified that the \$18,000 represented the rent on the Florida property. I do not accept this evidence for the following reasons.

First, the Houghtons charged Mr. Bonwick, a friend and employer, more than they charged other renters. For example, the year earlier, they rented the property for US\$4,000 a month.[†] In 2013, they rented the property for \$3,750.

* Mr. Budd sent his January 21 email to Mr. Houghton's personal Gmail account. Mr. Houghton forwarded the email from his personal Gmail account to his Town of Collingwood email account.

† In 2011, the Canadian and America dollars were effectively at par.

Second, despite paying \$18,000 in advance, Mr. Bonwick testified he stayed at the property for only a few days at the end of 2011 and not at all in 2012. On January 13, 2012, Mr. Bonwick emailed Mr. Houghton about a different house he was renting in Boca Raton, Florida. Ms. Houghton testified that Mr. Houghton had told her Mr. Bonwick had asked for a refund. Mr. Houghton directed Mr. Bonwick to speak with Ms. Houghton, but Mr. Bonwick never sought to recover any portion of the \$18,000.

Third, the Houghtons did not follow their usual renting practices. They did not send Mr. Bonwick their prepared terms and conditions of rental, as they did with other renters. They also charged Mr. Bonwick in Canadian dollars, not American. Further, the Houghtons typically rented the property for two months in the year, but they purportedly rented to Mr. Bonwick for four months.

Finally, concerning timing, Ms. Houghton changed her testimony on the period of the rental. In her affidavit on June 13, 2019, she swore that Mr. Bonwick rented the property from November 2011 to February 2012. In his testimony the next day, on June 14, Mr. Bonwick said he rented the property for November and December 2011 and April and May 2012. When Ms. Houghton was examined on her affidavit later the same day, she testified that her affidavit was wrong and that, in fact, Mr. Bonwick had rented for the months he identified. She stated she had noticed the error when she swore the affidavit and left a note for her counsel, Mr. Chenoweth. I do not accept this explanation.

In the circumstances, I cannot accept that Mr. Bonwick paid Ms. Houghton an additional \$18,000 in September 2011 to rent the Florida property.

Development of the RFP Criteria

As I discuss in Part One, Chapter 4, Mr. Houghton advised Council at its June 27, 2011, meeting that the “preferred option” for Collus Power’s future was to pursue a 50 percent share sale, which he called a “strategic partnership.” On Mr. Houghton’s recommendation, Council struck a task team to explore the option further.

The Strategic Partnership Task Team comprised Mr. Houghton, Collus

Power chair Dean Muncaster, Collus Power director David McFadden, Collus Power CFO Tim Fryer, Collingwood Utility Services director Doug Garbutt, Mayor Sandra Cooper (also a Collus Power director), Deputy Mayor Rick Lloyd, and CAO Kim Wingrove. The Task Team was responsible, among other things, for meeting with potential buyers, developing the RFP criteria, and, based on those criteria, selecting a winner to recommend to Collingwood Town Council.

The pursuit of a strategic partner, however, was flawed from the outset.

As I discuss in Part One, Chapter 4, Mr. Houghton told Council on June 27 that a strategic partner was the best way to achieve the Town's objective of "[ensuring] that the Municipality is receiving the most value for its dollar." Council, unaware that no assessment had been made of the strategic partnership option from the Town's perspective, accepted this recommendation. From that point onward, Council and the Strategic Partnership Task Team believed that, in pursuing a strategic partner, they were working in the interests of both Collus Power and the Town. However, the fact that the Town's perspective was not considered when the strategic partner option was created meant that the pursuit of such a partner prioritized the interests of Collus over those of the Town.

This reality was reflected in the evidence members of the Task Team gave at the Inquiry. Mr. Lloyd testified:

My personal feeling was that the monetary end of it wasn't nearly as important as all the other aspects ... factually[,] what our objective was, to find a strategic partner that would ... assist in growing Collus. That was really the focus, what we're trying to do, and that's what we did.

Mr. Fryer testified that the purpose of finding a strategic partner was to "grow the value of the organization" and allow it to continue through changing market and regulatory conditions. He said this partnership would enable the utility to provide cost-effective services to its customers, but acknowledged he "didn't know the specifics" of whether reducing the Town's costs was a goal the team was pursuing. Similarly, Mr. McFadden testified that the team's goals were "the Town getting money" and "strengthening the company, making it more resilient and ... better [able] to deal with the kind

of challenges we were facing. And – that would be good for the community, for employees, as well.”

Focus on Finding a Strategic Partner

The Strategic Partnership Task Team held its first meeting on August 3. The meeting minutes record that the team focused on strengthening Collus Power through the addition of a strategic partner. They do not reference any discussion about reducing the Town’s debt. A second meeting was scheduled for August 29 to discuss the format for the bidder interviews. The minutes state that a “Team Strategy Session” would be scheduled so the team could brainstorm issues related to the RFP.

Mr. McFadden was not able to attend the second meeting. He sent an email on August 28 providing his input on how the Strategic Partnership Task Team should proceed. His email is telling in what he suggested, though his advice was not followed. In particular, he stated that the team would need to understand the governance structure proposed for the new partnership. He advised that “[t]he composition of the Board of Directors will be critical to this.” As things transpired, however, the minutes from the August 3 team meeting do not reflect any discussions about corporate governance, and, while the August 29 meeting minutes reference governance matters, they do not record any decisions made.

Mr. Houghton, who took the lead on retaining and instructing the professional advisors from KPMG who worked on the earlier valuation and the strategic options analysis, the RFP, and the share-sale transaction, testified that the Task Team discussed potential governance issues posed by a 50/50 partnership and agreed there were ways to address them.

KPMG’s Involvement

At its second meeting on August 29, the Strategic Partnership Task Team agreed to retain KPMG to assist in preparing an RFP and to investigate the cost of having the firm help with the evaluation of the bids. Before this decision, neither the Town nor Collus Power had received any professional advice on pursuing a 50 percent strategic partnership through an RFP. However, by

the time KPMG was retained, the RFP process was already underway and focused on finding a strategic partner for Collus Power. KPMG, like the Task Team, followed this same direction in its work.

The day after the meeting, on August 30, Mr. Houghton emailed John Herhalt, a partner at KPMG, with the subject line “Strategic Partnership Plan” and asked to arrange a call. In response, Mr. Herhalt wrote: “What is the strategic partnership plan about?” This communication was the first time he became aware of the term strategic partnership.

Following discussions with Mr. Houghton about the strategic partnership plan, KPMG agreed to assist Collus Power with the RFP. Mr. Herhalt testified that KPMG’s role included attending meetings the Strategic Partnership Task Team held with the bidders, providing a framework for the RFP document, suggesting options for the team’s consideration, and putting the factors they identified to paper.

KPMG’s role was outlined in a retainer letter dated September 9, 2011, which stated that KPMG would provide the following services:

- Participate in the interviews of the 4 potential strategic partners identified – Hydro One, Veridian Power, PowerStream, and Horizon Utilities These interviews will take place on September 12th and 19th, 2011.
- Prepare and discuss a request for proposal document for issue to the potential strategic partners.
- Assist with the evaluation of the proposals received from the potential strategic partners.

Mr. Houghton signed the letter on behalf of Collus Power. Neither the retainer letter nor Mr. Herhalt indicated that KPMG was a member of the Strategic Partnership Task Team. Moreover, neither the Collingwood Council nor the Task Team reviewed or approved KPMG’s contract.

As with the valuation and the strategic options analysis, KPMG’s client was Collus Power, not the Town. The engagement letter provided that KPMG was retained to help Collus Power, defined in the letter as KPMG’s “Client,” and the Town of Collingwood “with the pursuit of a Strategic Partner.” Mr. Herhalt testified he primarily took instructions from Mr. Houghton, but

he understood they “really came” from the Strategic Partnership Task Team as a whole. Mr. Herhalt believed that Collus Power and the Town of Collingwood had authorized the team to provide instructions on their behalf, though he was never explicitly advised that the team had this authority. He inferred that the team had authorized Mr. Houghton to provide instructions to KPMG.

By the time KPMG had been retained, significant steps had already been taken toward an RFP for a 50 percent share sale, including the initial meetings with potential bidders. The Strategic Partnership Task Team had already met twice and had discussed RFP criteria. Mr. Herhalt also testified that, when KPMG was retained, the team had already scheduled meetings with the four remaining bidders.

Secret Advantage to PowerStream

The misunderstanding flowing from Mr. Houghton’s recommendation to Council at the June 27 meeting – that pursuing a strategic partnership would best meet the Town’s goals of debt reduction and increased efficiencies – was not the only matter undermining the efforts of the Strategic Partnership Task Team. The team was also not advised about the advantages that PowerStream had already enjoyed.

At its first meeting on August 3, the Strategic Partnership Task Team was advised that Mr. Muncaster and Mr. Houghton had attended initial informal meetings with potentially interested bidders to gauge their interest and to explain and discuss the RFP process. The team was also told that, in making their presentation Mr. Houghton and Mr. Muncaster had used a consistent introduction at each meeting. The team was not told that only PowerStream was offered the opportunity to partner in the Solar Strategic Alliance.

Mayor Cooper testified that a level playing field promotes real competition among the bidders, and that treating them all the same way drives up the price. Her evidence, which I accept in this regard, indicates that it is essential to treat all bidders similarly not only to ensure fairness but also to obtain the most value for the shareholder.

Mr. Houghton did not inform the Strategic Partnership Task Team that he had significant previous contact with PowerStream and had discussed

a potential purchase of Collus Power shares with PowerStream CEO Brian Bentz. Nor did he disclose that he had assisted Mr. Bonwick in securing a retainer with PowerStream to work on the Collus Power RFP, or that he and Mr. Bonwick had worked to implement the Solar Strategic Alliance between Collus Power and PowerStream. Mr. Houghton also did not disclose the degree to which he and Mr. Bonwick were involved in the solar attic vent project or that the vent company was paying Mr. Bonwick.

This lack of disclosure placed the Strategic Partnership Task Team in an awkward position. All the team members, except Mr. Houghton, believed they were creating and maintaining a level playing field for the bidders. Without the information that Mr. Houghton withheld from them about PowerStream, they were unknowingly working in an unfair environment.

Failure to Involve Legal Counsel

No legal advice was sought from the Town's solicitors at Aird & Berlis as the RFP development process began. It goes without saying that the Strategic Partnership Task Team would have benefited from legal guidance as it began setting the parameters of its search for a strategic partner. As the individual overseeing the process, Mr. Houghton should have recognized that it would be prudent to obtain legal advice on the partial sale of one of the Town's largest assets. Had Mr. Houghton ensured that Aird & Berlis was involved at this point of the sale, many of the issues I will address later in this Report could very well have been avoided.

Ian Chadwick's Weekly News Summary

Concurrent with the launch of the solar attic vent initiative and the RFP planning by the Strategic Partnership Task Team, Mr. Bonwick entered into a business relationship with one of Collingwood's Town councillors, Ian Chadwick, who had worked as a journalist.

Mr. Bonwick approached Mr. Chadwick in August 2011 and asked him if he would be willing to create a weekly news summary about the energy

and electricity industries. He explained that he planned to send the review to clients of his company, Compenso Communications Inc. Mr. Chadwick accepted the offer: he worked for Compenso from August to December 2011 and again from February 2012 until April 2014, charging \$700 a month.

Early on, Mr. Chadwick became aware that PowerStream was one of Mr. Bonwick's clients and a recipient of the news summary. He recognized that this contract could place him in a conflict of interest in his role as councillor of the Town of Collingwood.

On October 3, 2011, Mr. Houghton updated Council *in camera* on the sale process and the proposed RFP for a 50 percent sale of Collus Power. Although the minutes do not record a vote or a decision to proceed, the RFP was released the next day. Mr. Chadwick told the Inquiry that, at the time, he considered he would "probably have to stand aside from the table, just in case [PowerStream] got involved in any of the bidding or any further process." He did not declare a pecuniary interest at this meeting because he did not see the RFP as "specific to any company ... not specific to any business," and he did not believe that Council had yet made a decision to sell anything.

On December 5, before Mr. Houghton presented the results of the RFP to Council *in camera*, Mr. Chadwick recused himself on the basis that he provided consulting services for "electricity sector clients." He said he would not participate in the *in camera* discussion until it was known "whether his client has submitted an RFP for the Collus Partnership."

Mr. Chadwick did not recuse himself, however, at two other important Council meetings where councillors discussed the RFP and PowerStream. In each case, he should have.

On January 16, 2012, Collingwood Town Council received a privileged, *in camera* update on the negotiations with PowerStream. Mr. Chadwick did not declare a conflict. A week later, on January 23, Council voted to sell 50 percent of the shares in Collus Power to PowerStream. Again, Mr. Chadwick did not declare a conflict. In both cases, Mr. Chadwick gave the Inquiry the same explanation: he had stopped working for Compenso at the end of December 2011. Although true, two other elements need to be considered.

First, Compenso had not yet paid him for his work in December. Mr. Chadwick's only other source of income during December 2011 and

January 2012 was his Council stipend. The December invoice remained outstanding until after he had voted in favour of the sale of Collus Power shares to PowerStream on January 23, 2012. Second, Mr. Chadwick was seeking further work from Compenso during the period he was not actively contracted to provide the news summaries.* On December 30, 2011, Mr. Chadwick wrote in an email to Mr. Bonwick, “Hope I can do more work for you in 2012.” He repeated his request for more work on January 4, 2012.

Mr. Chadwick’s continuing relationship with Compenso placed him in a conflict of interest when it came to Council’s decisions about the RFP. Mr. Chadwick gave evidence that his work for Compenso did not affect his decisions about PowerStream. Although that may be so, one of the harms flowing from an unaddressed apparent conflict of interest, as I discuss in this Report, is the public perception that the conflict tainted related municipal actions. The emails between Mr. Bonwick and Mr. Chadwick during the January 23, 2012, meeting and later are precisely the kind of correspondence that could spark such a suspicion.

On January 23, in a public session, Council authorized the sale of Collus Power shares to PowerStream. Mr. Bonwick emailed Mr. Chadwick shortly after the meeting started, writing, “I was going to ask if you could speak to Industry trend [*sic*] and leading the way. You likely know more about the industry than others at the table.” Mr. Chadwick made a statement before he voted in favour of the transaction. At no point did he disclose his relationship with Compenso or with PowerStream through Compenso.

Shortly after the Council meeting, Mr. Chadwick emailed Mr. Bonwick to request payment for his December invoice, explaining that it had “[b]een a lean month for [him], income-wise.” Mr. Bonwick replied, “Yes[,] we should meet ... would like to discuss growth strategy as well. They are interest [*sic*] in expansion that requires monitoring. Tomorrow afternoon works for my office.” On January 28, Mr. Chadwick followed up with Mr. Bonwick again, asking if PowerStream was interested in further work. Mr. Bonwick replied, “[Y]es ... please keep going until we chat.”

Whether or not Mr. Chadwick’s vote was influenced by his work for

* January 1–28, 2012.

PowerStream, these emails give rise to an apparent conflict of interest. A reasonably well-informed person would conclude that Mr. Chadwick might have been influenced by his past work for Mr. Bonwick and the prospect of future work.

PowerStream had become aware that Mr. Bonwick had hired Mr. Chadwick through a September 1, 2011, Compenso invoice that sought to pass the cost of his work on to PowerStream. PowerStream CFO John Glicksman explained that PowerStream refused to pay for this media monitoring service, partly because paying for Mr. Chadwick's services would raise conflict of interest issues. He explained his reasoning to Mr. Bonwick at the time.

Mr. Bonwick testified he did not advise Mr. Chadwick that PowerStream was not receiving the news summary. Instead, in January 2012, he told Mr. Chadwick that PowerStream was interested in more work.

Mr. Chadwick's experience also shows the limits of the current *Municipal Conflict of Interest Act*. Mr. Chadwick understood that the *Act* comprehensively covered the field when it came to conflicts of interest. He stated that nobody at Town Hall could provide councillors with advice on the *Act*. Councillors were required to seek their own legal advice on conflict of interest issues, thereby presenting a cost constraint.

I accept Mr. Chadwick's evidence that he believed he was complying with the applicable conflict of interest law as it related to his work for Compenso. However, even though he was acting in good faith, his participation in Council's decisions regarding the Collus RFP and share sale on January 16 and January 23 was inconsistent with his obligations to the municipality.

Meetings with the Bidders

The Strategic Partnership Task Team hosted meetings with each of the four potential bidders in early September 2011. The purpose of the meetings was to allow the interested parties to discuss how Collus Power would fit into their future and to ensure they understood the RFP criteria. The meetings were to be confidential. Mr. Bonwick, however, was able to obtain information about the presentations of the potential bidders as well as the reactions of the team to them. He shared that information with PowerStream officials.

Brian Bentz, John Glicksman, and Dennis Nolan took no steps to address this breach. Neither did Mr. Houghton, who also knew that Mr. Bonwick had learned about the confidential discussions with the other bidders.

Confidentiality Essential

The Strategic Partnership Task Team meetings were confidential. Dean Muncaster sent letters to each of the bidders in advance clearly stating that the meetings were confidential. The bidders were required to sign mutual nondisclosure agreements with the Town of Collingwood and Collus Power. The fact that the Town was considering divesting a portion of its interest in the utility company was not publicly disclosed until near the end of the Strategic Partnership Task Team's tenure. The team members who appeared before the Inquiry all understood, first, that the bidders had provided information that the team would keep to itself; and, second, that their own deliberations were secret.

Each of the witnesses from the other bidding LDCs spoke to the importance of confidentiality in an RFP. Neil Freeman, who at the time of the events examined by the Inquiry was Horizon's vice-president business development and corporate relations, explained the importance of confidentiality in the RFP process. He stated that the vendor would be undermining itself if it did not maintain confidentiality: "[T]hey have an interest ... in the bidders wanting to ... give their best foot forward and not walk away because they feel ... their information is being shared."

I am satisfied that everyone involved in this process understood the importance of confidentiality and the significance of being indiscreet with confidential information.

Although no minutes were taken of the meetings between the Strategic Partnership Task Team and the bidders because of these confidentiality concerns, the Inquiry received a record of the meetings in the form of contemporaneous notes taken by Mr. Herhalt, who was there. It would have been better, however, if minutes had been retained of all the team meetings and stored in the Town's files.

Leakages of Confidential Information

Material information about the confidential deliberations of the Strategic Partnership Task Team was leaked to Mr. Bonwick from the beginning of the share-sale process. Mr. Bonwick provided this confidential information to PowerStream.

Mr. Bonwick emailed Mr. Bentz after the first team meeting on August 3, 2011, offering to provide him with “an update as it relates to Collus presentation this morning” and asking him to call his cell phone. Mr. Bentz did not recall having a discussion with Mr. Bonwick after receiving this email. He did remember Mr. Bonwick providing an update that the chair and CEO of Collus Power had met with the bidders, they were proceeding with the RFP in the fall, and there could be interviews.

On September 14, two days after the team met with Veridian and Hydro One, Mr. Bonwick sent a competitive analysis memo to Mr. Houghton for his review and comment. The memo provided information about the confidential presentations Hydro One and Veridian had made to the team on September 12. For example, concerning Hydro One, it advised that, “while the presenter demonstrated integrity and an in-depth knowledge of the industry, trends and more particularly the South Georgian Bay Region[,] the assessment committee was not enamored with the concept or direction Hydro One presented.” The memo also reported on the content of Veridian’s presentation and the team’s reaction to it. It identified, among other things, that Veridian’s proposal to implement a contribution fund for discretionary gifting on behalf of the mayor and Town Council “resonated well” with the team.

The confidential nature of the information in the memo is apparent from a plain reading of the document. The potential harm flowing from the leakage of such confidential information is reinforced by the strong reactions during the Inquiry hearings of the witnesses from the other bidding companies. All those witnesses indicated that knowledge of the leaks undermined their confidence in the RFP process.

Mr. Bonwick told the Inquiry that the memo was a compilation of information he received from Mr. Muncaster, Mr. Houghton, and Mr. Lloyd, along with information from the Internet and other public sources. Mr. Houghton and Mr. Lloyd denied they provided the information in the

memo to Mr. Bonwick. For the reasons I discuss in Chapter 6, I am satisfied that Mr. Houghton and Mr. Lloyd provided Mr. Bonwick with confidential information about the bidder meetings.

Mr. Houghton and Mr. Bonwick both testified that Mr. Houghton contacted Mr. Bonwick after receiving the memo. Mr. Houghton's evidence about the conversation that followed was inconsistent, but he indicated that Mr. Bonwick sourced the information in the memo from the Internet and from discussions with various people including Mr. Muncaster. He said he told Mr. Bonwick, "[T]his isn't something we should be putting out to anybody," and he would speak to Mr. Muncaster about it in the morning. According to Mr. Houghton, Mr. Bonwick agreed to consider his comments.

Mr. Bonwick testified that Mr. Houghton did not object to his having confidential information about the deliberations of the Strategic Partnership Task Team. Rather, Mr. Houghton objected to his sharing this information with PowerStream.

Mr. Houghton said he took the issue to Mr. Muncaster, who cross-referenced the memo against the invitation letters that had been sent to the bidders and determined that "there is virtually little here from a commercial value, if anything from a commercial value." Mr. Muncaster told Mr. Houghton he would deal with it. According to Mr. Houghton, Mr. Muncaster dealt with it by telling the Strategic Partnership Task Team at their next meeting to "remember to keep the information amongst these four walls."

I do not accept that this consultation with Mr. Muncaster took place. Mr. Muncaster, who passed away in 2012, was a well-respected and experienced businessman. He would have understood that maintaining confidentiality was essential to attracting the most desirable bidders and ensuring they were provided with the necessary safeguards to permit them to share business information and, ultimately, make their best bids. He also would have realized that the disclosure of information internal to the Strategic Partnership Task Team would undermine its deliberative secrecy and its ability to function. Finally, he would have appreciated that compromising confidentiality would undermine bidder confidence in the administration of the RFP and be detrimental to the corporation's interest in attracting the best bids.

I am satisfied that Mr. Houghton, as an experienced public servant,

understood the significance of the confidential information contained in the memorandum. However, he did nothing meaningful to prevent Mr. Bonwick from passing on the information.

Mr. Bonwick, Mr. Bentz, and Mr. Nolan, PowerStream's general counsel and corporate secretary, all testified that Mr. Bonwick conveyed some of the memo information to PowerStream. Mr. Glicksman could not recall if any of the information in the memo was communicated to PowerStream. He observed that the community gifting fund was the only item that made its way into PowerStream's RFP but testified he could not recall whether that idea came from Mr. Bonwick or PowerStream. Mr. Bentz recalled Mr. Bonwick advising that one of the other bidders might or would include a community fund, so PowerStream should include one, which it did. Mr. Bentz and Mr. Nolan also stated that the information was confidential and should not have been possessed by Mr. Bonwick or disclosed to PowerStream.

I am satisfied that Mr. Bonwick conveyed all the information in the memo to PowerStream. It would make no sense for him to prepare a memo describing the bidders' presentations and then convey only a portion of that information to his client.

The failure of Mr. Bentz, Mr. Glicksman, and Mr. Nolan to disclose that PowerStream's paid consultant had provided the company with confidential information concerning the deliberations of the Strategic Partnership Task Team is troubling. Certainly, it is far removed from the standard of disclosure that PowerStream's Audit and Finance Committee had insisted on as a condition of Mr. Bonwick's retainer.

Mr. Houghton's failure to take any steps to address Mr. Bonwick's possession of confidential information endangered the Town's ability to attract quality bids on this, and future, RFPs. Mr. Bonwick continued to furnish confidential information about the RFP, as I discuss in more detail below.

Leakage of the Team's Reactions to PowerStream's Presentation

The Strategic Partnership Task Team met with Horizon and PowerStream on September 19, 2011. On September 20, Mr. Bonwick sent Mr. Glicksman information about the team's reactions to PowerStream's presentation and

provided suggestions on the best way to leverage the team's views to PowerStream's advantage. He also advised that "at least one of our competitors (Horizon) will submit a proposal providing a 50% ownership scenario." Both Mr. Bentz and Mr. Glicksman testified that this information was confidential and should not have been conveyed to PowerStream.

Once again, however, Mr. Bentz, Mr. Nolan, and Mr. Glicksman did not disclose the fact they were receiving confidential information from Mr. Bonwick.

Discussions Between PowerStream's Lawyer and a Collus Power Director

PowerStream retained Robert Hull, a lawyer at Gowling WLG, to act for it in responding to the Collus Power RFP. At the request of Mr. Nolan, Mr. Hull asked David McFadden, his law partner and a Collus Power director, about the RFP process and dates. Mr. Hull then provided the information he received to PowerStream.

Mr. Nolan testified that the purpose of these inquiries was to seek assurance that Collus Power was proceeding with the RFP and to confirm the general timing. PowerStream also wanted clarity on whether there was any possibility for PowerStream to submit a bid for 100 percent of the Collus Power shares as an alternative to the 50/50 ownership structure. Mr. Nolan explained that he and Mr. Hull discussed whether this request could place Mr. McFadden in an "inappropriate position" and agreed that it would be limited to "whatever he felt that he was at liberty to provide, that would be proper for him to provide."

On September 28, after PowerStream had made its presentation to the Strategic Partnership Task Team, Mr. Hull asked Mr. McFadden for any information about the Collus Power RFP that Mr. McFadden was at liberty to share. Mr. Hull's notes of his conversation with Mr. McFadden included "presentation was great," "expected dates 4th and Nov. 16," "likely best not to do in the alternative," and "other bidders seem OK with 50/50." This information should not have been disclosed.

Mr. Nolan testified that although the RFP determined how PowerStream constructed its response, the information Mr. Hull provided helped turn PowerStream's focus away from constructing an alternative bid. He did not

recall discussing the RFP dates, the political composition of the board, or the fact that the other bidders were “ok with 50/50” with Mr. Hull, but acknowledged that this information would have been good to know.

In further testimony, Mr. Nolan agreed that the information about the other bidders’ stance on the 50/50 ownership structure was confidential and ought not to have been shared with PowerStream. In its closing submissions, PowerStream acknowledged that it ought not to have made this request of Mr. Hull. The other bidders who testified at the Inquiry stated that, although it was not possible to determine the impact of sharing this information with PowerStream, all the bidders should have had the same information.

The Draft Request for Proposal and Paul Bonwick's Raise

After completing its meetings with four potential strategic partners in mid-September 2011, the Strategic Partnership Task Team began to finalize the contents of the request for proposal (RFP) that it would send to potential bidders. The team's work continued to focus on finding the best strategic partner for the company, leading to an RFP that emphasized non-financial factors over the proposed share purchase price.*

Collus Power retained KPMG, the accounting and consulting firm that conducted the valuation and options analysis, to assist with the preparation and administration of the RFP. Collus Power did not ask or retain KPMG to advise whether the strategic partnership concept served the Town's interest. During this period, Paul Bonwick and PowerStream negotiated a new retainer that saw an increase in his compensation in lieu of a success fee for the completion of a transaction with Collus Power.†The new retainer also contained explicit success fees in the event of further deals with other utility companies in the region. Brian Bentz, PowerStream's president and CEO, Dennis Nolan, its general counsel and corporate secretary, and John Glicksman, its chief financial officer, did not require Mr. Bonwick to disclose the new retainer or compensation structure to the Town, and no such disclosure occurred.

* The members of the team were Collus Power chair Dean Muncaster, Collus Power chief executive officer Ed Houghton, Collus Power chief financial officer Tim Fryer, Collus Power director David McFadden, Collingwood mayor and Collus Power director Sandra Cooper, Collingwood deputy mayor Rick Lloyd, and Collingwood chief administrative officer Kim Wingrove.

† A success fee is defined as a payment to an advisor for successfully completing a transaction.

During the retainer negotiations, Mr. Bonwick continued to provide PowerStream with confidential information. He also placed the company in a position to assist Mr. Houghton on the RFP communications strategy for Collus Power and the Town. Mr. Houghton did not advise either the Town or the Strategic Partnership Task Team that PowerStream was advising and assisting in the RFP communications strategy.

Ron Emo, Collingwood's former mayor, warned the current mayor, Sandra Cooper, about the risks if the Collus Power sale process was not transparent. In a September 26 email to Mayor Cooper, before the release of the RFP on October 4, 2011, Mr. Emo wrote:

I don't know what is going on with COLLUS & PowerStream but it should not be something done behind closed doors. Selling off all or part of our Utility is not [something] to be done lightly. It was never mentioned during the campaign and if not handled responsibly will be a very divisive local issue.

Mr. Emo's email was prophetic. The RFP was released without providing notice to the public.

The Draft RFP

The Inquiry received little information on how the RFP was developed, including the amount of input the Strategic Partnership Task Team provided on the content of the RFP. What is evident is that the RFP document prioritized Collus Power's interest in obtaining a strategic partner over the Town's interest in decreasing its debt and increasing efficiencies for the taxpayer.

Collus Power retained the consulting group KPMG to assist in preparing the RFP. On September 25, KPMG's John Herhalt sent a draft slide presentation on the RFP to Collus CEO Ed Houghton, which Mr. Houghton circulated to the Strategic Partnership Task Team for discussion at its next meeting, scheduled for September 28.

Mr. Herhalt testified that he prepared the draft slide presentation after attending the September 12 and 19 Strategic Partnership Task Team's

confidential meetings with the potential bidders: Horizon Utilities Corporation, Hydro One Incorporated, PowerStream Incorporated, and Veridian Corporation. Mr. Herhalt took notes of the team's discussions, the only record of those meetings that the Inquiry received.

Mr Herhalt based his draft presentation partially on what he considered the team's goals to be. Mr. Herhalt determined the Strategic Partnership Task Team's goals from the two bidder meetings he attended and his participation in discussions with the team before and after the meetings. Other segments of the presentation included components that, based on Mr. Herhalt's professional experience, needed to be included in an RFP. Some aspects of the RFP – such as the weight to be assigned to particular criteria – were left blank, as Mr. Herhalt was of the view that these matters warranted further discussion among members of the Strategic Partnership Task Team.

The presentation identified five “key needs” a strategic partner would be required to satisfy, including “[s]upport in growing the Collus Power business, both organically and through acquisition.” It also set out a list of criteria for RFP bidders to address in their responses and contemplated that the team would score the bids using a point-based system. However, it did not include the allocation of the points for each criterion. Mr. Herhalt's presentation contemplated bids for 50 percent of the shares of Collus Power, and alternative bids for acquiring more than 50 percent of the Collus Power shares.

