

Collingwood Judicial Inquiry

CLOSING ARGUMENT

**ALECTRA UTILITIES CORPORATION
(SUCCESSOR TO POWERSTREAM INC.)**

TABLE OF CONTENTS

	Page
A. INTRODUCTION	- 1 -
B. BACKGROUND REGARDING ONTARIO'S ELECTRICITY DISTRIBUTION SECTOR	- 1 -
C. POWERSTREAM INC.....	- 8 -
D. POWERSTREAM LEARNS OF POTENTIAL COLLUS OPPORTUNITY; NOVEMBER-DECEMBER 2010.....	- 9 -
E. POWERSTREAM WAS THE MOST LOGICAL FIT FOR A STRATEGIC PARTNERSHIP WITH COLLUS.....	- 10 -
F. POWERSTREAM RETAINING PAUL BONWICK , AND DISCLOSURE OF THE RETAINER TO THE TOWN, TO COLLUS, AND TO THE STRATEGIC PARTNERSHIP TASK TEAM ("SPTT")	- 10 -
G. THE JUNE 29, 2011 MEETING BETWEEN POWERSTREAM AND TOWN / COLLUS OFFICIALS.....	- 23 -
H. THE NOVEMBER 2011 POWERSTREAM – BONWICK CONSULTING AGREEMENT (EXTENSION OF THE JUNE AGREEMENT).....	- 30 -
I. SOLAR POWERED ATTIC VENT INITIATIVE	- 34 -

TABLE OF CONTENTS

(continued)

J. THE COLLUS REQUEST FOR PROPOSAL (“RFP”)..... - 38 -

K. A ROBUST REQUEST FOR PROPOSAL (“RFP”) PROCESS
ESTABLISHED..... - 40 -

L. POWERSTREAM AS THE SUCCESSFUL BIDDER ON THE RFP - 47 -

M. THE COMMUNICATIONS STRATEGY REGARDING RFP..... - 52 -

N. INFORMATION PROVIDED BY COLLUS TO OTHER BIDDERS - 54 -

O. INFORMATION PROVIDED TO POWERSTREAM BY COLLUS, NOV.
2010 – MARCH 2012 - 58 -

P. TERMS OF THE TRANSACTION – TRANSITION TO SALE OF COLLUS
HOLDING COMPANY RATHER THAN COLLUS POWER AND
SHOTGUN BUY-SELL PROVISIONS - 71 -

Q. THE CONSIDERATION PAID BY POWERSTREAM..... - 76 -

R. POWERSTREAM RECEIPT OF SLIDE DECK SUMMARIZING BIDS,
AFTER RFP PROCESS COMPLETE - 81 -

S. DRAFTING OF THE BY-LAW AUTHORIZING THE TRANSACTION - 83 -

T. FURTHER AMENDMENTS TO DRAFT BY-LAW - 88 -

U. MR. BONWICK’S COMMUNICATIONS REGARDING JANUARY 19, 2012
CONFERENCE CALL - 88 -

V. LAWYER-CLIENT PRIVILEGE IN THE CONTEXT OF COMMERCIAL
TRANSACTIONS - 89 -

W. WHAT IS COVERED BY LAWYER-CLIENT PRIVILEGE? - 90 -

X. COUNCIL APPROVES THE TRANSACTION – JANUARY 23, 2012 - 91 -

Y. THE PREPARATION AND SIGNING OF THE TRANSACTION CLOSING
DOCUMENTS - 92 -

Z. NON-FINANCIAL BENEFITS FLOWING TO THE TOWN AS A RESULT
OF THE TRANSACTION..... - 93 -

AA. THE EARLY SUCCESS OF THE COLLUS POWERSTREAM
STRATEGIC PARTNERSHIP..... - 94 -

BB. ARRIVAL OF NEW TOWN OF COLLINGWOOD CAO JOHN BROWN..... - 95 -

TABLE OF CONTENTS
(continued)

CC. CONCLUSION..... - 97 -

A. Introduction

1. At the time of the events giving rise to this Inquiry, Ontario's electricity industry was undergoing considerable change, placing pressure on small local electrical utilities such as Collus to consolidate or join larger, regional utilities. It was recognized by numerous witnesses at the Inquiry that PowerStream was the logical best fit as a strategic partner for Collus. This was primarily because of the geographic location of PowerStream's operations, its size and expertise in electrical distribution, and the fact that it had an excellent reputation in the local distribution company ("LDC") electricity sector, and was admired for its successful regional consolidation model.
2. In deciding to hire Paul Bonwick to work as a consultant on the Collus transaction (the "**Transaction**"), PowerStream took considered steps to address any potential conflict arising from Mr. Bonwick's sister being the Mayor of Collingwood. PowerStream insisted on disclosure of Mr. Bonwick's retainer to the Mayor and the Town. At the time it retained Mr. Bonwick as a consultant, PowerStream had no reason to believe that as a result it would receive any information that it was not appropriate for PowerStream to receive. With the benefit of all of the evidence that was presented at the Inquiry, it has become apparent, and PowerStream's witnesses have candidly acknowledged, that during the Request for Proposal ("**RFP**") process leading to the closing of the sale of 50% of the shares of Collus to PowerStream, PowerStream was provided with certain information that in retrospect it was not appropriate for it to receive. As is discussed more fully in these submissions, PowerStream acknowledges that at the time it should have taken steps to address this matter.
3. PowerStream states, however, that none of the information that it received had any impact on the outcome of the RFP or on the amount that it paid for the Collus shares. Ultimately, the consideration that PowerStream paid for those shares made the share sale an extremely good deal for the Town of Collingwood. Further, in addition to financial value, the Town and Collus received many non-financial benefits as a result of its strategic partnership with PowerStream, from which the citizens of the Town of Collingwood benefitted tremendously.

B. Background regarding Ontario's Electricity Distribution Sector

4. In April 2012, the Ontario Minister of Energy established the Ontario Distribution Sector Review Panel to provide expert advice to the government on how to improve efficiencies in the sector with the aim of reducing the financial cost of electricity distribution for electricity consumers. The Panel released a report in December, 2012, "Renewing Ontario's Electricity Distribution Sector: Putting the Consumer First"; The Report of the Ontario Distribution Sector Review Panel, December 2012 (the "Review Panel Report").¹

¹ CJI0010462 (Exhibit 137).

5. The Preface to and Chapters 1 and 2 of the Review Panel Report provide (in part) as follows:

In order to ensure that Ontario's local distribution companies (LDCs) deliver power at the lowest possible cost and contribute to a strong economic future, the government asked the Panel to look at whether a restructured distribution system could lead to price stability, a more efficient and reliable system configuration, as well as fairness and value for money.

...

The Panel members heard from close to 85 stakeholders including LDCs, associations, consumer groups, unions, municipalities, government ministries and agencies, financial and investment organizations and individuals from across the province. The Panel found that most presenters and submitters agreed that significant change is required if all the province's LDCs are to adopt the technological innovations that will enhance the safety and reliability of the electricity system, reduce its operating cost, and enable a renewed focus on the customer.

...

Chapter 1: The Imperfect World--How We Got Here

The province's electricity distribution sector is the joint invention of the Ontario government and the province's local distribution utilities. It was created in the early 1900s under pressure from business leaders and politicians in Toronto, Kitchener, London and other communities who understood that their communities needed an affordable supply of electricity in order to prosper.

The towns and cities in Ontario at the beginning of the 1900s also knew they needed an assured supply of this new source of energy. In 1906 the Ontario government created the Hydro-Electric Power Corporation (HEPC) to transmit power from Niagara Falls. HEPC and its successor Ontario Hydro established the generation and transmission facilities that supplied electricity to generations of Ontarians.

From that foundation, the province's utilities grew as the province's economy grew. At one point in 1923, Ontario had 393 different utilities supplying electricity to customers. Essentially, any municipality could create a distribution utility, and HEPC or Ontario Hydro would supply the power, both generation and transmission. This was basically the state of affairs until 1996, when a provincially appointed committee recommended significant changes to the structure of municipal electricity utilities (MEUs).

The MacDonald committee recommended that Ontario's 307 remaining MEUs be merged with the distribution systems then operated by Ontario

Hydro to create shoulder-to-shoulder distribution utilities along regional and county lines. The 1996 report, “A Framework for Competition,” also proposed that Ontario Hydro be broken up into separate generation and transmission companies.

Two-and-a-half years later, the Ontario legislature passed the Energy Competition Act (ECA), putting into place a number of the recommendations of the committee. The ECA created a new company for generating electricity (Ontario Power Generation) and another to take over Ontario Hydro’s transmission and distribution assets (Hydro One Inc.). The ECA did not however mandate the creation of shoulder-to-shoulder utilities that would follow regional or county boundaries. While the ECA did confirm that municipal governments owned the electricity utilities, it required that they be transformed into business corporations under the Ontario Business Corporations Act (OBCA), a departure from the past when local commissions were the norm.

Even though the legislation did not mandate a wholesale consolidation of the province’s MEUs, a flurry of mergers and acquisitions did occur during this period, reducing the number of utilities from 307 to 89.

Many utilities were sold by their municipal owners, who took advantage of a temporary lifting of a transfer tax to monetize the value of the assets. The transfer tax holiday eliminated a 33% tax that would have been levied on the proceeds of the sale.

88 of the smaller utilities were bought by Hydro One Networks, and absorbed into its distribution network; an 89th, Brampton Hydro, was purchased by Hydro One Inc. and set up as a separate subsidiary.

Larger utilities were created when their municipal owners were amalgamated, such as Hydro Ottawa, Chatham-Kent Hydro, Greater Sudbury Hydro, Hamilton Hydro, and Toronto Hydro.

Many other utilities merged with neighbouring utilities.

Since then, there have been a handful of further consolidations among LDCs, including PowerStream, Veridian Connections, Horizon Utilities, and Entegrus Powerlines. However, the pace of consolidation and rationalization of the distribution sector has slowed to a snail’s pace. Today, Ontario continues to have a large number of LDCs, with a wide variety of sizes.

The Current Landscape²

² CJI0010462, Exhibit 137 (as of 2012, when the Review Panel Report was published).

Ontario's fragmented system for distributing electricity is unique in Canada, a product of history rather than the outcome of rational planning. No other jurisdiction has chosen this structure as a desired outcome.

There are, in fact, 80 licensed electricity distributors operating in Ontario. While they are all licensed by the Ontario Energy Board (OEB), the OEB does not regulate the rates charged by three of them. All the remaining utilities have their rates regulated by the OEB. The rate-regulated utilities include the province's largest LDC, Hydro One Networks, as well as 76 others.

The range and variety of the province's LDCs is remarkable and cannot be found in any other jurisdiction in Canada. One of the smaller utilities, Hydro 2000, serves just 1,208 customers in the eastern Ontario towns of Alfred and Plantagenet. The largest distributor in the province, Hydro One Networks, has a thousand times as many customers.

...

Hydro One Inc. put it this way in its submission: "When compared against other Canadian jurisdictions, Ontario has almost twice as many LDCs... as all of the remaining provinces combined."

...

Ontario's distribution sector is unusual in another respect. The boundaries of many of the LDCs lack any coherence or consistency. A number of utilities serve a patchwork of widely separated areas with non-contiguous boundaries.

...

Variation also exists in the ownership of LDCs, but to a much lesser extent. Ontario's provincial and municipal governments own the vast majority of the province's distribution utilities. The Ontario government owns Hydro One Inc., which in turn owns three distribution utilities.

...

If Ontario was to set out to establish a new electricity distribution system from scratch, it is highly doubtful that it would choose to replicate the current structure. The arrangement of Ontario's distribution system cannot be found anywhere else in Canada. Many other provinces have only a single electricity distributor that is part of a vertically integrated utility handling both the transmission and the distribution of electricity.

...

The Cost to the Consumer

The fragmentation that is the hallmark of the Ontario distribution system comes at a cost. The Panel's research and analysis shows that the current approach to delivering electricity is costing families, farms and businesses more than it should.

Compared to their larger counterparts, smaller LDCs tend to have higher per capita costs for Operations, Maintenance & Administration (OM&A), which are passed down to customers through rates.

There is a duplication of equipment and facilities among neighbouring LDCs.

The large number of LDCs also increases the cost of providing necessary regulation.

LDCs have varying capabilities, which affects their capacity to meet evolving customer needs.

The key question for the Panel is whether there is a better way to manage the costs of delivering electricity to the consumer in Ontario.

...

Data show that there have been significant increases in the OM&A costs of the distribution sector. The OM&A expenses for utilities increased by more than 42% between 2005 and 2011. During the same time the number of customers served by LDCs saw an increase of just 7% and inflation was just 11.6%.

...

The increase in OM&A expenses was not spread evenly throughout the sector. When one looks closer at individual LDCs, it is clear that OM&A costs per customer are generally higher for smaller LDCs.

...

To put it another way, in 2011 OM&A costs per customer for small LDCs were, on average, 75% higher than for large LDCs.

This is in part driven by the fact that small LDCs on average have approximately 2.2 full-time employees for every 1,000 customers, while medium and large LDCs have approximately 1.7 full-time employees for every 1,000 customers. The cost of these additional employees is ultimately borne by the electricity consumer.

...

Smaller LDCs usually have to pay more to raise money and attract investment... Smaller LDCs are typically charged higher interest rates and financing charges than LDCs that have a larger asset and customer base. Larger LDCs generally have access to a wider variety of capital markets, and benefit from the best terms and lowest debt costs. These lower financing costs are passed on to their customers.

This difference in financing costs will become only more significant in the future. Utilities will need billions of dollars in additional investment to transform themselves into modern LDCs that use up-to-date technology and offer higher levels of service to their customers. This investment will be more easily secured by larger LDCs.