The Task Team met to discuss the RFP on Wednesday, September 28. Mr. Herhalt testified that, at this meeting, the team reviewed his slide deck and then arrived at a consensus on the RFP elements. He also testified that the point allocations for the RFP criteria were assigned at this meeting. However, Mr. Herhalt noted that the team had discussed many of the criteria before he had arrived, and that he worked with the team to flesh out “what were the most important things to the task team.” The primary goals of the team, he said, were reflected in what turned out to be the three most heavily weighted criteria of the RFP: receiving appropriate value for 50 percent of Collus's shares; receiving specialized resources from a potential strategic partner; and receiving support from a potential partner in growing the Collus Power business.

The next day, Mr. Herhalt prepared a revised draft of the RFP slides,

which included the points assigned to each of the RFP criteria. The weight accorded to non-financial categories, such as “support in growing Collus business” and “cultural and synergistic fit,” was 70 points. The financial offer and related matters category (e.g., the proposed capital and governance structures) was assigned a weighting of 30 points. Bidders were to submit the proposals in two envelopes, one containing the financial bid and the other containing the non-financial proposal. The revised draft did not include the option to submit a proposal for the purchase of more than a 50 percent interest in Collus Power.

Mr. Houghton circulated a revised draft of the RFP slides to the Strategic Partnership Task Team on Friday, September 30, and scheduled an update to Council the following Monday at the October 3 Council meeting. The Inquiry did not receive any records indicating that changes were made to this draft, which was substantively the same as the RFP that would be sent to bidders the following week.

It is clear from Mr. Herhalt's evidence that the genesis of the RFP criteria occurred before KPMG had been retained to assist with the process. Mr. Houghton testified that the Strategic Partnership Task Team engaged in brainstorming on the RFP criteria at three meetings: on August 3, August 29, and September 28. The first two meetings occurred before Mr. Herhalt was retained. None of the other Task Team members who appeared as witnesses before the Inquiry had a detailed memory of how the team developed the RFP or provided input on the RFP criteria.

The witnesses did recall discussing the relative weight to be assigned to each criterion. Mr. Houghton testified that the team allocated the non-financial factors a 70 percent weighting because “we really wanted to have somebody that was going to allow us to be bigger, better, and stronger.” Deputy Mayor Lloyd explained that he supported assigning 70 percent of the evaluation to non-financial criteria because the Task Team's objective was to find a strategic partner that would assist in growing Collus Power.

When asked whether he was satisfied the RFP criteria weighting was in keeping with what he considered the wishes of Collus and the Town to be, Mr. Herhalt responded, “Certainly the wishes of the strategic partnership task team.”

Ultimately, Mr. Herhalt's role in developing the RFP was to propose

a structure for the document to the Strategic Partnership Task Team and leave the final decisions about content up to the team. Mr. Herhalt also testified that “at the time we were retained, we weren’t really advising on the transaction ...”

The Strategic Partnership Task Team emphasized non-financial factors in the interest of finding the best strategic partner because, at the June 27 Council meeting, Mr. Houghton recommended the Town pursue a strategic partner. As explored earlier in the Report, the process that led to that recommendation was flawed in several respects, but in particular because it failed to consider and prioritize the Town’s goals of debt reduction and finding efficiencies. The pursuit of a strategic partner continued to promote the interests of Collus over those of the Town throughout the preparation of the RFP.

For example, while Mr. Herhalt’s first draft of the RFP contemplated that bidders would be permitted to bid on 50 percent of the shares of Collus Power and would also be able to submit alternative bids for more than 50 percent, the final RFP explicitly prohibited bids for more than 50 percent of the Collus Power shares. This prohibition demonstrates that the Task Team’s objective was to find a strategic partner and that learning how much cash the Town would receive if it sold a larger stake in the company was not a priority.

It was in the Town’s interests to understand all available options so it could make an informed decision about the portion of Collus Power that it was prepared to sell.

Mr. Herhalt testified that Mr. Houghton was his “direct liaison through a lot of this” and that Mr. Houghton retained KPMG and provided instructions. He said he understood that the Team had authorized Mr. Houghton to instruct KPMG. The Strategic Partnership Task Team was KPMG’s sole source of information. KPMG was not retained to advise the Town about how best to meet its debt reduction objective through the RFP process.

Although Mr. Herhalt may have been of the view that in serving the interests of the Strategic Partnership Task Team he was serving the interests of both Collus and the Town, the reality of the situation was that the team’s goals represented Collus Power’s goal of finding a strategic partner and not the Town’s interests in reducing debts and finding greater efficiencies.

A Fair Process That Wasn't Followed

Had its requirements been followed, the RFP provided for a confidential, well-documented, and fair process. It incorporated the non-disclosure agreements among each of the bidders, the Town, and Collus Power. It also provided for a fair, confidential, and documented communications process for the bidders, who were directed to submit all questions to KPMG's John Herhalt by email. It granted the Strategic Partnership Task Team the discretion to share "the substance of any inquiries for additional information and responses to these inquiries" with all the bidders. This approach would have allowed the team to maintain a level playing field, ensuring that all the bidders received the same information. It also would have provided a comprehensive, confidential record of the communications with the bidders if any questions arose about the RFP process.

The RFP permitted the Strategic Partnership Task Team to meet with any of the bidders to discuss or otherwise clarify their proposal after the closing date. However, any additional information obtained would form part of the proposal. Had this provision been used, the Task Team could have sought the information it required to compare the bids accurately.

Unfortunately, and as discussed in further detail below, the safeguards built into the RFP were ignored.

Mr. Houghton's RFP Presentation

Collingwood Council was not provided with the opportunity to consult with KPMG or relevant Town staff before the RFP was issued.

Mr. Houghton provided a confidential update on the RFP to Collus Power staff on September 29. The next day, he offered to provide an *in camera* update to Town Council at its October 3 meeting. Mayor Cooper and Deputy Mayor Lloyd agreed the *in camera* update was a good idea. Mayor Cooper voiced concern about the rumours and emphasized the need to dispel them and highlight KPMG's assistance.

On October 3, Mr. Houghton provided an *in camera* update on the RFP to Council.

Mr. Houghton's slide presentation at the October 3 *in camera* Council meeting outlined the RFP criteria, the two-envelope response requirements,

the permitted communications channels for the RFP proponents, and the anticipated timeline for the receipt and evaluation of the RFP. It also set out the evaluation criteria and associated weightings. As I noted elsewhere, the final RFP criteria and weightings prioritized Collus Power's interest in identifying a strategic partner over the interests of the Town.

The minutes from the meeting stated that Mr. Houghton provided a detailed presentation. They did not include any information on the contents of the presentation. The minutes also reported that Mr. Houghton addressed questions from Council but did not record the questions asked or the responses provided by Mr. Houghton. According to the minutes:

Mr. Houghton indicated that COLLUS will be working with KPMG and issuing a Request for Proposal's [*sic*] (RFP) to determine interest and if a partnership would be advantageous ... an evaluation team would be established to thoroughly review the proposals that will be presented back to their Board and Council for review.

The RFP was officially sent to PowerStream, Horizon, Veridian, and Hydro One on October 4. The deadline for responses was November 16.

Confidential Information Obtained Through Mr. Bonwick

After the RFP was issued, Paul Bonwick continued to provide advantages to PowerStream. Meanwhile, PowerStream considered extending Mr. Bonwick's retainer. Each of the several situations discussed below should have been a red flag to PowerStream that Paul Bonwick was obtaining confidential information. PowerStream's president and CEO, Brian Bentz, its chief financial officer, John Glicksman, and its executive vice-president of corporate services, Dennis Nolan, a lawyer, ought to have addressed these warning signals.

However, they took no steps to identify the sources of Mr. Bonwick's information. Nor did they alert the Town of Collingwood that PowerStream had received confidential information.

A Favour for the Deputy Mayor's Friend

On October 4, Deputy Mayor Lloyd asked Mr. Bonwick to assist a business in Barrie, Ontario, operated by a friend of the deputy mayor. The business was experiencing problems with a transformer and required assistance from PowerStream. PowerStream provided the requested help.

Both Mr. Bonwick and PowerStream recognized the advantage that this request provided to PowerStream in the RFP. On October 5, Mr. Bonwick advised PowerStream that assisting the deputy mayor would be “very useful as it provides [Deputy Mayor Lloyd] an opportunity first hand to blow our horn during review stage.” PowerStream executive Mark Henderson asked Mr. Bonwick to subtly inform the deputy mayor that PowerStream went “beyond the norm” in response to the deputy mayor's request.

Mr. Bonwick forwarded an email to Deputy Mayor Lloyd that day and asked him to “chat.” Mr. Bonwick drafted the following message for the deputy mayor, which the deputy mayor sent to Mr. Henderson on October 14:

Hi Mark:

Please accept my sincere thanks to you and your team for all your efforts on the recent matter I brought to your attention.

Your actions only reaffirmed the high level of confidence I have in the Powersteam [sic] organization. I have had an opportunity to follow up with [redacted] and I can also state that he could not be more pleased with the level of service your team has provided.

When we meet next I will more properly thank you but until that time I offer you my thanks.

Sincerely,

Rick Lloyd

Deputy Mayor,

Town of Collingwood

Deputy Mayor Lloyd, who had asked Mr. Bonwick to draft the email, told the Inquiry that while he was appreciative of PowerStream's assistance, these events did not influence his scoring of the RFP responses. The deputy

mayor testified that he already believed the RFP was “PowerStream’s to lose.” At the time, PowerStream had not yet submitted its bid.

Deputy Mayor Lloyd explained that he did not disclose the transformer transaction to the Strategic Partnership Task Team because the assistance PowerStream provided to his Barrie friend, at his request, was unrelated to the RFP. In his closing submissions, Mr. Lloyd said he did not know in October whether Mr. Bonwick was assisting PowerStream with its response to the Collus Power RFP.

I do not accept that Deputy Mayor Lloyd did not know Mr. Bonwick was assisting PowerStream with the RFP.

As I discuss in Part One, Chapter 1, Deputy Mayor Lloyd was a close friend of Mr. Bonwick’s. He also had a history of providing Mr. Bonwick with private and confidential Town Council information to assist Mr. Bonwick in his business dealings. It is noteworthy that Mr. Bonwick forwarded to Deputy Mayor Lloyd Mr. Henderson’s email asking Mr. Bonwick to “subtly” let the deputy mayor know that PowerStream had “gone beyond the norm” to help the deputy mayor’s friend during the bid review stage. I am satisfied Deputy Mayor Lloyd knew Mr. Bonwick was assisting PowerStream with its bid.

In his closing submissions, Deputy Mayor Lloyd stated that he did not receive any personal benefit for arranging PowerStream’s assistance. Deputy Mayor Lloyd also maintained that the recipient of PowerStream’s assistance was not a Collingwood resident, and that no confidential information was shared in the course of the transformer transaction.

None of those facts mitigates against the harm caused by the undisclosed conflict of interest in which the deputy mayor placed himself when he sought and obtained special treatment from PowerStream (through its agent, Mr. Bonwick) for his friend. The deputy mayor had asked one of the RFP bidders for a favour, which materialized. PowerStream performed a favour for the deputy mayor during the procurement process, creating a reasonable concern that the deputy mayor might owe, or might believe he owes, PowerStream a favour in return. The deputy mayor exacerbated that conflict when he chose to send the thank you note, drafted for him by Mr. Bonwick, to PowerStream executive Mark Henderson.

The deputy mayor’s intervention with PowerStream placed him in a

conflict of interest that ought to have been disclosed to Town Council as well as the Strategic Partnership Task Team. Disclosure of the conflict would have allowed the Town Council to consider his continued participation in the RFP, evaluation of the bids, and the Town's decision regarding a strategic partner.

Confidential Information Provided by Mr. Bonwick to PowerStream

As PowerStream prepared its response to the Collus Power RFP, Mr. Bonwick continued to provide PowerStream with information that was not available to the other bidders, some of it confidential.

The day after the RFP was issued, October 5, Mr. Bonwick sent Mr. Bentz, Mr. Nolan, Mr. Glicksman, and other PowerStream staff a memo addressed to the "PowerStream EVP Team." The memo provided recommendations for the company's bid that Mr. Bonwick indicated were "based on input over the last several weeks." Mr. Bonwick recommended adding a discretionary gifting fund, a recommendation he had made in his September 14 memo regarding Veridian's confidential presentation to the Strategic Partnership Task Team, as well as highlighting PowerStream's involvement in the solar attic vent initiative (see Part One, Chapter 5). Mr. Bonwick also advised that Veridian had "emphasized synergies with same Union."

In his closing submissions, Mr. Houghton denied he had provided Mr. Bonwick with information that Veridian emphasized union synergies in its confidential presentation to the Strategic Partnership Task Team. Mr. Houghton also took the position that this information was "obvious to all bidders and therefore of no particular significance." This view was not shared by Michael Angemeer, Veridian's CEO at the time. In his testimony, Mr. Angemeer confirmed Veridian included this information in its presentation to the team and stated that the emphasis Veridian placed on this issue was confidential.

I agree with Mr. Angemeer. Regardless of whether it was public that Collus Power and Veridian employees belonged to the same union, how

Veridian chose to use this information in its efforts to win the RFP was confidential. Veridian was entitled to rely on the non-disclosure agreement.

Bidders engaged in municipal procurement processes must trust that information provided to the municipality will be carefully protected. Without this trust, the municipality will not attract the best responses and resources to meet its needs.

Mr. Bonwick also provided PowerStream with confidential information concerning Collus Power employees. In preparing PowerStream's response to the Collus Power RFP, a PowerStream employee circulated an email to BDR (PowerStream's valuation consultant) and Paul Bonwick which sought information about Collus Power's employees. Mr. Bonwick provided Mr. Glicksman with an email summarizing important employee information, which Mr. Glicksman forwarded to PowerStream staff and its consultant. On October 12, Mr. Bonwick also sent Mr. Glicksman a document that contained the names of Collus Power employees and included their positions, employment status, birthdates, current ages, hire dates, years of service, and early retirement and normal retirement dates.

Mr. Bonwick testified that he obtained this information by asking for it through Mr. Houghton or his executive assistant, Pam Hogg, and then personally appearing at the Collus office to retrieve it. Some of this information was eventually made available to the other bidders through Collus Power's data room. Nevertheless, Mr. Bonwick provided this information to PowerStream, which supported the notion that he could add value to PowerStream's response to the RFP.

Mr. Glicksman did not inquire into the source of the employee information that Mr. Bonwick provided to PowerStream. Mr. Glicksman testified that he did not consider whether the employee information was confidential because it "did not seem to be very important." I do not accept Mr. Glicksman's assertion that the information was unimportant because his statement is inconsistent with PowerStream's efforts to obtain this information while preparing its RFP response.

Feedback on PowerStream's Proposal

On November 6, an internal PowerStream memo reported that Mr. Bonwick had suggested PowerStream structure its bid in “the best possible light” by following the approach that KPMG had taken. This approach structured the offer to provide that PowerStream pay the purchase price before Collus Power took on debt to reach the Ontario Energy Board's (OEB's) deemed debt-to-equity threshold.

As I discuss in Part One, Chapter 2, the OEB assumed local distribution companies (LDCs) carried a debt-to-equity ratio of 60 percent debt to 40 percent equity. Until the strategic partnership transaction, Collus Power had not taken on debt up to the level permitted by the OEB. In October 2011, Collus's debt-to-equity ratio was 30 percent debt to 70 percent equity.

The Collus Power RFP document stated that bidders' offers to purchase 50 percent of the utility's shares could include proposed changes to the company's capital structure.* In their RFP responses, all the bidders proposed that Collus Power assume debt to achieve the 60 percent debt to 40 percent equity ratio used by the OEB.

If Collus Power accepted a bid that involved increasing Collus Power's debt to 60 percent, Collus Power would receive a large cash payment in the form of a loan – in addition to the money the successful bidder would pay for 50 percent of the Collus Power shares. The internal PowerStream memo discussed two approaches to how that large loan payment could be distributed. The first approach, which had been proposed by BDR, PowerStream's consultant, was to have Collus Power take the loan and then declare a dividend to its sole shareholder before the shares were sold to the strategic partner. In this scenario, Collingwood Utility Services Corporation, which the Town wholly owned, would receive the full loan payment. The second approach, which Mr. Bonwick recommended and attributed to KPMG, was to have the dividend declared after the buyer purchased 50 percent of the shares. In this scenario, Collingwood Utility Services Corporation would receive 50 percent of the loan, and the successful bidder would receive

* Part One, Chapter 2, includes additional information on this point.

the other 50 percent. If PowerStream took the second approach, it could recover some of its purchase price for the Collus Shares, which would allow its bid to appear higher. As explained by Brian Bentz, “if you offer [the recapitalization dividend] after the fact, your bid appears higher, because ... you’re going to get 2½ million dollars back. So your bid appears 2½ million dollars higher.”

Mr. Bentz testified that he did not want to present the purchase price that way and PowerStream did not follow the approach recommended by Mr. Bonwick.

Mr. Bonwick’s recommendation about how to structure the share purchase is important for two reasons. First, it undermines Mr. Bonwick’s argument that I discuss later in this chapter that he was working in the Town’s best interests while he was retained by PowerStream. It was not in the Town’s best interests to receive PowerStream’s proposed purchase price presented in a way that made it appear higher than it was. Second, this recommendation provides another example of Mr. Bentz and Mr. Glicksman ignoring a red flag about their agent’s actions. Even though Mr. Bonwick reported that his suggested approach was the approach that Collus Power’s consultant, KPMG, had taken, and Collus Power had not disclosed any KPMG valuation of Collus Power in the data room, Mr. Bentz and Mr. Glicksman failed to inquire into the source of Mr. Bonwick’s information.

Mr. Bentz said it did not occur to him to ask about where Mr. Bonwick got the information. This question would have been an obvious one to ask.

Mr. Bonwick provided further comments on PowerStream’s draft response to the Collus Power RFP. In particular, Mr. Bonwick recommended removing language regarding the provision of backroom support, advising:

While the offer for back office support will become a reality I highly recommend removing it at this time. A general offer of support will be more warmly received than [*sic*] telling them what we will provide. The senior person for this department is presently very supportive. I don’t want us to lose that support.

Mr. Bonwick and Mr. Houghton believed the “senior person” referred

to in Mr. Bonwick's email was Larry Irwin, director of operations and IT services for Collus Power and the Town. Mr. Bonwick did not identify who provided him with this information, though he testified that he had "made enquiries through staff that I know, through Mr. Houghton, through Mr. Lloyd, in terms of as this situation is unfolding, how staff are reacting." Both Mr. Houghton and Deputy Mayor Lloyd denied they provided this information to Mr. Bonwick.

PowerStream used this information. Dennis Nolan, PowerStream's general counsel and corporate secretary, responded to Mr. Bonwick's email and advised that PowerStream had made Mr. Bonwick's recommended change. Neither Mr. Nolan nor John Glicksman, PowerStream's chief financial officer, who was copied on this email exchange, inquired into the source of Mr. Bonwick's information.

Collus Power's RFP Communications Strategy

Mr. Houghton consulted with Mr. Bonwick and PowerStream on Collus Power's RFP communications strategy before the bidders had submitted their responses and before anyone had informed Town staff about the RFP. No other bidder engaged with Collus Power or the Town on the RFP communications strategy. Mr. Bonwick asked Mr. Houghton if he had a communications strategy in place for the RFP and offered to assist him with it. Mr. Houghton accepted the offer and consulted with Mr. Bonwick and Eric Fagen, PowerStream's director of corporate communications, on the Collus Power RFP communications strategy. Mr. Bonwick and Mr. Fagen reported back to PowerStream on October 25.

On October 26, Mr. Houghton made an *in camera* presentation on the RFP communications strategy to the Collus Power board of directors, describing it to the Inquiry as the strategy's "bones." Mr. Houghton shared the presentation with PowerStream through Mr. Bonwick on November 10, six days before the bidders submitted their responses to the RFP.

Mr. Houghton's slide presentation indicated that a draft of the news release would be published on November 17 (after receipt of the responses to the RFP) and stated that the communications strategy would:

- begin immediately following the call of the RFP on November 16, 2011;
- state that the strategic partnership was an exciting opportunity;
- describe how Collingwood Town Council came to the decision to take on a strategic partner in [its] local distribution company;
- describe the advantages of a strategic partnership and how it fit into the current electricity environment;
- explain that the Town of Collingwood would receive a large dividend;
and
- describe cost savings resulting from the strategic partnership.

The slide presentation also stated there should be one designated media spokesperson and that members of the board of Collus Power and Collingwood Town councillors would receive speaking notes if they needed to comment on the RFP.

In explaining why he shared the presentation with Mr. Bonwick, Mr. Houghton maintained it contained nothing confidential. He acknowledged in his evidence that he should have made the presentation available to the other bidders, and he testified that he would have provided it to them had they asked, but none of the bidders did.

It is not surprising that the other proponents did not ask about the communications strategy. The RFP provided a list of the data available in the data room. The list of available data did not include documents concerning Collus Power's RFP communications strategy.

The failure to treat all bidders equally is another example of Mr. Houghton providing preferential treatment to PowerStream. It was reasonable for the bidders to assume that the Town would share relevant information about the RFP with everyone. Failure to do so risks undermining public confidence in the integrity of the RFP process.

By November 14, Mr. Houghton and Mr. Bonwick were corresponding about the text of a Collus Power press release that would announce the RFP. Mr. Houghton did not inform Mayor Cooper that he was consulting with her brother about the Collus Power RFP communications strategy. PowerStream was the primary drafter of the Collus press release. Mr. Houghton explained to the Inquiry that he had handed the pen to PowerStream because Collus did not have communications staff. He also testified that Collus Power chair

Dean Muncaster and director David McFadden approved PowerStream's assistance in drafting the press release.

I do not accept Mr. Houghton's evidence that Mr. Muncaster and Mr. McFadden approved his outsourcing of the drafting of the Collus Power press release to PowerStream. As I discuss in Part One, Chapter 4, both Mr. Muncaster and Mr. McFadden were experienced and well-respected professionals. Neither would condone endangering the integrity of the RFP by inviting one of the bidders to consult on the communications strategy of Collus Power or the Town. Mr. Houghton introduced this evidence when he testified at the Inquiry, following Mr. McFadden's testimony.

When Mr. McFadden testified, Mr. Houghton's counsel did not ask Mr. McFadden if he approved outsourcing the drafting of the Collus Power press release to PowerStream before completion of the RFP process. The failure to ask Mr. McFadden about this assertion is consistent with my finding.

In addition, Mr. Houghton's rationale for including PowerStream in the communications strategy does not withstand scrutiny. Regardless of whether Collus had a communications department, the Town communicated with the public regularly about Town business.

Mr. Houghton was part of a November 14 conference call with Mr. Bonwick and Mr. Fagen, during which he provided PowerStream with the following "tentative public disclosure and decision timelines for the Collus Power / Collingwood RFP":

November 17 (a.m.)	COLLUS Power to issue news release that the utility is seeking a strategic partnership
November 17 (p.m.)	COLLUS Power updates Town Council on the status of the RFP process
November 22 (p.m.)	Public Information Session in Collingwood
November 23	COLLUS Power Strategic Partnership Task Force begins review of RFP responses
December 2	COLLUS Power Strategic Partnership Task Force brings recommendation forward to COLLUS Power Board of Directors
December 5	COLLUS Power Board of Directors brings recommendation forward to an in-camera session of Collingwood Town Council
December 12	Resolution brought forward to Collingwood Town Council

Mr. Nolan acknowledged in his evidence that this conference call may have been premature. He could not recall whether he knew Mr. Fagen (who reported to him) was providing Collus Power with comments on its draft press release, but stated that he might have known this consultation was taking place. Mr. Bentz was aware of the conference call, but assumed “that Ed Houghton was representing Collus in the RFP process and that ... the communication with him ... was made in that context.” Mr. Glicksman testified that he believed this information was available to all the bidders.

Collus Power issued the press release on November 17. It was branded with the Collus Power logo and identified Mr. Houghton as the sole media contact.

In email correspondence related to Collus Power’s announcement of the RFP, Mr. Bonwick informed Mr. Fagen and Mr. Nolan on November 18 that,

Collus was advised on Wednesday at the time of submission that one of the four proponents did not yet have shareholder approval for their proposal and as a result requested not to be named ... there is apparently an internal discussion taking place today with the review team as to whether the proposal will be accepted ... By the end of this day there may only be three in contention.”

Mr. Nolan did not recall “focusing” on this email communication.

Alectra Utilities, the successor company to PowerStream, acknowledged in its closing submissions that PowerStream’s involvement in Collus Power’s communications strategy might have been “premature.” Alectra argued that its “extremely limited involvement in the development of the Communications Strategy and press release did not rise to the level of an attempt to influence Collus’s intent or direction in approaching either one, nor the result of the RFP process.” Mr. Bonwick’s and Mr. Fagen’s involvement in Collus Power’s communications strategy was another red flag that PowerStream’s agent, Mr. Bonwick, was engaging in problematic conduct that Mr. Bentz, Mr. Nolan, and Mr. Glicksman failed to identify and address.

Mr. Houghton took the position that his consultation with PowerStream on the communications strategy did not affect the bidding process.

I do not agree.

Mr. Houghton compromised the integrity of the RFP process by providing PowerStream with the opportunity to work directly with the CEO of the asset it was bidding on. The CEO was also a voting member of the team that would be scoring its response to the RFP. Even if this opportunity did not provide PowerStream with a material advantage over the other bidders, it contributed to the uneven playing field for the bidders.

Mr. Houghton's decision to include Mr. Bonwick, and therefore PowerStream, in the creation of the RFP communications strategy for Collus Power, and his failure to disclose this information to either the Town or the Strategic Partnership Task Team, undermined the Town's ability to oversee the sale. Because the Town was unaware there was an issue, it could not address it.

Mr. Bonwick's New Retainer

On November 9, 2011 PowerStream and Mr. Bonwick executed an amended and extended retainer agreement after two months of negotiation. The new agreement increased Mr. Bonwick's fee from \$10,000 a month plus \$1,000 in monthly expenses to \$15,000 a month plus \$1,500 in monthly expenses. Mr. Bonwick's term of engagement was also extended, from August 30, 2011 to December 31, 2012, although this extension was contingent on PowerStream completing a transaction with Collus Power by June 30, 2012. Finally, the new agreement provided that Mr. Bonwick would be paid an \$80,000 success fee for each successful CHEC group* merger or acquisition after Collus Power. No explicit success fee was specified for a successful transaction with Collus Power.

On October 19, Brian Bentz, Dennis Nolan, and John Glicksman recommended to PowerStream's Audit and Finance Committee that PowerStream sign a new retainer agreement with Mr. Bonwick. Mr. Bentz, Mr. Nolan, and Mr. Glicksman told the committee that Mr. Bonwick had "proven to be a valuable asset in providing strategic and communication advice and

* Cornerstone Hydro Electric Concepts Association Group, a group of 12 local distribution companies that shared resources.

in assisting us to be successful both with respect to the Collus bid and other utilities in the CHEC group” and recommended PowerStream retain Mr. Bonwick on a long-term basis.

In their evidence before the Inquiry, however, Mr. Bentz, Mr. Nolan, and Mr. Glicksman were less enthusiastic about the value Mr. Bonwick provided. Mr. Bentz, who testified that Mr. Bonwick reported primarily to Mr. Glicksman, had considerable difficulty describing what Mr. Bonwick delivered. He said Mr. Bonwick delivered little in the way of value on the action items set out in the retainer letter, other than his pre-existing relationships with the mayor, deputy mayor, and Mr. Houghton, and his involvement in the solar attic vent initiative.

Mr. Glicksman, who told the Inquiry that Mr. Bonwick dealt more with Mr. Bentz, identified the solar attic vent initiative as Mr. Bonwick’s main contribution to PowerStream’s efforts to acquire an interest in Collus Power. Mr. Nolan told the Inquiry that he was concerned about retaining Mr. Bonwick from the outset and remained unenthusiastic about Mr. Bonwick’s retainer throughout the engagement. Mr. Nolan was worried about the appearance of a conflict and told the Inquiry that he did not think PowerStream required Mr. Bonwick’s assistance. Mr. Nolan was “skeptical about the – the value for – for the dollar.”

I accept Mr. Bentz’s evidence that Mr. Bonwick’s value arose from his pre-existing relationships with the mayor, deputy mayor, and Mr. Houghton, as well as facilitating the solar attic vent initiative. This is why PowerStream extended his retainer.

At the outset of the negotiations, Mr. Bonwick had requested a success fee of \$150,000 for every LDC – including Collus Power – that PowerStream acquired over the course of Mr. Bonwick’s retainer. Although the new agreement did not provide a success fee for the acquisition of Collus Power, it provided for a longer term in the event a Collus Power transaction proceeded.*

Both Mr. Bentz and Mr. Nolan testified that the increase in Mr. Bonwick’s fee was to account for the fact that PowerStream was not giving Mr. Bonwick a success fee for Collus Power.

* The November 9, 2011, retainer agreement did include Collus Power on the list of LDCs for which Mr. Bonwick could be paid a success fee, but its inclusion was an error.

PowerStream provided that the agreement would terminate on June 30, 2012, if there was no executed Collus Power share transaction agreement. This provision meant that if a Collus Power transaction proceeded, Mr. Bonwick's retainer would extend for another six months, until the end of December 2012. During those six months, Mr. Bonwick would earn an additional \$80,000 in fees, which was the same amount as the success fee for the acquisition of any other CHEC group LDC. In his evidence, Mr. Bonwick agreed that, if a transaction between Collus and PowerStream did not come to fruition, Compenso Communications Inc.'s new retainer with PowerStream would "no longer [be] applicable," because PowerStream's growth strategy would no longer be viable. Mr. Bonwick noted that if the transaction did not take place his retainer would have been terminated, requiring a discussion with Brian Bentz to determine whether any other opportunities would be available for him at PowerStream.

Alectra, in its closing submissions, argued that PowerStream and Mr. Bonwick agreed Mr. Bonwick would not be paid a success fee in relation to a potential Collus share sale and that no such fee was paid. According to Alectra, the primary purpose of the November retainer was for PowerStream to achieve regional consolidation in the areas surrounding Collingwood. The Collus transaction was simply a stepping stone to this greater goal. It was for this reason Mr. Bonwick was to receive success fees for other CHEC LDCs, but not Collus Power.

The evidence of Mr. Bentz and Mr. Nolan undermines this argument. Both men testified that the increase in Mr. Bonwick's fee was to account for the fact that PowerStream was not giving Mr. Bonwick a success fee for Collus Power.

The November 2011 retainer letter contained the same disclosure provision found in Mr. Bonwick's original retainer with PowerStream executed in June:

Bonwick agrees to make all necessary and prudent disclosures of his / CCI's engagement with PowerStream. Any such disclosures shall be discussed and authorized by PowerStream in advance. Specifically, with respect to any authorized activity on PowerStream's behalf, relating to COLLUS Power, Bonwick represents and warrants that he has disclosed the scope of his services and his retainer by PowerStream to the Mayor

and Clerk of the Town of Collingwood, and shall provide written evidence of such disclosure to PowerStream ...

The November retainer letter did not explicitly require Mr. Bonwick or Compenso to disclose the extension of the retainer. In its closing submissions, Alectra did not address Mr. Bonwick's disclosure obligations under the November retainer, other than acknowledging that both retainer letters made use of the same disclosure requirement language.

Regardless of the intention behind the disclosure provision in the November retainer, Mr. Bentz, Mr. Glicksman, and Mr. Nolan did not ask Mr. Bonwick to disclose the November agreement, and Mr. Bonwick did not make any disclosure. Neither of the agreements between PowerStream and Compenso required disclosure of the financial terms of the retainer. At the time, PowerStream did not see a reason to disclose the fee.

Sources of Confidential Information

Throughout the request for proposal (RFP) process, Paul Bonwick obtained confidential information that he provided to PowerStream Incorporated. This information included details from the other bidders' September 2011 presentations to the Strategic Partnership Task Team, from the contents of the other bids, and the Task Team's deliberations.

Mr. Bonwick testified that he received the information from conversations with "at least three" members of the Strategic Partnership Task Team: Ed Houghton, Collus Power Corporation's chief executive officer (CEO); Deputy Mayor Rick Lloyd; and Dean Muncaster, chair of Collus Power's board of directors.

I do not accept that Dean Muncaster was one of Mr. Bonwick's sources. Mr. Muncaster was an experienced and sophisticated businessman. I am satisfied he understood the importance of confidentiality and fairness in the RFP process. It was Mr. Muncaster, after all, who sent the bidders a non-disclosure agreement in advance of the September 2011 bidder meetings, advising them it was "drafted to protect all parties from the disclosure of highly confidential and proprietary information."

That leaves Mr. Houghton and Deputy Mayor Lloyd. I am satisfied both men provided Mr. Bonwick with confidential information about the RFP process, the bidder meetings, and the Strategic Partnership Task Team, despite their denials at the Inquiry's hearings.

Mr. Houghton was in regular contact with Mr. Bonwick about Collus Power and the RFP process, including confidential and sensitive matters such as KPMG's valuation and the RFP media strategy. Mr. Houghton acknowledged he might have told Mr. Bonwick in late May or early June 2011 that KPMG had completed the valuation, testifying that he "wouldn't be surprised if ... [Mr. Bonwick] had said, you know, how'd that valuation go? Oh, it's done." There is no reason to believe Mr. Houghton did not continue to share confidential information that he thought might assist PowerStream with Mr. Bonwick.

Further, Mr. Houghton repeatedly failed to guard against disclosure of confidential information despite knowing that Mr. Bonwick was sharing information with PowerStream. After discussing a potential Collus Power RFP with Mr. Bentz, he connected the two men. Mr. Houghton then involved Mr. Bonwick in drafting the mayor's letter directing Collus Power to undertake a valuation in January 2011, despite his knowledge that Mr. Bonwick was actively soliciting a retainer with PowerStream to assist in its pursuit of an interest in Collus Power.

Mr. Houghton also knew Mr. Bonwick had confidential information about the bidders and took no steps to protect the RFP process. Specifically, on September 14, 2011, Mr. Bonwick emailed Mr. Houghton a memorandum he prepared for PowerStream's executive team that contained confidential details about presentations by Hydro One Incorporated and Veridian Corporation to the Strategic Partnership Task Team for his "review and comment." Mr. Bonwick had no reservations sharing with Mr. Houghton what he had learned about the confidential bidder presentations. Although Mr. Houghton testified that he told Mr. Bonwick not to share the information with PowerStream, he did not take any steps to prevent Mr. Bonwick from obtaining further confidential information. Instead, he involved Mr. Bonwick in the creation of the RFP communications strategy, then the Town's execution of the transaction documents.

Turning to Deputy Mayor Lloyd, as I discuss in Part One, Chapter 1,

Mr. Lloyd told the Inquiry that it was his practice as a member of Council to share information about Council matters with local businesses, including Mr. Bonwick and his clients, that might interest them. In the same period as the Collus Power share sale, there were multiple instances where the deputy mayor provided Mr. Bonwick with confidential and, on occasion, privileged Town information.

When Inquiry counsel asked Deputy Mayor Lloyd why he would not continue his practice of sharing information with Mr. Bonwick when it came to the Collus RFP, Mr. Lloyd testified that he did not share information with Mr. Bonwick because Mr. Bonwick did not ask.

I do not accept this answer.

There was no reason Mr. Bonwick would not ask for information about the RFP. He was seeking information to provide to PowerStream. Deputy Mayor Lloyd was on the Strategic Partnership Task Team and in possession of information that was important, sensitive, and confidential. Mr. Bonwick would be eager to ask Deputy Mayor Lloyd about the attitudes and deliberation of the team members. The fact that Deputy Mayor Lloyd testified that he was leaning towards PowerStream after its presentation to the Strategic Partnership Task Team in September 2011 reinforces my conclusion.

No Justification for Obtaining Confidential Information

In his testimony and closing statements, Mr. Bonwick sought to justify the gathering and sharing of information about the RFP process and the Strategic Partnership Task Team on the basis that none of his sources told him the matters were confidential. I do not accept that Mr. Bonwick, an intelligent experienced politician, businessman, lobbyist, and government relations consultant, did not understand that the information he received about the RFP process and the other bidders was confidential and should not have been disclosed to him, or by him, to PowerStream.

Mr. Bonwick also argued he was acting in the Town's best interests in his work for PowerStream. As I discuss throughout my Report, his assistance gave PowerStream an unfair advantage and deprived the Town of the opportunity to assess the bidders on an even playing field. It also called into question the legitimacy of the entire procurement process. And it deprived

PowerStream of claiming its bid was genuinely superior to the others. Mr. Bonwick obtained and shared this information to assist PowerStream, his client. As I explained above, Mr. Bonwick had a vested interest in PowerStream winning the RFP because that would extend his contract with the company.

PowerStream's Failure to Act

During the RFP process, PowerStream's Brian Bentz, Dennis Nolan, and John Glicksman did not take any steps to address the confidential information Mr. Bonwick was providing. Mr. Glicksman, who was PowerStream's chief financial officer and Mr. Bonwick's primary point of contact during the RFP process, testified that no one from PowerStream ever told Mr. Bonwick to stop providing confidential information.

Mr. Bentz testified that, at some point after the Town had selected PowerStream, there were internal discussions within PowerStream about the propriety of the information Mr. Bonwick had provided in the RFP process. Mr. Bentz confirmed that, despite the internal concerns, PowerStream did not raise the issue with the Town.

In its closing submissions, PowerStream acknowledged that it "should have ... (i) asked Mr. Bonwick what the sources of his information were; (ii) made clear to Mr. Bonwick that it did not wish to receive confidential information ...; (iii) ... informed Collus and/or the SPTT [Strategic Partnership Task Team] that it had received such confidential information through Mr. Bonwick."

At the same time, PowerStream argued, among other things, that (1) it received much of the information before the RFP was released and the information was therefore not of significance; (2) much of the information received was publicly available or could be surmised by PowerStream; and (3) there is no evidence that receiving the information gave PowerStream any advantage in the RFP process. Mr. Houghton made similar arguments in his closing arguments.

In making these arguments, PowerStream and Mr. Houghton sought to diminish the seriousness of what Mr. Houghton, Mr. Bentz, Mr. Glicksman, and Mr. Nolan allowed to happen. The seriousness cannot be diminished.

The disclosure of confidential information undermined the integrity of the share sale. Among other issues, it gave one proponent an unfair advantage. All bidders in an RFP should be provided with the same information. None of the bidders should be provided with the confidential information of another bidder.

Neil Freeman, who was vice-president of business development for Horizon Utilities Corporation, explained the negative effects of an unfair procurement. Commenting on the information Mr. Bonwick obtained, Mr. Freeman testified that “if you don’t have a procurement process that is – is beyond question, that you basically lose confidence in the marketplace and you – you won’t get the best prices for – from your suppliers,” adding that the “good suppliers will – will sort of stop bidding if they don’t feel that they’re – they’re getting a fair shake.” Mr. Freeman further stated that “if it was all sort of a predetermined conclusion,” Horizon probably would not have participated “to save ourselves the embarrassment.”

In its closing submissions, PowerStream argued that it was reasonable for the company to assume all bidders were receiving the same information that Mr. Bonwick obtained and disclosed.

I reject this argument. The bidders understood the importance of confidentiality in the RFP process. They all signed agreements at the outset of the process to protect against the disclosure of highly confidential and proprietary information.

Representatives of the unsuccessful bidders testified at the Inquiry. Michael Angemeer (CEO of Veridian at the time), Horizon’s Mr. Freeman, and Kristina Gaspar (manager of strategy and risk at Hydro One) testified that their presentations to the Strategic Partnership Task Team were confidential. Mr. Angemeer said in his evidence, “[W]hen somebody’s having an RFP, it is essentially understood and, you know while we often write confidentiality agreements, it – it goes without saying that the material has to be confidential, or – or frankly, the – the vendor is possibly undermining its own interest ...” Ms. Gaspar testified that “it is just assumed and standard practice for anything dealing with any activity to be highly confidential, and that is just the way transactions occur.”

Like Mr. Freeman, Mr. Angemeer, and Ms. Gaspar, PowerStream’s Mr. Bentz, Mr. Nolan, and Mr. Glicksman are experienced and sophisticated

executives. I cannot accept that they didn't understand the importance of confidentiality.

In his testimony, Mr. Nolan suggested that the Town or Collus condoned the disclosure of confidential information because "the assumption was that the information was coming from Collus or from the Town." I do not accept this suggestion.

For any municipal procurement process to be effective, all parties must abide by the rules. Municipalities, their representatives, and proponents must all strive to protect the integrity of the process to avoid undermining their interest in a competitive RFP process. The sale of a public asset, like the procurement of a public asset, has to be transparent. Real and apparent conflicts of interest and unfair advantages must be avoided. There is a practical reason for this policy; namely, the maintenance of public confidence in both the councillors and the senior staff. If the public loses confidence in the integrity of its elected representatives and administrative personnel, regaining trust can take considerable time and expense.

PowerStream also said the information it received from Mr. Bonwick was similar to what Mr. Houghton provided to other bidders. The company pointed to a few examples, including:

- telephone conversations Mr. Houghton had in July 2011 with Horizon CEO Max Cananzi and with Veridian CEO Michael Angemeer;
- a conversation between Horizon's Neil Freeman and Mr. Houghton on August 22, 2011, about the solar attic vent initiative;
- an October 2011 discussion between Veridian and KPMG inquiring into whether Collus Power would accept a bid for more than 50 percent of Collus Power; and
- a conversation Mr. Cananzi had with Mr. Houghton on November 16, 2011, the date the RFP responses were due. Mr. Cananzi reported internally that he spoke with Mr. Houghton about

our bid to smooth the waters for us and for him to have the background to our thinking. He [Mr. Houghton] received the information well and looked forward to reading our proposal. He also mentioned that he would be releasing this news release since the word had got out and they wanted to get out in front of it. He was approached by other LDCs

[local distribution companies] and was asked what he was doing since they were considering something similar. As expected we may see more of these not less.

There is no comparison between those isolated interactions and the early, frequent, and ongoing communications that PowerStream, through Mr. Bonwick, had with Ed Houghton and Deputy Mayor Rick Lloyd before, during, and after the RFP.

Information About Bid Scoring Received by PowerStream

PowerStream's failure to appropriately address the receipt of confidential information about the RFP process continued after it won the RFP. As I discuss in Part One, Chapter 8, Collus Power retained the law firm Aird & Berlis to assist with the share sale to PowerStream. Aird & Berlis began working in mid December 2011. On January 4, Aird & Berlis sent PowerStream Vice President, Rates & Regulatory Affairs Colin Macdonald a copy of the slide presentation that Mr. Houghton presented to Council *in camera* on December 5, 2011.* The presentation contained details about PowerStream's, Horizon's, Hydro One's, and Veridian's financial offers, and how those bids were scored.

Mr. Macdonald sent the slide presentation to Mr. Glicksman, who forwarded it to Brian Bentz, writing, "[w]e got it from Aird & Berlis when we like [*sic*] shouldn't have. It shown [*sic*] our ranking in detail along with other interesting points on our proposed transaction ..."

Mr. Bentz, Mr. Nolan, and Mr. Glicksman testified that PowerStream should either have deleted the presentation or alerted Aird & Berlis or the Town to the disclosure of confidential information. Alectra repeated this acknowledgement in its closing submissions. Mr. Bentz testified that he thought Mr. Macdonald did raise the matter with Aird & Berlis, but Mr. Bentz did not follow up to confirm. The Inquiry did not receive any documents indicating that Aird & Berlis was advised of the disclosure. I am satisfied they were not.

* This presentation is discussed further in Part One, Chapter 7.

In their evidence, Mr. Bentz, Mr. Nolan, and Mr. Glicksman sought to downplay the utility of the information contained in the slide presentation. Mr. Bentz and Mr. Nolan stated that information regarding the other RFP proponents' bids was not useful because, by January 2012, the RFP process had ended and PowerStream was already negotiating the share sale with Collus. Mr. Glicksman testified that PowerStream "did not do anything" with the information contained in the presentation. Alectra's closing submissions reiterated these statements and argued that some of the information in the slide presentation may have been useful to the MAADs application.* Alectra also pointed out that the Ontario electricity industry is highly regulated and that detailed financial information relating to LDCs in Ontario is publicly available on the Ontario Energy Board's website.

I agree with Alectra's acknowledgement that Mr. Bentz, Mr. Nolan, and Mr. Glicksman should have taken steps to inform Aird & Berlis or the Town that it received the information and deleted the presentation. The sensitivity of the information should have compelled them to confirm whether it was intentionally disclosed, regardless of how useful they believed the information was at that point in time. Once again, Mr. Bentz's, Mr. Nolan's, and Mr. Glicksman's failure to acknowledge the receipt of confidential information risked further undermining the perceived fairness of the RFP and share sale.

RFP Made Public

The four bidders submitted their responses to the Collus Power RFP on November 16, 2011. The following day, Collus Power issued the PowerStream-authored press release announcing the Strategic Partner RFP.

Mr. Houghton provided an *in camera* update to Council on November 17. This update was the first that Council had received since October 3, the day before the RFP was issued. Mr. Houghton informed Council that "Collus staff" was preparing to issue a press release announcing a public information session on the RFP process, scheduled for November 22, 2011. The Council

* MAADs (mergers, amalgamations, acquisitions and divestitures) applications, which are filed with the Ontario Energy Board, are discussed in Part One, Chapter 2.

minutes indicate that Mr. Houghton and Mr. Muncaster responded to concerns about the magnitude of the partnership and that the sale of Collus Power was happening quickly. The minutes did not record details of those exchanges.

The public announcement of the RFP received some media coverage, which in turn generated concern from members of the CHEC group. Shortly after the press release, Mr. Fryer reported he had received calls from six CHEC group LDCs, all of whom questioned statements in the press release that the share sale would not affect the Town's dividend. Specifically, they asked how Collus Power could grow without using the money from the share sale to fund the utility's growth.

As I discuss in Part Two of the Report, Town Council did not retain any of the sale proceeds to invest in the future growth of the LDC. The Town did not use the money from the share sale to reduce the Town's debt. The Town's treasurer, Marjory Leonard, gave evidence that using the proceeds from the Collus share sale to do so would not have been cost efficient because paying down the debts at once would result in substantial early repayment penalties.

On November 22, Collus Power hosted a public information session on the RFP. Although Mayor Cooper and John Rockx of KPMG delivered some remarks, Mr. Houghton presented most of the information. A slide presentation stated that Collus Power retained KPMG to "look at our value, to provide us with a review of what is happening to our industry, to provide insight to what might happen in the future and to provide us with options."

The slide presentation identified three options: status quo, sale, and strategic partnership, stating that those options were "discussed by the Board and Council in detail and it was decided that the best approach is the Strategic Partnership." It listed only benefits that would flow from a strategic partnership, did not identify any risks, and set out a high-level description of the evaluation criteria and the points assigned to each category. It also presented a "timeline of key events," which included both the initial bidder meetings and the bidder meetings with the Strategic Partnership Task Team.

The timeline that Ian Chadwick, a councillor at the time of the sale, prepared for this Inquiry indicated that 200 people attended the meeting.

Mr. Chadwick conceded, when he testified, that he was guessing the number of attendees and that fewer people may have been at the public information session.

Neil Freeman, who at the time of the events examined by the Inquiry was Horizon's vice-president of business development and corporate relations, attended the public information session and reported to his colleagues the next day. He noted that 32 people, mainly municipal and LDC representatives, attended, commenting, "There are only 48 employees in water and electric, so this is not a significant turnout." He stated that the meeting was well managed, with only two questions raised, "one of which was a question / statement from a large customer supporting the Strategic Partnership for rates purposes which was obviously a setup."

Mr. Freeman also sent Horizon a photo of the billboard (see Part One, Chapter 5) advertising Collus Power and PowerStream's solar attic vent partnership, writing: "COLLUS is not only giving away these vent fans for less than cost ... it is paying for billboards to do so." Horizon's CEO, Max Cananzi, made these comments in response:

This is basically a community advertisement to pave the way for a Collus / PowerStream [sic] deal for the utility. Gone are the other 3 three utilities that have also participated in this launch.

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

The fix is in. PowerStream will be declared the winner of the competition. This is my prediction.

I just pray that PowerStream, knowing we were in the hunt, overpaid.

The Successful Bidder: PowerStream

After receiving the request for proposal (RFP) bids, the Strategic Partnership Task Team scored the submissions. PowerStream Incorporated received the highest score for the non-financial criteria and was the overall winner of the RFP despite not having offered the most money for 50 percent of the shares of Collus Power Corporation. This result was less than surprising, given the emphasis placed on seeking a strategic partner for Collus rather than reducing the Town's debt and the advantages PowerStream enjoyed throughout the process. Although Hydro One's offer was \$3.85 million higher than PowerStream's, this fact was not put before Council when it chose to partner with PowerStream.

Evaluating the Bids

The RFP required bidders to submit their proposals in two envelopes: one containing the non-financial criteria, and the other the financial bids and related matters. On reviewing the non-financial proposals, KPMG associate partner John Rockx remarked to his colleagues, "[M]y gut sense is that they are similar in terms of quals etc. The second envelope with the proposed purchase price / business terms will likely be the differentiator." John Herhalt, a partner at KPMG who had helped to draft the RFP, agreed.

They were wrong.

Although KPMG expected the financial offers to be the determinative factor, the Strategic Partnership Task Team selected PowerStream as its recommended bidder based on the perceived superiority of its non-financial bid, even though it did not offer the highest price.

The Two-Envelope Approach

The four bidders delivered their RFP responses on November 16, 2011. The Strategic Partnership Task Team used a two-envelope approach to review the bids, which involved reviewing the non-financial bids and financial bids separately.* Kim Wingrove, the Town of Collingwood's chief administrative officer (CAO), explained that the Town typically used a two-envelope approach when it purchased goods and services. In this way, the non-financial components of the bids were evaluated based on their merit and not influenced by the cost of the good or service.

For the Collus Power RFP, this system meant that the Task Team would assess a bidder's partnership qualities without knowing what it had offered to pay for the shares.

Record Keeping

Pam Hogg, Ed Houghton's executive assistant who also served as board secretary for the Collus corporations and provided administrative support to the Strategic Partnership Task Team, testified that her approach to taking minutes at Task Team meetings followed the same practice she used for Collus board meetings: no minutes were taken of confidential discussions. As a result, Ms. Hogg stated she did not take minutes of the discussions at the scoring meetings because she understood the subject matter was confidential. She did, however, record minutes of the first two Task Team meetings, which, she said, she did not consider to be sensitive or confidential.

I accept that Ms. Hogg believed she was keeping appropriate records and was, in good faith, striving to protect the team's confidential deliberations.

KPMG was not consulted with regard to the recording of the contents of the November 23, 2011, Task Team meeting – the one where the non-financial bids were scored. Mr. Herhalt testified that recording and retaining minutes of this meeting would have been beneficial and consistent with “normal

* PowerStream's lawyer Robert Hull delivered both the financial and the non-financial bid to David McFadden, his law partner and a Collus Power director, on November 16. Mr. McFadden testified that he deleted that correspondence from his computer.

practice.” Certainly, a complete record of the Task Team’s independent evaluations of the non-financial criteria and its deliberations about the scores awarded to the bidders would have assisted the Town when questions arose about the process leading to the sale of the Collus Power shares.

To maintain public confidence, the Town of Collingwood must operate a fair RFP process. It also needs to be able to demonstrate the fairness of its RFP if questions or issues arise later. A comprehensive documentary record of the communications, considerations, and decisions related to the RFP process enhances public confidence in the administration of the municipality’s business.

The Non-financial Bids

Before the November 23 meeting, Ms. Hogg distributed the submissions to members of the Strategic Partnership Task Team for their consideration. On November 20, Mr. Houghton emailed the team, advising that he and Collus Power board chair Dean Muncaster had decided that RFP submissions should be scored as follows:

[F]or each criteria, the best proposal shall receive the full points. For example, if you feel respondent “A” has the best proposal regarding the “Support for Employees and Their Careers[,]” then they shall get the full 10 points. The other three respondents will be then judged and provided points based on the best proposal. If in your opinion, there is a tie[,] then they should both [sic] receive 10 points.

Mr. Herhalt testified that Mr. Houghton did not consult with him regarding this decision or how best to evaluate the RFP responses. He stated that it would have been useful to provide clarity and guidance on scoring the second-, third-, and fourth-ranked bidders. As things turned out, the only Task Team members who followed the November 20 instructions for every category were Mr. Houghton and Deputy Mayor Rick Lloyd.

Because he was travelling on business, Mr. Herhalt attended the November 23 meeting by telephone. Mr. McFadden was unable to attend the meeting and submitted his scores in advance.

In an affidavit and in her testimony at the Inquiry, Ms. Hogg explained that, at the November 23 meeting, all members of the Strategic Partnership Task Team read out their scores for each category. She recorded the results in a spreadsheet projected on a screen in the meeting room. She stated that the Task Team discussed the results after all members had scored a category, but she could not recall any details.

The only written record of the team's scores that the Inquiry received was a copy of Ms. Hogg's spreadsheet. Although Ms. Wingrove, Mr. Lloyd, Mayor Sandra Cooper, and Collus Power chief financial officer (CFO) Tim Fryer testified they completed their scoring on a template that was turned in at the meeting, no such templates were provided to the Inquiry.

Scoring the Non-financial Bids

Before the November 23 meeting, Mr. Houghton asked KPMG to rank the non-financial bids. Mr. Herhalt completed a ranking based on his review and comments by his KPMG colleagues John Rockx and Jonathan Erling. Mr. Erling considered Hydro One's proposal to be "the most professional looking, and one of the most specific in terms of detail." Mr. Rockx said it was "[d]ifficult to rank parties as significantly better or worse." Mr. Herhalt noted that ranking the non-financial proposals was "not all that easy" because some of the non-financial elements were "a little fuzzy" and required judgment calls. He also stated that he was travelling at the time, which made his review "a little more difficult." Mr. Herhalt ranked the bids as follows: (1) PowerStream, (2) Hydro One, (3) Horizon, and (4) Veridian. He emailed this ranking to Mr. Houghton before the meeting and, as I note above, attended the meeting by telephone.

During the meeting, Mr. Herhalt was asked to assign scores to the non-financial bids, which he did. Mr. Houghton testified that Mr. Muncaster asked Mr. Herhalt to score the responses, but Mr. Herhalt could not recall if the request came from Mr. Houghton, Mr. Muncaster, or both of them. As I discuss below, although he was not a member of the Strategic Partnership Task Team, Mr. Herhalt's scores were included in the evaluation, and, later, he was presented to the Town Council in that capacity too.

Mr. Herhalt considered that KPMG's role on the bid review would mean

attending both Task Team and bidder meetings, assisting in developing the RFP, and helping with the bid evaluations. He testified that making a recommendation was not appropriate because that function should have been restricted to members of the Strategic Partnership Task Team. Mr. Herhalt testified he did not know that his scores had been included in evaluating the bidder responses, and he learned of it only in 2012. He testified that had KPMG been asked to assume the same role as members of the Strategic Partnership Task Team, he would have responded that it was not logical: KPMG “needed to have some ability to stand apart from the team that was actually being charged with making the recommendation.” He noted that acting as a member of the team that KPMG had been retained to advise “seemed to be in conflict ... to put us in that position, I would have thought.”

The Apparent Winner: PowerStream

After the Strategic Partnership Task Team reviewed the non-financial scores on November 23, it became apparent that PowerStream had won the RFP, scoring 594 out of a total of 630 points. The second-place bidder, Horizon, was more than 100 points behind, with a score of 491 points. Although it is not possible to determine whether PowerStream would have fared equally well without the advantages it received before and throughout the RFP process, the perception of advantage colours the result.

PowerStream’s non-financial bid impressed the Strategic Partnership Task Team. Mr. McFadden said its presentation “stood out”: it “was really first class” and “clearly ... [a] class almost by itself in terms of the scope, what [it] was offering the Town[,] what [it] was offering staff and everything else.” These comments, however, would have carried more weight if all the bidders had been on an equal footing throughout the RFP process.

Although I recognize that PowerStream had certain inherent advantages, such as geographical proximity to Collingwood, the company also had access to the information its paid consultant Paul Bonwick provided about deliberations of the Strategic Partnership Task Team and the team’s assessment of two of the other bidders (see Part One, Chapter 5). These advantages enabled PowerStream to tailor its presentation to the task team’s subjective inclinations.

Before reviewing and scoring the non-financial submissions, Ms. Cooper and Mr. Lloyd did not disclose their respective conflicts of interest or recuse themselves. As I discuss below, the mayor was in a conflict as a result of her brother's work for PowerStream, and the deputy mayor had obtained a favour from PowerStream. Their participation undermined the fairness of the RFP process and created, at the very least, the perception of another unfair advantage to PowerStream.

The Financial Offers

Toward the conclusion of the November 23 meeting, the bidders' financial offers were opened and distributed to the Strategic Partnership Task Team. It quickly became apparent that the bidders had taken different approaches in structuring their bids, with the result that the Task Team could not perform a meaningful immediate comparison. Mr. Houghton testified that the Task Team asked KPMG to review the financial bids to enable it to make an "apples to apples" comparison of the cash payment each bidder had offered to the Town.* Mr. Herhalt testified that it was Mr. Houghton who made this request.

I accept Mr. Herhalt's evidence.

Two days later, on November 25, Mr. Rockx emailed Mr. Houghton a spreadsheet containing his preliminary comparison of the financial bids. The spreadsheet was not forwarded to the rest of the Strategic Partnership Task Team. The PowerStream and Hydro One bids are set out in Table 7.1.

To compare the bids on an "apples to apples" basis, Mr. Rockx made certain assumptions about the bids, and he adjusted the bids based on these assumptions. In particular, he reduced Hydro One's bid by \$4.112 million and PowerStream's bid by \$1.412 million on the assumption that certain debts and liabilities held by Collus Power had not been considered.

Mr. Rockx testified that after completing this preliminary analysis, he wanted to clarify aspects of both PowerStream's and Hydro One's bids so he

* The RFP asked for proposals to purchase up to 50 percent of the shares in Collus Power, which was wholly owned by Collus Utility Services Corporation. The Town in turn wholly owned Collus Utility Services Corporation.

Table 7.1: Excerpt from John Rockx’s “Comparison of Proposals – Financial Considerations,” November 25, 2011

Further clarification required	Key areas of difference / significance	
Business Issue	Hydro One	Powerstream
Binding / Non-binding	Non-binding	Non-binding
Exclusivity	Yes	
Shares	Up to 50% of the common shares of Collus Power; would consider lower share % with price adjustment	50% of shares of Collus Power
Share Purchase Price	\$13.6 million for a 50% share interest	\$7.3 million for a 50% share interest
Unassumed Liabilities	\$4.112 million of unassumed liabilities	\$1.412 million of unassumed liabilities
Net Share Purchase Price	\$9.488 million for shares	\$5.888 million for shares
Recapitalization	Recapitalization to 60% / 40% debt to equity Borrow \$8.1 million of new debt \$3.2 million dividend to Town \$3.2 million dividend to Hydro One \$1.71 million to repay shareholder loan	Recapitalization to 60% / 40% debt to equity Borrow \$7.2 million of new debt \$5.5 million pre-closing dividend to Town \$0 million dividend to Powerstream \$1.71 million to repay shareholder loan
Existing Shareholder Loan	\$1.71 million payout	\$1.71 million payout, option of the Town
Total cash consideration to the Town of Collingwood	\$14.398 million in cash (\$13.6 million + \$3.2 million + \$1.71 million less \$4.112 million of unassumed liabilities)	\$13.098 million in cash (\$7.3 million + \$5.5 million + \$1.71 million less \$1.412 million of unassumed liabilities)
NBV of 50% share interest (Higher is better, less debt)	\$4,457,500.00 Extra value of \$900K to \$1.35 million (1.5X) due to lower leverage)	\$3,557,500.00
Closing Date	Upon OEB approval	Upon OEB approval MADD application required
Future Dividend Policy	Pay dividends in profitable years Board of Directors to make decision based on cash needs etc.	Dividend policy to be determined based on policies of other LDCs Expect to pay dividends in 2013 forward Expect to pay out 50% of future net income, subject to sufficient net working capital, capex needs etc. Estimate of \$400K to \$500 (100% basis) of dividends paid in 2013

Note: Although Mr. Rockx made adjustments to the Horizon and Veridian offers, those utilities were not given further consideration. His treatment of their bids is therefore not addressed in this report.

could confirm his adjustments. Accordingly, on November 27, the day before the Strategic Partnership Task Team was scheduled to review the financial bids, Mr. Rockx sent separate emails to PowerStream and Hydro One requesting specific clarifications.