...

It is already a struggle for many small LDCs to meet the demands of renewing their networks and adding state-of-the-art technology and services. Small LDCs have typically focused their expenditures on maintaining their existing asset base, while medium and large LDCs have undertaken more improvements and capital projects that have added new capacity and services. In addition, larger LDCs tend to reinvest the majority of their net income back into the business.

...

The province's distribution workforce is "greying," and the wave of retirements expected over the coming decade threatens to cause a shortage of skilled labour in the province's LDCs. Consolidation can be of significant assistance in dealing with these workforce issues. Some of the job reductions that will come from the increased efficiency of the sector can be painlessly absorbed by retirements. There would also be a bigger talent pool in larger LDCs, making it easier to shift employees into vacant positions without the need for new hires. The next few years present a rare opportunity to rationalize the distribution system with a reduced impact on employees.

...

Chapter 2: The New World of Electricity

Around the world, dramatic changes are occurring to the way people generate and use electricity. Electricity distributors are having to rethink how they do business in order to stay ahead of the curve.

For decades, LDCs were relatively passive players in the electricity sector, delivering electricity that was generated elsewhere. They have been the

brokers of a one-way flow of energy. The electricity would be produced at a central generation station using hydroelectric, coal, or nuclear energy, where it would then be transmitted, often over long distances, to local communities and then distributed to customers.

Jurisdictions everywhere are changing how they generate electricity and how they use it. Instead of mega-projects, they are building smaller-scale distributed generation closer to where the energy will be consumed. In order to reduce the greenhouse gas (GHG) emissions that come from the use of carbon based fuels, industrialized nations everywhere are turning their minds towards new uses for electricity, such as emission-free electric vehicles. Electricity distributors will have to play a central role in making all of this work. This promises to be a far more complex and sophisticated role than Ontario's LDCs are used to currently.

...

The advent of computerized switching and digital data in electricity distribution will present challenges for LDCs. Some of the larger ones, such as Hydro One Networks, Horizon Utilities and PowerStream have already taken advantage of the new technology to develop new services for customers. Others are in danger of being left behind.

The investment needed to transform the province's current electricity distribution system into one that uses modern technology to provide new customer services will cost billions of dollars. This investment is critical to ensuring the preservation of and the future economic prosperity of sustainable communities throughout Ontario.

6. The Review Panel made numerous recommendations, this one among them:

Regional Distributors

The 73 LDCs that are the focus of this report should be consolidated into 8 to 12 larger regional distributors that are large enough to deliver improved efficiency and enhanced customer focus, while at the same time maintaining a strong connection with their local communities.

There should be two regional distributors to serve the north, one serving the northeast part of Ontario, and the other serving the northwest, leaving 6 to 10 regional distributors in southern Ontario. Any new regional distributor in southern Ontario should have a minimum of 400,000 customers.³

7. David McFadden, who was one of three members of the Ontario Distribution Sector Review Panel, a former electricity lawyer, co-chair of the electricity transition committee,

³ CJI0010462 (Exhibit 137), Chapter 6.

and a Collus board member, gave evidence at the hearing.⁴ He stressed in his evidence the importance of the context of the electricity industry at the beginning of 2010:

If you look at the context in which we were living, and--I think that probably is really important, is that over the period -- if you look at it -- at this point we're at 2010, a little over ... 10 years earlier, around 2000 there were 307 LDCs in Ontario like Collus Power.

By this point the number had dropped down to a little under 80 ...

... all these companies where it's a huge amount of activity between 1999, basically, and 2010, companies merging, selling, moving on.⁵

8. As were most LDCs, Collus was following developments in the industry, and considering its options for the future. In January 2010, Mr. McFadden made a presentation to the Collus Board during a strategic planning session in which he set out the challenges that electricity distributors in Ontario would face as a result of new legislative requirements.⁶
9. Other LDCs were also concerned about the industry dynamics at the time. Both Horizon and Veridian representatives gave evidence at the hearing that in 2011 LDCs were pursuing consolidation opportunities. Kristina Gaspar, a former representative of Hydro One, gave evidence that the expectation in the industry was that there would continue to be significant consolidation and, if LDCs did not consolidate on their own, the provincial government might intervene to force consolidation.⁷ Based on this, Hydro One fully expected and was pursuing widespread industry consolidation.⁸ Michael Angemeer, former Chief Executive Officer (“CEO”) of Veridian Connections, also gave evidence that the expectation was that consolidation would continue and that small utilities would continue to struggle under increased regulatory burdens.⁹

C. PowerStream Inc.

11. Alectra Utilities Corporation is a municipally-owned electrical distribution company that was formed in 2017 through the merger of PowerStream, Horizon, and Enersource and

⁴ Evidence of David McFadden, May 13 Transcript, p. 87, lines 6-25, p. 88, lines 1-5.

⁵ Evidence of David McFadden, May 13 Transcript, p. 100, lines 22-25, p. 101, lines 1-4, 19-21.

⁶ TOC0516594 (Exhibit 76), “Presentation to the Collus Power Strategic Planning Session” (January 14, 2010) by David J McFadden Q.C., Board Member.

⁷ Evidence of Kristina Gaspar, May 29 Transcript, p. 251, lines 3-16.

⁸ Evidence of Kristina Gaspar, May 29 Transcript, p. 251, lines 17-18.

⁹ Evidence of Michael Angemeer, May 29 Transcript, p. 253, lines 3-9, 19-25.

the subsequent purchase of Hydro Brampton. Prior to this, PowerStream had been created through four LDC consolidations within eight years (2001-2009).¹⁰

12. At the time of the events giving rise to this Inquiry, PowerStream was the second largest municipally-owned distribution company in Ontario, and was jointly owned by the municipalities of Barrie, Markham and Vaughan. PowerStream's service territory was focused in Simcoe County and York Region, including in Aurora, Barrie, Bradford West Gwillimbury, Markham, New Tecumseth, Penetanguishene, Richmond Hill, Thornton and Vaughan. It provided services to over 330,000 customers and had more than 500 employees.¹¹
13. PowerStream had a reputation in Ontario's LDC sector as a leader in achieving synergies through mergers and consolidation.¹² PowerStream also had a history of being an industry leader in environmental and conservation initiatives.¹³

**D. PowerStream Learns of Potential Collus Opportunity;
November-December 2010**

14. In late November 2010, Ed Houghton, the CEO of Collus, reached out to PowerStream CEO Brian Bentz and suggested that they meet. Mr. Houghton and Mr. Bentz had attended electricity industry events over the years and knew each other somewhat through their involvement in the Electricity Distributors Association. Also, Mr. Bentz had previously worked at Barrie Hydro, and had come to know Mr. Houghton because they were from neighbouring municipalities.¹⁴
15. Mr. Houghton and Mr. Bentz met on December 3, 2010.¹⁵ At that meeting, Mr. Houghton and Mr. Bentz spoke about the changes occurring in the LDC industry, as well as fiscal challenges faced by the Town of Collingwood. Mr. Houghton told Mr. Bentz that he was

¹⁰ ALE0004044 (FD1 at para 274), "Collus Power & PowerStream: A Strategic Partnership – A presentation by PowerStream to the Collus Power Task Team" (September 19, 2011), slide 9. Evidence of Brian Bentz, May 30 Transcript, p. 350, line 14 – p. 351, line 24.

¹¹ ALE0004044 (FD1 at para 274), "Collus Power & PowerStream: A Strategic Partnership – A presentation by PowerStream to the Collus Power Task Team" (September 19, 2011).

¹² Evidence of Brian Bentz, May 31 Transcript, p. 82, lines 3-5.

¹³ ALE0004044 (FD1 at para 274), "Collus Power & PowerStream: A Strategic Partnership – A presentation by PowerStream to the Collus Power Task Team" (September 19, 2011); Evidence of Brian Bentz, June 3 Transcript, p. 122, lines 18-22.

¹⁴ Evidence of Brian Bentz, May 30 Transcript, p. 356, line 20 – p. 357, line 23.

¹⁵ ALE0000044 (FD1 at para 110), Email chain between Bentz and Houghton, November 30, 2010.

exploring options for Collingwood's LDC, including the possibility of an RFP with multiple bidders for a possible sale of Collus.¹⁶

E. PowerStream was the Most Logical Fit for a Strategic Partnership with Collus

16. Even before the RFP was issued, it was obvious to anyone in the Ontario LDC industry that PowerStream was the most logical fit for a strategic partnership with Collus for various reasons:
- (i) PowerStream's existing rate base was in close geographic proximity to Collingwood, allowing for efficiencies in service delivery.¹⁷
 - (ii) PowerStream already had a presence in Simcoe County.¹⁸
 - (iii) PowerStream was large enough to offer assistance with regulatory matters, information services, call centre, Conservation and Demand Management and other specialized services.¹⁹
 - (iv) PowerStream offered a community-based approach, which would protect local jobs and maintain local access to Collingwood's utility.²⁰
17. Once the four bidders' responses to the RFP were submitted in mid-November 2011, it became clear to the other bidders that PowerStream had prepared the strongest bid. In the words of Veridian's Dave Clark, PowerStream "just plain outbid us".²¹

F. PowerStream Retaining Paul Bonwick , and Disclosure of the Retainer to the Town, to Collus, and to the Strategic Partnership Task Team ("SPTT")

(a) Introduction

18. In June 2011 PowerStream entered into a Consulting Agreement (dated June 7, 2011) with Paul Bonwick and his company, Compenso Communications Inc. ("**Compenso**").²²

¹⁶ ALE0000008 (Exhibit 246), Undated notes of Brian Bentz; ALE0050195 (FD1 at para 110), Transcription of Brian Bentz Notes; Evidence of Brian Bentz, May 30 Transcript, p. 367, lines 2-4.

¹⁷ Evidence of Brian Bentz, May 31 Transcript, p. 38, lines 13-23.

¹⁸ Evidence of Brian Bentz, May 31 Transcript, p. 38, lines 13-14.

¹⁹ ALE0040924.0001 (Exhibit 104), p. 6. "2013 Collus PowerStream Annual Report", Message from Co-Chair David McFadden.

²⁰ ALE0004044 (FD1 at para 274), "Collus Power & PowerStream: A Strategic Partnership – A presentation by PowerStream to the Collus Power Task Team" (September 19, 2011), slides 14 and 24.

²¹ VER0000207 (Exhibit 219), Email from Dave Clark to Mark Turney and others, February 2, 2012.

²² ALE0000192 (Exhibit 3), Compenso Consulting Inc. "Consulting Engagement" (June 7, 2011).

As is described below, the impetus for the retainer was the prospect that the electrical utility of the Town of Collingwood, Collus Power, might be up for sale in whole or in part (as Ed Houghton had told Brian Bentz in late November and early December).

19. PowerStream was interested in acquiring all or part of Collus as part of its overall mergers and acquisitions growth strategy, with which it had enjoyed considerable success in the preceding years. PowerStream viewed the possible acquisition of all or part of Collus as a useful and indeed necessary precursor or stepping stone to future mergers with or acquisitions of other LDCs in the same geographic area. PowerStream was particularly interested in the dozen municipally-owned LDCs that comprised the Cornerstone Hydro Electric Concepts Association (commonly called the “**CHEC Group**”), partly because most of them were located in the same geographic area in which PowerStream itself operated. Collus was a member of the CHEC Group.²³
20. PowerStream therefore embarked on a two-stage endeavour; the first stage was a transaction with Collus, whereby PowerStream would acquire all or some of the shares of Collus from the Town of Collingwood. If that transaction proceeded, PowerStream would use it as a springboard to enter into discussions with other LDCs in the CHEC Group for further consolidations.²⁴
21. PowerStream and other large companies that had been involved in LDC consolidation over the previous decade on occasion used consultants to assist them in their merger and acquisition efforts.²⁵
22. PowerStream was of the view that Mr. Bonwick could assist the company in its growth strategy because of his lengthy connection to Collingwood and the surrounding area and his personal knowledge of the politics of and important issues in the region.²⁶ Mr. Bonwick had been a Collingwood Town Councillor in the 1990s, and had served as the member of Parliament for Simcoe-Grey from 1997 to 2004, being appointed to the Privy Council as a parliamentary secretary to the Minister of Human Resources and Skills Development. Mr. Bonwick had a good reputation. He was well known and had many connections in the Simcoe-Grey area, and had operated his consulting firm Compenso for many years.²⁷
23. When in January 2011 Mr. Bonwick contacted PowerStream about the possibility of assisting PowerStream in connection with a possible Collus Transaction (which is discussed in detail below), PowerStream was immediately concerned when it learned that Bonwick’s sister, Sandra Cooper, was the Mayor of Collingwood. PowerStream

²³ Evidence of Brian Bentz, May 31 Transcript, p. 37, line 19 – p. 39, line 3.

²⁴ Evidence of Brian Bentz, May 31 Transcript, p. 39, line 24 – p. 40, line 6.

²⁵ Evidence of Kristina Gaspar, May 29 Transcript, p. 226, lines 16-20.

²⁶ ALE0000192 (Exhibit 3), Compenso Consulting Inc. “Consulting Engagement” (June 7, 2011), p. 1; Evidence of Brian Bentz, May 31 Transcript, p. 39, lines 1-7.