The Strategic Partnership Task Team met on November 28 to rate the financial bids.* The meeting took place before Hydro One responded to Mr. Rockx’s request for clarifications. Although PowerStream responded on November 28, Mr. Rockx did not incorporate that response into his analysis

* Mr. Herhalt, who was still travelling, attended by telephone.

before the meeting. He presented his preliminary analysis to the Task Team as planned and advised that further clarification was required, in particular concerning the amount of liabilities each bidder had assumed. The team evaluated the financial bids at the meeting. Several witnesses from the team stated they relied on KPMG's analysis in assessing the bids.

The bidders' financial proposals set out not just a monetary offer but also pre-closing conditions, representation on Collus Power's board of directors, dividend proposals, capital structure, and buy-sell arrangements, including rights of first refusal and "shotgun" provisions.* All these matters would have an impact on the Town's continued ownership of the utility, and, as I discuss below, some would have an impact on the total cash paid to the Town.

Mr. Houghton testified that although the other items were discussed, "the conversation didn't really take very long" because it was "pretty clear that PowerStream was ... the chosen proponent, or potentially the chosen one," and that the governance and shareholder issues could be negotiated. As I discuss below, Mr. Rockx testified that the Strategic Partnership Task Team was concerned that PowerStream had proposed a shotgun provision as part of its bid. That proposal should not have been surprising: the RFP expressly stated that the shareholders' agreement between Collus Power and the successful bidder would include a shotgun clause. Mr. Rockx testified that at the November 28 meeting, however, the Task Team decided it no longer wanted a shotgun clause and wished to negotiate this item with PowerStream.

The Inquiry heard different accounts of how the financial bids were scored. Mr. Houghton and Mr. Herhalt testified that the Task Team members and Mr. Herhalt scored the financial bids, Mr. Houghton said that Hydro One was given "full points" because its bid was the highest, and the team members assigned scores to the other bids. Mr. Rockx stated that either Mr. Houghton or Ms. Hogg collected the scores for the financial proposals, but he did not know how the total scores were tabulated. Mr. Lloyd testified that KPMG assigned the scores for the financial bids. Ms. Wingrove did not recall assigning scores for the financial bids. Ms. Hogg did not remember

* A shotgun clause is a mechanism whereby one partner can trigger the end of a partnership. Although the details can vary, a shotgun provision typically provides that, if partner A offers to buy partner B's share at a set price, partner B must either sell the shares or buy partner A's shares at the same price.

how the bids were scored. Mr. Fryer stated he recalled giving Hydro One the highest score, but he did not remember how he scored the other bidders.

It is not apparent how the financial bids were scored. Ms. Hogg did not take minutes of the November 28 meeting to preserve the confidentiality of the process. The spreadsheet Ms. Hogg provided to the Inquiry also included the total number of points the Strategic Partnership Task Team assigned to each financial bid, though it did not specify the individual scores each member assigned. Hydro One received a full score of 270, which suggests each individual team member gave it the full 30 points. In contrast, PowerStream received 243 points, Veridian 207 points, and Horizon 191 points. None of the witnesses from the review team recalled how these totals were arrived at other than Mr. Houghton, who testified that Hydro One received full points for submitting the highest bid.

As I set out below, Hydro One's bid was approximately \$3.85 million higher than PowerStream's bid. The Strategic Partnership Task Team did not have this information when it was scoring the financial bids. The effects of the team not receiving this information were minimal, as the RFP's emphasis on locating a strategic partner over reducing the Town's debt meant that PowerStream would have won the RFP on the strength of its non-financial score regardless of how high Hydro One's financial bid proved to be. The fact remains, however, that the team did not know how much money the Town of Collingwood was leaving on the table by choosing PowerStream as its strategic partner.

In any event, by the time the Strategic Partnership Task Team scored the financial bids, PowerStream was too far ahead to make the financial offers meaningful.

Dissolution of the Strategic Partnership Task Team

At the end of the November 28 Strategic Partnership Task Team meeting, PowerStream had the highest overall score. Mr. Muncaster then led a conversation about the need to "stand back and have a sober second thought" regarding the RFP result. They had ranked PowerStream the winning bidder, he cautioned, but Hydro One had submitted a higher financial bid. The

Task Team thereupon decided there should be a meeting with PowerStream “to see if there was anything else that they might be able to offer.” Because Mr. Rockx had indicated clarification was necessary, the team also wanted to look further into Hydro One’s financial offer.

As I discuss below, PowerStream increased its offer at a meeting with Mr. Houghton and Mr. Muncaster, and Hydro One spoke with Mr. Rockx about the clarifications he sought. However, the team did not meet to discuss PowerStream’s increase to its bid, the Hydro One offer or the impact, if any, that Mr. Rockx’s clarifications might have on the results of the RFP.

Meeting with PowerStream

On November 29, 2011, the day after the Strategic Partnership Task Team meeting, Ed Houghton advised Dean Muncaster, John Herhalt, John Rockx, and Pam Hogg that he had arranged a meeting with PowerStream scheduled for two days hence, December 1.

Later that same day, Mr. Herhalt asked Mr. Rockx to report back to him on the meeting. Mr. Rockx responded that he was interested in ascertaining how PowerStream would respond to the “proposed elimination of the shotgun clause and the possible entry into a long-term 50/50 relationship with the Town.” He concluded his email with the comment, “Ideally, all the proponents really want to own 100% of Collus.”

On November 30, Mr. Rockx presented an agenda for the meeting to Mr. Houghton and Mr. Muncaster. The proposed items included “no shotgun clause” as well as service agreements, purchase price, avoiding tax, corporate structure, future acquisitions, and assistance in seeking Ontario Energy Board approval of the transaction.[†] Mr. Rockx also attached the second version of his spreadsheet detailing the financial elements of the RFP bids.

* As I noted earlier, a shotgun clause is a mechanism whereby one partner can trigger the end of a partnership. Although the details can vary, a shotgun provision typically provides that if partner A offers to buy partner B’s share at a set price, partner B must either sell the shares or buy partner A’s shares at the same price.

† A Mergers, Acquisitions, and Divestiture application, colloquially referred to as a MAADs application.

In his testimony, Mr. Rockx said he included the shotgun clause on the agenda because the Strategic Partnership Task Team had raised concerns about the clause at the November 28 meeting. Given that the RFP had advised bidders that a shotgun clause would be part of the arrangement, he believed that the team wanted to ascertain whether PowerStream would agree to a different exit strategy if the partnership broke down.

Mr. Houghton explained the inclusion of the shotgun clause differently. He testified that he wanted to raise the shotgun clause at the meeting because he did not know what the term meant. He testified that Mr. McFadden explained that it had to do with liquidity. Mr. Houghton told the Inquiry that he did not know what that term meant either, saying it was “something still completely foreign to me.” He therefore wanted to raise the matter with PowerStream to determine the meaning it ascribed to “shotgun clause.”

The December 1 meeting took place at PowerStream’s offices and was attended by Collus Power representatives Mr. Houghton and Mr. Muncaster, KPMG’s Mr. Rockx, and three PowerStream executives, John Glicksman, CFO; Brian Bentz, president and CEO; and Dennis Nolan, general counsel and corporate secretary. The discussion focused on both financial and non-financial considerations.

Financial Considerations

The primary financial issue related to the amount PowerStream was willing to pay for 50 percent of the Collus Power shares. In its original response to the RFP, PowerStream had offered \$7.3 million for the shares.

At the meeting, Mr. Muncaster and Mr. Houghton informed the PowerStream executives that their company had scored the highest overall points in the RFP, but its financial bid was the second highest. They asked whether PowerStream would increase the amount of its bid. Before the meeting, the PowerStream board of directors had authorized Mr. Bentz to offer up to \$8 million for the Collus shares. Accordingly, Mr. Bentz increased the PowerStream offer to \$8 million.

Non-financial Considerations

Mr. Houghton testified that several non-financial considerations were also discussed at the meeting. Given his own limited understanding of shotgun clauses, he sought information on the nature of a potential shotgun clause between the two parties. They also discussed shared services that PowerStream might provide to Collus Power, whether the transaction would involve the sale of shares in Collus Power or Collingwood Utility Services, and the eventual filing of a MAADs application with the Ontario Energy Board.

The Inquiry heard contradictory evidence about the status of a potential shotgun clause. Collus Power seemingly came into the meeting with a desire to do away with the clause. Mr. Houghton testified that both Collus Power and PowerStream agreed that, while they did not like the term “shotgun,” they should allow for a similar mechanism, though under a different, less “heavy handed” name.

However, Mr. Rockx wrote in an email to Mr. Herhalt immediately after the meeting that the shotgun clause would be removed. He also testified he left the meeting with a sense that the shotgun clause would be replaced with other resolution mechanisms, such as a right of first refusal. Mr. Nolan and Mr. Bentz testified they did not recall discussing a shotgun clause.

No Legal Advice

Mr. Houghton testified he did not believe it was necessary to have anybody from Aird & Berlis – the law firm he had retained to prepare the transaction documents – attend the meeting.* Ron Clark, the lead Aird & Berlis lawyer on the share sale transaction, confirmed that he was not involved in any discussions concerning the December 1 meeting. When asked why Aird & Berlis was not asked to attend, Mr. Houghton responded that he and Mr. Muncaster were comfortable relying on Mr. Rockx’s expertise. He added he did not ask Aird & Berlis to attend because no one on the Strategic Partnership Task Team told him that Collus Power ought to have legal representation at the meeting.

As an experienced executive and, moreover, the individual overseeing the process, Mr. Houghton should have recognized that, before entering into

* The Aird & Berlis retainer is discussed in Part One, Chapter 8.

negotiations in a transaction as significant as this one, it would be prudent to obtain legal advice. He did not need the Task Team to give him explicit directions on this matter. Members of the team testified that they relied on Mr. Houghton during this process.

KPMG Analysis of Hydro One's Bid

After the Strategic Partnership Task Team met to review the financial bids, KPMG completed two further comparative analyses of PowerStream's and Hydro One's bids. The final analysis was ultimately presented to the Collus Power board and to Town Council. These analyses were based on unconfirmed assumptions about Hydro One's bid. As a result, the version of Hydro One's bid presented to both Collus and the Town was undervalued.

No Confirmation with Hydro One

As I discuss above, on November 27, Mr. Rockx emailed Hydro One and PowerStream with questions about their bids. He wanted answers to two questions: whether the bidders would assume all Collus Power's long-term liabilities; and how Collus Power's net working capital would affect PowerStream's proposed recapitalization dividend. PowerStream had made the amount of the dividend conditional on Collus Power's actual working capital matching the Ontario Energy Board's deemed net working capital.

PowerStream advised Mr. Rockx it would assume all Collus Power's liabilities and that "the net working capital calculation at December 31, 2010 resulted in an approximate \$1.1 million shortfall (i.e. price reduction to PowerStream's benefit)." Mr. Rockx testified that the shortfall effectively decreased the dividend component of PowerStream's bid by \$1.1 million.

On November 29, 2011, Rick Stevens of Hydro One responded to Mr. Rockx's inquiries, reiterating that "the Town would receive total cash proceeds of approximately \$18.5 million" and confirming that Hydro One would assume "the estimated pro rata share of assets and liabilities, based in part on the detail provided in the 2010 audited financial statements." He went on to specify liabilities that Hydro One would assume, including

net regulatory liabilities and “Ontario infrastructure debt of \$2.7 million.” Despite this information, Mr. Rockx remained unconvinced that Hydro One would assume all Collus Power’s long-term liabilities. In his next analysis, discussed below, Mr. Rockx accepted that Hydro One would assume \$2.7 million in infrastructure debt, but he still made a \$1.412 million deduction for Collus Power’s other long-term liabilities.

Mr. Rockx spoke to Mr. Stevens after receiving his email to seek further clarity. Following the conversation, Mr. Rockx reported to Mr. Houghton that Mr. Stevens was not prepared to discuss Hydro One’s bid further unless Collus Power agreed to negotiate exclusively with Hydro One. That stipulation meant that Collus Power would not be able to continue its discussions with PowerStream or other bidders. Although Hydro One requested exclusivity for further discussions, Mr. Stevens did say the company was willing to look over KPMG’s calculations and the assumed adjustments.

Mr. Rockx then asked Mr. Houghton: “*Can I provide Hydro One with the one-page summary of their offer to see if they agree with the assumed purchase price adjustments?*” [emphasis in original]. Mr. Houghton responded he would speak with Mr. Muncaster, but his first reaction was to “leave as is for now.” Mr. Rockx did not receive any instructions to confirm his calculations with Hydro One.

Mr. Houghton testified that he and Mr. Muncaster were uncertain whether Hydro One would provide further information to KPMG, and that Mr. Muncaster decided that KPMG’s one-page summary should not be sent to Hydro One for clarification. Mr. Houghton also said there was an aversion to Hydro One.

KPMG conducted its second analysis after obtaining the information discussed in this section and before the December 1 meeting between Collus and PowerStream representatives. This analysis was shared with Mr. Houghton and Mr. Muncaster. There is no evidence it was shared with anyone else.

Hydro One’s Bid Undervalued

After obtaining the additional information and the meeting with PowerStream, Mr. Rockx conducted another analysis of the bids. KPMG’s third analysis, which Mr. Rockx acknowledged included errors that undervalued

Hydro One's bid and overvalued PowerStream's bid, was presented to the Collus Power board and to Collingwood Town Council. As a result, Council was told that Hydro One's bid was only \$988,000 higher than PowerStream's bid. In fact, Hydro One's bid was \$3.85 million higher than PowerStream's.

Mr. Rockx testified he made two adjustments to Hydro One's bid in his third analysis. First, owing to KPMG's concern that Hydro One would not assume all the Collus liabilities, he deducted \$1.412 million in estimated net long-term liabilities. Second, he deducted \$1.1 million from Hydro One's bid: his spreadsheet indicates that the deduction was for "estimated [net working capital] shortfall from deemed [net working capital]." Mr. Rockx said that this deduction should not have been made; it reflected a condition that PowerStream had placed on its recapitalization dividend. Hydro One's bid contained no such condition. Mr. Rockx did not make this deduction to PowerStream's bid. In cross-examination, he offered an alternative deduction that could have been made to Hydro One's bid to account for the different amounts of debt Hydro One and PowerStream proposed to inject into Collus Power, but he stated that this alternative deduction should have been only \$550,000.

In this third analysis, Mr. Rockx testified that he also made two adjustments to PowerStream's bid: he added the \$700,000 increase in the bid; and he applied a \$200,000 deduction "for estimated additional net working capital adjustment." He agreed that this deduction should have totalled \$1.1 million. Mr. Rockx also commented on the lack of Town involvement in this review and in the analysis of the financial bids:

Typically, if you're in a situation like this ... you would expect maybe somebody ... [with] financial capacity with either the Town or the Collus Power would be involved in those reviews ... I would have expected ... other people would be looking at this as well. It's not just usually in isolation.

The product of Mr. Rockx's third analysis was presented to Council on December 5, 2011.

Although an additional 3.85 million may have better served the goal of reducing the Town's debt, the RFP, as a result of the recommendation to find a

strategic partnership, was created to favour the non-financial criteria, not the highest bidder. In addition, Hydro One had already earned full marks when its bid was presented as \$988,000 more than PowerStream's bid. Presenting the difference as \$3.85 million would not have affected the RFP scoring.

Collus Board Meeting, December 2, 2011

On December 2, 2011, there was a joint meeting of the boards of directors of Collus Power and Collus Solutions. The attendees included directors Dean Muncaster, Mayor Sandra Cooper, David McFadden, Joan Pajunen, Doug Garbutt, and Mike Edwards; executives Ed Houghton and Tim Fryer; board secretary Pamela Hogg; and four guests: Deputy Mayor Rick Lloyd, John Herhalt and John Rockx of KPMG, and Ralph Neate of Gaviller & Company LLP. Mr. Neate, the auditor responsible for auditing Collingwood Utility Services, Collus Power, Collus Solutions, and Collus Energy, attended at the request of Town treasurer Marjory Leonard. Ms. Leonard had asked Mr. Fryer to invite the auditor to the meeting. As with the PowerStream negotiation meeting the day before, Kim Wingrove, the Town's chief administrative officer, was not present.

Mr. Houghton testified that at the meeting, the Collus entities' boards heard there was about \$1 million difference between PowerStream's and Hydro One's bids. He did not state who led these discussions. Mr. Rockx testified that he provided a "brief" presentation of his financial analysis at the meeting. He informed the boards that Hydro One had the best financial offer, but that certain assumptions still needed to be clarified.

Mr. Herhalt did not recall attending the meeting.

The Collus Board Resolution

The minutes of the December 2 meeting state that no conflicts were declared and the board passed the following resolution:

Upon motion duly made, seconded and unanimously carried[,] the Board approved that COLLUS Power Corp Board hereby accepts the findings of

the Strategic Partnership Task Force Team and recommends to Collingwood Council that Collus Power Board be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement;

And further that the results of these negotiations be brought back to Collingwood Council in a timely fashion for further review and consideration.

A presentation to Collingwood Council will be made in-camera on Monday, December 5th, 2011.

The Council Meeting, December 5, 2011

Mr. Houghton presented the results of the RFP to Council three days later during an *in camera* session on December 5. Before speaking, he exchanged emails with Mr. Bonwick, who wrote that Mr. Houghton “might want to start with a bit of humour considering what they just with [*sic*] through with that public meeting ... good luck.” Mr. Houghton responded, “I will try ...” Mr. Bonwick replied, “Chin up ... when the going gets tough the tough get going!”

After an introduction by Mayor Cooper, Mr. Houghton presented a slide deck that explained the RFP process and reported the Strategic Partnership Task Team’s scoring for both the non-financial and the financial criteria. As Table 7.2 shows, he used two slides for the financial results.

Table 7.2: Excerpts from Ed Houghton’s December 5, 2011, Presentation to Council

Proposal Evaluation Summaries				
	Horizon	Hydro One	PowerStream	Veridian
Total cash consideration to Town of Collingwood	3rd	1st	2nd 1st	4th
Provision of strategic and specialized resources, support in growing COLLUS			9 out of 9	
Support for employees and their careers	1st 2 out of 9		1st 6 out of 9	1st 1 out of 9
Customer experience and satisfaction, supporting the interests of the communities			1st 9 out of 9	
Competitive distribution rate and cost structure of COLLUS	1st 8 out of 9			1st 1 out of 9
Cultural and synergistic fit			1st 9 out of 9	
	1st	1st	1st	1st
	Totals 10 out of 45	0 out of 45	33 out of 45	2 out of 45

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

Town councillor Kevin Lloyd testified that the slide deck was the only information he received on the financial offers and that Council did not receive the original proposals, so members saw only KPMG's version of Hydro One's offer.

Mr. Houghton testified that Mr. Rockx did discuss the financial bids during the presentation to Council. Mr. Rockx stated, however, that Mr. Houghton was the primary speaker and that his role was limited to answering questions. He could not recall if he spoke at all. Mr. Rockx also testified that he was not provided with a copy of the presentation before the meeting. He had no recollection whether he explained to Council that Hydro One's offer was \$18.5 million on its face, as compared to the \$15.998 million set out in the presentation. He also did not recall explaining his adjustments or that he had not been able to confirm his assumptions with Hydro One.

I am satisfied that Council was not provided with any additional meaningful information regarding the financial bids beyond what was presented on the slides. As a result, Council presumably believed that Hydro One was offering only \$988,000 more than PowerStream. In fact, though, as I explained above, Hydro One was offering \$3.85 million more.

Further, although the recapitalization dividend was subject to change based on Collus's financial position, Mr. Rockx could not recall whether this fact had been shared with Council. This item was particularly relevant in a comparison of the two highest financial bids, from Hydro One and

PowerStream. PowerStream offered more cash from the dividend than it did for the shares. Although the dividend payment for any bidder was subject to change, the amount offered for the Collus shares was not. As a result, while Hydro One was committing to pay \$13.6 million in any event, PowerStream was committing to pay only \$8 million. During the hearings, an issue arose about whether Council was confused about what exactly it would receive in exchange for 50 percent of Collus Power. Any confusion at this juncture was particularly problematic because this meeting was the only opportunity Council had to consider all four bids.

The presentation included a misleading list of “Key Events” that ran over two slides. As Table 7.3 shows, the first slide listed 12 events with dates.

Table 7.3: Excerpt from Mr. Houghton’s December 5 Council Presentation




Key Events:

Key Events:

- June 27, 2011 - Met with Council & received approval to investigate Strategic Partnership
- July 7, 2011 - Meeting with Strategic Partner 1
- July 20, 2011 - Meeting with Strategic Partner 2
- July 20, 2011 - Meeting with Strategic Partner 3
- July 26, 2011 - Meeting with Strategic Partner 4
- July 26, 2011 - Meeting with Strategic Partner 5
- August 3, 2011 - First Meeting with Strategic Partnership Task Team
- August 29, 2011 - Second Meeting of Strategic Partnership Task Team
- Sept. 12, 2011 - Interview with Strategic Partner 4 and Strategic Partner 2
- Sept. 19, 2011 - Interview with Strategic Partner 1 and Strategic Partner 5
- Sept. 28, 2011 - Third Meeting of Strategic Partnership Task Team
- Sept. 29, 2011 - Met with Collus Staff and provided confidential update

This slide included the dates on which Mr. Houghton and Mr. Muncaster had introductory meetings with potential bidders in July 2011 and, in September 2011, when the entire Strategic Partnership Task Team met with bidders. The list of events did not include, however:

- the early meeting on December 3, 2010, that Mr. Houghton had with Brian Bentz, the president and CEO of PowerStream, the company that won the RFP; and
- any dates relating to the solar attic vent initiative from the summer of 2011 – an event that purportedly constituted a “litmus test” for the bidders (see Part One, Chapter 5).

Given this missing information, no councillor could appreciate the advantages from which PowerStream benefited over the course of the RFP process.

The Vote and Conflict of Interest

Town councillor Ian Chadwick recused himself from the December 5 *in camera* discussion on the RFP. He advised Council he had a pecuniary interest in the matter because he had provided consulting services for electricity sector clients and did not know whether his client had bid on the RFP (see Part One, Chapter 5). He thought that PowerStream, as Mr. Bonwick’s client, received the weekly news summaries he prepared, and he considered, on this occasion, that he might be in a conflict of interest.

Mayor Sandra Cooper and Deputy Mayor Rick Lloyd also had potential conflicts when they participated in Council discussions about the RFP results. However, they did not follow Mr. Chadwick’s lead and recuse themselves at the December 5 meeting. Ms. Cooper’s potential conflict arose from her relationship with her brother Mr. Bonwick, who acted as her advisor while assisting PowerStream with its RFP bid. Mr. Lloyd’s conflict arose from the favour PowerStream had provided to a friend at his request (see Part One, Chapter 6). The fact that both these Town leaders did not recuse themselves is not surprising; as members of the Strategic Partnership Task Team they had not recused themselves when confronted with the same conflicts. Their continued participation in key decisions heightened the risk that the process for selecting PowerStream as the strategic partner would be seen as being less than objective.

Contemporaneous emails illustrate how a reasonably informed person would conclude that the favour PowerStream did for Deputy Mayor Lloyd’s friend may have influenced his vote. During the December 5 meeting,

Mr. Bonwick and Mr. Lloyd exchanged emails. As Council moved into the *in camera* session to discuss the RFP, Mr. Bonwick wrote to Mr. Lloyd: “Try to lighten things up a bit when you go in-camera ... we need them in a good mood for other things.” Mr. Lloyd testified that he could not recall the email exchange or why Mr. Bonwick asked him to lighten things up.

With respect to Ms. Cooper, before the Council meeting, Mr. Bonwick emailed his sister speaking notes about the Collus Power RFP. Among other things, he wrote that Council had “the opportunity to correct the terrible economic situation we inherited and once again put Collingwood in strong financial shape for future generations.” Ms. Cooper testified that the notes were unsolicited. She said she may have used a portion when speaking, but not in their entirety. Ms. Cooper stated she did not turn her mind to Mr. Bonwick’s relationship with PowerStream when he sent her the speaking notes. She said she was under the impression that Mr. Bonwick continued to do public relations work, but she did not think to ask him whether he had assisted with the RFP. When questioned about the speaking notes, Ms. Cooper testified that, as of that point, she had not asked Mr. Bonwick a single question about his work for PowerStream.

Conclusion

Regardless of whether the mayor and deputy mayor voted impartially, these communications, coupled with their relationship to Mr. Bonwick and PowerStream, would leave a reasonably informed person with the impression they might have been open to influence.

The risk of a public perception of partiality did not end with the December 5, 2011, meeting. After Council directed Collus Power to continue negotiations with PowerStream, Mr. Bonwick began dealing directly and more openly with his sister, Mayor Cooper, and his friends, Mr. Houghton and Deputy Mayor Lloyd. Mr. Bonwick pushed to have the sale finalized in the first half of 2012 – before the deadline of his extended retainer with PowerStream. I discuss these developments in more detail in the following chapter.

Finalization of the Share Sale

From January to March 2012, Collus Power Corporation and PowerStream Incorporated negotiated and finalized the agreements for the 50 percent share sale. Collus Power's chief executive officer (CEO), Ed Houghton, retained Ron Clark from Aird & Berlis to prepare the transaction documents. Mr. Clark was a corporate lawyer who specialized in the electricity industry. Mr. Houghton instructed Mr. Clark, and Mr. Clark believed the Town had authorized Mr. Houghton to provide instructions on its behalf, in addition to providing instructions on behalf of Collus Power.

Leo Longo, another lawyer at Aird & Berlis and one of the Town's municipal solicitors, reviewed the transaction documents directly for the Town. However, Mr. Longo testified that his work was limited to reviewing a draft bylaw and transaction documents from a municipal perspective. Mr. Longo told the Town that he lacked the corporate law experience to review the financial elements of the transaction. No other lawyers provided advice directly to the Town about the financial elements of the transaction, despite Mr. Longo having advised Mayor Sandra Cooper and Deputy Mayor Rick Lloyd that Mr. Clark was representing Collus Power's interests and that those interests may not be identical to the Town's interests. Although it may have appeared that lawyers from Aird & Berlis were advising the Town on the transaction, Mr. Houghton withheld and filtered the information the Town received.

Council received an *in camera* update on negotiations between Collus and PowerStream at a meeting on January 16 and then publicly voted to authorize the mayor and the Town clerk to execute transaction documents at the January 23 meeting. Council's vote was undermined by the fact that three of the eight councillors who voted had, at the very least, apparent conflicts of interest that had not been disclosed.

Paul Bonwick helped Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton to arrange meetings with Mr. Longo so that the Town could sign the first transaction documents on March 6, 2012. In the process, Mr. Bonwick obtained privileged information that should never have been disclosed to an agent of PowerStream, the Town's counterparty to the transaction. Mr. Houghton testified that Mr. Bonwick's involvement was okay because PowerStream was "part of the family." PowerStream was not. The Town signed the final transaction documents on July 31, 2012, after the transaction received approval from the Ontario Energy Board.

Professional Advisors on the Transaction

Aird & Berlis's Involvement Late in the Transaction

Three lawyers from Aird & Berlis were involved in finalizing the share sale, albeit to varying degrees.

The first lawyer was Mr. Clark. Near the end of October 2011, Mr. Houghton called Mr. Clark and asked him to assist with the planned sale of 50 percent of Collus Power to the successful bidder in the request for proposal (RFP). Mr. Clark was a corporate commercial lawyer and specialized in Ontario's electricity sector.*

Although Mr. Houghton contacted Mr. Clark before the bidders submitted responses to the RFP, Mr. Houghton did not ask Mr. Clark for advice until mid-December 2011, after the Town had selected PowerStream as the successful bidder. Mr. Clark provided no legal advice before or during the RFP process. He testified that, by the time he began assisting in the share sale, a number of key decisions had already been made, including:

- that PowerStream would be the strategic partner;
- that 50 percent of the company's shares would be sold;
- the specific amount of money that would be paid to the Town as a result of the transaction; and

* In 2000, Mr. Clark helped Collus incorporate under the *Ontario Business Corporations Act*. He did not provide any other assistance to the utility between that point and the time of the events examined by this Inquiry.

- that a portion of this money would be the result of a recapitalization dividend.

Mr. Clark testified that he was disappointed he was involved in the transaction at such a late stage.

When asked to describe his overall role in the share transaction, he stated that he had been retained to draft transaction documents which reflected decisions that had already been made. He also testified that he was not retained to give any other advice regarding the sale.

The second lawyer was Corrine Kennedy, an associate with Aird & Berlis, who assisted Mr. Clark. She helped draft transaction documents and served as a liaison between Mr. Clark and Collus Power.

The third lawyer was Leo Longo, one of two municipal lawyers at Aird & Berlis who provided legal services to the Town on an as-needed basis.

Mr. Longo first became aware of the Collus Power share sale in early January 2012. Like Mr. Clark, he did not advise the Town about the RFP process or the implications of selling 50 percent of Collus's shares. As the share sale progressed in January 2012, Mr. Longo provided advice on a handful of discrete issues that I discuss later in this chapter. Because Mr. Longo's expertise was municipal and not corporate law, he did not provide any advice on the transaction's financial elements.

The Town received no legal advice regarding the sale until after an RFP bidder had been selected and critical terms of the sale had been negotiated. This situation is obviously unsatisfactory. It is difficult to believe the RFP process would have been beset by as many problems had legal counsel been engaged from the outset.

Individuals Instructing Legal Counsel

Mr. Clark testified that he represented both the Collus corporations and the Town of Collingwood. He thought he did because he received instructions from Mr. Houghton who, he believed, had been authorized by the Town to provide instructions on its behalf, in addition to providing instructions on behalf of the Collus corporations. Mr. Clark described Mr. Houghton as the "point person" on the transaction who, he explained, was "the person who is

instructing [counsel]; who is reviewing documentation; who is informing other stakeholders of the progress of the transaction; who is, you know, in my world, the immediate contact person.”

In his testimony, Mr. Houghton confirmed he was the primary point of contact for Mr. Clark and that he did provide instructions on behalf of both Collus Power and the Town to the extent he was able to understand the financial intricacies of the transaction. In his closing submissions, Mr. Houghton argued that David McFadden, a director of Collus Power, had played a large role in instructing Aird & Berlis, particularly when it came to matters beyond Mr. Houghton’s knowledge. I address this argument later in the chapter. I am satisfied Mr. Houghton was the primary person instructing Mr. Clark.

I do not accept, however, that Mr. Houghton was authorized to provide instructions to Mr. Clark on behalf of the Town. Instead, Mr. Houghton proceeded to run the transaction, and the mayor and deputy mayor acquiesced.

Mr. Houghton testified that his authority emanated from two sources. First, he took the position that his authorization stemmed from the August 29, 2011, Strategic Partnership Task Team meeting at which the team requested he retain a lawyer.* I do not accept that this request was a grant of authority to instruct the Town’s lawyers in respect of the share sale transaction. The minutes of that meeting state that Mr. Houghton was asked to contact Aird & Berlis lawyer John Mascarin for the specific purpose of discussing bidder non-disclosure agreements. There is no evidence that the team either asked Mr. Houghton to instruct Mr. Mascarin to undertake any other work or asked Mr. Houghton to hire corporate counsel to assist with the transaction. In any event, the Strategic Partnership Task Team did not have the authority to decide who would instruct outside counsel on behalf of the Town regarding the sale transaction. That was Council’s decision to make.

Second, although Mr. Houghton acknowledged there was no official documentation authorizing him to instruct Aird & Berlis on behalf of the Town, he asserted that Council was comfortable with him instructing the

* See Part One, Chapter 5. The Task Team was responsible, among other things, for meeting with potential buyers, developing the RFP criteria, and, based on those criteria, selecting a winner to recommend to Collingwood Town Council.

legal firm because, when Council was presented with the transaction documents later in the sale process, it approved them.

I also reject this argument.

As I state in Part One, Chapter 3, waiting for an objection is not an appropriate approach. Authorizing anyone to instruct lawyers to protect the Town's interests in a complex transaction is an important decision. This approval must be issued in a clear, recorded manner. It should not be assumed through silence.

In his testimony, Mr. Clark also stated that he presumed Mr. Houghton reported back on his discussions to the mayor, the CAO, and Council. Any reports, however, did not take place in the manner Mr. Clark expected. Ms. Wingrove testified that while she assumed it was Mr. Houghton who was instructing Aird & Berlis, she played no role because she had been told many times that she should not concern herself with Collus matters. Rick Lloyd testified that, as deputy mayor, he did not know who provided instructions to Aird & Berlis, and that Council's role was "limited" during negotiations of the transaction documents. Sandra Cooper stated that Mr. Houghton kept her informed of the progress of the transaction but that the information she received was "in general terms" and "not detailed."

I am satisfied that Mr. Clark believed that Mr. Houghton had the authority to instruct him on behalf of the Town and, in doing so, Mr. Houghton was consulting with Council. This was not the case. As I discuss in this chapter, Mr. Houghton did not update or obtain directions from Council during the negotiations and finalizing of the share sale to PowerStream.

Dismissal of Solicitor's Caution

On January 11, 2012, Mayor Cooper emailed Mr. Longo to request a meeting to discuss the Collus share sale. Mr. Longo forwarded the email to Mr. Clark and Ms. Kennedy. Ms. Kennedy responded: "I spoke with Ed this morning and he made it clear that the Mayor had expectations that there be no red flags that come up Monday night – this may be what she is calling about but we can discuss further later."

Mr. Longo spoke with the mayor that day, along with Deputy Mayor Lloyd and Mr. Houghton.

Mr. Longo testified that, during the call, the mayor, deputy mayor, and Mr. Houghton advised that they wanted him to review the agreements and “perhaps say that from the Town solicitor’s perspective, the agreements were fine.”

At the hearings, Mr. Longo testified that he was not a corporate lawyer and did not have the ability to comment on the transaction’s financial or corporate elements. He stated that he did not raise this point on the January 11 call because he had never given the Town corporate law advice and he believed the Town knew it was not within his area of expertise. In any event, Mr. Longo did raise it in an email five days later.

On January 16, Mr. Longo emailed Mayor Cooper and Deputy Mayor Lloyd to advise that he was reviewing the representations and warranties in the agreements “to ensure the Town can make these statements,”* adding: “What I cannot comment on are the financial aspects of the deal. Has the Town received advice that it is receiving fair value?”

Mr. Longo testified that the financial elements of the transaction were beyond his knowledge and he had “no idea” if the Town was receiving fair market value. He added that he also could not provide advice on other corporate matters, such as the unanimous shareholders agreements’ buy-sell provisions (also called the shotgun clause), the composition of the board of directors, or the list of decisions that would require unanimous agreement of the Town and PowerStream. Mr. Longo testified that his email was to advise the mayor and the deputy mayor that he could not assist with these matters. He emailed them because they were the people with whom he had spoken on January 11.

Mayor Cooper responded that Collus had Mr. Clark and Ms. Kennedy review the documents, while Mr. McFadden reviewed “other electricity agreements.” She noted that KPMG had been an “observer in all aspects including the financial part. They feel the agreement is very fair.”

Mr. Longo replied that Mayor Cooper’s response “partially” addressed his comments. He then noted that “Ron and Corrine are advising Collus, not the Town. I just want to note that the Town’s interests may not be identical

* As an example, Mr. Longo explained this included confirming that certain Town or Collus properties were free of environmental contamination.

to Collus.” At the Inquiry, Mr. Longo testified that he was not aware of any specific issue where the interests might diverge, but he did not have enough “independent knowledge” of the financial and corporate elements to “form an opinion one way or another.”

Deputy Mayor Lloyd replied:

The fact is that the best interest of the Town has been the driving force and objective for this entire initiative ... on a consistent basis Council has been fully briefed and provided unanimous support to continue with this direction.

At this point, Mr. Longo added Mr. Houghton to the email conversation, writing:

My earlier email addressed something different; i.e. that the lawyers preparing the agreements are representing entities other than the Town.

I simply wished to bring that to your attention as you move forward on this.

It is clear that those drafting the agreements wanted Town input (and Town eyes) on the proposed reps and warranties. John Mascarin and I will be doing so.

Ed is “in the loop” on this.

Deputy Mayor Lloyd responded that he was:

pleased that the firm of Aird and Berlis will be in general looking after the interests of the Town of Collingwood and its ownership of Collus. I only expect that you and your colleagues provide the best guidance possible to us and our company of Collus. I totally understand your responsibility and that of Aird and Berlis in general ... and look forward to a very positive outcome of this transaction.

Mr. Longo testified that, at this point, he had raised his concerns and the message back was: “Thanks for raising it, but we think there’s no issue there. Let’s move on.” He did not push the matter further because “there didn’t

seem to be a door open to even have that conversation with them. They were saying that they were satisfied that the interests were being protected.”

Ms. Cooper testified that, despite Mr. Longo’s caution, she felt comfortable because Mr. Longo’s email indicated that four lawyers from Aird & Berlis were involved in the transaction.

Rick Lloyd testified that his reaction to Mr. Longo’s caution that Collus interests may not be identical to the Town’s interest was “we were all one.” He also said he would have expected Mr. Longo or Aird & Berlis to advise the Town to seek independent legal advice if he or Aird & Berlis had “an absolute concern on this thing.” Later, Mr. Lloyd testified that, while he understood the interests may not be identical, “we’ve been briefed ... we are steering the ship, the Town of Collingwood, and we ... felt very comfortable ... that the end result was going to be positive.”

Mr. Houghton testified that he spoke to the mayor and the deputy mayor about Mr. Longo’s emails and they

were taken aback by the fact that they felt that Aird & Berlis, being Ron Clark and Corrine Kennedy and others, were actually looking after the interests of...the Town of Collingwood and Collus.

And they ... didn’t understand why Leo was injecting himself into this. And they ... instructed me to ensure that we ... need to keep the ... the fees and things like that to at least a bit of a dull roar, which is a common terminology.

I am satisfied that Mayor Cooper and Deputy Mayor Lloyd should have acted on Mr. Longo’s caution and raised the matter with Ms. Wingrove or Council, such that the Town could retain counsel who could assist with the financial and corporate elements of the transaction. I accept Mr. Houghton’s evidence that, one of the reasons they did not, was out of concern about the cost of retaining additional counsel.

In his submissions to the Inquiry, Rick Lloyd reiterated his belief that the Town and Collus Power’s interests were aligned, and he asserted that “it was up to the CAO and town’s legal firm to ensure that the town’s interests were represented in any negotiations, not the responsibility of elected representatives.” This submission overlooks the circumstances of this transaction. First,

Mr. Houghton, not the CAO, was overseeing the process and had assumed the role of instructing legal counsel. Second, it was Mayor Cooper and Deputy Mayor Lloyd who had initially involved Mr. Longo in the matter. When Mr. Longo raised the issue with them, the deputy mayor dismissed the caution and the matter went no further.

Both Rick Lloyd and Sandra Cooper argued in their submissions that, at this point in the process, Council had determined that the Town's and Collus's interests were aligned as a result of the Town being the sole shareholder of the Collus holding company. There was no evidence, however, that the issue of whether the Town needed separate legal representation was ever put before Council. To the extent Council made the determination that their interests were sufficiently aligned (which I am satisfied it did not), it did not know that the Town's solicitor disagreed, as the mayor and deputy mayor did not pursue Mr. Longo's concern.

Witnesses provided different evidence about who Mr. Clark and Mr. Longo represented and the roles the two men played. For example, Clerk Sara Almas believed Mr. Clark had been retained by Collus and that Mr. Houghton instructed him on behalf of only Collus. She believed Mr. Longo was assisting the Town. Rick Lloyd testified that Mr. Clark and Ms. Kennedy represented the Town and Collus, and that Mr. Longo had no role in the transaction. Kevin Lloyd testified that Mr. Clark was the Town's lawyer.

This confusion could have been avoided had the people instructing the lawyers required a retainer agreement. Retainer agreements should identify the outside counsel's client or clients, identify the individual or individuals authorized to provide instructions, and specify the scope of the engagement.

Mr. McFadden's Role in the Transaction

One other matter arose concerning who was instructing Aird & Berlis on behalf of the Town. In his closing submissions, Mr. Houghton argued that it was, in fact, Collus Power director David McFadden who had instructed Aird & Berlis on behalf of both Collus Power and the Town during the negotiations. In support of this argument, Mr. Houghton pointed to a number of email exchanges among Mr. McFadden, Mr. Clark, and PowerStream about

the transaction documents. During the hearings, Mr. Houghton's counsel questioned Mr. McFadden about this correspondence. Mr. McFadden agreed that he reviewed the documents, provided comments to Mr. Clark to ensure the documents were headed in a satisfactory direction, and provided instruction regarding the documents where he felt appropriate.

Mr. Houghton's counsel never directly asked Mr. McFadden if he instructed Aird & Berlis about the transaction. However, when Inquiry counsel directly asked him about it, Mr. McFadden responded: "[T]hose instructions came from Dean Muncaster [chair of Collus Power's board of directors] and/or Ed Houghton ... I wasn't giving instructions. I was giving comments." When asked specifically whether he instructed Aird & Berlis on behalf of Collus Power, Mr. McFadden stated, "I never thought that [Collus Power's lawyers] were ever reporting to me." When specifically asked whether he gave direction to Aird & Berlis on behalf of the Town, he responded: "I was never asked by the Town to give direction." And when asked whether he was aware of the process the Town used to approve an individual to instruct legal counsel on behalf of the Town, Mr. McFadden replied: "I was never involved with Town Hall, so I don't know how they handle their business and – and who approved what."

Mr. Clark used a variety of terms to describe Mr. McFadden's role in the transaction, but none of them involved Mr. McFadden instructing counsel. He agreed that Mr. McFadden had an "opportunity" to provide Mr. Clark with instructions on the transaction documents, but did not state that he had received instructions from Mr. McFadden. In addition, Mr. Longo testified that he was not aware of Mr. McFadden's involvement in the transaction.

Based on the evidence, I find that Mr. Houghton was the primary point of contact with Aird & Berlis and was the individual who provided instructions to legal counsel. Given the complexity of the transaction, I have no doubt there were instances in which Mr. McFadden used his knowledge of the electricity industry to assist and provide helpful information to Aird & Berlis. However, it is clear from the evidence that the directions provided to Mr. Clark came from Mr. Houghton.

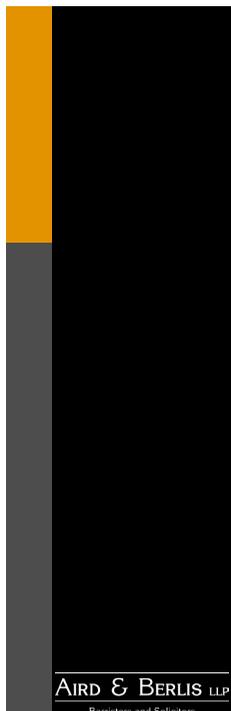
Update on the Negotiations

Aird & Berlis lawyer Ron Clark provided Town Council with an *in camera* update on the transaction during the January 16, 2012, Council meeting.

Mr. Clark testified that the purpose of his presentation was to inform Council about the transaction documents and to respond to questions. Council did not make any decisions about the transaction at the meeting.

Mr. Clark's presentation covered several topics. First, it explained why it would be beneficial for the Town to sell 50 percent of its shares in Collingwood Utility Services (parent company to Collus Power) as opposed to shares in Collus Power. The genesis of this decision is explored below.

The presentation also explained that the Town would receive three payments in connection with the share sale transaction, as depicted on two slides (see Figure 8.1).



Transaction Structure (cont'd)

Share Purchase Agreement ("SPA")

1. Timing:
 - a) Pre-Execution and Due Diligence
 - b) Execution of Agreements
 - c) Interim Period – fulfillment of conditions
 - d) Closing Target Date - April 2012 following:
 - i. financial arrangements
 - ii. Infrastructure Ontario consent
 - iii. Amendment to Service Agreements
 - iv. OEB filing
 - v. Interim 2011 Financial Statements
2. Consideration (see Article 2 of SPA):
 - a) PowerStream pays \$8M for 50% of shares of CUS
 - b) \$5.2M – Estimated dividend arising from debt injection by PowerStream (or Third Party) through Collus and up to Town

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SPA (Cont'd)

- i. based on draft Working Capital numbers
- ii. adjusted post-closing
- iii. Holdback Amount of \$1M

c) \$1.7M – Repayment of Promissory Note to Town

d) Dispute resolution mechanism for disagreements on calculation of final numbers

3. Reps and Warranties (see Section 5.1(a) and (b))

- a) Basic reps of Town with respect to the Town
(corporate power and authority, enforceability, no bankruptcy, no violation of by-laws and contracts by entering into transaction)
- b) More extensive reps by Town and CUS re CUS and Subsidiaries (ie. Collus, Energy, Solutions)
(Issued capital, ownership of shares, no third party rights to purchase shares, no violations of by-laws and contracts by entering into the transaction, compliance with laws, real property and leased property, intellectual property, environmental, insurance, employees and plans, litigation, taxes, service agreements with Town)

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Figure 8.1: Payments in Connection with the Share Sale Agreement

Source: “A Strategic Partnership Between Collingwood Utility Services and PowerStream Inc.; Proposed Transaction: Purchase of 50% of Collingwood Utility Services Inc. Shares by PowerStream Inc., Town of Collingwood Council.” Prepared by Ron Clark, January 16, 2012.

Mr. Clark testified that he did not have a detailed recollection of his presentation but agreed his slides likely contained all the information presented to Council. He did not recall any member of Council expressing significant concerns about the transaction.

In his testimony, Kevin Lloyd recalled being told at the Council meeting that the amount of the dividend was not certain and would be finalized toward the end of the transaction, based on the final financial figures for both the Town and Collus in 2011. He testified that no one explained the specific factors that might cause the amount of the dividend to increase or decrease. Other witnesses who testified at the Inquiry – Ed Houghton, Sandra Cooper, Kim Wingrove, Ian Chadwick, and Rick Lloyd – had limited recollections of what was explained.

Mr. Longo attended the January 16 *in camera* Council meeting to learn more about the transaction in the event the Town’s CAO had further

questions. He was not asked any questions at the meeting and played no role in the preparation of Mr. Clark's presentation. He testified that some of the financial elements described on the slides were not within his area of expertise.

The Inquiry heard contradictory evidence concerning the involvement of KPMG's John Rockx at the *in camera* January 16 Council meeting. Mr. Houghton and Mr. Longo testified that Mr. Rockx spoke about financial aspects of the transaction during the presentation.

Mr. Rockx testified that although he attended the meeting, he did not present any information to Council. The draft minutes of the meeting listed the speakers; Mr. Rockx was not identified as someone who addressed Council.

I am satisfied that Mr. Rockx did not present at the *in camera* session of the January 16 meeting.

Council Advised to Sell Holding Company Shares

At the January 16 meeting, Mr. Clark advised Council of a significant change to the structure of the transaction. The RFP had originally contemplated that the successful bidder would purchase 50 percent of the shares of Collus Power from Collingwood Utility Services Corporation, a holding company that also owned Collus Solutions Corporation and the inactive Collus Energy Corporation. Mr. Clark advised Council that PowerStream would instead buy 50 percent of the holding company directly from the Town (the sole shareholder). The reason given for the change was that KPMG had determined it would be more beneficial from a tax perspective. Mr. Clark's presentation suggested that the Town of Collingwood would avoid a capital gains tax estimated at \$350,000.

The potential tax advantage of selling the holding company instead of Collus Power arose in late October 2011, after the release of the RFP. Prompted by a question from Hydro One Incorporated, one of the bidders, Jonathan Erling of KPMG sent Mr. Houghton an email explaining, among other things, that Collingwood Utility Solutions would incur capital gains taxes if Collus Power shares were sold. Five days later, Mr. Erling circulated a draft answer to Hydro One's question internally. It stated that proposals

were to be based on the purchase of Collus Power alone, but the possibility of selling at the holding company level was being investigated. Collus's chief financial officer (CFO) Tim Fryer responded to Mr. Erling's draft answer, stating that the transaction "will most likely be the Collingwood Utility Services Corp's shares being sold by the Town of Collingwood." There was no evidence that Mr. Erling's draft response was sent to Hydro One or any of the other bidders.

The possibility of selling shares in the holding company instead of Collus Power was raised again, during a December 12, 2011, meeting that Mr. Houghton arranged with PowerStream to discuss purchasing the Collus holding company. Mr. Houghton wrote in an email that "we are struggling" with what entity should be sold. Discussions between PowerStream and Collus Power continued and, ultimately, the decision was made that PowerStream should purchase 50 percent of the holding company, Collingwood Utility Services.

Dennis Nolan, PowerStream's general counsel and corporate secretary at the time of the events examined by this Inquiry, testified that this change was cost neutral for PowerStream. On the other hand, a report from PowerStream's valuator, BDR, suggested that purchasing the holding company would increase the value to PowerStream because it would then have more control over Collus Solutions, the shared services company that employed many of Collus Power's staff.

The change in shares being sold did not escape the notice of the other bidders. In internal emails, employees of Veridian Incorporated discussed this departure from the RFP, noting: "Somewhere along the way, Collingwood seems to have lost their rigidity on the form of proposals that they would consider. Remember that the response we got from them was that if we submitted something that wasn't within the scope of their RFP, then we would be rejected and disqualified."

Fortunately for the Town, none of the bidders decided to turn this into an issue.

Authorization of the Transaction Before Finalization of Documents

Overview of Transaction Documents

Two contracts governed the share sale transaction: the share purchase agreement, and the unanimous shareholders agreement. The share purchase agreement set out the terms by which the Town agreed to sell PowerStream 50 percent of the shares in Collingwood Utility Services, the holding company that owned Collus Power and Collus Solutions. The unanimous shareholders agreement set out the terms by which the Town and PowerStream agreed to jointly own and control the Collus companies going forward.

CAO and Town Solicitor Overruled

PowerStream and the Collus companies negotiated the share purchase agreement and the unanimous shareholders agreement in January 2012.

Leo Longo from Aird & Berlis prepared a bylaw for Council to pass that would formally authorize the Town to execute both agreements. The authorizing bylaw was scheduled to be presented to Council on January 23, 2012, but, at that time, the transaction agreements had not been finalized. Mr. Longo testified that they were “still very draft” and were not “in any way, shape or form in a final form.” Both Mr. Longo and CAO Wingrove sought to include provisions in the authorizing bylaw that ensured that Council and the Town solicitor had the opportunity to review any changes before the mayor and clerk executed the agreements.

Their efforts were defeated when Mr. Houghton, without telling Mr. Longo or Ms. Wingrove, engaged with Dennis Nolan to review and comment on the draft bylaw. Mr. Houghton testified that both Mayor Cooper and Deputy Mayor Lloyd insisted on proceeding without those protections, despite Mr. Longo’s advice that they be included.

Mr. Longo sent an initial draft of the authorizing Council bylaw to Mr. Houghton on January 17, 2012, copying Clerk Sara Almas, Town CAO Kim Wingrove, and Aird & Berlis partner John Mascarin. Mr. Longo’s initial

draft (1) authorized the mayor and clerk to execute transaction documents once those documents were “in a form and content to the satisfaction of the Town’s Solicitor”; and (2) required Town staff and the Town solicitor to report back to Council as required and before the final closing of the share purchase transaction.

Mr. Longo, in his email, also asked Mr. Houghton, “Who handles the legal work for [Collus]? Will that person / firm be preparing the necessary corporate minute(s) authorizing the draft agreements from CUS’s [Collingwood Utility Services’] perspective?” Mr. Houghton testified that he interpreted these questions to mean that “Aird & Berlis obviously is not looking after ... our interests.” He said he did not know what else to do, so he reached out to Dennis Nolan.

I do not accept Mr. Houghton’s explanation for why he consulted Power-Stream, the Town’s counterparty in the share sale transaction, for assistance with the Town’s bylaw. If Mr. Houghton wanted assistance, his obvious choices included the Town clerk, the Town’s chief administrative officer, and the corporate lawyers at Aird & Berlis who he had retained to work on the transaction.

Mr. Nolan sent Mr. Houghton a draft of the Town’s authorizing bylaw on January 18, 2012. Mr. Nolan’s draft removed (1) the requirement that the Town solicitor be satisfied with the transaction documents; and, (2) the requirement that Town staff and the solicitor report to Council before the final closing of the transaction. Mr. Nolan’s draft required the transaction documents to be “in a form and content to the satisfaction of the mayor.”

Mr. Houghton did not disclose to anyone Mr. Nolan’s involvement in drafting the Town’s bylaw. Mr. McFadden and Mr. Nolan testified that it was not unusual for counterparties in a transaction to review the bylaw, but both men agreed that, where a counterparty is conducting such a review, it is done with the full knowledge of both parties. Mr. Nolan testified that he assumed Aird & Berlis was intending to review his proposed changes to the draft bylaw.

Mr. Houghton sent Mr. Nolan’s draft to Mr. Longo that day, but he did not identify Mr. Nolan as its source. Mr. Longo understandably believed he was being provided with the Town’s (his client’s) comments on the draft bylaw. He testified that, although he thought it was inappropriate to remove

both clauses, “the hill to die on” was the requirement that staff and the Town solicitor report back to Council.

CAO Wingrove also wanted the reporting requirement included in the bylaw because Council was being asked to provide final approval on transaction documents that were not yet finalized. Ms. Wingrove testified that Council is never asked to make a final decision on materials that are not completed and available for Council’s review, but told the Inquiry that her “perspective had not won the day.”

Later on January 18, Mr. Longo circulated a revised version of the draft bylaw without removing the provision. His covering email stated that the provision requiring Town staff and the solicitor to report back to Council could be removed “if it [was] felt that such provision is unnecessary or undesirable.” Mr. Longo testified that he included this language because he did not want to appear difficult or unreasonable.

On the afternoon of January 19, Ms. Kennedy sent a new draft of the bylaw to Leo Longo and others at Aird & Berlis that included the requirement that the Town solicitor report back to Council. That evening, Mr. Houghton sent the final version of the bylaw to Mayor Cooper, Ms. Wingrove, Ms. Almas, Deputy Mayor Lloyd, and Dean Muncaster. This version did not include the reporting requirement. Mr. Houghton testified that he removed the reporting requirement from the final version of the bylaw at the direction of the mayor and deputy mayor.

Ms. Almas testified that the clauses requiring that the documents be to the Town solicitor’s satisfaction and requiring Town staff and the solicitor to report back to Council were not necessary because staff generally consulted with lawyers and Council would generally be informed of any major changes to the deal. Alectra Utilities Corporation (the successor to PowerStream) also made this point in its closing submissions.

While perhaps not strictly necessary, these requirements were important protections for the Town that Mr. Houghton removed despite the Town’s solicitors’ repeated suggestion they be included.

Privileged Information Obtained by Mr. Bonwick

PowerStream consultant Paul Bonwick emailed the mayor, the deputy mayor, and Mr. Houghton on January 19, 2012, to orchestrate a meeting among the mayor, deputy mayor, Mr. Houghton, Mr. Longo, and CAO Wingrove on that afternoon. He suggested the mayor and deputy mayor “provide clear direction” at the meeting to Mr. Longo and CAO Wingrove. Witnesses’ recollections of the conversations that followed this email differed, but Ms. Wingrove, Rick Lloyd, and Mr. Houghton agreed that the mayor and deputy mayor directed the removal of the reporting requirement from the Town’s authorizing bylaw. Ms. Cooper, in her testimony, recalled the meeting but did not have a detailed recollection.

Mr. Longo testified that corporate lawyers Ron Clark and Corrine Kennedy took on the next draft of the bylaw on January 18 and that “the pen had been taken out of [his] hand.”

Although the reporting requirement survived a further round of drafting by Mr. Clark and Ms. Kennedy, Mr. Houghton directed its removal from the bylaw’s final version. Mr. Houghton testified that he was carrying out instructions from the mayor and the deputy mayor, who did not want to pay Mr. Longo to report to Council when they were already paying Mr. Clark and Ms. Kennedy to put the contracts together. I do not accept Mr. Houghton’s evidence, and, in any event, he should have brought this issue to all of Council.

Mr. Bonwick reported back to PowerStream on the evening of January 18, noting:

The meeting went very well this afternoon with the Town’s lawyers Mayor, Deputy Mayor, CAO and Ed. The motion is completely in keeping with our discussion. It [*sic*] subject to the satisfaction of the Mayor with no mention of their lawyer ... All is moving ahead as per our discussion.

In his testimony, Mr. Bonwick stated that Mr. Houghton told him what happened at the meeting. In doing so, Mr. Houghton disclosed confidential communications between the Town’s representative and its lawyer.

Mr. Bonwick’s involvement in the finalizing of the authorization bylaw is remarkable in at least four respects. First, while Mr. Bonwick acted as an

advisor to the mayor during this time, he was also acting as a representative for PowerStream in this transaction. Second, in this capacity, Mr. Bonwick was seeking to arrange internal meetings with the Town's solicitor so that the authorization bylaw would be finalized in the manner preferred by PowerStream. Third, Mr. Bonwick obtained privileged information about that meeting, which he then disclosed to PowerStream. Fourth, and finally, Mr. Bonwick's involvement was remarkable because Mr. Houghton, Deputy Mayor Lloyd, and Mayor Cooper allowed it, despite knowing Mr. Bonwick worked for PowerStream, creating conflicts of interest. When cross-examined by the counsel for the Town, Ms. Cooper agreed that she should not have allowed Mr. Bonwick to be involved in discussions about meetings with Mr. Longo because she knew he was being paid to advance PowerStream's interests.

Mr. Houghton testified that he believed that dealing with Mr. Bonwick at this stage was fine because "PowerStream was part of the family." As I discuss below, PowerStream was not part of the family. In any event, there was no justification for involving Mr. Bonwick in confidential discussions regarding the authorization bylaw.

The Recapitalization Dividend – Less Than Expected

On January 18, 2012, after Collus and PowerStream had agreed on the formula to calculate the recapitalization dividend, Mr. Rockx of KPMG advised Mr. Houghton that the recapitalization dividend would likely be lower than \$5.2 million. Mr. Rockx explained:

Based on the 2010 financial statements we are at \$4.6 M from Collus Power + \$0.2 M from Solutions = \$4.8M. PowerStream [sic] estimates that the recap dividend from Collus Power alone will be \$5.6 M once calculated based on 2011 financial statements.

I think PowerStream [sic] is too aggressive ...

So – \$4.8M of dividends is real (based on 2010 financial statements) + an estimated increase of \$400k to \$500k for 2011 +/- a possible pick-up for the stub period from December 31, 2011 to the closing date.

Two days later, on January 20, Mr. Houghton emailed PowerStream's president and CEO Brian Bentz, its CFO John Glicksman, and Paul Bonwick to try to negotiate a guaranteed minimum dividend. Mr. Houghton wrote: "[W]e have been telling Council that our goal is to provide them with approximately \$15 million ... made up of \$8 million from 50 percent of the shares, \$1.7 million from the promissory note and \$5.3 million from the recap dividend." He asked PowerStream for a guaranteed minimum dividend of \$5.1 million.

Unsurprisingly, in an email sent midday on January 23, PowerStream refused to agree to a guaranteed minimum for the recapitalization dividend.

In an internal PowerStream email, John Glicksman described Mr. Houghton's request as "simply an increase in the amount we are paying for the equity," noting, "We had provided them with a detailed illustration of our recapitalization calculation on Nov 28th prior to the meeting where we went from 7.3M\$ to 8M\$ for the equity."

Mr. Houghton did not believe the Town should have been involved in the discussion about the dividend calculation. He testified that:

[T]his was the dividend that Collus was putting together to be able to provide to their shareholder. So, we were doing the work. And then we would provide the dividend.

...

But because PowerStream is now going to be the 50 percent partner, they needed to be involved because they needed to agree that what we were doing in the recapitalization is correct and – and fair for both companies.

So, Collus and PowerStream were working jointly together to be able to determine exactly the recapitalization dividend that then we would be in turn giving to the Town of Collingwood.

...

Again, the dividend comes from Collus ... if they had wanted to challenge the dividend, they certainly could have challenged them [*sic*].

Not only did Mr. Houghton not involve the Town in the dividend discussions but, as I discuss below, he did not subsequently advise Council that

the amount was less than expected at the January 23 meeting, where Council voted to proceed with the transaction.

Mr. Houghton's withholding of information undermined the Town's ability to oversee the transaction. There can be no question the Town should have been involved in discussions about the amount of the dividend. When Mr. Houghton presented the bidders' financial offers at the January 23 Council meeting, which I discuss below, he included the estimated dividend amount as part of the potential proceeds of the transaction. When the expected amount changed, Council should have been informed so it could consider its options.

Instead, when Mr. Houghton learned the dividend would be less than expected, he elected not to share that information with Council.

Approval of Sale at Public Council Meeting

At the January 23, 2012, public Council meeting, Council voted to enact the bylaw that authorized the mayor and the Town clerk to execute the share purchase agreement and the shareholders agreement. It was the first Council meeting at which the RFP and the sale process were discussed in a public session, not *in camera*. It was the first time the public learned the details of the deal.

The agenda package prepared for the public included a staff report that identified CAO Wingrove as the author. Mr. Houghton also prepared a slide presentation, which was displayed during the meeting.