²⁷ ALE0000192 (Exhibit 3), Compenso Consulting Inc. “Consulting Engagement” (June 7, 2011), p. 1.

sought and received assurance that this relationship did not create any conflict of interest under the applicable legislation (the *Municipal Conflict of Interest Act*). PowerStream was still concerned enough about appearances, however, that it went to great lengths to disclose Mr. Bonwick's retainer by and role for PowerStream (i) to officials of the Town, (ii) to Collus Power, and (iii) to members of the Strategic Partnership Task Team ("**SPTT**") that Collus put in place in July 2011 to run the RFP process for the sale of shares of Collus. PowerStream also imposed a contractual obligation on Mr. Bonwick to disclose his retainer and the scope of his services to both the mayor and the Clerk of the Town.

24. PowerStream states as follows with respect to its retainer of Mr. Bonwick as a consultant with respect to the Collus opportunity:

- (i) There was nothing illegal or improper in PowerStream retaining Mr. Bonwick as a consultant to assist them on both the Collus opportunity and with respect to future LDC consolidation opportunities.
- (ii) PowerStream was concerned about and addressed the fact that Mr. Bonwick and the Mayor were siblings. PowerStream had no legal obligation in this regard, however, and certainly no obligation to investigate in detail the precise nature of the relationship between Mr. Bonwick and Mayor Cooper, or Mayor Cooper's relationship with Collus Power and its Board of Directors. Mayor Cooper was an experienced and capable politician who was well aware of her obligations. Any possible conflict of interest was hers to consider and address, and not Mr. Bonwick's or PowerStream's.
- (iii) Having decided to retain Mr. Bonwick, PowerStream took all steps that were reasonable and prudent in the circumstances to disclose Mr. Bonwick's consulting retainer to all those who should have known about the retainer.

(b) *The first contact between Mr. Bonwick and PowerStream: January 2011*

25. On January 10, 2011, about six weeks after Mr. Houghton had met with Mr. Bentz to discuss a potential sale of shares of Collus Power, Mr. Bonwick sent Mr. Bentz an email introducing himself, and advising of an opportunity for PowerStream regarding a potential sale of Collus:

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 mixed emotion. It is a result of that possibility I would like to meet and discuss PowerStream's level of interest in pursuing such an option.

Municipal Council is in the process of beginning their budget considerations and as a result timing is potentially a critical factor. As a result I am requesting an opportunity to meet and discuss the situation should PowerStream have a potential interest.²⁸

26. Mr. Bentz had never met and knew nothing about Mr. Bonwick.²⁹ Mr. Bentz called Mr. Houghton and asked him what he knew about Bonwick. Mr. Houghton said that he knew and "highly respected" Mr. Bonwick. Mr. Houghton told Mr. Bentz that Mr. Bonwick might be able to help PowerStream but that PowerStream would have to decide whether to hire Mr. Bonwick as a consultant.³⁰
27. PowerStream had used consultants to assist on other LDC acquisitions prior to the Collus Transaction. One of the reasons Mr. Bentz believed that Mr. Bonwick might be of assistance on the Collus Transaction was to shed light on whether the Town of Collingwood was likely to agree to proceed with a sale of some portion of Collus. The following was Mr. Bentz's evidence about his reaction to Mr. Bonwick's email and his discussion with Mr. Houghton:

I thought of the conversation that I had with -- with Mr. Houghton and the fact that he had said that the Utility was considering its options, and -- but it was clear to me, based on our conversation, that I didn't think the Town was involved at the time. And we were working on a lot of things. We were working on a lot of transactions and a lot of non-regulated type initiatives, wind, plasma gasification plants, the FIT Program was coming into place. We were looking at four (4) or five (5) different mergers. I had had experience before with -- in a situation actually in Orangeville Hydro in 2007 where the Board and the Utility were not aligned. The Board approached - the Board and the management approached us and said that they were very interested in a transaction. We went a long ways down the road. We put in an unsolicited bit. We did a valuation. I wasted a lot of time on that transaction. Here's someone who has experience as a municipal councillor and a federal politician, who likely would be familiar with the situation at the Town and may provide insight into what was -- what was the Town's deliberations on this, because I did not want to waste time if the Town was not amenable to such a transaction.³¹

²⁸ ALE0000045 (FD1 at paras 115-116), Email from Paul Bonwick to Brian Bentz, January 10, 2011.

²⁹ Evidence of Brian Bentz, May 31 Transcript, p. 10, lines 10-14.

³⁰ ALE0000008 (Exhibit 246), Undated notes of Brian Bentz; ALE0050195 (FD1 at para 110), Transcription of Brian Bentz Notes.

³¹ Evidence of Brian Bentz, May 31 Transcript, p. 13, line 18 – p. 14, line 19.

(c) The communications and meetings between PowerStream and Mr. Bonwick, January – May 2011

28. On January 11, 2011, Mr. Bentz responded to Mr. Bonwick's email, inviting him to meet at PowerStream's offices.³² During that first meeting on January 12, 2011, Mr. Bonwick told Mr. Bentz that he was the brother of the Mayor of Collingwood, Sandra Cooper. Mr. Bentz was concerned about a possible real or perceived conflict because of that relationship. Mr. Bentz testified that he made it clear to Mr. Bonwick that the hiring of his firm would have to be vetted by PowerStream's Audit & Finance Committee, "that it would require full disclosure because of [the] potential conflict", and that Mr. Bentz wanted Mr. Bonwick to advise Mr. Houghton that PowerStream was considering hiring Mr. Bonwick's firm.³³
29. In notes that he later made in April, 2011 for the purpose of seeking approval from the PowerStream Board to hire a communications consultant, Mr. Bentz noted that the following issues were of concern to him as he considered working with Mr. Bonwick [in part]:
- ? Onside with the Municipal Act?
 - Even if technically not our issue, (it's the Mayor's)
 - Do we want to be associated with the optics
 - If we don't what is fall out--if they do proceed--I can probably answer
 - Commercial terms fees, etc can negotiate abut [sic] is a secondary issue.³⁴
30. Mr. Bentz proceeded carefully on the potential retainer of Mr. Bonwick, given his relationship with Mayor Cooper. On January 19, 2011, Mr. Bentz met with the Mayors of the Barrie, Markham and Vaughan, who sat on both PowerStream's Board of Directors, and its Audit and Finance Committee, as designated representatives of PowerStream's municipal shareholders. Mr. Bentz sought the Mayors' advice about the conflict issue and whether PowerStream should engage Mr. Bonwick. Mayor Lehman and Mayor Bevilacqua both knew Mr. Bonwick personally. Mayor Bevilacqua and Mr. Bonwick had served together in the federal Liberal caucus during the time when they served as Members of Parliament.³⁵ The Mayors thought that if Mr. Bonwick could

³² ALE0000051 (FD1 at para 118), Email chain between Bonwick and Bentz, January 11-12, 2011.

³³ Evidence of Brian Bentz, May 31 Transcript, p. 19, line 13 – p. 20, line 6.

³⁴ ALE0000008 (Exhibit 246), Undated notes of Brian Bentz; ALE0050195 (FD1 at para 110), Transcription of Brian Bentz Notes.

³⁵ Evidence of Brian Bentz, May 31 Transcript, p. 153, lines 13-18, p. 274, lines 18-25.

provide value, and subject to them meeting with Mr. Bonwick and disclosure being made, they would recommend hiring Bonwick.³⁶

31. At Mr. Bentz's request, on January 20, 2011, Mr. Bonwick provided Mr. Bentz with a proposal for the potential engagement of Mr. Bonwick's company, Compenso, by PowerStream.³⁷ The proposal provided for a monthly fee of \$9,500, plus a "success fee" of 2.5% of the acquisition price of any LDC.
32. From the outset, Mr. Bentz would not agree to have PowerStream pay a success fee to Mr. Bonwick for a Collus Transaction, because Mr. Bentz was of the view that Mr. Bonwick's compensation should be based on time and effort expended, and not on outcome. As is detailed below, Mr. Bonwick ultimately agreed to this, and PowerStream paid no success fee to Mr. Bonwick or Compenso for the Collus Transaction.
33. Mr. Bonwick understood that Mr. Bentz was concerned about the possible conflict of interest arising from Mr. Bonwick being the brother of the Mayor. On January 29, 2011, Mr. Bonwick forwarded to Mr. Bentz a January 17, 2011 email from Collingwood Town Clerk Sarah Almas to Deputy Mayor Rick Lloyd, in which Almas confirmed as follows:³⁸

You are correct in that the Municipal of [sic] Conflict Interest Act, clearly identifies that a Member of Council is NOT deemed to be in conflict if it's the interest (direct or indirect) of a sibling.
34. Over the next several months, PowerStream had discussions and meetings and exchanged emails with Mr. Bonwick. Mr. Bentz and PowerStream CFO John Glicksman made a presentation to PowerStream's Audit and Finance Committee on March 8, 2011, informing the Committee of the potential opportunity regarding Collus and that PowerStream was considering hiring Mr. Bonwick as a consultant, but only if there were full disclosure of his relationship with the Mayor.³⁹
35. On April 13, 2011, the three PowerStream Mayors met with Mr. Bonwick and Mr. Bentz. At that meeting, Mr. Bentz and the Mayors told Mr. Bonwick that they could see merit in retaining him, but that they were concerned about a perception of conflict. Mr. Bonwick responded to this concern by suggesting an in-person meeting between PowerStream and Town representatives to ensure that the Mayor and Town were comfortable with the retainer.⁴⁰

³⁶ Evidence of Brian Bentz, May 31 Transcript, p. 79, lines 1-15.

³⁷ ALE0000059 (Exhibit 236), Email from Bonwick to Bentz re: proposal, January 20, 2011; ALE0000060 (Exhibit 237), attached proposal.

³⁸ ALE0000069 (Exhibit 241), Email chain from Bonwick to Bentz re: "Conflict of Interest", January 17-29.

³⁹ ALE0004218 (Exhibit 248), Audit and Finance Committee "M&A and Renewable Generation Update", March 8, 2011.

⁴⁰ ALE0000104 (Exhibit 267), April 20, 2011 memo from Paul Bonwick to Brian Bentz.

36. Mr. Glicksman became the main point of contact at PowerStream for Mr. Bonwick, and was responsible for drafting a written agreement in connection with Mr. Bonwick's retainer. On April 25, 2011, Mr. Glicksman prepared "DRAFT Key Points for Discussion",⁴¹ setting out a proposed approach to a written retainer, based on his understanding of a previous retainer that PowerStream had entered into with another consultant. Mr. Glicksman forwarded the Key Points for Discussion to Mr. Bentz.⁴²
37. On May 24, 2011, Mr. Glicksman and Mr. Bentz met with Mr. Bonwick. Mr. Bonwick wrote to them both two days later to thank them for the meeting that was "to discuss the exciting future and potential of Powerstream". He also attached a copy of the proposal that he had sent to Mr. Bentz on January 18 as well as four letters of reference (three from current clients, and a fourth from Mr. Houghton on Collus letterhead, dated 2005).⁴³

(d) The draft and final form of consulting agreement (the "June Agreement") between PowerStream and Mr. Bonwick and his company, Compenso

38. PowerStream then drafted a consulting agreement with respect to Bonwick's engagement with PowerStream, and Mr. Glicksman sent it to Mr. Bonwick on May 31.⁴⁴ The draft agreement, which bore a date of June 1, 2011:
- (i) included a section on "Scope of Work" that copied almost *verbatim* the language that Mr. Bonwick had used in his January 18 proposal; and
 - (ii) also included the following section, that imposed detailed disclosure requirements on Mr. Bonwick:

Disclosure

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. Further, with respect to Collus Power, CCI shall, after consulting with PowerStream, make additional disclosure(s) that may be prudent or required by applicable law, during the course of this engagement,

⁴¹ ALE0000119 (Exhibit 229), Email from Glicksman to Bentz re: terms for discussion with Paul Bonwick, April 25, 2011.

⁴² ALE0000119 (Exhibit 229), Email from Glicksman to Bentz re: terms for discussion with Paul Bonwick, April 25, 2011.

⁴³ ALE0035415 (Exhibit 271), Email from Paul Bonwick to John Glicksman and Brian Bentz re: reference letters and January 18, 2011 proposal.

⁴⁴ ALE0000159 (Exhibit 56), Email from John Glicksman to Paul Bonwick, May 31, 2011; ALE0000160 (Exhibit 55), attached draft agreement.

or any extension thereof. Further, Bonwick nor CCI, will advocate on PowerStream's behalf to the Province of Ontario, or any Ministry thereof, without PowerStream's express written direction, and further, any such authorized activity shall comply with applicable law, including the *Lobbyists Registration Act, 1998*.

39. By email of the same day, Mr. Bonwick replied to Mr. Glicksman (copies to Mr. Bentz and Dennis Nolan, PowerStream's in-house counsel) specifically concerning the "Disclosure" requirement in the draft agreement. He wrote:

There is one small correction required in the disclosure paragraph related to "notice to the Clerk". The paragraph is correct in its [sic] assertion that the Mayor has been informed and has subsequently agreed to provide written confirmation to Powerstream. I have not formally engaged with the Clerk or any other municipal staff on this matter at this time.

Brian and I discussed participating in a meeting with several Municipal and LDC officials from the Town of Collingwood and Collus at a date and time to be determined should the Municipality announce an RFP.⁴⁵

40. The further meeting with Town and Collus officials that Mr. Bonwick referred to did indeed take place, on June 29, 2011 (discussed below). But of immediate concern to PowerStream was Mr. Bonwick's statement that he had not engaged with the Clerk of the Town. This was unacceptable to PowerStream, because it did not amount to the level of disclosure that Mr. Bonwick had represented to PowerStream that he would make. The next day (June 1, 2011), Mr. Glicksman replied to Mr. Bonwick, copying Mr. Bentz and Mr. Nolan, stating:

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 there was no conflict **for you do to 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. Given that you had direct discussion with Brian regarding this it may be best for you to give him a quick call so that we can sort the wording out and get on with you supporting us on this exciting project. [emphasis added]⁴⁶

In the underlined portion of this email, Mr. Glicksman made it clear to Mr. Bonwick that PowerStream expected him to tell Town Clerk Almas specifically that part of Bonwick's work for PowerStream would be "leading to or on a potential RFP of Collus".