The staff report and the slide presentation were consistent with and elaborated on Mr. Houghton's presentation to Council on June 27, 2011, in which Mr. Houghton presented the strategic partnership as the "preferred option" for the Town.

For example, the staff report suggested that KPMG had developed the concept of a strategic partnership. In particular, the staff report stated that, after KPMG had examined various options, the "strategic partnership option was chosen for several reasons." Further on, the staff report stated: "Upon review of the strategic ownership options prepared by KPMG, Town Council gave direction to Collus to further investigate the Strategic Partnership

options through the creation of a Strategic Partnership Task Team.” When the strategic partnership concept was introduced at the June 27 Council meeting, Mr. Houghton did not advise that KPMG never analyzed that option.

In addition, the staff report stated that “the Town of Collingwood will receive cash and other considerations valued at approximately \$15M.” The slide presentation provided more detail, saying the proceeds were estimated at \$14–\$15 million and noted the calculation was “predicated on three considerations: 50 percent share purchase, recapitalization, and redeeming of historical promissory note.” The presentation did not identify how much each element contributed to the estimated total.

At the Inquiry, Ms. Wingrove testified that the staff report was misleading to the extent it suggested the Town was receiving \$15 million for its shares, rather than \$8 million for the shares and the remainder for recapitalization and the promissory note.

Earlier in her evidence, Ms. Wingrove agreed the promissory note’s repayment and the recapitalization dividends were not “net benefit[s]” to the Town. In both cases, although the Town received a benefit (in the form of repayment of the loan and a dividend from recapitalization), Collus Power incurred a corresponding loss because repayment of the loan would deplete the company’s value and recapitalization would increase the company’s debt. Since the Town wholly owned Collus Power through the holding company, Ms. Wingrove agreed the dividend and repayment of the promissory note were neutral and that the only “new money” the Town received was the \$8 million cash payment from the shares.

Ms. Wingrove also testified that it was misleading for the staff report to suggest the Town was receiving \$15 million for the shares, when only \$8 million was a net benefit to the Town. Ms. Wingrove noted that the presentation identified that the \$15 million estimate comprised three components. She also testified, however, that the presentation was misleading because, although it identified three sources of money, it suggested that all of them were “new money,” when the recapitalization and promissory note were, in effect, neutral for the Town.

In response to Ms. Wingrove’s evidence, Mr. Houghton insisted Council was not confused about the sale’s financial elements. He argued in his closing submissions that he and KPMG’s John Rockx presented and explained

the financial offers at the December 5, 2011 Council meeting and that Council received a second explanation at the January 16, 2012 meeting. As a result of these meetings, Mr. Houghton argued in his closing submission, it would have been “virtually impossible” for a reasonable councillor to have been confused.

Kevin Lloyd testified that, while he recalled being told at the January 16 Council meeting that the amount of the dividend could change, no one explained the factors that might cause the dividend to increase or decrease.

Kevin Lloyd’s evidence at the Inquiry was consistent with email correspondence he and Councillor Chadwick sent around the transaction’s closing in July and August 2012.

On July 30, right before the transaction closed, Councillor Chadwick had questions about the final amount the Town would receive. That morning, Mr. Houghton, then the Town’s acting CAO, advised Council that the dividend would amount to approximately \$4 million in addition to the \$8 million for the shares and \$1.7 million for the payment of the promissory note. Councillor Chadwick responded: “Wait ... that’s \$12 million. I thought the total was \$15 million. What happened to the rest?” Mr. Houghton then explained that, as a result of Collus Power reducing its regulated liabilities in 2011, the dividend was less than expected.

In August, Mr. Chadwick continued to have questions about what the Town was receiving. On August 24, Treasurer Marjory Leonard sent Mr. Chadwick information regarding the funding available for new recreational facilities.* In the email, Ms. Leonard mentioned the Town having “\$8 million from COLLUS.” Councillor Chadwick replied to Ms. Leonard and Mr. Houghton: “Woah. Did I miss something? \$8 million from Collus. It started out as \$15m, then got reduced to \$13, how it it [*sic*] dwindle to \$8m?”

Mr. Houghton responded:

You never missed anything. This \$8M was the portion that PowerStream gave to the Town. The Town still holds the \$1.7M promissory note and the recapitalization was just of [*sic*] \$4M which was just slightly north of \$14M. The amount was always mentioned to be between \$14–\$15M with

* The recreational facilities are the focus of Part Two of my Report.

the real difference that we paid down more than a \$1.0M in regulated liability. This made our bottom line better (ie reduced liabilities by \$1M) but reduced the recapitalization by \$0.5M to the Town.

Councillor Chadwick forwarded Mr. Houghton's email to Deputy Mayor Lloyd and Councillor Kevin Lloyd, writing: "Are either of you aware that the Collus money was down to \$8 million? I don't recall that discussion. Did I miss something? It seems like an awful tumble from the optimism of \$15m back when the sale was first proposed."

Councillor Kevin Lloyd responded: "I believe there is another 7 plus million to come."

Councillor Chadwick responded: "Never mind. Ed called me and explained it. Brain fart. We have the money, but are keeping some for other projects ... or we can spend it all. Our choice."

The staff report was also the subject of comment by John McNeil of BDR, who valued the Collus Power shares for PowerStream when it was preparing its RFP response. Mr. McNeil emailed John Glicksman on the morning of January 23, before the Council meeting, with congratulations, writing: "I understand (and I am sure that you are aware) that the following staff report will be submitted tonight. It is drafted such that it 'sounds like' PowerStream is paying \$15 million for 50% of the shares! ... Well done!"

At the hearings, there was a disagreement about who authored the staff report. Ms. Wingrove and Mr. Houghton each said the other was responsible for the content of the staff report. Although identified as the author of the report, Ms. Wingrove testified that she prepared it using notes provided by Mr. Houghton. She said the information in the report was derived from Mr. Houghton and that she focused on formatting, clarity, and areas where she felt additional information was needed. Mr. Houghton denied he had generated the content of the staff report. He testified that Ms. Wingrove prepared the report and that he did not provide any input aside from minor edits.

Mr. Houghton was the primary speaker at the January 23 public Council meeting, as he was at the December 5 Council meeting.* Although KPMG's

* The January 23 Council meeting was recorded on video. A transcript of the meeting was prepared for the Inquiry.

Mr. Rockx attended the January 23 meeting, Mr. Houghton alone addressed the transaction's financial components. Mr. Rockx was asked to speak solely on the background of the electricity industry in Ontario, not the transaction's financial components – a subject on which he had detailed knowledge.

Mr. Houghton's comments mirrored the staff report and the slide presentation. Concerning the dividend, although Mr. Houghton indicated that the dividend component was a "moving target," he did not advise Council that, earlier in the day, he was told the dividend would be less than anticipated. This was a serious omission. Council should have had the opportunity to consider this information before voting to authorize the mayor and clerk to finalize the share sale transaction.

I pause here to make a final observation about Mr. Houghton's January 23 presentation to Council. Mr. Houghton confirmed what I have observed: that the strategic partnership concept prioritized Collus Power's interests over the Town's interests. Near the end of his remarks, Mr. Houghton stated, "We went out to the market and got money but that wasn't was important to us what we wanted to do was have a partner that could offer additional resources to our customers [*sic*]."

After the presentation, all eight Town councillors present voted in favour of authorizing the mayor and the clerk to execute the share purchase agreement and the unanimous shareholders agreement. During the Inquiry, it was suggested that Council's January 23, 2012, vote to proceed with the PowerStream transaction – and the earlier vote to pursue negotiations with PowerStream after the RFP – demonstrate it was Council, not Mr. Houghton or the Collus Power board, that made the final decision to proceed with the transaction. In this vein, Mr. Houghton's counsel argued in closing submissions that "[n]ever once during these many meetings did Mr. Houghton ever put his hand up to vote on the decisions to be made. Never once did we hear any evidence that Mr. Houghton forced the decisions of the Collus Power Board or Collingwood Council."

Mr. Houghton's submission misses the point. Council's decision to proceed with PowerStream was coloured by the issues I have identified throughout this Report. Council was not advised of the advantages PowerStream enjoyed throughout the process, including the early discussions with Mr. Houghton and the solar attic vent initiative (see Part One, Chapters 3-5).

Council's decision was also rooted in Mr. Houghton's misrepresentations at the June 27 Council meeting, which led the Town down the path toward a strategic partner. Finally, Council's decision was undermined by the fact that Mr. Houghton instructed Mr. Clark without providing updates to the Town, or seeking direction from the Town.

Mr. Houghton did not force Council's decisions but, through these actions, effectively thwarted any meaningful consideration of other options.

Council's vote was also undermined by the fact that three of the eight councillors who voted had, at the very least, apparent conflicts of interest that had not been disclosed. The mayor was in an undisclosed conflict as a result of her brother's work for PowerStream; the deputy mayor had obtained a favour from PowerStream; and Councillor Chadwick was awaiting payment for his work for PowerStream's agent, Mr. Bonwick.

As I discuss in Part One, Chapter 5, from August to December 2011, Mr. Bonwick's company paid Mr. Chadwick to prepare weekly news summaries about the energy industry, which Mr. Bonwick shared with his clients. Mr. Chadwick understood PowerStream was one of Mr. Bonwick's clients and, at the December 5 meeting, recused himself from the meeting before the RFP was discussed. However, he testified that he did not recuse himself on January 23, on the basis that he was no longer working for Mr. Bonwick. As I explain in Part One, Chapter 5, Councillor Chadwick should have recused himself because, among other reasons, Mr. Bonwick still owed him money for his work and Mr. Chadwick was interested in further work. A reasonably informed person would be left with the impression that Mr. Chadwick might have been open to influence.

Deputy Mayor Lloyd emailed Mr. Bonwick during the Council meeting. Following CAO Wingrove's remarks on the Collus Power sale, the deputy mayor sent Mr. Bonwick an email that simply said, "HOME RUN." Mr. Bonwick forwarded the deputy mayor's email to John Glicksman at PowerStream later that evening. Mr. Glicksman replied: "Thanks and thanks so much for your support."

Transaction Documents Signed

Mr. Bonwick Asked to Arrange for Signatures

PowerStream and Collus Power continued negotiating the transaction documents in February 2012. On February 29, Ron Clark sent Leo Longo copies of the transaction documents to be signed by the mayor and the clerk, along with a memo “for the purposes of [his] briefing [them].”

Mr. Longo forwarded the documents to Mayor Cooper and Clerk Almas, offering to “discuss this with you at your convenience,” copying CAO Wingrove and Ed Houghton. Mr. Houghton forwarded the email chain along with the Aird & Berlis memo to Mr. Bonwick, asking him to “ensure that this takes place before end of day Friday.” Mr. Bonwick subsequently sent the email chain to his sister, Mayor Cooper, asking her to chat. He then forwarded this email chain including the memo and the emails from Ron Clark and Leo Longo, to Ed Houghton, Brian Bentz, John Glicksman, Dennis Nolan, and PowerStream executive Mark Henderson, advising that a meeting to sign the documents had been scheduled.

Although Sandra Cooper’s evidence about this email exchange was inconsistent, she did testify that she was “frustrated” that Mr. Bonwick instead of Mr. Houghton – who had been “involved in the ... transaction throughout” – contacted her about signing the documents.

This email chain is another example of Mr. Houghton discussing confidential Town business with Mr. Bonwick and PowerStream, without the Town’s knowledge. Mr. Houghton testified that he asked Mr. Bonwick to ensure the mayor and clerk signed the documents because it was the easiest way to facilitate the task and, “at this point in time, that PowerStream was part of the family.” Mr. Bonwick gave similar evidence, asserting that Mr. Houghton’s request was made “post-transaction.”

PowerStream was not a “part of the family.” It was a for-profit corporation negotiating the terms of an impending business transaction in its own best interest. Mr. Houghton should have treated it as such. Instead, he provided PowerStream with a legal memo intended for the Town and asked the company’s agent to coordinate the Town’s execution of the documents.

Mr. Longo, Mr. Clark, and Mr. Nolan agreed the memo was protected

by solicitor-client privilege. In its closing arguments, Alectra “acknowledge[d] that it did not take any steps to address with Mr. Bonwick that the Aird & Berlis memorandum which he forwarded to PowerStream was a privileged communication.” Failure to acknowledge receipt of the memo and return it is another example of the failure of Mr. Bentz, Mr. Glicksman, and Mr. Nolan to responsibly address red flags raised by the actions of Mr. Bonwick, their agent. I appreciate that one can debate whether the memo’s information was significant, but that misses the point. Legal advice that the Town received about the documents to be signed found its way to Mr. Bonwick, who was representing the party on the other side of the transaction. Disclosure of this kind of information leads to the conclusion that the Town’s information was not being kept confidential in a transaction involving the sale of an interest in one of Collingwood’s most significant assets.

In his email advising PowerStream and Mr. Houghton that the meeting had been arranged, Mr. Bonwick suggested Mr. Houghton attend because “[t]heir solicitor on occasion is not as constructive as one would hope.”

The meeting to review the transaction documents was scheduled for March 1, 2012, but witnesses had differing memories about who participated. Ms. Cooper, Ms. Almas, and Mr. Longo agreed they were involved in the meeting along with CAO Wingrove. Ms. Cooper recalled they met in person, while Ms. Almas and Mr. Longo agreed Mr. Longo attended by phone. Ms. Cooper also recalled that Ron Clark and Corrine Kennedy called into the meeting. Ms. Almas testified that Mr. Houghton called in, but also said she did not have a detailed recollection of the meeting. Mr. Clark did not recall if he met with anyone from the Town before the documents were signed.

The Inquiry also heard different accounts of what took place at the meeting.

Ms. Almas testified that Ms. Wingrove raised concerns at the meeting, but she could not recall what those concerns were. She further recalled that Mr. Longo, who was not familiar with the electricity sector aspects of the agreements, provided general information and Mr. Houghton sought to explain why certain decisions had been made. At points, Ms. Almas recalled that the discussion was “a little heated” because CAO Wingrove was “asking

some targeted questions.” Ms. Almas said she was comfortable signing the documents after the discussion because they had been provided to the Town by Aird & Berlis and reviewed by Leo Longo.

Mr. Longo was present on the call, but did not have a detailed recollection of what was discussed. He said he was “not asked much.”

Mayor Cooper, Clerk Almas, and CAO Wingrove did not review the transaction documents before they were executed.

Two crucial issues were not meaningfully discussed at all with the mayor or the clerk before they executed those documents: the change in the recapitalization dividend the Town would receive; and a “letter of intention” about the shared services agreements among Collus Power, Collus Solutions, the Collingwood Public Utilities Service Board, and the Town of Collingwood.

The Decreased Dividend – Briefing of the Mayor

By March 5, 2012, Collus Power and PowerStream knew the recapitalization dividend would be significantly lower than originally estimated. Mr. Houghton advised the Town of the decrease in July.

On March 5, Corrine Kennedy wrote to Leo Longo, advising him the dividend would be “significantly less than the original \$5.6M that was expected ... Though the parties had a sense it would be lower and was getting lower as the deal went on, I think they are surprised by the number.” On March 6, Ms. Kennedy informed Mr. Longo that “Ed Houghton has confirmed that he is briefing the mayor and dealing with this directly and there is nothing for us to do on our end.” Mr. Longo did not discuss this information with anyone from the Town.

Mr. Houghton “took it upon [himself]” to brief the mayor because finance was not Mr. Longo’s area of expertise. Mr. Houghton testified that finance “was certainly not [his] area of expertise either,” but John Rockx had briefed him. Mr. Houghton said he met with the mayor and explained Mr. Rockx’s recapitalization dividend calculations.

Mr. Houghton sent Ms. Cooper an email on the afternoon of March 6, providing her with a draft email for her “consideration to send to Leo [Longo].” The draft stated that Mr. Houghton had explained to her that the

recapitalization dividend would be about \$4.126 million. Mr. Houghton advised the mayor that the email should be copied to Ron Clark, Corrine Kennedy, John Rockx, Dean Muncaster, Kim Wingrove, Sara Almas, and himself. Ms. Cooper forwarded Mr. Houghton's email to her executive assistant, asking her to craft a letter for the mayor's review and directing her to Mr. Houghton for any clarification.

Ms. Cooper testified that, before she signed the transaction documents, she did not recall anyone informing her that the recapitalization dividend would be lower than originally expected. There is no evidence that Town Council was advised of the significant decrease in the recapitalization until July 29, 2012, two days before the transaction closed.

Shared Services Unresolved

On March 6, 2012, the Town, the Collus entities, and PowerStream entered into a share purchase agreement and related documents. Among other things, the share purchase agreement required the parties to amend or confirm the shared services agreements prior to the closing of the transaction.

On the same day the mayor and the clerk signed another document, one not included in the documents provided by Aird & Berlis. It was a letter regarding the shared services agreements in place among Collus Power, Collus Solutions, the Collingwood Public Utilities Service Board, and the Town of Collingwood. The letter stated that the Town would continue to purchase services under the agreements and that any amendments to the agreements would comply with Ontario Energy Board regulations.

It is not clear who negotiated this letter on behalf of the Town. It wasn't Aird & Berlis or Collus Power CFO Tim Fryer. There is no evidence that anyone from the Town reviewed the letter before it was signed. In a March 5 email, Ms. Kennedy alerted Mr. Longo to its existence, but Mr. Longo did not have further discussions with the mayor or Town clerk. As I discuss below, the shared services agreements were not dealt with before the transaction closed. As I discuss in Part One, Chapter 10, the status of the agreements remained an unresolved issue after the share sale transaction closed.

Share Sale Approved by the OEB

The share purchase agreement between the Town and PowerStream stated that PowerStream would prepare and submit a MAADs (mergers, amalgamations, acquisitions, and divestitures) application to the Ontario Energy Board (OEB).^{*} The application was filed on March 9, 2012. On April 25, the OEB informed Collus Power that its application would be considered on the basis of written documents submitted by the applicants.

On July 12, the OEB approved the Town's and PowerStream's MAADs application. As discussed in Part One, Chapter 2, the board considers the "impact of the proposed transaction on price, reliability and quality of service; and on the cost effectiveness, economic efficiency and financial viability of the electricity distribution sector." In assessing the application, the OEB does not typically consider the purchase price of the transaction, the process by which the vendor decided to sell its utility to the purchaser, or whether an alternative transaction would be more beneficial.

Closing of the Transaction

The Unanimous Shareholders Agreement

The sale of 50 percent of the shares in Collingwood Utility Services to PowerStream was completed on July 31, 2012. The transaction was finalized with the signing of a unanimous shareholders agreement among the Town of Collingwood, the Collingwood Utility Services Corporation, and PowerStream, along with a number of other documents.

The unanimous shareholders agreement contained certain clauses that would govern the relationship between the Town and PowerStream as joint owners of Collingwood's electric utility. The agreement contained a buy-sell provision, or "shotgun clause," which allowed the Town or PowerStream to offer to purchase all the shares of the other shareholder at any time. Such an offer would trigger a 20-day period during which the other shareholder

* MAADs applications are discussed in Part One, Chapter 2.

had either to accept the offer and sell all its shares or to buy the offering shareholder's shares at the offered price per share. The provision could not be used within the first 30 months of the partnership.

The agreement also stated that certain corporate actions could not be taken unless both the Town and PowerStream agreed to them. These included actions taken to:

- a. acquire, merge, or amalgamate with another electricity distributor;
- b. dispose of, rent, or sell any part of Collus PowerStream;
- c. spend more than \$500,000;
- d. borrow money outside the ordinary course of business;
- e. make, amend, or repeal corporate by laws; and
- f. change Collus PowerStream's dividend policy.

Under the unanimous shareholders agreement, the Town, and PowerStream also granted each other a right of first refusal: neither party could sell all or part of its shares to a third party without first giving the other shareholder the opportunity to purchase the same number of shares for the same price.

The Town also decided at the closing of the transaction that it would not immediately request repayment of the promissory note. Under the share purchase agreement signed on March 6, the Town retained the right to request the note's repayment at any time.

Ron Clark testified that he did not have a recollection of the mechanics of the closing and the way in which the documents were signed, though he noted he likely coordinated with Corrine Kennedy on the matter and that she probably would have been aware of the transaction closing. Nor could Mr. Clark recall whether anybody from Aird & Berlis was present at the closing of the transaction.

Mr. Longo was not involved in any of the discussions or negotiations leading up to the document signing on July 31. He did not provide any advice on elements of the agreement such as the shotgun clause, and he did not know whether the Town sought this advice from anyone else regarding the agreements. Mr. Longo did not participate in the closing of the transaction.

Sara Almas, who was present when the transaction closed, did not recall whether she received a memo outlining the agreement, similar to the one

she had received before signing the share purchase agreement in March 2012. She did not read the unanimous shareholders agreement before signing it, but testified that she relied on others to advise her on its contents.

The Shared Services Side Letter

The closing of the transaction also involved the execution of a document regarding the shared services agreements' status. By July 31, 2012, the new shared services agreements still had not been finalized.

Mr. Houghton testified that the agreements were not finalized for two reasons. First, he was of the view that all parties were complacent because they wanted the agreements to continue. Second, Collus Power staff was extremely busy in the months leading up to the transaction's completion, and it was difficult to assemble all the information and devote the required amount of labour to finalize the agreements. As I discuss in Part One, Chapter 9, Mr. Houghton had been appointed acting CAO of the Town of Collingwood in April 2012. While admitting that, in that capacity, he should have devoted more attention to the agreements, he said his many responsibilities to the Collus corporations, the Collingwood Public Utilities Service Board, and the Town left him unable to do so.

Mr. Fryer similarly testified that he was not surprised the agreements were not finalized before the closing of the transaction, given the amount of work required to complete them. Collus controller Cindy Shuttleworth also believed the volume of work required to complete the transaction was an impediment to the agreements' finalization. Mr. Nolan was of the view that the agreements were not finalized because of insufficient time to perform the necessary due diligence before the closing of the transaction.

Mr. Nolan and Ms. Shuttleworth also testified that they could not recall any discussions of pushing back the transaction closing date to ensure the shared services agreements were completed and finalized.

There was conflicting evidence at the Inquiry about which members of Collus's management were responsible for finalizing the shared services agreements before the transaction closed. Mr. Fryer testified that, around March 2012, responsibility for finalizing the shared services was assigned to Ms. Shuttleworth and Mr. Houghton. By contrast, Ms. Shuttleworth

believed the finalization was Mr. Fryer's responsibility. Ms. Almas stated that Mr. Houghton and Mr. Clark were responsible for negotiating the agreements. In his closing submissions, Mr. Houghton argued that Collus Power director David McFadden instructed the lawyers on the agreements.

The shared services agreements were not finalized. Instead, Collingwood Utility Services, the Collus corporations, the Town of Collingwood, and PowerStream signed a letter agreeing to waive a requirement in the share purchase agreement that the shared services be reviewed, amended, or confirmed before the closing of the transaction.

This letter stated that the service agreements would be reviewed and amended within 12 months of the closing of the transaction and would comply with certain conditions, which included:

- a. That Collus PowerStream would provide services to the Town of Collingwood on a fully allocated cost basis plus a return on investment;
- b. That Collus PowerStream would not pay more than the fair market value for any services supplied by the Town of Collingwood;
- c. That the shared services agreements would be reviewed annually so that the costs of the services under the agreements could be revised. If the parties could not agree on a revised cost of services, the cost would increase by 3.5% of the previous year's costs;
- d. That there would be a five-year term of the Service Agreements; and
- e. If the parties were unable to determine the cost of services, the cost would be determined by an independent accounting firm.

The letter was signed by Clerk Almas and Mayor Cooper on behalf of the Town; Mr. Houghton on behalf of Collingwood Utility Services and all the Collus corporations; and Mr. Nolan on behalf of PowerStream.

As with the March 6, 2012, letter of intention regarding the shared services agreements, it is unclear who negotiated or reviewed the letter on behalf of the Town. Mr. Fryer was not involved in the negotiation, nor was he consulted in any way about how shared services should be addressed after the share sale. Ms. Shuttleworth similarly testified that she did not recall reviewing the letter before it was signed. Mr. Houghton, who testified

that Ms. Shuttleworth and Mr. Clark reviewed the agreement before it was signed, had no knowledge of whether anybody from the Town reviewed the agreement.

Mr. Clark similarly had no knowledge of anybody providing advice to the Town before the letter was signed. Mr. Longo, who testified that he was not consulted at any point on how the shared services agreements might affect the transaction, further stated that he was never shown the July 31 letter and was never asked to advise on it.

Ms. Almas stated that somebody explained the letter to her before she signed it, but she did not recall who provided the explanation. She also indicated she would generally consult with the CAO before signing such agreements. However, she did not do so in this case because the CAO was Mr. Houghton, who was already signing the agreement on behalf of the Collus corporations.

Rick Lloyd testified that no one told him that selling 50 percent of the shares of Collus would require negotiation of the shared services agreements.

As I discuss in Part One, Chapter 10, the shared services agreements were the subject of ongoing negotiations between the Town and Collus PowerStream and were never finalized.

Future Acquisitions

The closing documents also included a letter dated July 31, 2012, from Dennis Nolan, PowerStream's general counsel and corporate secretary, to Mayor Cooper. Among other things, Mr. Nolan wrote:

This letter is to confirm that it is the intent of PowerStream Inc. ("PowerStream") and The Corporation of the Town of Collingwood ("Town of Collingwood") to pursue significant growth opportunities on a prudent and profitable basis, where it enhances the Corporation's strategic position, and creates economies of scope and scale. Specifically, the Corporation will pursue opportunities for the acquisition, merger or other business arrangements with local distribution companies within the CHEC Group of LDCs, and consider other opportunities for acquisition, merger or other business arrangements, upon the recommendations of the Management and the Board of the Corporation, and such proposals shall

be reviewed and considered by each Shareholder, acting in good faith, in the best interests of the Corporation.

In accordance with Section 14.11 of the Shareholders Agreement, this is also to confirm that PowerStream and the Town of Collingwood agree that the Corporation shall have the first right to evaluate and or pursue such M&A [mergers and acquisitions] opportunities that may arise with CHEC Group of LDCs, and that PowerStream will first consider pursuing M&A activities with LDCs having less than 20,000 customers, and within a reasonable geographic proximity to Town of Collingwood through the Corporation, prior to pursuing such opportunities through PowerStream.

Mayor Cooper and Clerk Almas signed the letter on behalf of the Town of Collingwood, and Mr. Nolan on behalf of PowerStream. Mr. Nolan testified that, according to the letter, every time PowerStream considered acquiring or merging with a local distribution company (LDC) in the CHEC group,^{*} it was required to provide the Town with the opportunity to participate in the merger or acquisition through the strategic partnership. If the Town indicated it was not interested in the transaction, then PowerStream could pursue a merger or acquisition of a CHEC group LDC on its own.

Ms. Almas did not have a specific recollection of signing this letter. Mr. Longo testified that no one showed him the letter before it was signed.

Council Advised of Final Proceeds from the Transaction

Two days before the transaction closed, Ed Houghton updated Council on the proceeds the Town would receive. In an email to Council on July 29, 2012, he wrote:

If all goes well Monday and Tuesday morning, the transaction between Collus Power and PowerStream will take place late Tuesday afternoon.

In Councillor Cunningham's terms, we will be delivering two suitcases of money. One suitcase with \$8,000,000 from PowerStream and one from

* The CHEC group was made up of 12 local distribution companies, including Collus, that shared resources (see Part One, Chapter 2).

Collus Power with approximately \$4,000,000 (the recapitalization dividend calculation is being completed tomorrow). As you know, the Town of Collingwood will still hold the Promissory Note in the amount of \$1,710,000.

As noted above, Councillor Chadwick responded: “Wait ... that’s \$12 million. I thought the total was \$15 million. What happened to the rest?”

Mr. Houghton replied:

The estimates we discussed with Council was [*sic*] based on 2010 Financials and were between \$14 and \$15 M. The totals I noted are just under \$14 M if you include the Promissory Note which Council has requested to not be monetized at this time. The good news for Collus is we have reduced our regulated liability by almost \$1 M since December 31st, 2010 and that helps out the balance sheet but reduces the recapitalization dividend by \$1/2 M.

There will also be a true up once we have completed the 2012 Financials up to July 31st. The totals also exclude the transaction costs.

This is still a good news story.

Draft Dividend Calculations

In the fall of 2012, Collus adjusted the dividend paid to the Town. The adjustment was based on financial statements showing the financial position of Collus Power and Collus Solutions as at July 31, 2012. On September 26, Cindy Shuttleworth sent John Rockx draft financial statements for Collus Power and Collus Solutions dated July 31. Mr. Rockx replied: “We will need to be creative to get an additional dividend due to all the changes in accounting etc.” The following day, Mr. Rockx sent Ms. Shuttleworth draft dividend calculations that provided for a declared dividend of \$20,443 from Collus Solutions and a declared dividend of “about \$276k” from Collus Power. According to Mr. Rockx, the declaration of the Collus Power additional dividend would “require PowerStream [*sic*] to agree to certain changes to the formulas in the Share Purchase Agreement.”

On September 27, Ms. Shuttleworth sent an email to Mr. Houghton, stating: “On a scale of 1 to 10 where does your opinion fall? ... [w]ith 1 being not concerned over the town getting any further dividend. And 10 being, lets

[sic] get the maximum we can push for.” Mr. Houghton responded: “I for sure.” Ms. Shuttleworth forwarded Mr. Houghton’s response to John Rockx, stating: “See below. We are interested in wrapping up the dividend adjustment in the quickest way and path of least resistance. Don’t want to push hard with PowerStream.”

This email chain serves as further confirmation that Mr. Houghton was not providing updates on the negotiations to, or seeking direction from, Town Council at this stage in the transaction.

Payments Made

To the Town in Connection with the Share Sale

The Town received payments related to the share sale transaction from three sources:

1. PowerStream, which paid the Town cash for the Collus shares it bought.
2. Dividends – a recapitalization dividend and another dividend from the Collus companies.
3. Collus PowerStream, which repaid the promissory note the Town had issued to Collus Power.

These payments are summarized here.

PowerStream’s Payments to the Town for the Collus Shares

The Town received a total of \$7,999,970 from PowerStream in payment for the Collus shares. The Town paid \$30 in service charges in connection with PowerStream’s share payments.

Recapitalization Dividend and Other Dividends Paid to the Town

The Town received two dividends on the transaction’s closing: \$4,363,960 recapitalization dividend, and \$234,429 additional dividend.

Repayment of the Promissory Note in 2015

At the closing of the transaction, the parties agreed that the Town could request the promissory note's repayment at any time. The Town requested repayment in 2016, and the Town received repayment totalling \$1,710,170 on December 31, 2015.