⁴⁵ ALE0000158 (FD1 at para 190), Email exchange between John Glicksman and Paul Bonwick, May 31, 2011.

⁴⁶ ALE0000163 (Exhibit 244), Email from John Glicksman to Paul Bonwick, June 1, 2011.

41. Mr. Bonwick addressed the matter immediately. On June 2, 2011 he sent the following email to Bentz and Glicksman, copying Town Clerk Almas:

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 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.

Ms Almas agreed to be copied on this message.⁴⁷

In her evidence Town Clerk Almas said that this email "was a pretty accurate description of what ... we [she and Bonwick] had a discussion about".⁴⁸

42. Also on June 2, 2011, Mayor Cooper sent a letter (by email from her assistant) on Town letterhead to Mr. Bentz.⁴⁹ In that letter, which had been prepared with Mr. Bonwick's assistance, the Mayor said that that she had been made aware of Mr. Bonwick's proposed retainer by PowerStream:

My brother, Paul Bonwick, recently brought to my attention that he has submitted a proposal to provide services to Powerstream.

Paul has described the potential services his company will be providing to include but not limited to strategic advice in matters related to Public Relations, Strategic Planning, Acquisitions, and Media Relations. He has also stated that these responsibilities could potentially incorporate advice related to the Town of Collingwood subject to certain conditions unfolding in the coming months.

Should these conditions come in to play Paul has suggested that a meeting be scheduled with relevant parties to more formally clarify Paul's role with Powerstream.

This appears to be a reasonable course of action however I would emphasize that should you choose to engage Compenso in some manner

⁴⁷ ALE0000175 (Exhibit 5), Email from Bonwick to Bentz and Glicksman (copying Almas) re: Compenso proposal, June 2, 2011.

⁴⁸ Evidence of Sara Almas, April 15 Transcript, p. 54, lines 18-20.

⁴⁹ TOC0048811 (Exhibit 57), Email from Sandra Cooper to Brian Bentz, June 2, 2011; TOC0048812 (Exhibit 58), attached letter.

of service, it should be base [sic] entirely on the merits of the proposal and completely unrelated to his relationship with me and that of my office ...

43. In her evidence at the hearing, Mayor Cooper acknowledged that in her June 2, 2011 letter to Mr. Bentz, the reference to “conditions” that may “come in to play” referred to opportunities for a possible acquisition of Collus by PowerStream.⁵⁰
 44. It must be borne in mind that Mr. Bonwick was highly regarded, and with good reason. He was an experienced businessman, as well as a former Town Councillor and the twice-elected Member of Parliament for Simcoe-Grey (as it was then).⁵¹ With this background concerning Mr. Bonwick, all of these communications with PowerStream involving the Town’s Mayor and Clerk very reasonably gave PowerStream confidence that Mr. Bonwick had indeed complied with his disclosure obligations in the draft consultation agreement. PowerStream had no reason to question whether or not Mr. Bonwick had done so.
 45. On June 3, 2011, Mr. Bonwick sent an email to Mr. Glicksman, copying Mr. Bentz and others at PowerStream:

The Clerk has been thoroughly briefed by me. Previously the discussion had taken place between the Mayor and the Deputy Mayor. I have also informed both Parties that Brian and I will be requesting a meeting over the next two or three weeks as time permits.⁵²
- Because Mr. Glicksman had made it clear to Mr. Bonwick in his email of June 1 (set out above) that he had to disclose to Clerk Almas that he would be doing “work for [PowerStream] leading to or on a potential RFP for Collus”, PowerStream reasonably concluded that Mr. Bonwick had complied with that requirement as well.
46. Mr. Glicksman forwarded Mr. Bonwick’s email about disclosure to the Clerk to Mr. Bentz and Mr. Nolan so they could decide whether the disclosure was sufficient.⁵³ Based on the email, they were satisfied that there was no need to request further disclosure.⁵⁴
 47. The date on the draft consulting agreement was then changed from June 1 to June 7, and Brian Bentz signed it (the “**June Agreement**”) on behalf of PowerStream.⁵⁵

⁵⁰ Evidence of Sandra Cooper, April 25 Transcript, p. 141, lines 14-25, p. 142, lines 1-17.

⁵¹ Evidence of Paul Bonwick, June 14 Transcript, p. 41, lines 1-6.

⁵² Email from Paul Bonwick to John Glicksman, Brian Bentz, and others; June 3, 2011; ALE0000178 (Exhibit 88), Email from Bonwick to Glicksman (copying Bentz), June 3, 2011.

⁵³ Evidence of John Glicksman, June 3 Transcript, p. 215, lines 9-13.

⁵⁴ Evidence of John Glicksman, June 3 Transcript, p. 217, lines 8-14.

⁵⁵ ALE0000192 (Exhibit 3), Compenso Consulting Inc. “Consulting Engagement” (June 7, 2011).

(e) PowerStream's submissions concerning its retainer of Mr. Bonwick, the numerous steps that it took, and the extensive disclosures that PowerStream and Mr. Bonwick made

48. PowerStream submits that any criticism that PowerStream failed to take adequate steps to address the situation arising from Mr. Bonwick being the brother of the Mayor of Collingwood is entirely misplaced, for the following reasons:
- (i) All involved parties knew that the law concerning conflict of interest and municipal officials was the *Municipal Conflict of Interest Act* (the "**MCIA**") of the Province of Ontario, and they also knew that that statute did **not** provide that a municipal official would be in a conflict by reason of a matter involving a sibling of the official coming before the municipal Council for action.
 - (ii) Thus, in the event that the Town and/or Collus were to issue an RFP for the sale of some or all of the Collus shares, and in the event that PowerStream were to be the successful bidder on the RFP, the Mayor would not be deemed to have a conflict of interest under the *MCIA* by reason of her brother working for PowerStream on the bid.
 - (iii) Any concern about a conflict of interest arising out of the Bonwick-Cooper relationship was a concern for the Mayor, because she would be the person with a perceived conflict. Why? Because she was the one who (i) had an obligation as a member of Town Council to act in the best interest of the Town, and (ii) would potentially be voting on approval of a transaction involving Collus. Neither PowerStream nor Mr. Bonwick had any such obligation.
49. During the hearing, some questions were asked of the PowerStream witnesses about what they knew, and whether they made inquiries about, the relationship between Mr. Bonwick and Mayor Cooper, and as to whether Mayor Cooper was a member of the Collus Board. This questioning seemed to suggest an argument or theory that PowerStream had some obligation to do so and failed to discharge that obligation.
50. PowerStream submits that it had no such obligation, and that any argument that PowerStream should have made such inquiries is without merit, for the following reasons:
- (i) As is detailed in the next paragraph, PowerStream made, and ensured that Mr. Bonwick had made, extensive disclosure of Mr. Bonwick's role with PowerStream on a potential transaction involving Collus. After such disclosure had been made, it was up to Mayor Cooper to determine whether her relationship with Mr. Bonwick created a problem of conflict or perceived conflict for her. She would then have to determine whether she should recuse herself from participation in the Collus RFP process and in participating in any ultimate Town Council discussion and decision arising from that process. It would be presumptuous and inappropriate, PowerStream submits, for PowerStream to involve itself in those determinations by the Mayor.

- (ii) As for the Mayor's position as a member of the Collus Board, again, it was the Mayor who would have to determine whether that position created a problem and, if so, how to deal with it. In any event, the Mayor's position as a member of the Collus Board was, PowerStream submits, largely beside the point. This is because any transaction involving the sale of shares of Collus or a strategic partnership involving Collus had to be made by the Town Council, and not by the Collus Board.
- (iii) Mayor Cooper was an experienced politician who had been on Town Council for many years. She had all necessary resources available to her to make appropriate decisions concerning conflicts, both real and perceived. Among them was the Town's long-time external legal counsel, Aird & Berlis, who were experts on municipal conflicts. Indeed Aird & Berlis made a detailed presentation on conflicts to the incoming Collingwood Town Council after each municipal election, and it did so in January 2011 for the new Town Council, including newly-elected Mayor Cooper.⁵⁶

51. It is noteworthy that there is no evidence, in either of the hundreds of thousands of documents submitted to the Inquiry, or from any of the numerous witnesses called to give evidence, that anyone – whether from Collus, the SPTT or the Town – complained or raised questions about PowerStream having retained Mr. Bonwick as a consultant to work on the Collus Transaction. Quite to the contrary, as then Deputy Mayor Lloyd said in his evidence at the hearing, at the end of the June 29 meeting with PowerStream officials, Collus Board Chair Dean Muncaster said:

if Bonwick can help with the sale of ... Collus to the benefit of Collingwood, God bless him.⁵⁷

52. Although as is submitted above PowerStream had no legal obligation to do so, PowerStream nonetheless took numerous steps, and certainly all steps that were reasonable and appropriate in the circumstances, to address any conflict of interest or any perception of conflict arising as a result of Mr. Bonwick being the brother of the Mayor. Before it entered into the June Agreement with Mr. Bonwick, PowerStream had taken all of the following steps:

- (i) PowerStream had carefully considered Mr. Bonwick's engagement, both at the Audit and Finance Committee (including the Mayors of PowerStream's three municipal shareholders) as well as at the PowerStream Board of Directors level.

⁵⁶ Evidence of Sara Almas, April 15 Transcript, p. 155, line 8 – p. 159, line 19; CJI0009072 (Exhibit 11), Agenda for January 6-7, 2011 Orientation Workshop for Collingwood Town Council; CJI0009080 (Exhibit 12), Aird & Berlis PowerPoint presentation to Town Council at Orientation Workshop.

⁵⁷ Evidence of Rick Lloyd, April 30 Transcript; p. 165, line 22 – p. 166, line 7.

- (ii) PowerStream's CEO Brian Bentz had met with Mr. Bonwick to discuss his retainer several times, and both he and three Mayors on the PowerStream Board had also met with Mr. Bonwick.
 - (iii) PowerStream had obtained written confirmation from the Town of Collingwood Clerk that the Mayor had no conflict of interest arising out of Mr. Bonwick acting for PowerStream.
 - (iv) PowerStream had obtained a letter from the Mayor stating that she was aware that PowerStream had engaged Mr. Bonwick.
 - (v) PowerStream had insisted that the June Agreement between PowerStream and Mr. Bonwick and his company contain a provision requiring Mr. Bonwick to make all necessary and prudent disclosures of his engagement with PowerStream.
 - (vi) Although Mr. Bonwick had requested one, PowerStream did not agree to pay a success fee to him in connection with any ultimate transaction for Collus.
53. Further, after PowerStream and Mr. Bonwick entered into the Letter Agreement, PowerStream ensured that a meeting was held with various Town and Collus officials to discuss PowerStream and Mr. Bonwick's role as a consultant for PowerStream in connection with a possible RFP for Collus. This meeting occurred on June 29, 2011, At this meeting, disclosure of Mr. Bonwick's role with PowerStream was made – or repeated – to:
- (i) elected Town officials who were members of the Town Council (Mayor Cooper, Deputy Mayor Lloyd);
 - (ii) Collus officials (Board Chair Dean Muncaster, Board member Cooper, and CEO Ed Houghton); and
 - (iii) members of the future Strategic Partnership Task Team (the "**SPTT**") (all of the above individuals, plus Town CAO Kim Wingrove).
54. The June 29 meeting was held before:
- (i) the SPTT had even been formed, and weeks before it met for the first time;
 - (ii) the SPTT made a decision to proceed with an RFP, and if so what the terms of the RFP would be;
 - (iii) the RFP was issued;
 - (iv) any bids were submitted to the SPTT in response to the RFP;
 - (v) any evaluation of bids was undertaken; and

(vi) any recommendation on the strategic partnership and on the sale of Collus shares was made to Town Council, and the Council made a decision.

55. Before the Town and Collus had taken any significant steps to proceed with or advance a sale of Collus shares, therefore, PowerStream had ensured that extensive disclosure to all relevant people had been made of Mr. Bonwick's role for PowerStream in connection with a possible Collus share sale.
56. In summary, therefore, PowerStream submits that there are no grounds on which to criticize either (A) PowerStream's decision to retain Mr. Bonwick and his company as a consultant both generally and on the Collus Transaction, or (B) how it responded to and handled the relationship between Mr. Bonwick and Mayor Cooper, including the disclosure of Mr. Bonwick's role for PowerStream.

G. The June 29, 2011 Meeting between PowerStream and Town / Collus Officials

57. On June 29, 2011, a meeting took place at the Town of Collingwood's administrative offices.⁵⁸ Present at the meeting were the Mayor (Sandra Cooper), Deputy Mayor (Rick Lloyd) and Chief Administrative Officer (Kim Wingrove) of the Town, Collus Board Chair Dean Muncaster and CEO Ed Houghton, PowerStream CEO Brian Bentz, and Jeff Lehman (the Mayor of Barrie and shareholder representative on the PowerStream Board).⁵⁹

(a) How the meeting came about

58. The idea of a meeting with Town and Collus officials had first been proposed by PowerStream's consultant Mr. Bonwick, as Mayor Cooper stated in her June 2 letter to Mr. Bentz.⁶⁰

(b) The context in which the June 29 meeting took place

59. By the time of the June 29 meeting,

- (i) KPMG had been retained and at the end of May had delivered its valuation of Collus and its report on alternatives for Collus;⁶¹ and

⁵⁸ CPS0002188 (FD1 at para 207), Calendar invitation for June 29, 2011.