Bonus Payments to Collus Staff

In March 2012, Collus CEO Ed Houghton received a \$40,000 bonus for his work concerning the share sale to PowerStream. Two other staff members received bonuses. Pam Hogg, Mr. Houghton's assistant and Collus board secretary, as well as Collus controller Cindy Shuttleworth each received \$15,000. Ms. Hogg and Ms. Shuttleworth testified that they understood the bonus was compensation for the many additional hours they worked to support the transaction.

During their audit for the 2012 fiscal year, Collus's auditors did not find a record showing the board had authorized the bonus payments. Rather, the auditors received a memorandum from Joan Pajunen, chair of Collus Solutions' Human Resources Committee, stating that the committee had approved the bonuses. There were no minutes from the Human Resources Committee meeting, however. The auditors noted that significant bonuses should be approved by the board prior to payment.

Since the payments were recorded in Collus's financial records and reviewed by its auditors, I accept that the payments to Ms. Hogg and Ms. Shuttleworth were compensation for their additional efforts in supporting the transaction.

In an email to a friend on March 26, 2012, Ms. Shuttleworth wrote: "I have been working like a dog for two months. Not much to envy. Well then again I did get 15,000 on Thursday for my work closing the PowerStream [*sic*] deal. Paid off my car in full. :) Shhhhh. Secret."

In an affidavit, Ms. Shuttleworth explained she used the word "secret" in this email because she was disclosing salary information, which was typically confidential. She added that she was not told by anyone to keep the payment secret. Ms. Hogg also testified that she was never told the bonus was a secret but understood it to be confidential in the same way as any salary information.

When Ms. Shuttleworth's email is coupled with the auditors' difficulty in confirming board authorization for the sale, questions are naturally raised. After considering all the evidence, I accept Ms. Shuttleworth's testimony that the bonuses were paid for additional work done. The only other bonus paid in relation to the transaction was a \$30,000 bonus to Dean Muncaster.

PowerStream's Payments to Compenso

In 2011–12, PowerStream paid Mr. Bonwick's company, Compenso Communications Inc., \$323,997 in fees and expenses as shown in Table 8.1.

Table 8.1: Amounts PowerStream Paid to Compenso Communications Inc.

<i>Date</i>	<i>Cheque no.</i>	<i>Monthly amount'</i>	<i>Additional expenses</i>	<i>Invoice total</i>
1-Jun-11	717	12,300	898	13,198
1-Jul-11	720	12,300		12,300
1-Aug-11	726	12,300		12,300
1-Sep-11	731	12,300	5,373	17,673
1-Oct-11	735	12,300	2,820	15,120
1-Nov-11	738	19,450	1,462	20,912
1-Nov-11	739	14,300		14,300
1-Dec-11	745	19,450		19,450
1-Jan-12	751	19,450		19,450
1-Feb-12	759	19,450		19,450
1-Mar-12	766	19,450		19,450
1-Apr-12	776	19,837	479	20,317
1-May-12	784	19,775		19,775
1-Jun-12	791	19,775		19,775
1-Jul-12	799	19,775		19,775
1-Aug-12	807	19,775		19,775
1-Sep-12	812	19,939	1263	21,202
1-Oct-12	821	19,775		19,775
Total		\$311,701	\$12,295	\$323,997

Note: 1. None of the amounts were disclosed to Council or the Strategic Partnership Task Team.

Source: Foundation Document 1.

From Collus Power / Collus PowerStream to Compenso

On January 1, 2013, Collus PowerStream paid Paul Bonwick's company, Compenso, \$16,950. The payment followed a conversation between Brian Bentz and Ed Houghton.

According to Mr. Bentz, sometime in 2012, Mr. Houghton phoned him and suggested the transfer of Mr. Bonwick's retainer with PowerStream to Collus PowerStream. Mr. Bentz agreed with the suggestion. At the time, the PowerStream board had already contemplated that Mr. Bonwick's fee should be shared because he was working on the growth strategy for both Collus and PowerStream. Mr. Bentz testified that Compenso's contract with PowerStream was then moved to Collus PowerStream.

In his testimony, Mr. Houghton denied that moving Mr. Bonwick's contract was his idea. He testified that, although there had been discussions about moving Mr. Bonwick's contract to Collus, he pushed back because he wanted to keep costs low. Mr. Houghton then testified that, at some point, Mr. Bentz said PowerStream would pay Mr. Bonwick's monthly fee until the end of 2012, at which time it would shift to Collus PowerStream for a three-month trial. Mr. Houghton testified that he considered this arrangement to be fair.

Cindy Shuttleworth, Collus PowerStream's controller and later CFO at the time of the events examined by this Inquiry, testified that before January 1, 2013, Mr. Houghton advised her that Collus PowerStream had retained Compenso to develop a communications strategy concerning Collus PowerStream's plans for future growth. She said the board did not approve the arrangement, and she did not review Compenso's contract because the monthly fee fell within Mr. Houghton's authorization limit. Ms. Shuttleworth did not know how long the arrangement would last. Still, she assumed it would be short term because the monthly fee "was a significant amount of money" that would negatively affect the company's profitability.

As I discuss further in Part One, Chapter 10, this arrangement was short-lived. On February 1, 2013, Collus PowerStream made a second payment to Mr. Bonwick for \$16,950. However, it was subsequently clawed back after a news report in March 2013 stated that the Ontario Provincial Police were investigating matters relating to Mr. Bonwick and the Town.

Related to Solar Attic Vents and to Shirley Houghton

As I describe in Part One, Chapter 5, Collus Power and PowerStream purchased solar-powered attic vents – an invention intended to reduce home energy costs – from International Solar Solutions Inc. (ISSI) as part of a marketing campaign. ISSI in turn paid a portion of the profits for the sale of the vents to Mr. Bonwick’s company, Compenso. Contemporaneous emails from Peter Budd, a co-founder of ISSI, suggest Mr. Bonwick, Mr. Houghton, and Mr. Budd had entered into an arrangement whereby Mr. Bonwick and Mr. Houghton would share in the profits of the sale of the vents. Mr. Houghton, Mr. Bonwick, and Mr. Budd denied that any such arrangement was finalized.

ISSI’s financial records show sales to Collus Power totalling \$100,750 and to PowerStream totalling \$77,500 during the year ended June 30, 2012. These sales are set out in Table 8.2.

Table 8.2: ISSI Sales to Collus Power and PowerStream

<i>Date</i>	<i>Invoice number</i>	<i>Purchaser</i>	<i>Amount</i>
2-Sep-11	2	Collus Power Corp.	15,035
21-Sep-11	4	Collus Power Corp.	62,465
20-Oct-11	6	Collus Power Corp.	23,250
			\$100,750
2-Sep-11	3	PowerStream Inc.	15,035
21-Sep-11	5	PowerStream Inc.	62,465
			\$77,500

Source: Foundation Document 1.

ISSI, in turn, made two payments to Compenso in 2011 relating to the sales to Collus Power and PowerStream: \$35,001.75 (including HST) on September 3, 2011, and \$4,844.28 (including HST) on November 30, 2011, which total \$39,846.03 (including HST).

Compenso paid Shirley Houghton a total of \$27,390 between December 1, 2010, and December 31, 2012, including \$19,350 shortly after Compenso received \$35,001.75 from ISSI for the sales to PowerStream and Collus Power. The payments to Shirley Houghton are set out in Table 8.3.

Table 8.3: Payments from Compenso to Shirley Houghton

<i>Date per bank statement</i>	<i>Payee per general ledger</i>	<i>Cheque number</i>	<i>Amount (\$)</i>	<i>Notes</i>
9-Mar-11	Shirley Houghton	18001	240	1
8-Jun-11	S. Houghton	1861	360	
8-Jul-11	S. Houghton	1867	2,000	
29-Aug-11	S. Houghton	1878	540	
11-Sep-11	S. Houghton	1888	2,400	
6-Oct-11	S. Houghton	18942	19,350	2
3-Aug-12	S. Houghton	20493	2,500	3
Total			27,390	

Notes:

1. Cheque memo line indicates February Services. The Compenso general ledger classifies this cheque as a consulting expense.
2. Cheque memo line indicates Florida house / office.
3. Cheque memo line indicates July 27/12 invoice.

Source: Foundation Document 1.

As I discuss in Part One, Chapter 5, Ms. Houghton, Mr. Houghton, and Mr. Bonwick testified that \$18,000 of the \$19,350 Compenso paid to Ms. Houghton on October 6, 2011, was for the rental of the Houghtons' Florida property. I do not accept that evidence. As a result, the \$18,000 paid to Ms. Houghton remains unexplained.

Conclusion

After the transaction closed, Collus became Collus PowerStream. In the meantime, the company's CEO, Mr. Houghton, had also been appointed as the Town's acting CAO. Council terminated Ms. Wingrove's employment in April 2012.

Mr. Houghton stepped down as acting CAO a year later, in April 2013, after which tensions grew between the Town and its utility. The strategic partnership did not survive.

Changing Collingwood's CAO

Kim Wingrove was fired as chief administrative officer (CAO) of the Town of Collingwood on April 3, 2012, but the process leading up to her termination had been going on for some weeks. Throughout March and April 2012, Deputy Mayor Rick Lloyd kept Paul Bonwick informed of his criticisms of Ms. Wingrove's performance as CAO, as well as of the process leading to her termination. Mr. Bonwick offered advice to his sister, Mayor Sandra Cooper, directly on some aspects of this process. Mr. Lloyd and Mr. Bonwick then together persuaded Ed Houghton to accept the position of acting CAO.

By April 12, 2012, a CAO who, according to Mr. Lloyd, had a "lack of ability" had been replaced by Mr. Houghton, who was considered by Mr. Lloyd to be a "friend," and who had directed Mr. Bonwick toward two business relationships that proved to be lucrative: PowerStream Incorporated and International Solar Solutions Inc.* As I explore in Part Two, Mr. Lloyd, Mr. Houghton, and Mr. Bonwick would go on to become central figures in the Town of Collingwood's decision to construct two new recreational facilities: an arena and pool.

Council Terminates Kim Wingrove's Employment

Discussions Before Termination

Mr. Bonwick discussed the CAO's performance with the mayor and deputy mayor at various points during Ms. Wingrove's tenure. On January 19, 2011, Mr. Bonwick emailed Ms. Cooper, "Also curious how you made out with the

* Mr. Houghton and Mr. Bonwick worked together both formally and informally on other active business ventures. See Part One, Chapter 1, for more details.

CAO in clarify [*sic*] roles and conduct.” At the Inquiry hearings, Ms. Cooper could not recall why Mr. Bonwick emailed her about the CAO but acknowledged speaking with him.

On June 16, 2011, Ms. Cooper forwarded to Mr. Bonwick an email she had sent to Council and the CAO cancelling a strategic planning session Ms. Wingrove had arranged for Council. Ms. Wingrove testified that she had retained a consultant to facilitate a day-long planning session involving Town department heads and Council members. The purpose of the session was to develop a shared understanding of Council's priorities and to provide order and structure to how Council and staff would move forward. Ms. Wingrove could not recall if the mayor gave her any notice that she intended to cancel the session, other than the email to Council.

On March 2, 2012, Mayor Cooper instructed Ms. Wingrove to “stand down” on a water utility matter in an email chain, including Mr. Lloyd. Mr. Lloyd once again forwarded the chain – which concerned a private instruction from the mayor to the CAO – to Mr. Bonwick.

I have already discussed that Mr. Bonwick was involved in privileged discussions about the share sale transactions which resulted in the Town passing a bylaw that did not include certain protections Ms. Wingrove wanted to include.

Matters appear to have come to a head on March 10. Mr. Lloyd emailed Ms. Cooper and Mr. Bonwick:

Sandra I would really like to meet with you and Paul ASAP.

I need to discuss my concerns I have about Kim. I have had enough and the lack of ability. I am so pissed I want to deal with it ASAP.

I haven't really expressed how I really feel YET!!!! But feel if we don't deal with her I'm going to explode!!!!

Mr. Lloyd then sent a follow-up email to Mr. Bonwick, “Hehehehehehe.”

Mr. Lloyd testified that he included Mr. Bonwick on the email to Mayor Cooper because Mr. Bonwick was the mayor's advisor. However, Mr. Lloyd said that he did not recall why he sent the email or about what he was angry. He did not share these frustrations with anyone else on Council at the time, nor did he inform Council members that he had sent this email to Mayor

Cooper and Mr. Bonwick. Mr. Lloyd said that he wasn't expecting any outcome from his email; he "just wanted to vent." He also did not explain why he felt Mr. Bonwick should be at a meeting with himself and the mayor to discuss his concerns about the Town's CAO. In response to Mr. Lloyd's email, Ms. Cooper wrote that she would call him shortly.

Ms. Cooper told the Inquiry that the deputy mayor's frustration had built up over time. She testified that Mr. Lloyd believed that "items at the Council table weren't being addressed in a timely fashion." When asked if she shared his concerns, Ms. Cooper replied that she thought that Ms. Wingrove was not a "good delegator." Ms. Cooper testified that she spoke with Mr. Lloyd after receiving this email and suggested that Council as a whole should provide input on this issue. She also told Mr. Lloyd that including Mr. Bonwick on his email was inappropriate. Mr. Lloyd testified that Ms. Cooper "ream[ed] him out" about including her brother on email correspondence concerning Town staff.

Ms. Cooper and Mr. Bonwick disagreed about whether they discussed Mr. Lloyd's email.

Mr. Bonwick said in his evidence that he did not know why Mr. Lloyd included him in the email. Mr. Bonwick testified that he forwarded Mr. Lloyd's email to his sister, asking her to give him a call. He claimed that he told Ms. Cooper, "this is pretty bizarre, you ... might want to deal with this." Ms. Cooper, however, denied speaking with her brother about Mr. Lloyd's email or, more generally, about Ms. Wingrove at any time between receiving Deputy Mayor Lloyd's March 10, 2012, email and Ms. Wingrove's termination. Ms. Cooper explained that she did not address the inappropriateness of Mr. Bonwick's involvement in discussions about Town staff with him because she had dealt with the deputy mayor and felt "that would be the end of it." Council terminated Ms. Wingrove's employment on April 3, 2012.

Mr. Bonwick testified that he did not follow up with either the mayor or deputy mayor about this issue, and they did not follow up with him. As I discuss below, this testimony was not accurate.

Mr. Lloyd acknowledged that he should not have included Mr. Bonwick in his email to the mayor about a member of Town staff. Nevertheless Deputy Mayor Lloyd continued to involve Mr. Bonwick in managing the fallout from Ms. Wingrove's termination and her replacement by Mr. Houghton. I discuss this below.

Council Votes on Kim Wingrove's Termination

Council decided to terminate Kim Wingrove in an *in camera* session on April 2. During the Council meeting, Mr. Lloyd emailed Mr. Bonwick to advise him that Ms. Wingrove's "Most important" termination was "DONE!!" Mr. Lloyd did not recall who placed the CAO's performance review on the April 2 Council agenda, though he did acknowledge that it was "quite possible" that he had done it. When asked who initiated the discussion at the Council meeting, Mr. Lloyd responded, "no doubt that I was aggressive about it or talking about it."

Ms. Wingrove testified that she was called into the mayor's office on April 3 to find the mayor and the deputy mayor present. They told her that the Council had decided to terminate her employment, and asked her to resign. Ms. Wingrove refused to resign, and so she was fired.

Effect of Ms. Wingrove's Firing

Town Clerk Sara Almas was "shocked" by Ms. Wingrove's termination. She testified that, to her knowledge, Council did not follow the Town's progressive discipline policy, and she believed that she would have known if they had. Other than the performance review that Ms. Cooper prepared but did not share with Ms. Wingrove in April 2011 (see Part One, Chapter 1), the Inquiry did not receive any formal record about Ms. Wingrove's performance. Ms. Almas said she knew that individual members of the Council were not satisfied with Ms. Wingrove because she did not want to pursue their agendas.

Ms. Almas testified that she knew that Mr. Lloyd, the most influential Council member, was instrumental in Ms. Wingrove's termination. She said:

The deputy mayor was the strongest and ... had the most power over members of council ... in that council term ... if the deputy mayor didn't agree, then it didn't happen ... And if ... the deputy mayor wanted something, he got it.

Although Ms. Almas stated under cross-examination that she regretted wording her evidence that way, she reiterated that the deputy mayor "did

have power, a lot of influence, and in a council of nine (9), you only need five (5), and a lot of the decisions happened to go in the favour that he was influencing.” She said that staff had to “walk a very fine line on what [they were] going to object to and why,” and further commented that “the culture at that time was ... much harder.”

Town treasurer Marjory Leonard also testified that, after Ms. Wingrove’s termination, “it was always in the back of [my] mind that it could happen to any one of us.” She acknowledged that a consequence of the Wingrove termination was that she “may have” held back from raising concerns about Town business.

Ed Houghton Becomes Acting CAO

Ms. Cooper and Mr. Lloyd offered Mr. Houghton Ms. Wingrove’s job before Council decided to terminate the CAO at the April 2 Council meeting. Mr. Houghton testified that the mayor and deputy mayor called him three times in the afternoon on April 2, asking him to take on the Town chief administrative officer’s role. Mr. Houghton said “no” the first two times. According to Mr. Houghton, the third time they called, “they said ... we are going to be making this decision ... would you consider it at least in the short term.” Mr. Houghton asked for time to consider it, and ultimately agreed to the role with three “caveats”: (1) the appointment be short-term (they discussed two months); (2) he not be blamed for Ms. Wingrove’s departure; and (3) he not be paid for this new role. Ms. Cooper testified that Mr. Lloyd had suggested appointing Mr. Houghton as acting CAO. She said that Council did not at that point in time consider any options to fill the CAO role other than Mr. Houghton.

Mr. Lloyd gave somewhat contradictory evidence about Mr. Houghton’s appointment as acting CAO, testifying that he first tried to convince Mr. Houghton to take on the role immediately after the April 2 Council meeting. He testified that Kim Wingrove’s termination placed Council in an awkward position, explaining, “I think we were somewhat in a ... problem, not having a CAO. I think the Municipal Act reads that we must have a CAO ... we made the decision. It may have been rash about ... Ms. Wingrove.

It was quickly [*sic*]. We had to respond to have a CAO.” When asked why Council did not have a plan in place to replace the CAO, Mr. Lloyd said he did not know. He also testified, however, that he “would think that Ed Houghton was discussed at that point” as “somebody interim ... to steer the ship.” He didn’t specifically recall a discussion about Mr. Houghton at the Council meeting but explained, “I don’t think we would ... let our CAO go without a plan ... I believe the plan was that Mr. Houghton would be the acting CAO until we could fill that seat.”

Mr. Bonwick testified that Mr. Lloyd contacted him and explained that they were trying to persuade Mr. Houghton to take on the acting CAO role but he had declined. Mr. Lloyd asked Mr. Bonwick to encourage Mr. Houghton to accept the position. Mr. Bonwick could not recall whether he spoke to Mr. Houghton about it. In his testimony, Mr. Lloyd denied that he and Mr. Bonwick worked together to arrange for CAO Wingrove to be terminated and replaced by Mr. Houghton.

I am satisfied that, after arranging to have Ms. Wingrove terminated, Mr. Lloyd wanted Mr. Houghton in the CAO’s chair. I am also satisfied that he and Mayor Cooper secured Mr. Houghton’s agreement before Council decided to terminate Ms. Wingrove. Mr. Lloyd then sought Mr. Bonwick’s assistance to facilitate Mr. Houghton’s appointment. The deputy mayor also continued to consult with Mr. Bonwick about Mr. Houghton’s transition to the CAO’s role. In certain instances, Mr. Bonwick also directly advised the mayor on how to handle this transition.

On April 9, Mr. Lloyd emailed Mr. Houghton offering his assistance and said:

I like the way direction was given this morning and this is exactly what is required!

Kick ass if need be as you know where we need to be and that is exactly the direction required not only this issue but all.

It is time the Corporation is managed as staff have been doing what ever [*sic*] but now clear concise direction will prevail.

Glad to see someone finally steering the ship.

CAO don’t make friends of staff they give direction to staff and that has been lacking for a long time.

Mr. Lloyd forwarded this message to Mr. Bonwick, who responded, "Perfect." Mr. Lloyd testified that he had asked Mr. Bonwick to convince Mr. Houghton to take on the role, because he knew they were friends. However, Mr. Lloyd stated that he did not have a detailed recollection of that conversation. He said that he sent Mr. Bonwick this email to inform him that Mr. Houghton had agreed to assume the CAO's role.

I reject Mr. Lloyd's explanation. Mr. Houghton had already accepted the position by this time. This email correspondence was simply an excerpt from Mr. Lloyd's ongoing conversation with Mr. Bonwick about issues the deputy mayor thought important. This time the significant issue happened to be the installation of Mr. Houghton as acting CAO.

Mayor Cooper issued a press release dated April 10 announcing Ms. Wingrove's "departure." The press release stated: "The Mayor, Council and staff are thankful for Ms. Wingrove's service and contribution during her tenure and wish her every success in the future," and it directed any inquiries to Mayor Cooper. Mr. Lloyd forwarded the news release to Mr. Bonwick, who replied, "That's not a news release ...". Mr. Lloyd testified that he sent the press release to Mr. Bonwick to "take it to his attention."

On the morning of April 11, Mr. Lloyd forwarded to Mr. Bonwick two email chains in which he and councillor Dale West discussed their concerns that the mayor was not providing a sufficient response to a local reporter, Ian Adams, about Ms. Wingrove's dismissal. Mr. Bonwick forwarded the email chains in turn to his sister, warning her that the issue is "about to explode on you!" In the email Mr. Bonwick asked to speak to her, also advising her to "get on top of this quickly."

Mr. Lloyd testified that he forwarded this correspondence to Mr. Bonwick because he knew that Mr. Bonwick was one of the mayor's advisors. He explained that, "some things I just didn't touch ... it was easier for me to go through Paul [Bonwick]." Mr. Bonwick denied that he was involved in the CAO's termination and testified that he was simply providing advice about the mayor's media relations.

On April 11, Ian Adams' article in the Collingwood *Enterprise-Bulletin* reported:

A week after town councillors huddled behind closed doors to discuss the performance of their chief administrative officer, the woman hired to do the job less than three years ago is out the door.

...

On Thursday, council was scheduled to meet behind closed doors; one of the topics on the agenda was discussion on the acting-CAO position. Cooper said council had an individual in mind for the role ...

Sources say Collus president, and the Town's executive director of public works, Ed Houghton, will be tapped to head up the town's management team.

The next day, Mr. Lloyd reported to Mr. Bonwick, advising that he "Just met with Adams and he is going to wrote [*sic*] the EB blog about Council making the right decision and how wonderful Ed is." Mr. Bonwick approvingly responded, "You are the man."

Mr. Lloyd testified that his discussion with Ian Adams about Mr. Houghton's impending appointment was "damage control." He explained that he reported his conversation to Mr. Bonwick, because Paul Bonwick "was one of our advisors."

When the clerk's department circulated an agenda for the April 12 Council meeting without listing the acting CAO position, Mr. Lloyd emailed Mayor Cooper, asking, "I thought you were going to place Personel Personal [*sic*] on the Incamera [*sic*] agenda? Re: Acting CAO." Once again he forwarded the email chain to Mr. Bonwick, writing, "?????????????" The clerk's department circulated a revised agenda shortly thereafter, which added "Discussion re Acting CAO." Mr. Lloyd forwarded the revised Council agenda to Mr. Bonwick.

Mr. Lloyd consulted Mr. Bonwick again when Councillor Keith Hull sought to delay the discussion about replacing the CAO. Mr. Hull, responding to the revised agenda, emailed Council asking, "I am not able to attend Thursday's meeting. Why can these items not wait until Monday?" Councillor Joe Gardhouse agreed, writing, "We certainly don't need to making [*sic*] big decisions with a councillor not present unless it's absolutely necessary. It is my understanding that the town clerk can make any necessary signings." Mr. Lloyd forwarded this email correspondence to Mr. Bonwick,

who responded, “Who cares what he says ... tell Sandra to stay the course.” Mayor Cooper responded to Councillor Hull’s email that evening: “The item regarding CAO by-law must come forward due to documents that will signing [*sic*] authority ... If you have further questions, please call or email. I have an open door policy if anyone wishes to stop by the office. I invite each member of council and I will provide the coffee.”

Despite the objections of Councillors Hull and Gardhouse to the appointment being dealt with in the absence of Councillor Hull, Council appointed Mr. Houghton acting CAO on April 12, 2012.

I find that the mayor and deputy mayor consulted with Mr. Bonwick on terminating Ms. Wingrove. The deputy mayor then enlisted Mr. Bonwick’s assistance in convincing Mr. Houghton to accept the role of acting CAO. It was to Mr. Bonwick’s advantage and benefit to have a friend serve as the Town’s most senior staff member. As I discuss in Part 2, this advantage was apparent when Council decided to construct two recreational facilities, for which Mr. Bonwick’s company earned a fee of \$756,740.42, including HST.

The Breakdown of the Strategic Partnership

In March 2013, seven months after the share sale transaction closed, the CBC reported that Collingwood citizens had complained to the Ontario Provincial Police about Paul Bonwick's role as a consultant to PowerStream, raising questions about his involvement in the share sale. Shortly afterwards, in April 2013, Ed Houghton stepped down as acting chief administrative officer (CAO) and, in July, was replaced by a new CAO, John Brown. Mr. Brown began asking questions about the nature of the shared services agreements between the Town, its water utility and Collus Power (now Collus PowerStream Corp.) and whether they provided good value. Mr. Brown's inquiries broadened to include questions about the process leading to the Collus share sale. He commissioned multiple reports in search of answers but these reports yielded more questions. By 2017, the strategic partnership would be dissolved, and the Town would sell off the entirety of its hydro utility.

Following the completion of the share sale, a number of reports were commissioned, including reports that Mr. Brown commissioned as part of his efforts to understand the strategic partnership transaction and its implications for the Town. I describe these reports to help explain the context in which the Town continued to investigate the Collus share sale transaction. I do not necessarily adopt all of their findings and conclusions.

New Corporate Structure

Before the share sale, the Town was the sole shareholder of Collingwood Utility Services Corporation, which was the sole shareholder of Collus Power Corporation, Collus Solutions Corporation, and Collus Energy

Corporation. After the sale, the Town became the 50 percent shareholder of a new entity, Collingwood PowerStream Utility Services Corporation. PowerStream owned the other half of the shares. Collingwood PowerStream Utility Services owned the Town's utility, and the name of the utility was changed from Collus Power to Collus PowerStream Corporation. Collus Solutions and Collus Energy were changed to Collus PowerStream Solutions and Collus PowerStream Energy, respectively.

Under the unanimous shareholders agreement, the Town and PowerStream each had the right to appoint three members to the board of directors of each of the corporations and the same six individuals were appointed to each. The Town appointed David McFadden (previously a director of Collus Power), Mayor Sandra Cooper, and David Garner. PowerStream appointed Brian Bentz (PowerStream's president and chief executive officer), Jeff Lehman (mayor of Barrie), and Dan Horchik (a Markham city councillor). Ed Houghton remained as the president and CEO of Collus PowerStream. Cindy Shuttleworth stepped into the role of chief financial officer (CFO) of Collus PowerStream, replacing Tim Fryer, and Pam Hogg continued at the company as the executive assistant to Collus PowerStream's CEO, director of human resources, and secretary for the Collingwood Public Utilities Service Board (CPUSB).

The CPUSB, the Town's water utility, remained under the control of the Town.

Delayed Shared Services Updates

As I discussed in Part One, Chapter 8, the Town, PowerStream, and the Collus corporations did not update the shared services agreements between the Town, the Collus companies, and the CPUSB in advance of closing the Collingwood Utility Services share sale. Instead, the parties signed a side letter on July 31, 2012, agreeing to update the agreements within one year of the closing of the transaction (the side letter). Some efforts were undertaken to update the agreements within the first year of the strategic partnerships, but they did not result in amended agreements.

As I discuss in Part One, Chapter 2, one of the primary transactions

under the shared services agreements was Collus Solutions billing Collus Power and the CPUSB for the services that Collus Solutions' employees provided to the Town's power and water utilities. However, both Tim Fryer and Cindy Shuttleworth testified that the process by which Collus Solutions' costs were allocated differed from the cost allocation process contemplated in the agreements.

The HSG Report and Initial Shared Services Negotiations

On January 4, 2013, Collus PowerStream CFO Shuttleworth hired a consultant, Howard Gorman of HSG Group, to analyze the distribution of Collus PowerStream Solutions' costs to Collus PowerStream, the CPUSB, and the Town. Mr. Gorman presented the HSG report to Collus PowerStream and the CPUSB on July 22, 2013. The report identified the services each employee of Collus PowerStream Solutions provided to Collus PowerStream, the Town, and the CPUSB. It determined that Solutions' costs were distributed as follows:

Collus PowerStream (power)	59.4%
CPUSB (water)	32.7%
Town	7.9%

The HSG report concluded:

The methodology developed for Collus PowerStream Solutions Corp. to distribute its costs among the businesses it serves is cost-based, consistent with OEB precedent and regulatory practice, and is transparent and efficient.

Although the HSG report concluded that the process used was transparent and efficient, it did not assess whether the process complied with the shared services agreements or whether the current approach provided the best value to the Town.

Regardless of whether Collus PowerStream Solutions' cost allocation methodology was appropriate, it was crucial that the agreements regulating

these services be updated to reflect the services being provided. First, the transaction documents required that the agreements be updated. Second, ensuring that the services provided by Collus PowerStream Solutions were accurately reflected in the agreements would allow the Town to know whether it was receiving value for the money it and the CPUSB paid for these services. As will be seen below, when the Town of Collingwood hired a new CAO, it was not immediately clear to him whether the Town was receiving value for money under the shared services agreements. This confusion, among other things, led Collingwood's new CAO to investigate the share sale.

As I discuss in Part One, Chapter 3, KPMG first identified in March 2011 that a transaction could affect the provision of services between the Town and Collus. At that time, Mr. Houghton instructed KPMG not to complete a detailed review of how costs were distributed. I pause here to note that Mr. Gorman completed his review in just over six months.

In his closing submissions, Mr. Fryer argued that the completion of the HSG report was one step in the agreement-updating process; the next step was to negotiate amendments to the agreements as necessary. It appears that these negotiations started in the first year of the partnership but were not completed. Mr. Bentz testified that there were "a couple" of meetings to negotiate the agreements in the first year but he acknowledged that these negotiations were not significant. Mr. Nolan could not recall why the agreements were not updated.