⁵⁹ FD1 at para 207, Meeting confirmations for Ed Houghton (TOC0518178), Sandra Cooper, (TOC0518179), Rick Lloyd (TOC0518180), Paul Bonwick (TOC0518181), Brian Bentz (TOC0518182), Dean Muncaster (TOC0518183).

⁶⁰ TOC0048811 (Exhibit 57), Email from Sandra Cooper to Brian Bentz, June 2, 2011; TOC0048812 (Exhibit 58), attached letter.

⁶¹ KPM0000600 (Exhibit 107), KPMG Retainer, dated March 11, 2011; KPM0001030 (Exhibit 18), Email from KPMG to Houghton with draft valuation; KPM0001032 (Exhibit 19), Draft valuation.

- (ii) Mr. Houghton and Mr. Muncaster had met with Town Council at the in camera session on June 27 and had reported on the strategic partnership proposal for Collus.⁶²

60. Further,

- (i) Mayor Cooper had sent her June 2, 2011 letter to Mr. Bentz in which she said the following:

My brother, Paul Bonwick, recently brought to my attention that he has submitted a proposal to provide services to PowerStream.

Paul has described the potential services his company would be providing to include but not limited to strategic advice in matters related to ... Acquisitions. He has also stated that these responsibilities could potentially incorporate advice related to the Town of Collingwood subject to certain conditions unfolding in the coming months.⁶³

- (ii) PowerStream had made it clear to Mr. Bonwick that the disclosure requirement in the draft June Agreement was that he would have “made disclosure to and received clearance from, the City clerk, that under the Municipal Act [sic] there was no conflict for you [Bonwick] **to do work for us leading to or on a potential RFP of Collus**” [emphasis added];⁶⁴
- (iii) Mr. Bonwick had copied Clerk Almas on his June 2 email to Mr. Bentz confirming that, at his meeting with Clerk Almas, “I described the services my company would be providing to Powerstream [sic] throughout the region as well as specific to Collingwood”;⁶⁵ and
- (iv) he had assured PowerStream that he had complied with the requirements in the June Agreement.⁶⁶

61. PowerStream was therefore justifiably comfortable that disclosure had been made as contemplated in the June Agreement with Mr. Bonwick.

62. Not being content with such disclosures and assurances, however, PowerStream went further and attended the June 29, 2011 meeting with the Town and Collus that Mr.

⁶² TOC0516351 (Exhibit 15), In-Camera Minutes of Council Meeting (June 27, 2011).

⁶³ TOC0048811 (Exhibit 57), Email from Sandra Cooper to Brian Bentz, June 2, 2011; TOC0048812 (Exhibit 58), attached letter.

⁶⁴ ALE0000163 (Exhibit 244), Email from Glicksman to Bonwick email (copied to Brian Bentz and Dennis Nolan), June 1, 2011.

⁶⁵ ALE0000175 (Exhibit 5), Email from Bonwick to Bentz and Glicksman (copying Almas) re: Compenso proposal, June 2, 2011.

⁶⁶ ALE0000178 (Exhibit 88), Email from Bonwick to Glicksman (copying Bentz), June 3, 2011.

Bonwick had suggested, in order to discuss PowerStream and Mr. Bonwick's work for PowerStream in person.

(c) What took place at the meeting

63. This meeting took place eight years before the Inquiry hearings, so it is not at all surprising that the witnesses' memories of what was discussed at this meeting have faded or that they don't remember the topics that were discussed.
64. Further, it does not appear that anyone made notes of the meeting; certainly no notes were produced by any of the witnesses or parties to the Inquiry.
65. What follows is a summary of the evidence that various witnesses gave about this meeting.

- **Former Mayor Sandra Cooper**

66. Ms Cooper was clear that it was Mr. Bonwick who requested the meeting.⁶⁷ She recalled that the purpose was to introduce Mr. Bentz (CEO of PowerStream) and to discuss what PowerStream was doing in the area.
67. Ms Cooper remembered little else about the meeting. She said that she couldn't remember, couldn't remember the specifics, or didn't know any of the following:⁶⁸
 - (i) whether the June 29 meeting was the same meeting as was referred to in her June 2 letter;
 - (ii) whether or not Mr. Bonwick was at the meeting;
 - (iii) what PowerStream said about what it was doing in the area;
 - (iv) whether the work that Mr. Bonwick was going to be doing for PowerStream was discussed; and
 - (v) whether at the meeting she considered whether PowerStream might respond to the forthcoming RFP.

68. Ultimately she said:

I recall being -- it being an introductory meeting at that time. And I don't recall the detail of the meeting.⁶⁹

⁶⁷ Evidence of Sandra Cooper, April 24 Transcript, p. 81, lines 2-5, p. 82, lines 7-10.

⁶⁸ Evidence of Sandra Cooper, April 24 Transcript, p. 81, lines 12-19, p. 82, line 17 – p. 83, line 18; April 25 Transcript, p. 143, lines 21 – p. 146, line 2.

⁶⁹ Evidence of Sandra Cooper, April 24 Transcript, p. 147, lines 1-3.

69. She did, however, agree that in the circumstances that existed at that time (the potential sale of Collus, a valuation of Collus having been done, Mr. Bonwick acting for PowerStream), that no one at the meeting raised any alarms or particular concerns.⁷⁰

- **Former Town CAO Kim Wingrove**

70. Ms Wingrove candidly acknowledged that "I'm afraid my memory of that particular meeting is not very fulsome" and "I wish that my -- my memory was more precise in -- in this matter".⁷¹ She did not even remember whether or not Collus Board Chair Dean Muncaster was at the meeting. She recalled that the meeting was introductory, that there were discussions about PowerStream and what work they did. She also said that the meeting did not stick out in her mind as providing any information that was concerning to her.⁷²

71. She also said the following:

At the time I think it -- the feeling was that this was going -- this was the -- the process that we were going through, that we would be meeting with representatives of some of the interested utilities. And I -- I did not -- I did not read more into it than that. This was an opportunity for them to talk about who they were.⁷³

72. It is submitted that Ms Wingrove's words "the process that we were going through" is a reference to the Collus RFP process that Council had authorized just two days before, and the "them" refers to PowerStream, which was making a presentation at the meeting. Thus is it apparent that in Ms Wingrove's mind the meeting had to do with a possible transaction for Collus and PowerStream being one of the interested parties.

- **Former Deputy Mayor Rick Lloyd**

73. Rick Lloyd, who was Deputy Mayor at the time, remembered the June 29 meeting. He listed all those who attended the meeting, as well as the fact that Mr. Houghton and Mr. Bonwick were not present.⁷⁴

74. While he could not remember a specific discussion about Mr. Bonwick doing work for PowerStream in connection with a possible RFP for Collus, he also said the following:

It was an introduction meeting, but it got into discussing that Bonwick was working for PowerStream, officially, and I was little surprised at that, only

⁷⁰ Evidence of Sandra Cooper, April 25 Transcript, p. 148, lines 9-17.

⁷¹ Evidence of Kim Wingrove, April 18 Transcript, p. 6, lines 19-20, p. 7, lines 19-20.

⁷² Evidence of Kim Wingrove, April 18 Transcript, p. 6, lines 19-24, p. 7, lines 13-20, p. 8, lines 13-16, May 17 Transcript, p. 257, lines 13-17.

⁷³ Evidence of Kim Wingrove, May 17 Transcript, p. 256, lines 16-23.

⁷⁴ Evidence of Rick Lloyd, April 30 Transcript, p. 164, lines 14-19, p. 165, lines 13-21, May 2 Transcript, p. 170, lines 10-16.

because there's no conflict and I guess they just wanted to be open and transparent about it, and, you know, they -- they talked about PowerStream and -- and again just briefly touched on the Bonwick involvement. I remember after Dean Muncaster when we were leaving had said, made the comment that if Bonwick can help with the sale of -- of Collus to the benefit of Collingwood, God bless him.⁷⁵

75. Mr. Lloyd recalled Mr. Bentz saying that Mr. Bonwick "was basically the go-to person", that "[h]e was ... going to be doing all the ... leg work for them", "he was going to be involved in the process", and that the legwork would "[b]asically be helping PowerStream ... with their bids and so on".⁷⁶ He also said the following:

Q. In your mind ... did you believe that Mr. Bonwick's role as a consultant would include speaking to individuals on the Strategic Task Team, in Council, or at Collus about the RFP?

A. I think what was explained to us on -- on June 29th that we could expect that.⁷⁷

76. The fact that Mr. Bonwick would be working for PowerStream in connection with the possible sale of Collus was disclosed at the June 29 meeting, according to Mr. Lloyd:

Q. And I -- and I take it the purpose and context of the meeting was that Mr. Bonwick, it was being revealed, was acting on behalf of Collus with respect to their potential involvement relating to the purchase of Collus?

A. I think you have that wrong. So I -- I think you said that Mr. Bonwick was acting on behalf of Collus.

Q. No. If I did, I am in error. He was acting on behalf of Power -- PowerStream with respect to their interest in a purchase or involvement in the purchase of Collus?

A. Yes.

Q. Do you remember -- following this revelation, at the June 29th meeting, do you remember any reaction by anyone to -- to that discussion about Mr. Bonwick being involved on behalf of PowerStream in the Collus purchase? Did anyone react to that or -- or object to that or make any adverse comments in any way?

A. Dean Muncaster, who was in attendance, who was also the chair of -- of Collus, had said on the way out of the meeting, not directly to anyone in

⁷⁵ Evidence of Rick Lloyd, April 30 Transcript, p. 165, line 22 – p. 66, line 7.

⁷⁶ Evidence of Rick Lloyd, April 30 Transcript, p. 222, line 20 – p. 223, line 14.

⁷⁷ Evidence of Rick Lloyd, May 1 Transcript, p. 45, lines 13-21.

particular, that if Paul Bonwick can help to -- I have it in here, in my minute already -- if Paul Bonwick can assist the Town in getting the best deal possible, God bless him.

Q. Other than that comment from Mr. Muncaster, do you have any memory of -- of any negative con -- comment with respect to the involvement of Mr. Bonwick with PowerStream on PowerStream's purchase?

A. Not at all. In fact, I was somewhat surprised that it was even an issue because, knowing that there was no conflict according to the Conflict of Interest Act, it was nice that they informed us, but it wasn't something they had to do. And it was nice that they were being open and transparent about it.⁷⁸

- **PowerStream CEO Brian Bentz**

77. Mr. Bentz remembered the June 29 meeting, and gave the following account:

- (i) The attendees were the Town's Mayor, the Deputy Mayor and CAO, Collus Chair Muncaster, Barrie Mayor Lehman, and Mr. Bentz.
- (ii) The purpose of the meeting was for PowerStream to make disclosure, the importance of which had been discussed in January 2011.
- (iii) He thought that at this time (June 29), it was likely but not conclusive that there would be an RFP.
- (iv) Mayor Cooper set the stage for the meeting by referring to her June 2 letter and the *Municipal Conflict of Interest Act*, and that there would be no conflict if Mr. Bonwick were engaged, but that it would be PowerStream's decision.
- (v) People at the meeting then introduced themselves.
- (vi) "Then I spoke about PowerStream and who we were, sort of our -- you know, our size, basic facts about the company, how we came to be, and -- and the fact that we were a product of -- of a merger. And I think Mayor Lehman then spoke about his experience with -- with the Barrie merger."
- (vii) "Then we talked about the engagement with Mr. Bonwick and the fact that the purpose of this meeting was to advise the -- the people at the table that we had engaged Mr. Bonwick and that if there were an RFP that he would assist us in that regard. And -- and did they have any problems with that? Did they have any concerns about that?"

⁷⁸ Evidence of Rick Lloyd, May 2 Transcript, p. 171, line 19 – p. 173, line 9.

(viii) "And the reaction we got was on the contrary that I remember -- I remember the deputy mayor making a statement around, you can't prevent a person from earning a living, or something like that. And then someone else made a comment that if anything -- I don't know if it was Dean Muncaster or -- or Deputy Mayor Lloyd -- if anything, he would enhance the quality of your response because of his knowledge of the community."⁷⁹

78. When all of the foregoing evidence is considered together, the following seems clear about the June 29 meeting, PowerStream submits:

(i) The purposes of the meeting were:

(A) to introduce PowerStream, its CEO and Board member Jeff Lehman to officials from the Town (Mayor, Deputy Mayor and CAO) and Collus Chair Muncaster (CEO Houghton was already very familiar with PowerStream and Mr. Bentz);

(B) to inform those in attendance about PowerStream and its business; and

(C) to inform them that PowerStream had retained Mr. Bonwick, and that Bonwick would be working for PowerStream on various projects, including a possible future RFP for Collus.

(ii) These matters were indeed discussed at the meeting.

(iii) The fact that those at the meeting were informed that Mr. Bonwick would be working with PowerStream on a potential future RFP for Collus is clear from:

(1) Mr. Lloyd's account of Mr. Muncaster's statement at the conclusion of the meeting (see paras. 51 and 74); and

(2) Mr. Bentz's statement to those at the meeting that Mr. Bonwick would be assisting PowerStream on any RFP (see para. 77).

79. The fact that PowerStream wished to make clear to the Town and Collus that Mr. Bonwick would be working for PowerStream on any future RFP concerning Collus is in no way surprising. On the contrary, it is completely consistent with the sentiment expressed in all of PowerStream's internal communications going back to January 2011, as well as its communications with Mr. Bonwick, that disclosure of Bonwick's role was essential.

80. Finally, this was not the last occasion on which PowerStream made disclosure of Mr. Bonwick's role. Mr. Lloyd's evidence was that, at PowerStream's September 2011

⁷⁹ Evidence of Brian Bentz, May 31 Transcript, p. 144, line 21 – p. 148, line 9.

presentation to the SPTT, Mr. Bentz informed the SPTT that Mr. Bonwick was working with PowerStream on the matter.⁸⁰

81. PowerStream submits that this Inquiry should conclude as follows:

- (i) The *Municipal Conflict of Interest Act (MCIA)* obviously did not apply to the situation of the Mayor's brother acting as a consultant to PowerStream on a matter (a sale of shares of the Town's electrical utility) that might come before Council for discussion and approval.
- (ii) All of the key people who were involved in the Collus RFP knew that the *MCIA* did not apply.
- (iii) Nonetheless, PowerStream took all reasonably prudent steps to ensure that proper disclosure of Mr. Bonwick's role had been made to (A) the Town, (B) Collus, and (the SPTT).
- (iv) There is no evidence that anyone in a position of authority or who held a decision-making position was unaware of Mr. Bonwick's role as consultant for PowerStream on the Collus RFP.

H. The November 2011 PowerStream – Bonwick Consulting Agreement (extension of the June Agreement)

83. The June Agreement between PowerStream and Mr. Bonwick was for a term of 90 days, starting on June 1 and expiring at the end of August 2011, "subject to extension as mutually agreed by the parties".⁸¹

84. By the end of August 2011, the process leading to a potential Collus Transaction, which was the impetus for the June Agreement, had started but was not well advanced. The SPTT had scheduled meetings with the four potential bidders, to take place in Collingwood on September 17 and 19 before the RFP was to be issued. The RFP was issued on October 4, with responses due on November 16.

85. In September, after the June Agreement had expired, Mr. Bonwick discussed an extension of that agreement with PowerStream. In a September 8 memorandum to PowerStream, he proposed that PowerStream increase his monthly fee from \$10,000 to \$15,000 for the extended agreement. He also asked for a success fee of \$150,000 for every transaction between PowerStream and another LDC during the term of the extension. This would include any transaction between PowerStream and Collus.⁸²

⁸⁰ Evidence of Rick Lloyd, April 30 Transcript, p. 224, line 18 – p. 225, line 10.

⁸¹ ALE0000192 (Exhibit 3), Compenso Consulting Inc. "Consulting Engagement" (June 7, 2011).

⁸² AFF0000008 (Exhibit 270), Affidavit of John Glicksman, Exhibit N.

86. PowerStream's CEO and CFO thought that there was value in extending the consulting arrangement with Mr. Bonwick. In a report that Mr. Bentz and Mr. Glicksman prepared for the October 19 meeting of PowerStream's Audit and Finance Committee, they wrote:

Since that time [the signing of the June Agreement] Mr. Bonwick has assisted PowerStream grow it's [sic] presence and profile in the Central Ontario region and has proven to be a valuable asset in providing strategic and communication advice and in assisting us to be successful both with respect to the Collus bid and other utilities in the CHEC group.⁸³

In his evidence, Mr. Bentz explained his thinking about the extension of Mr. Bonwick's retainer:

Q. At this point in time, why did you want to continue retaining him?

A. We thought that, you know, we were moving through the process of the RFP, and that it was coming to a conclusion, and that in the event we were the successful bidder, that it would be time to start thinking about the phase 2 strategy, if it were to occur.⁸⁴

87. There was not unanimity of opinion within PowerStream as to whether an extension of the June Agreement was warranted. In his evidence at the hearing, Mr. Nolan said that he was not enthusiastic about an extension because he didn't think that PowerStream needed Bonwick's assistance, and he was sceptical that PowerStream would receive sufficient value for what it would be paying to Mr. Bonwick.⁸⁵ The PowerStream board was not unanimous that the June Agreement should be extended.⁸⁶
88. On the other hand, PowerStream's CFO John Glicksman was of the opinion that Mr. Bonwick had assisted PowerStream to that point in time, by providing suggestions as to how PowerStream could increase its profile in the community (such as with the solar attic vent initiative), suggesting the June 29 meeting at which Mr. Bentz introduced himself and PowerStream to various Town and Collus officials, and in reviewing the presentation that Mr. Bentz made to the SPTT on September 19.⁸⁷
89. Mr. Bentz and Mr. Glicksman's report to the Audit and Finance Committee proposed a fee structure for the extended agreement as follows:
- (i) monthly retainer of \$15,000 [increased from the existing \$10,000 per month];

⁸³ ALE0000566 (Exhibit 228), Bentz and Glicksman report to PowerStream Audit and Finance Committee for October 19, 2011 meeting.

⁸⁴ Evidence of Brian Bentz, May 31 Transcript, p. 221, lines 17-24.

⁸⁵ Evidence of Dennis Nolan, May 30 Transcript, p. 51, lines 2-17.

⁸⁶ Evidence of John Glicksman, June 4 Transcript, p. 31, lines 7-12.

⁸⁷ Evidence of John Glicksman, June 4 Transcript, p. 17, line 4 – p. 18, line 15.

- (ii) monthly expense allowance of \$2,500;
- (iii) a success fee of \$75,000 for each additional local distribution company (i.e. LDC) and/or acquisition in the CHEC group after Collus [*which was much smaller lower than the 2.5% of acquisition price that Mr. Bonwick had asked for*];
- (iv) additional bonuses of \$100,000 paid at the five LDC consolidation mark and at the 10 consolidation mark.⁸⁸

The report explained the financial proposal this way:

These amounts are consistent and more in-line with the retainer and success fee arrangements that PowerStream has entered into in the past.

PowerStream had used consultants in the past in connection with RFPs for the sale of LDCs in Ontario. Other electrical distribution companies such as Hydro One had done so as well.⁸⁹

- 90. Although PowerStream was agreeable to paying success fees to Mr. Bonwick for completed transactions with other LDCs, PowerStream made it clear to Mr. Bonwick that it would not agree to pay a success fee should PowerStream enter into a transaction with Collus. Mr. Bonwick confirmed that he accepted this in a September 27 email to Mr. Glicksman in which he said "I agree that there will be no bonus attached in any way to the Collus initiative".⁹⁰
- 91. PowerStream's refusal to pay a success fee to Mr. Bonwick for the Collus Transaction was based on its concern about the appearance that PowerStream would be paying Mr. Bonwick for a specific result with respect to Collus rather than for his efforts, in light of his relationship with Mayor Cooper.⁹¹
- 92. On November 9, 2011, Mr. Bonwick and PowerStream signed an extension to the consulting agreement (the "November Agreement").⁹² The term of the November Agreement was 16 months, from September 1, 2011 until December 31, 2012 (again, subject to extension as mutually agreed to by the parties). Either party could terminate the agreement on 60 days' notice.

⁸⁸ ALE0000566 (Exhibit 228), Bentz and Glicksman report to PowerStream Audit and Finance Committee for October 19, 2011 meeting.

⁸⁹ Evidence of Dennis Nolan, May 28 Transcript, p. 233, line 17 – p. 234, line 1; Evidence of Kristina Gaspar, May 29 Transcript, p. 226, lines 9-23.

⁹⁰ ALE0000441 (Exhibit 245), Email from Bonwick to Glicksman, September 27, 2011.

⁹¹ Evidence of Dennis Nolan, May 30 Transcript, p. 57, lines 6 – p. 58, line 4.

⁹² ALE0000852 (Exhibit 65), Compensio Consulting Inc. "Consulting Engagement Letter" (November 9, 2011).

93. The agreement also stated, “provided that, this Agreement shall terminate on June 30, 2012 if no agreement for a transaction involving Collus Power has been executed”.⁹³ In his evidence at the hearing, PowerStream’s CEO Brian Bentz explained the reason for this June 2012 termination provision. He said that the provision “was consistent with the Collus Transaction being a precursor to executing on the Regional Consolidation Plan”. He agreed with the suggestion that “you [Mr. Bentz] saw the value that Mr. Bonwick could offer to PowerStream was really a -- a regional benefit specific to the -- the area ... And is that because that's where his relationships were”.⁹⁴
94. The November Agreement included the same disclosure obligation on the part of Mr. Bonwick as PowerStream had insisted be part of the June Agreement.
95. The financial terms of the November Agreement were identical to what Mr. Bentz and Mr. Glicksman had proposed in their October report to the Audit and Finance Committee (see para. 89 above), except with respect to the success fee. Concerning the success fee, the November Agreement:
- (i) provided for a success fee of \$80,000 to be paid within 30 days of the successful closing of a purchase or merger with certain listed LDCs *[rather than the \$75,000 that Bentz and Glicksman had recommended]*;
 - (ii) did not provide for any additional success fee [the Bentz/Glicksman recommendation was for “additional bonuses of \$100,000 paid at the five LDC consolidation mark and at the 10 consolidation mark”]; and
 - (iii) contained a chart listing various LDCs in connection with which a purchase or merger involving PowerStream would entitle Mr. Bonwick to the success fee. By mistake, “Collus Power” is listed in that chart. Collus Power was inadvertently included in this chart in error, which Dennis Nolan explained in his evidence at the hearing.⁹⁵
96. The evidence is clear that (i) Mr. Bonwick agreed that he would not receive any success fee (or “bonus”) in relation to the Collus Transaction, and (ii) that PowerStream did not pay any success fee to Mr. Bonwick in relation to that Transaction, under the June Agreement or the November Agreement or otherwise.⁹⁶
97. There is no doubt that the prospect of a transaction between PowerStream and Collus was the impetus behind PowerStream agreeing in the spring of 2011 to retain Mr. Bonwick as a consultant. It is equally clear on all of the evidence that the potential Collus Transaction was merely the first step in PowerStream’s overall strategy to expand

⁹³ ALE0000852 (Exhibit 65), Compenco Consulting Inc. “Consulting Engagement Letter” (November 9, 2011), p. 3.

⁹⁴ Evidence of Brian Bentz, May 31 Transcript, p. 226, lines 6-25.

⁹⁵ Evidence of Dennis Nolan, May 30 Transcript, p. 80, line 1 – p. 81, line 11.

⁹⁶ Evidence of Dennis Nolan, May 30 Transcript, p. 81, lines 6-11.

its business, especially into service areas that were geographically close to PowerStream's existing areas of operation.

98. The extension of the consulting arrangement between Mr. Bonwick and PowerStream through the November Agreement was therefore mainly for the purpose of PowerStream pursuing its greater regional growth plan, in the event that PowerStream was selected as the preferred strategic partner for Collus, and a Collus Transaction were to close.

I. Solar Powered Attic Vent Initiative

99. The solar attic vent initiative (the **"SPAV Initiative"**) was a pilot project developed by Ed Houghton and Peter Budd, President of International Solar Solutions Incorporated (**"ISSI"**). Mr. Budd had originally become involved in the solar attic vent business in 2011 when he was looking into solar energy options for his barn. Tom Bushey, the inventor, introduced Mr. Budd to the solar attic vent. Mr. Budd felt that this product had a lot of potential to advance attic ventilation technology, so he reached out to Mr. Houghton to get his input as an expert in the electricity sector and a long-time residential director.⁹⁷ Mr. Budd wanted to work with an LDC to purchase some solar attic vents and test them in the community.⁹⁸ But more than this, he wanted to launch the SPAV Initiative in Ontario and with Collus because Mr. Houghton was involved here.⁹⁹
100. The Collus Power Board agreed to move forward with the SPAV Initiative on June 10, 2011.¹⁰⁰ Collus Power was the first LDC to become involved with ISSI and was the main utility involved in the SPAV Initiative. Mr. Houghton described the SPAV Initiative to the Collus Power Board of Directors as an opportunity "to become a pilot community and run a beta test and then approach the other LDCs".¹⁰¹ The Collus Power Board was of the view that the SPAV Initiative was good for business because it would show Collus and Collingwood as leaders in conservation initiatives, which were an important government and community focus at the time.¹⁰²
101. The primary focus of the SPAV Initiative was a joint campaign that provided a one-time opportunity for residents to sign up for free solar roof venting.¹⁰³ The joint campaign

⁹⁷ Evidence of Peter Budd, June 18 Transcript, p. 122, lines 17-25, p. 123, lines 19-25, p. 124, lines 1-10, p. 125, lines 1-17.

⁹⁸ Evidence of Peter Budd, June 18 Transcript, p. 129, lines 4-14, p. 131, lines 11-14.

⁹⁹ Evidence of Peter Budd, June 18 Transcript, p. 133, lines 2-4.

¹⁰⁰ CPS0007007_0001 (FD1 at para 203), Collus Power Minutes of Board Meeting (June 10, 2011), p. 3.

¹⁰¹ CPS0007007_0001 (FD1 at para 203), Collus Power Minutes of Board Meeting (June 10, 2011), p. 2.

¹⁰² CPS0007007_0001 (FD1 at para 203), Collus Power Minutes of Board Meeting (June 10, 2011), p. 3.

¹⁰³ ALE0048833 (SD 1-3 at para 17), Email chain between Bonwick and PowerStream re: Solar Power Initiative, July 14, 2011; ALE0048834 (SD 1-3 at para 17), attached Bonwick memo re: Solar Power Initiative.

would allow ISSI to collect data about the impact of the solar roof vents and potentially expand to other CHEC jurisdictions.