The shared services agreements were not an issue while Ed Houghton was Collingwood's CAO. Those agreements, however, became increasingly contentious when Collingwood hired a career CAO to replace him.

CBC Story on Paul Bonwick's Role

On March 8, 2013, the CBC published an article titled "Collingwood mayor's brother paid by casino, power companies." The article reported that citizens had complained to the Ontario Provincial Police about Mr. Bonwick's role as a consultant to PowerStream at the time of the Collus Power sale. The news made waves.

PowerStream learned about the CBC article two days before publication when the reporter asked the company for comment. At 8:46 a.m. on March 6, 2013, Sandra DiPonio, Brian Bentz's assistant, emailed Mr. Bentz with the subject "!!Important" and wrote: "Dennis [Nolan] is extremely concerned and would like to speak to you (with Eric) asap ... re: an investigative reporter call and raising the issue with Paul Bonwick." Mr. Nolan testified that his concern was the same one he had at the outset of PowerStream's relationship with Mr. Bonwick: that PowerStream's retainer would create an appearance of a conflict of interest.

Mr. Bentz testified that, before the CBC article was published, PowerStream was aware of "talk in the community" regarding Mr. Bonwick and allegations of undue influence relating to the Collus share sale. As a result, Mr. Bentz explained, PowerStream was more cautious in how it engaged Mr. Bonwick and asked Mr. Bonwick to be sensitive to the optics of the situation.

The Collingwood *Enterprise-Bulletin* also published an article on Mr. Bonwick on March 8, 2013, which stated Mr. Bonwick denied that he had lobbied members of Council or municipal staff on the PowerStream transaction. It also reported:

PowerStream [CEO] and president Brian Bentz, in an interview with QMI Agency in May, 2012, said Bonwick played no role in the sale – and the idea that a third party would act as a broker in any deal "would not be normal practice in our industry."

Mr. Bentz recalled giving an interview in May 2012 and testified that the quote printed by the *Enterprise-Bulletin* was inaccurate. Mr. Bentz recalled being asked whether Mr. Bonwick acted inappropriately, to which Mr. Bentz responded "no." He further testified that, when he referred to third parties in the interview, he was trying to say that PowerStream did not typically use third-party consultants in transactions. Mr. Bentz testified that, when the article was published, he discussed with Dennis Nolan, PowerStream's general counsel and corporate secretary, and Eric Fagen, PowerStream's director of communications, whether to ask the newspaper for a correction. They decided it was better not to draw further media attention to the matter.

Mr. Bonwick gave an interview to a *Collingwood Connection* reporter for an article also published on March 8, 2013. The article quoted Mr. Bonwick as saying that, before entering an agreement with PowerStream, he met with Dean Muncaster, Clerk Sara Almas, CAO Kim Wingrove, and Mayor Sandra Cooper and “laid out the strategy that PowerStream [*sic*] was considering offering me a contract.” The article also reported: “Bonwick said his role was to develop a communications strategy regarding the future of local distribution companies and to ‘educate the public and elected officials without having any direct involvement with elected officials.’”

Mr. Bonwick agreed these statements were inaccurate. He testified that he did not see the article when it was published and did not recall making the statements. Mr. Bonwick suggested that the quote regarding his role with elected officials was taken out of context.

Termination of Compenso Agreement

The CBC article led to the termination of Mr. Bonwick’s consulting agreement with Collus PowerStream through his company, Compenso. As I discuss in Part One, Chapter 8, in late 2012, the agreement had been transferred from PowerStream to Collus PowerStream. Following the transfer, Collus PowerStream made two payments of \$15,000 (plus HST) to Compenso on February 13 and February 26, 2013. At the time the CBC article was published, the cheque for the second payment had not been cashed.

CFO Cindy Shuttleworth testified that, following the news report, Mr. Houghton advised her that Collus PowerStream needed to terminate Mr. Bonwick’s retainer because his “reputation had been so damaged by the media.” She also noted that the public would be critical if it learned that Collus PowerStream continued to pay Compenso \$15,000 each month, adding: “It would be very difficult to do work with other utilities and talk about strategic partnerships and mergers with a company that had been – their reputation had been so damaged.”

Mr. Houghton also directed Ms. Shuttleworth to cancel the second payment. On March 12, 2013, Mr. Houghton and Ms. Shuttleworth had the following email exchange regarding the payments to Compenso:

Mr. Houghton: We are only going to look at the two in 2012. Is that correct?

Ms. Shuttleworth: No they have to do subsequent events. So for sure they will look at the 2013 ones.

Mr. Houghton: The one should be removed

Ms. Shuttleworth: It is reversed. I got Dian to do it after I spoke to you.

But it still shows up in the vendor history for Compenso.

Mr. Houghton: Let's chat

In her affidavit, Ms. Shuttleworth explained that she understood Mr. Houghton was asking about which payments to Compenso would be reviewed by Collus's auditors for the 2012 year. Collus PowerStream had made two payments to Compenso in 2012: 1) \$1,262.73 for a dinner in March 2012 after the signing of the share purchase agreement, as well as accommodations for Brian Bentz (the attendees included Mayor Cooper, Deputy Mayor Rick Lloyd, and PowerStream's executive management team), and 2) for the cost of half a table at the Liberal Party's heritage dinner (PowerStream paid the other half). Ms. Shuttleworth explained to Mr. Houghton that, in addition to these two 2012 payments, both 2013 payments for \$15,000 (plus HST) would be reviewed, even though the second payment had been reversed.

Mr. Houghton testified that Brian Bentz instructed that the payment be reversed. Mr. Houghton gave this evidence after Mr. Bentz had testified at the Inquiry. As Mr. Houghton's counsel did not question Mr. Bentz to confirm whether he recalled any such conversation, Mr. Bentz did not have the opportunity to address Mr. Houghton's evidence on this point.

In light of the CBC article, it is clear that Mr. Bonwick's involvement in the Collus PowerStream share sale created an apparent conflict of interest in that it caused a reasonable apprehension among the public that Mr. Bonwick's relationship with certain councillors might influence how these councillors exercised their elected responsibilities. In such cases, the appropriate response would have been to disclose all of Mr. Bonwick's work to the parties involved.

As discussed in detail in previous chapters, proper disclosure did not take place. As a result, once word of Mr. Bonwick's involvement reached the media and public, the transaction's credibility was undermined, which harmed the reputation of the Town, its utility, and PowerStream. The public

backlash in response to the CBC article is an indication of the dangers of failing to properly address conflicts of interest.

Ed Houghton's Resignation as Acting Collingwood CAO

On April 15, 2013, Ed Houghton stepped down as Collingwood's acting CAO and executive director of public works, effective immediately. I discuss Mr. Houghton's resignation further in Part Two, Chapter 14.

KPMG Governance Review

On April 17, 2013, the Town hired KPMG to review all the municipality's services. Bruce Peever of KPMG presented the initial results on May 13. Among other things, Mr. Peever advised Council that the Town's senior management should be employees of the Town, noting that "even employees of 'sister' organizations – such as Collus – should not be considered as part of the [executive management] team." He added: "If there are two employers... the individual would have somewhat of a conflict of whose interest (that person) is representing [*sic*]."

Mr. Peever's comments struck a nerve with Ed Houghton. On May 31, 2013, he sent John Herhalt at KPMG an email titled "Another KPMG Slam," writing:

I'm sure you are not involved but I wanted to let you know that one of your colleagues, Mr Bruce Peever, has destroyed 35 years of a good partnership between the utility and the Town of Collingwood. His actual quote in the local paper in reference to what I have personally been doing for years is "The importance of having your senior leadership being employees of the Town (not employees of Collus) can't be understated."

I cannot believe this and I am so saddened by this.

Regretfully Ed.

* The executive team referred to is discussed further in Part Two, Chapter 2.

Although Mr. Herhalt had assisted with the Collus Power RFP, he was not involved in KPMG's review. Nevertheless, Mr. Houghton's email initiated a series of communications within KPMG and between KPMG and the Town that ended with Mr. Peever and a colleague recommending to Council on June 10 that their review be halted until Council hired a new CAO. KPMG, according to the minutes, also "provided clarification of the benefits and interaction of a shared service provider such as the Town's relationship with [its] utilities and Collus." I discuss KPMG's governance review further in Part Two, Chapter 14.

CAO John Brown and the Shared Services

Council hired a new acting CAO, John Brown, in July 2013. Mr. Brown had 40 years of municipal experience, with 30 years in city management as either assistant city manager or city manager.* At that point, he had worked for seven municipalities in three provinces.

In the fall of 2013, Mr. Brown began considering the shared services between the Collus PowerStream corporations, the Town, and the Collingwood Public Utilities Service Board as part of an overall organizational review. This led him to inquire further about the Collus share sale transaction, including questions about where he could find records of the transaction and who acted as the Town's lawyer. Mr. Brown testified that he was concerned by his difficulty in obtaining information about the transaction. He commissioned several reports relating to the Collus share sale and the shared services agreements. The reports identified issues with the share sale process and risks the partnership posed to the Town. These issues, in turn, contributed to the breakdown in the relationship between the Town, Collus PowerStream, and PowerStream.

Some of the reports I discuss in this chapter were criticized at the time they were being drafted and/or upon their release. During the Inquiry hearings and in closing submissions, certain participants took issue with Mr. Brown's approach to the matters discussed in this chapter. Those matters are

* He explained that this role was equivalent to the CAO role.

irrelevant to the issues in the Terms of Reference of this Inquiry. However, the fact that the Town undertook an intensive investigation into the share sale less than five years after it occurred is relevant to the Inquiry. Through the Town's efforts to understand the share sale after the fact, it became clear that elements of the Collus PowerStream share sale important to the Town had not been sufficiently considered.

The Town's Organizational Review

As CAO, Mr. Brown immediately began examining organizational matters at the Town, including matters related to the services Collus PowerStream Solutions was providing to the Town and the CPUSB. On December 4, 2013, Council identified priority items to be addressed in 2014, including "Governance review," "Strategic Financial Plan," "Corporate restructuring review," and "Facility management and development strategy."

The BMA Report on Collingwood's "Financial Health"

One of the first steps the Town took to address its strategic goals was to obtain an assessment of its "financial health" from BMA Management Consulting Inc. Published in January 2014, the BMA report found that Collingwood was in a negative financial position and predicted that, "without action to address the Town's financial position, the Town will become increasingly challenged to provide the services and infrastructure that citizens expect and value." It recommended, among other things, that the Town "conduct an operational review of all corporate expenditures to identify operating cost reductions and efficiencies thereby ensuring that taxpayers are receiving value for money."

The Beacon 2020 / True North Operational Review

On July 21, 2014, Council directed staff, together with the Collingwood Public Utilities Service Board, to conduct an independent operational review of the January 1, 2003, services agreement between CPUSB, the Town, and Collus PowerStream Solutions to determine whether it provided the Town with

sufficient value for money. The Town and the CPUSB retained Beacon 2020, Inc., and True North Consultants, Inc., to conduct the review. The authors of the Beacon 2020 / True North Report were unable to determine whether the Town was receiving value for money.

The Beacon 2020 / True North Report stated that the agreement may have expired and recommended, among other things, terminating the agreement. The status of the shared services agreements would become a source of increasing tension in the Town's relationship with PowerStream and the Collus PowerStream companies over the next two years, as the Town struggled to understand the deal it had made, and negotiate a way forward for the utility.

The Beacon 2020 / True North Report also advised against allowing individuals to hold roles within both the Collus PowerStream corporations and the CPUSB. Mr. Brown raised this with Ms. Shuttleworth and Ms. Hogg by email in March 2014. They did not agree with the report's conclusions, adding to the outstanding issues to be addressed by the Town and Collus PowerStream.

In addition, the Beacon 2020 / True North Report identified a conflict between the Town and PowerStream arising from their different fiscal goals for Collus PowerStream Solutions: the Town viewed it as a "break even" company,* while PowerStream's stated objective was stable regulated returns.

This difference in views should not have come as a surprise. As early as March 2011, KPMG identified to Collus Power that a transaction could affect the shared services (see Part One, Chapter 3). Mr. Houghton, however, directed KPMG not to review the agreements as part of its options analysis. The agreements were not given serious consideration again until after the transaction closed.

Although Collus PowerStream, the CPUSB, and certain Town councilors criticized the report,† all agreed that the shared services agreements

* The Town's view of Solutions as a "break-even" company was confirmed by Inquiry witnesses and is discussed further in Part One, Chapter 2.

† Representatives from the power and water utilities, as well as Ian Chadwick, submitted written responses rebutting some of the report's findings. These were provided to the report's authors, who replied by letter dated February 12, 2015, that "the recommendation and conclusions in the Report remain the same."

should be updated and clarified. The authors considered responses on the report before finalizing it on February 12, 2015.

Shared Services and the Sale Reviewed

While Beacon and True North completed their work, a new Council was elected on October 26, 2014. Sandra Cooper retained her position as mayor, while Brian Saunderson was elected as the new deputy mayor. The other councillors from the 2010–14 Council to retain their seats were Mike Edwards and Kevin Lloyd. The balance of the newly elected Council consisted of Tim Fryer, Cam Ecclestone, Kathy Jeffery, Deb Doherty, and Bob Madigan. The Council was sworn in on December 1, 2014.

On February 17, 2015, the new Council resolved to receive and approve the Beacon Report and to

defer the recommendation to provide notice of termination of the current agreement until the Board and CAO have an opportunity to review and report back to Council by no later than May 13, 2015 of the required services.

The Side Letter of July 31, 2012

On March 24, 2015, about a month after Council directed staff to review and report back on the Beacon 2020 / True North recommendations, Brian Bentz sent Mr. Brown a copy of an important document pertaining to the shared services that Mr. Brown had not been aware of: the July 31, 2012, side letter between Collingwood Utility Services, the Collus corporations, the Town, and PowerStream. This letter set out an agreement between all the parties that the shared services agreements would not be updated before closing the share sale and their commitment to update the agreements within the next 12 months. Mr. Bentz offered to convene a meeting to advance the negotiation of new shared services agreements.

Collus PowerStream had considered the letter internally on February 24, 2015. PowerStream board member Dan Horchik forwarded information

about it to Mr. Bentz, David McFadden, Sandra Cooper, Jeff Lehman, and Ed Houghton. In the email, Mr. Horchik noted that the letter had been overlooked by the Beacon 2020 / True North Report authors,* writing: “I think that at the right time we may have to remind the Town of the contents of this letter.”

Mr. Brown testified that the side letter’s existence “came as a real surprise.” Although it was included in the closing books for the transaction, the Town did not have a copy of the closing books. Mr. Brown, worried that the side letter superseded the original shared services agreements discussed in the Beacon 2020 / True North Report, sought legal advice and further information about the share sale transaction. He also began discussing the next steps for the service agreements with PowerStream representatives. The ongoing uncertainty about the shared services agreements led to increasing tension between Mr. Brown, PowerStream, and Collus PowerStream.

Legal Opinion of Aird & Berlis and the Closing Books of the Transaction

After discovering the July 31, 2012, side letter, Mr. Brown asked law firm Aird & Berlis for a legal opinion on “whether the provisions of the Purchase Agreement would create any issues in relation to the conclusions in the [Beacon 2020 / True North Report] concerning the termination of the [shared services agreements].” He also sought a copy of the closing books and continued to try to understand the extent of the Town’s legal representation during the transaction. Mr. Brown’s efforts to learn more about the shared services agreements and the Town’s legal representation yielded additional concerns that the Town’s interests were not protected over the course of the share sale.

As I noted above, the Town did not have a copy of the closing books for its share sale. Mr. Brown ultimately obtained a copy from Ron Clark at Aird

* Mr. Brown testified that this document was not included in the Beacon 2020 / True North Report because nobody involved in commissioning the report (i.e., the Town and the CPUSB) knew it existed. Tim Fryer, who served as a Town councillor during Mr. Brown’s tenure, testified that the Town’s new Council did not become aware of the letter until the various reviews commissioned by Mr. Brown brought it to light.

& Berlis in March 2015.* On March 26, Aird & Berlis provided the Town with a draft memo on the extent to which the share purchase agreement and the side letter affected the shared services agreements' legal status. The memo did not provide a definitive answer to whether the July 31 side letter created legal obligations. Instead, it identified potential arguments about the enforceability of the side letter and noted that it was "open to the Town to take the position that the terms of the [July 31 side letter] ... merely amount to a non-enforceable 'agreement to agree.'" It also stated that the Town and Collus PowerStream had failed to comply with the side letter's requirements to assess appropriate costs and conditions for the service agreements and to review the agreements annually.

In discussions with Aird & Berlis, the Town also learned that it could be subject to a \$1.7 million penalty if it terminated the shared services agreements. Mr. Brown described this potential penalty as "a major threat." Further, Leo Longo, who provided municipal solicitor services to the Town, raised the concern that PowerStream might react to the Town's position on the shared services agreements by initiating the shotgun share sale process (see Part One, Chapter 7), noting, "The 'threat' of such provisions being invoked is now a constant concern going forward and will loom over any future discussions the Town and PowerStream may have on any matter." Town Clerk Sara Almas testified that competing views over the letter's binding nature impeded the shared services agreements negotiations between the Town and PowerStream.

The Town's Legal Representation

Mr. Brown had also been trying to determine which lawyers had represented the Town in the transaction negotiations. This question proved difficult.

Mr. Brown testified that he was concerned about the extent to which certain elements of the agreements, such as the shotgun and right of first refusal clauses, compromised the Town's interests. He felt that a discussion with the lawyer who represented the Town during the transaction could help him

* As described in Part One, Chapter 8, Mr. Clark helped draft the transaction documents for the Collus PowerStream share sale.

understand what had transpired, and so he emailed Mr. Houghton in July 2014 to ask who represented Collus and the Town over the course of the share sale. Mr. Houghton responded the next day: “Collus worked through Ron Clark, the Town through Mr. Longo.”

On March 2, 2015, Mr. Longo told Mr. Brown that he did not provide general advice to the Town on the transaction but rather responded to the Town’s specific legal questions. Shortly thereafter, Mr. Brown asked Ron Clark who represented the Town in the transaction. Mr. Clark forwarded Mr. Brown’s email to Mr. Longo on March 4, asking for his thoughts. Mr. Longo responded:

The question posed by the CAO is who was the lawyer of record that represented the Town on the transaction. It wasn’t you. I don’t know what entity you billed but I don’t believe it was the Town. It wasn’t me ... as I was never involved in the negotiation of any of the agreements and other closing documents. Frankly, I believe the Town chose not to have a lawyer of record on this transaction.

In response, Mr. Clark indicated he had understood that Mr. Houghton instructed both Mr. Clark and Mr. Longo on behalf of both the Town and Collus Power. The following day, Mr. Clark advised Mr. Brown that he represented both Collus and the Town during the transaction, and that he took instructions from Mr. Houghton.

Mr. Brown emailed Ed Houghton on March 19, 2015:

This is by way of an update to our earlier e mail exchange related to the Towns [*sic*] legal representation, and your advice to me that Leo Longo represented the Town in this transaction, while Ron Clark represented Collus.

Following discussions with both of these gentlemen, I can now advise you that Leo Longo was not the Towns lawyer of record. Ron Clark was. Mr. Clark represented both the Town and Collus.

With respect to the Town, Mr. Clark advised me that he reported directly to you and took instructions from you.

Mr. Houghton forwarded this email to Mr. Clark, stating: “As you know, Leo was involved. Please provide a correction to Mr. Brown.” Mr. Clark forwarded Mr. Houghton’s email to Mr. Longo, who replied: “As we have discussed, my peripheral ‘involvement’ was minimal and I was not the lawyer of record for the Town respecting that transaction ... Please do not suggest otherwise.” Mr. Longo also emailed Mr. Brown, explaining that his involvement in the transaction was “sporadic and minimal” and limited to responding to specific legal questions from the Town.

Miller Thomson’s Legal Opinion on the Sale and Agreements

After receiving Aird & Berlis’s memo, Mr. Brown’s continued concern that the Town might be subject to a \$1.7 million penalty if it terminated the shared services agreements, as well as his questions about the Collus PowerStream share sale, led him to seek a legal opinion from the firm Miller Thomson.

In its opinion, provided to the Town on May 15, 2015, Miller Thomson concluded that there was a strong argument that the January 1, 2003, services agreement remained in force, and that the July 31, 2012, side letter did not amend the 2003 agreement. The Miller Thomson Report set out options including termination or amendment of the shared services agreement.

The report also opined that the share sale was valid and binding and discussed the Town’s apparent lack of involvement in the share sale process. It identified the lack of Town participation in key decisions in the transaction, noting that the decision to change the shares sold in the transaction from Collus Power shares to Collingwood Utility Services shares appeared to have “occurred without significant, or any, Council review or input.” The Report stressed that the decision on which shares would be sold “should not and cannot be delegated.”

Miller Thomson also stressed that it was essential for the Town to be actively involved in all aspects of a major transaction such as the Collus Power share sale transaction and reported there was confusion about which lawyers were acting on the transaction and which parties these lawyers were representing. The Miller Thomson Report concluded that, in such a major transaction as the sale of half of the Town’s shares in Collus Power to a third party, the parties involved ought to have considered several issues, including:

- a) whether it was appropriate for the Town, [Collus] and [its] Subsidiaries to all have the same legal representation;
- b) whether the interests of all these parties were fully aligned;
- c) whether independent legal advice was necessary or advisable for any or all of these parties;
- d) even if all of the parties believed it was appropriate to be represented by the same law firm, whether each party should have designated a different person to give instructions to their lawyer within that law firm and to determine if any conflicts of interest arose; and
- e) whether a 50% co-ownership structure was in the best interests of the Town.

The report also commented on the implications of the “far-reaching authority” the authorizing bylaw granted to the mayor or clerk to complete the transaction and “enter into other significant agreements without having to return to Council.” The report recommended that “such a broad grant of authority for significant transactions not be repeated in the future, and that Council maintain its role as overseer of such matters.”

Mr. Brown testified that, when Jean Leonard of Miller Thomson presented the report to Council, she advised that the Town was not at risk of incurring a \$1.7 million penalty with regard to the shared services agreements. Nonetheless, the opinion raised questions about the transaction process and whether there was sufficient legal and Council oversight of the share sale. Mr. Brown worried about whether Council was sufficiently advised on the strategic partnership’s governance structure before the transaction took place. Given that many of the questions raised by the Miller Thomson report are issues pertinent to this Inquiry, it is understandable that Mr. Brown would seek a deeper understanding of the share sale.

Council accepted Mr. Brown’s recommendation to consider the strategic partnership’s vulnerabilities and what the Town’s future options were. As I discuss below, the Town retained Mark Rodger, a partner with Borden Ladner Gervais LLP, on October 5, 2015, to conduct a detailed review of the share sale and options for the Town.

Water and Wastewater Services Report

While the Town investigated the share sale, it retained BMA Management Consulting Inc. and DFA Infrastructure International Inc. to assess the Town's water and wastewater operations. The report, published on June 16, 2015, recommended that the Town assume direct control of the water and wastewater services, estimating that savings of \$706,521 annually would result. The report also reiterated concerns previously identified in the KPMG review and the Beacon Report about the dual roles certain people had at the Town and the Collus PowerStream corporations. After the BMA/DFA Report was presented to Collingwood Council on June 22, 2015, Council voted to shift control of Collingwood's water and wastewater service delivery from the CPUSB to the Town.

Mr. Brown testified that, after the water services issues were resolved, he continued negotiations with PowerStream in the hope of settling the shared services agreements problems.

Valuation Report

The Town retained Henley International Inc. to undertake a valuation of the parent company Collingwood PowerStream Utility Services Corp. in or about 2015. Henley's report, published on June 16, 2015, set its firm value between \$26.5 and \$30.3 million and its equity value at approximately \$15.7 million. The report also stated that Collingwood and PowerStream's joint ownership of Collus PowerStream restricted the Town's ability to sell its interest in the company and potentially made the company less attractive to buyers.

Mr. Brown testified that he was alarmed by the report's findings on the Town's ability to sell its shares. He stated that he was unable to obtain any concrete information about who originally recommended a 50/50 partnership and what research was behind the recommendation to the Town.

Report on the History of the Collus Companies

As noted above, the Town retained Mark Rodger of Borden Ladner Gervais (BLG), to prepare a detailed report on the history of the Collus companies and to provide “go forward” alternatives for its interest in the Collus PowerStream corporations.

Findings of the Report

On March 31, 2016, after preparing various drafts, Mr. Rodger presented his final report to Council. Council voted to receive the report and authorized Mr. Rodger’s continued retainer. The report’s findings included:

- a) There did not appear to be any consensus as to why Collus decided to sell 50 percent of its shares in 2012. Interviewees provided conflicting information on this point, including that the transaction was caused by concerns that Collus needed to partner with a more sophisticated entity to survive upcoming government-forced consolidation of LDCs, and that the transaction was caused by a desire to provide the Town with a cash infusion;
- b) Neither the Town nor Collus-PowerStream were able to provide BLG with any rationale as to why a 50 percent sale of Collus’s shares was chosen in 2012 as opposed to a 100 percent sale, the sale of a smaller percentage of Collus’s shares, or a merger;
- c) BLG had difficulty locating information regarding Collingwood Council’s:
 - establishment of the Strategic Partnership Task Team;
 - approval of the criteria used in the 2012 RFP process; and
 - goals and preferred approach for negotiations with RFP bidders.

As with earlier efforts to understand the Collus PowerStream share sales’ genesis, the BLG report raised more questions than it supplied answers. Mr. Brown agreed that, at the time of this report, the relationship between the Town and Collus PowerStream had become “difficult.” Five weeks after the BLG report was published, Collingwood Council voted to authorize Mark Rodger to explore options to sell the Town’s remaining

50 percent interest in Collus PowerStream and effectively end the strategic partnership.

Drafts of the Report

The approach that Mr. Brown took to Mr. Rodger's preparation and presentation of his report was controversial. He directed that the first draft be written and provided to Council without consulting Collus PowerStream representatives. Mr. Brown testified that he wanted to ensure the report's contents did not "leak" before Mr. Rodger's presentation to Council. Collus PowerStream and others criticized this decision, as well as the draft report. Mr. Brown and Treasurer Marjory Leonard took issue with changes that Mr. Rodger made in subsequent drafts of the report.

I was not surprised to learn that, by this point in time, tensions had developed between the Town and Collus PowerStream. As Mr. Rodger observed in his final report,

[I]t is clear to us that a breakdown in communication and, at some levels, a mutual erosion of trust exists between Collus and the Town with respect to matters (especially regarding certain events occurring in the prior years and process resulting in the 50% share sale in 2012).

Regional Consolidation Attempts

PowerStream acquired 50 percent of Collus Power because it saw the utility as a stepping stone to consolidation within the South Georgian Bay region and, in particular, with the other members of CHEC.* In his testimony, Brian Bentz attempted to justify Paul Bonwick's retainer, stating that, after the transaction with Collus Power, Mr. Bonwick could assist with regional consolidation. Dennis Nolan also testified that Mr. Bonwick's role was to assist with Collus PowerStream's consolidation strategy.

* Cornerstone Hydro Electric Concepts Association Group, a group of 12 local distribution companies that shared resources.

After the share sale closed, the Collus PowerStream board held a planning session to discuss its consolidation strategy. The plan, however, never came to fruition. According to Mr. Bentz, consolidation never took place because the Town was not as interested in consolidation as PowerStream, and the two shareholders' views of a consolidation strategy did not align. Mr. Houghton similarly testified that the Town lacked interest in consolidation.

Deputy Mayor Lloyd told the Inquiry that none of the proceeds from the share sale transaction were set aside for the future growth of Collus PowerStream. He did not recall why the Town did not allocate a portion of the proceeds to fund the Town's participation in future acquisitions.

Mr. McFadden testified that consolidation efforts were initially hampered by a lack of interest among other local distribution companies (LDCs). He stated that Mr. Houghton met with various LDCs including those in Wasaga Beach and Orangeville, but none were interested in joining Collus PowerStream. Mr. McFadden also noted that, later on in the strategic partnership, the ongoing conflict between the Town and Collus PowerStream halted any efforts to consolidate and further reduced any interest among other LDCs in partnering with Collus PowerStream.

The EPCOR Sale, July 2016–October 2017

On July 11, 2016, Collingwood Council voted to authorize Mark Rodger to explore options for selling the Town's 50 percent interest in Collus PowerStream. In December 2016, PowerStream's successor corporation, Alectra, submitted an offer to buy the Town's half of Collus PowerStream's shares. The offer was a traditional offer to purchase and was not made pursuant to the shotgun clause in the unanimous shareholders agreement. Alectra offered to pay a premium for the shares similar to that which PowerStream paid for 50 percent of Collingwood Utility Service's shares in 2012. The Town rejected this offer.

On October 23, 2017, Collingwood's Council voted to sell the Town's 50 percent stake in Collus PowerStream and issued a buy-sell offer to Alectra for \$13 million pursuant to the shotgun clause in the unanimous shareholders agreement. On November 9, 2017, Alectra informed the Town that it had

chosen to sell its shares of Collus PowerStream back to the Town. The Town sold 100 percent of the shares of Collus PowerStream to EPCOR. On October 1, 2018, EPCOR completed its acquisition of Collus PowerStream.

Conclusion

The events described in these chapter should serve as a cautionary tale. They show what can happen when the sale of a Town's major asset occurs without transparency and accountability.

The revelation by the media of Paul Bonwick's involvement in the transaction damaged the reputation of Collus PowerStream and the Town. Meanwhile, after John Brown was hired as CAO, his efforts to acquire what should have been routine information about the shared services agreements and the genesis of the share sale laid bare issues at the core of the transaction that have been examined in this report.

Mr. Brown was unable to determine how crucial details of the deal were decided upon or whether the Town's interests were adequately protected throughout the transaction. Mr. Brown's efforts to unearth additional information from those involved and third-party experts raised further questions about the shared services agreements and the share sale itself. These compounding concerns eventually contributed to the undoing of the Collus PowerStream strategic partnership. The final outcome could have been worse, but that was a matter of good luck not good management.

Had Mr. Houghton ensured KPMG consulted with Council on its valuation and options analysis work and been forthright with Council regarding the origins of his strategic partnership recommendation, Mr. Brown's questions might not have needed to be asked. Had Mr. Bonwick's work for PowerStream been adequately disclosed, there would have been no issues concerning the share sale for the media to investigate or Council to inquire into. Had the share sale been conducted in a fully transparent manner from the outset, there would have been no suggestion that the decision to sell the utility happened behind closed doors.