(a) Outreach to other LDCs and their Participation in the SPAV Initiative

102. From the beginning, ISSI intended to expand the SPAV Initiative to other LDCs, seeking broad uptake in the Ontario electricity industry. With that goal in mind, Mr. Budd and others at ISSI engaged in conversations with Ontario LDCs to try to expand the SPAV Initiative. It was Mr. Budd's evidence that in early June 2011 ISSI had decided to approach certain electrical distribution companies as potential partners for the SPAV Initiative, including PowerStream, Hydro One, Veridian, and Toronto Hydro.¹⁰⁴
103. ISSI and Collus reached out to a number of other distribution companies to participate in the SPAV Initiative throughout the summer of 2011. At this point, Collus was also actively reaching out to distribution companies – including PowerStream – to gauge interest in a potential Collus Transaction.
104. At least three of the four RFP bidders were approached in the pre-RFP period, and the intention had been to approach all four.¹⁰⁵ Mr. Budd had contacts within each of the RFP bidders and he was in touch with these contacts throughout the summer of 2011. By June 2, 2011, Mr. Budd was already in contact with Michael Angemeer from Veridian and was considering approaching PowerStream.¹⁰⁶ As late as August 30, 2011, ISSI was still in contact with Horizon and Veridian as potential partners on the SPAV Initiative.¹⁰⁷
105. Unsurprisingly, some of the other RFP bidders saw the benefit of their involvement in the SPAV Initiative should a potential Collus Transaction come to fruition. For example, Max Canazi encouraged Horizon Utilities to stay engaged in discussions about getting involved in the SPAV Initiative throughout the summer of 2011 until Horizon knew where a potential Collus Transaction was going.¹⁰⁸
106. The other RFP bidders chose not to get highly involved in the SPAV Initiative.

¹⁰⁴ Evidence of Peter Budd, June 18 Transcript, p. 235, line 10 – p. 236, line 13; p. 237, lines 7-12.

¹⁰⁵ Evidence of Peter Budd, June 18 Transcript, p. 235, line 10 – p. 236, line 13; p. 237, lines 7-16, p. 239, lines 6-14.

¹⁰⁶ Evidence of Peter Budd, June 18 Transcript, p. 236, line 21 – p. 237, line 8, p. 241, lines 15-23.

¹⁰⁷ Evidence of Peter Budd, June 18 Transcript, p. 238, line 12 – p. 239, line 14; CPS0002297 (Exhibit 220), Email from Angemeer to Houghton re: solar vent launch, August 11, 2011.

¹⁰⁸ ALE0049494 (Exhibit 371), Email from Cananzi to Freeman re: Solar Vent and Peter Budd, August 31, 2011.

107. Beyond the four RFP bidders, Mr. Houghton and ISSI also contacted a number of local LDCs to partner on the SPAV Initiative.

(b) PowerStream's Involvement in the SPAV Initiative

108. PowerStream agreed to become involved in the SPAV Initiative on July 7, 2011, when representatives of PowerStream and Collus met to discuss a potential "solar strategic alliance" between the two LDCs in addition to a possible transaction with Collus.¹⁰⁹ PowerStream saw the SPAV Initiative as an opportunity to raise its profile in the Collingwood community should Collus decide to proceed with a transaction in the coming months. PowerStream also felt the SPAV Initiative might also give it an opportunity to expand its profile in the CHEC community, which was a key growth area.
109. PowerStream and Collus jointly purchased 1000 units of the solar roof vents from ISSI.¹¹⁰ No other LDC purchased a significant number of solar roof vents.
110. Each RFP bidder was given the opportunity to get involved with SPAV Initiative – an opportunity that was presented after the bidders were made aware of a potential Collus RFP. Despite this, only PowerStream chose to take advantage of the opportunity to get involved in a project that would increase its profile in the Collingwood community.

(c) Solar Attic Vent Launch Event

111. The solar attic vent launch event (the "**Launch Event**") took place in Collingwood on August 11, 2011.¹¹¹ At that time, five LDC distribution companies were involved in the SPAV Initiative: Collus Power, PowerStream, Orangeville Hydro, St. Thomas Energy Services, and Wasaga Distribution Inc. All five attended the Launch Event.¹¹²
112. As the main drivers of the SPAV Initiative, Collus and the Town of Collingwood took a leading role in the Launch Event. Representatives of behalf of each of the participating LDCs spoke at the Launch Event, including Brian Bentz of PowerStream.¹¹³ Mr. Houghton and Mayor Cooper spoke on behalf of Collus and the Town of Collingwood;

¹⁰⁹ ALE0000234 (Exhibit 252), Email from Bonwick to Bentz re: "solar strategic alliance", July 7, 2011. Mr. Muncaster and Mr. Houghton attended as an introductory meeting with each of the four bidders (and St. Thomas energy, which did not end up participating in the RFP) in July 2011. A consistent introduction to the possible transaction was used at each meeting. See CPS0002342 (Exhibit 61), Strategic Partnership Team Meeting Notes, August 3, 2011.

¹¹⁰ See SD 1-3 at para 43.

¹¹¹ ALE0048833 (SD 1-3 at para 17), Email chain between Bonwick and PowerStream re: Solar Power Initiative, July 14, 2011; ALE0048834 (SD 1-3 at para 17), attached Bonwick memo re: Solar Power Initiative.

¹¹² ALE0011152.0001 (SD 1-3 at para 31), "Five Ontario electric utilities to partner on solar initiative" Press Release.

¹¹³ ALE0048870 (SD 1-3 at para 29), Solar Powered Attic Vent Project Launch Event Agenda.

Mr. Bentz on behalf of PowerStream; Mayor Patterson on behalf of Wasaga Beach; and Andrew Kidd on behalf of Devonleigh Homes, which was the location for vent installations made by Orangeville Hydro and St. Thomas Energy.¹¹⁴ Mr. Bentz highlighted in his remarks that it was Mr. Houghton who was responsible for bringing the five LDCs together for the SPAV Initiative.¹¹⁵

(d) PowerStream was Unaware of Compenso's Involvement with ISSI

113. PowerStream's understanding was that all of the work that Mr. Bonwick was doing, including his work on the SPAV Initiative, was under and part of his retainer with PowerStream. Mr. Bentz's evidence was that Mr. Bonwick's role in the SPAV Initiative – both bringing the opportunity to PowerStream's attention and in helping with PowerStream's branding and profiling in the initiative – was the main example of the value Mr. Bonwick added as a consultant.¹¹⁶ Mr. Bentz understood this work to be part of Mr. Bonwick's requirement under the retainer to 'recommend and develop appropriate positioning' in the community.
114. Mr. Bonwick also understood that the scope of work under his retainer with PowerStream included his work on the SPAV Initiative. Mr. Bonwick's evidence was that he billed PowerStream for expenses related to the Launch Event and SPAV advertising because it was part of his retainer with PowerStream.¹¹⁷
115. However, Compenso entered into an arrangement with ISSI where Compenso would receive a disbursement for each solar attic vent purchased through the SPAV Initiative. The agreement was reached before September 12, 2011, when Compenso received a disbursement equalling 35% of the gross profit of all solar attic vents purchased through the SPAV Initiative.¹¹⁸
116. Mr. Bonwick had every opportunity to disclose his financial involvement with ISSI – and he should have – but he chose to withhold it from PowerStream. Mr. Bonwick acknowledged in his evidence that he never disclosed the financial arrangement between his company, Compenso and ISSI to anyone at PowerStream:

Q: Did you disclose the agreement that you had entered into at this point in time to PowerStream?

¹¹⁴ ALE0011152.0001 (SD 1-3 at para 31), "Five Ontario electric utilities to partner on solar initiative" Press Release.

¹¹⁵ ALE0048869 (SD 1-3 at para 29). Talking points for Brian Bentz, Solar Powered Attic Vent Launch – August 11, 2011.

¹¹⁶ Evidence of Brian Bentz, May 31 Transcript, p. 120, line 20 – p. 122, line 10.

¹¹⁷ Evidence of Paul Bonwick, June 13 Transcript, p. 264, lines 21-25, p. 265, lines 1-2, p. 275, lines 4-14.

¹¹⁸ CJI0007644 (Exhibit 321), ISSI Statement of Disbursements to Compenso, September 26, 2011.

A: No

Q: Why not?

A: I viewed it as a separate activity. This was, in my mind at the time, continued to be a relatively small step in terms of a much larger business model.

I did not have, as part of my engagement with PowerStream, a declaration required for other business interests, nor did I have any responsibility to advise them on -- set aside deals if you go through the letter of engagement, the engagement agreement that I have with PowerStream, there's no reference to -- to declarations specific to other areas that I would be involved with.¹¹⁹

117. Mr. Bonwick went on to explain that he never considered whether disclosure of the Compenso arrangement with ISSI would alter PowerStream's interest in participating in the project.¹²⁰ Mr. Bonwick did more than just fail to disclose his company's financial interest in PowerStream's involvement in the SPAV Initiative; the commission that Compenso received came directly from funds that PowerStream paid for the solar vents. These funds were in addition to the monthly retainer fee that PowerStream was paying him during that period.¹²¹
118. In effect, Mr. Bonwick was being paid a secret commission from the money that PowerStream paid to ISSI for a job he was already being paid for under the Compenso-PowerStream retainer.

J. The Collus Request for Proposal ("RFP")

119. On October 4, 2011, Collus issued a Request for Proposal – Strategic Partnership (the "RFP") for the purchase of up to 50% of Collus Power Corp. (referred to as "Collus" in these submissions).¹²² The RFP stated that only shares in Collus Power Corp., one of three subsidiaries of Collingwood Utility Services, would be available for purchase.
120. Collus identified the following six key needs in a strategic partner:
- (i) Value for the purchase of up to 50% of the shares of Collus;
 - (ii) Ability to provide strategic and specialized resources while continuing to effectively engage Collus and affiliate employees;

¹¹⁹ Evidence of Paul Bonwick, June 13 Transcript, p. 71, lines 3-19.

¹²⁰ Evidence of Paul Bonwick, June 13 Transcript, p. 71, line 25; p. 72, lines 1-4.

¹²¹ Evidence of Paul Bonwick, June 13 Transcript, p. 269, line 22 – p. 270, line 23.

¹²² CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership.

- (iii) Ability to support growth of the Collus business, both organically and through acquisitions;
- (iv) Continued and substantial presence in Collingwood;
- (v) Continued and enhanced support for community interests; and
- (vi) Focus on maintaining and enhancing competitive distribution rates and cost structures.¹²³

121. In essence, what Collus was looking for was a strategic partner that would: (a) provide resources to Collus while retaining existing employees; (b) have both a focus on and substantial presence in the Collingwood community; and (c) at the same time maintain competitive distribution rates and growth of the business.

122. These six key needs resulted in the following evaluation criteria, which were weighted in the evaluation process as follows:¹²⁴

	<u>Points</u>
• Payment for up to 50% of shares	
• Other considerations in Section 3.1	30
• Provision of strategic and specialized resources	
• Support in growing the COLLUS business	30
• Support for employees and their careers	10
• Customer experience and satisfaction	
• Supporting the interests of the communities we serve	10
• Competitive distribution rate and cost structure of COLLUS	10
• Cultural and synergistic fit	10

100 Points

¹²³ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p. 4.

¹²⁴ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p 12.

123. Bidders were also invited to comment on “other matters” that they felt would make them a good strategic partner, such as employee relations.¹²⁵ The RFP did not set out which criteria the “other matters” would be evaluated under.
124. The SPTT retained KMPG to assist with the RFP process. Among other responsibilities, KPMG maintained the data room and responded to bidders’ questions about the RFP.¹²⁶
125. Bidders were informed that the SPTT would review and evaluate the proposals, but the details of the actual process to be used were not provided in the RFP.
126. The bidders’ proposals were submitted using a two-envelope system, with the non-financial components separated from the financial component. The proposals were unsealed and evaluated in two stages. First, the non-financial portion of the proposals, to be evaluated on five criteria totaling 70 points, was evaluated by all SPTT members. Only after the non-financial components were evaluated was the financial envelope, containing one criteria totaling 30 points, unsealed.¹²⁷ Mr. McFadden’s evidence was that this two-envelope system is common in government RFPs.¹²⁸
127. Once the proposals were submitted, the SPTT reserved the right to:
 - (i) disqualify and reject any proposal that failed to comply with the criteria set out in the “Proposal Scope and Response” requirements set out in Part 3 of the RFP;¹²⁹ and
 - (ii) seek clarifications and supplementary materials from any bidder. Any clarifications or additional requested documentation formed part of the bidder’s proposal.¹³⁰

K. A Robust Request for Proposal (“RFP”) Process Established

128. When the Town of Collingwood decided to pursue a strategic partnership, the SPTT designed a process to achieve the Town’s objectives.
129. The strategic partnership process included the following steps:

¹²⁵ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p 10.

¹²⁶ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p 10, 13.

¹²⁷ Evidence of Pam Hogg, May 17 Transcript, p. 185, line 25, p. 186, lines 1-3, p. 187, lines 1-17.

¹²⁸ Evidence of David McFadden, May 15 Transcript, p. 200, lines 16-24.

¹²⁹ CPS0007007_0001 (FD1 at para 203), Collus Power Minutes of Board Meeting (June 10, 2011), p. 10.

¹³⁰ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, pp. 14-15.

- (i) The RFP process was selected to identify the appropriate strategic partner for Collus
- (ii) The Strategic Partnership Task Team (“SPTT”) was created to design and carry out the RFP process.
- (iii) The RFP process was initiated and proposals were submitted.
- (iv) The SPTT met to evaluate the proposals submitted by the four bidders.
- (v) The SPTT made a recommendation to the Collus Board on which bidder Collus should undertake negotiations with to become its strategic partner.
- (vi) The Collus Board reviewed the SPTT’s recommendation and determined which bidder to pursue a strategic partnership with.
- (vii) The Collus Board made a recommendation to Town Council on which bidder to pursue a strategic partnership with.
- (viii) Town Council decided whether to accept the recommendations of the SPTT and the Collus Board and pursue a strategic partnership.

(a) Request for Proposal process selected

130. Transactions for acquisitions or mergers for the purpose of consolidation in the LDC sector can be structured in a variety of ways, ranging from sole source transactions to RFPs.¹³¹ In a sole source transaction, a potential purchaser is contacted and direct discussions ensue. In an RFP, a seller has the right to decide who and how many parties will be allowed to bid and the seller can design flexible selection criteria to determine the successful proponent.
131. Historically, mergers and acquisitions in the LDC sector during the decade of consolidation that started in the 2000s proceeded as sole source transactions. John Herhalt of KPMG confirmed this in his evidence:

Q: In your experience, does the sale of some or all of an LDC in Ontario usually go by way of RFP or is it more usual that it would be a sole-source transaction?

¹³¹ Evidence of Michael Angemeer, May 29 Transcript, p. 224, lines 17-24. Municipalities may also have formal procurement policies (where any party can bid and the selection criteria are rigid and governed by government policy) that govern certain transactions, but these are not relevant to the merger or acquisition of an LDC. See evidence of Sarah Almas, April 15 Transcript, p. 216, line 5 – p. 217, line 4.

A: Oh, it's often sole-source, or at least a process of discussion without a formal request for proposal.

Q: And that was also the case in 2011/2012?

A: I would say so.

Q: So you'd agree with me then that the -- the sale of some or all of the shares of Collus Power in 2011/2012 didn't have to go by way of RFP; it could have just been a discussion with an interested purchaser, correct?

A: Could have been.

Q: And in fact that would have been the more common way for a transaction of that nature to take place.

A: Yeah. The only qualifier I'd put to it is that I think one (1) of the nuances of this transaction was that it wasn't just a disposition.¹³²

132. Mr. Bentz stated that the acquisitions in which he was involved in the early 2000s were primarily sole-sourced.¹³³ However, Mr. McFadden gave evidence that municipalities would often rely on an RFP process for a transaction of this nature because an RFP:

- (i) encourages competition, allowing the municipality to obtain the best price in the market; and
- (ii) ensures that the public can be satisfied that the transaction is appropriate.¹³⁴

133. These were two important benefits of the Collus RFP process.

(b) Strategic Partnership Task Team ("SPTT") created

134. Collingwood Town Council provided direction to Collus to move forward with the RFP process at its June 27, 2011 meeting.¹³⁵ Over the next five weeks, the SPTT working group was created to assist Collus and, ultimately, the Town in selecting a strategic partner for Collus.

135. The SPTT was created to ensure that all stakeholders in the potential Collus sale were represented. There were Council and Staff representatives from the Town, Directors and Officers of multiple Collus corporations, and (as of September 2011) a

¹³² Evidence of John Herhalt, May 23 Transcript, p. 79, line 12 – p. 80, line 9.

¹³³ Evidence of Brian Bentz, May 30 Transcript, p. 354, lines 7-10.

¹³⁴ Evidence of David McFadden, May 16 Transcript, p. 10, 17-25, p. 11, lines 1-25, p. 12, line 1.

¹³⁵ TOC0516351 (Exhibit 15), In-Camera Minutes of Council Meeting (June 27, 2011).

representative from KPMG who had been hired as an independent accounting firm to help facilitate the RFP process. The nine members of the SPTT were:

- (i) Mayor Sandra Cooper (Town Council);
- (ii) Deputy Mayor Rick Lloyd (Town Council);
- (iii) Kim Wingrove (CAO, Town Staff);
- (iv) Dean Muncaster (Chairman, Collus Board of Directors);
- (v) David McFadden (Director, Collus);
- (vi) Doug Garbutt (Director, Collus Solutions Corp.);
- (vii) John Herhalt / John Rockx (KPMG);
- (viii) Ed Houghton (Collus President & CEO); and
- (ix) Tim Fryer (Collus CFO).¹³⁶

136. In his evidence, Mr. McFadden explained that the purpose of the group was to:

- (i) provide advice on the criterion to be used in the RFP, including how to value Collus' financial and non-financial needs;
- (ii) participate in the creation of the RFP;
- (iii) be involved in the process of evaluation; and
- (iv) recommend a strategic partner and report that recommendation to Town Council.¹³⁷

137. The SPTT met five times to discuss the RFP process and evaluate the bids before presenting a recommendation to the Collus Board and then Town Council. In September 2011, the SPTT also met with the four potential bidders, all of whom made presentations. This provided both bidders and the SPTT an opportunity to ask questions and articulate their thoughts and ideas about the strategic partnership.¹³⁸

¹³⁶ ALE0005133.0002 (Exhibit 124), "Strategic Partnership Request for Proposal – Results and Evaluations: Update to Council" (December 5, 2011).

¹³⁷ Evidence of David McFadden, May 15 Transcript, p. 148, lines 24-25, p. 149, lines 1-4, p. 159, lines 24-25, p. 160, lines 1-5.

¹³⁸ CPS0002374 (FD1 at para 264), Collus letter to PowerStream re: Strategic Partnership Interview Meeting, September 6, 2011. The September meetings with the four bidders are discussed below.

138. The dates of and purposes for the SPTT meetings were as follows:

Date	Event
June 27, 2011	Town Council approved pursuit of strategic partnership
August 3, 2011	SPTT first meeting (discussion of RFP process and goals for strategic partnership)
August 29, 2011	SPTT second meeting (discussion of RFP process and goals for strategic partnership)
September 12, 2011	Veridian and Hydro One presentations to SPTT
September 19, 2011	PowerStream and Horizon presentations to SPTT
September 28, 2011	SPTT third meeting (discussion of draft RFP)
October 4, 2011	RFP issued to bidders
November 16, 2011	RFP Proposals due
November 23, 2011	SPTT fourth meeting (review of non-financial bids)
November 28, 2011	SPTT fifth meeting (review of financial bids)
December 2, 2011	Mr. Houghton presentation to Town Council with Collus/SPTT recommendation

(c) August 3 and 29, 2011 SPTT meetings – Discussion of the RFP process

139. At the August 3 meeting, the SPTT discussed:

- (i) the nature and goals of the strategic partnership;
- (ii) which LDCs had been approached to date and how many bidders that would be invited into the RFP process; and
- (iii) the timing and structure of the RFP process (including the use of a Non-Disclosure Agreement – “**NDA**” – and the bidder interviews that were being scheduled for September).¹³⁹

140. At its August 29 meeting, the SPTT discussed:

- (i) retaining of KPMG to facilitate the RFP process;
- (ii) the nature and goals of the strategic partnership;
- (iii) the goals and logistics related to the September bidder interviews;
- (iv) the RFP proposal and evaluation timeline and process; and

¹³⁹ CPS0002342 (Exhibit 61), Strategic Partnership Team Meeting Notes, August 3, 2011.

- (v) how to structure the RFP so it was not so rigid that it would prevent negotiations with bidders after proposals have been submitted.¹⁴⁰

141. For the August 29 meeting, Mr. McFadden provided his comments via email, in which he encouraged the SPTT to:

- (i) identify Collus' key objectives (for both the bidders and the evaluators benefit);
- (ii) be clear with bidders that it is a maximum 50% share available for sale; and
- (iii) pre-emptively address due diligence requirements to ensure all bidders have sufficient data available.¹⁴¹

(d) September 28, 2011 – Discussion of the RFP

142. KPMG prepared the preliminary draft of the RFP for review and comment by the SPTT at its September 28, 2011 meeting.¹⁴²

(e) October 4 – November 16, 2011 – RFP Process in Progress

143. The RFP was sent to all four bidders on October 4, 2011.¹⁴³ This was the first time that the bidders were made aware of the precise the details of Collus and the Town's proposed strategic partnership. The RFP document was highly important because, despite any previous conversations about a potential strategic partnership, this document governed Collus and the Town's expectations and requirements for bidders' responses. Mr. Nolan gave evidence that PowerStream had been waiting to see the contents of the RFP because "until we saw the RFP documents, that's what would determine our response."¹⁴⁴

144. The bidders worked to prepare their submissions over the following six weeks. On PowerStream's part, this including obtaining a valuation of Collus.¹⁴⁵

¹⁴⁰ CPS0002358 (FD1 at para 255), Strategic Partnership Team Meeting Minutes, August 29, 2011.

¹⁴¹ CPS0002345 (Exhibit 31), Email from McFadden to SPTT re: August 29, 2011 meeting, August 28, 2011; CPS0002407 (Exhibit 63), Collus Power Corp. draft Request for Proposal.

¹⁴² CPS0002406 (Exhibit 33), Email from Houghton to SPTT providing draft RFP, September 25, 2011.

¹⁴³ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership; FD1 at para 291.

¹⁴⁴ Evidence of Dennis Nolan, May 30 Transcript, p. 19, lines 22-24.

¹⁴⁵ Evidence of Dennis Nolan, May 30 Transcript, p. 20, lines 23-25, p. 21, lines 1.

(f) Independent Evaluation of Proposals

145. All four bidders submitted RFP Proposals on November 16, 2011. The SPTT then began evaluating the four proposals.
146. The purpose of using the two-envelope system for proposal evaluation was to ensure that each member of the SPTT evaluated (a) each of the bidder's proposals independently, without influence from other members of the SPTT, and (b) the non-financial components independent of the financial component. Former CAO Kim Wingrove explained the need for individual and independent scoring in her evidence:

... the evaluation of the RFP when you have a group -- and -- and often you use a group of people, a team of people, to -- to evaluate the RFP, that's appropriate. No one (1) person can skew the results.

But the idea is that you each score as individuals based on your perception of what those evaluation criteria are and what the information is that the proponent has provided to you.¹⁴⁶

147. To ensure this, each SPTT member was sent an individual sealed copy of the four bidders' non-financial proposals and the RFP criteria scoring. All SPTT members reviewed and evaluated the proposals and filled out their scores independently.¹⁴⁷
148. All SPTT members then provided a copy of their scores to Collus Secretary Pam Hogg before the November 23 SPTT meeting.¹⁴⁸ Pam Hogg prepared a summary of the SPTT members' independent scoring.

(g) November 23, 2011 – Evaluation of the Non-Financial Bids

149. On November 23, 2011, the SPTT met to discuss the non-financial components of the bids. The meeting proceeded as follows:
- (i) Each member of the SPTT read out his or her scores.
 - (ii) Pam Hogg recorded the scores in a spreadsheet, which was displayed on a screen for SPTT members during the meeting.
 - (iii) SPTT members then discussed the proposals.¹⁴⁹

¹⁴⁶ Evidence of Kim Wingrove, April 18 Transcript, p. 61, lines 13-21.

¹⁴⁷ See e.g. Evidence of Kim Wingrove, May 17 Transcript, p. 281, lines 1-5; Evidence of Tim Fryer, May 14 Transcript, p. 72, lines 2-8; Evidence of David McFadden, May 15 Transcript, p. 269, lines 2-17.

¹⁴⁸ Evidence of Kim Wingrove, April 18 Transcript, pp. 64-65.

¹⁴⁹ AFF0000003 at para 28 (Exhibit 151), Affidavit of Pam Hogg; Evidence of Kim Wingrove, May 17 Transcript, p. 280, lines 18-25, p. 281, lines 1-5

150. All original independent scoring provided to Pam Hogg was used in the final RFP tallies. No scores were changed during the meeting. The scores were the sole metric used to determine who the successful proponent would be. The subsequent discussion about the proposals did not alter the independent scoring that had taken place prior to the SPTT meeting.¹⁵⁰

(h) November 28, 2011 – Evaluation of the Financial Bids

151. After the November 23 meeting, SPTT members were provided with copies of the four bidders' financial proposals and the Scoring Sheet. All members were directed to review and evaluate the proposals before the November 28 meeting. In addition, John Herhalt and John Rockx of KPMG were asked to provide an analysis of the financial bids to the SPTT.¹⁵¹
152. On November 28 the SPTT met to discuss the financial component of the bids. Similar to the non-financial meeting, each SPTT member's financial score was added alongside the non-financial scores.¹⁵²
153. KPMG provided three iterations of their financial analysis of the bids, with a focus on evaluating, for each bid, (i) the purchase price being offered for the shares, and (ii) the recapitalization dividend.¹⁵³ The first iteration of KPMG's financial analysis was used at the November 28 SPTT meeting to assist with the discussion of the proposals.

(i) Ultimate approval lay with Town Council

154. Although the SPTT was created to assist the Collus Board in making a recommendation as to which bidder to proceed with for a strategic partnership, the decision ultimately lay with the Council of the shareholder – the Town of Collingwood. The SPTT was put in place to “facilitate the process and evaluate what they heard, and then ultimately inform Council how they saw it in terms of the ratings.”¹⁵⁴

L. PowerStream as the Successful Bidder on the RFP

155. Each of the nine SPTT members independently reviewed the four bidders' proposals on five non-financial criteria and one financial criterion, totalling 100 points. Based on the SPTT's review of the proposals, PowerStream's proposal clearly scored highest of the four.

¹⁵⁰ Evidence of Kim Wingrove, April 18 Transcript, p. 60, lines 1-3.

¹⁵¹ Evidence of John Herhalt, May 22 Transcript, p. 107, lines 22-25, p. 108, lines 1-11.

¹⁵² Evidence of John Herhalt, May 22 Transcript, p. 125, lines 8-15.

¹⁵³ Evidence of John Herhalt, May 22 Transcript, p. 119, lines 4-18. The three financial analyses were completed on (1) November 28, (2) November 30, and (3) early December.

Evidence of John Herhalt, May 22 Transcript, p. 124, lines 7-15.

¹⁵⁴ Evidence of David McFadden, May 15 Transcript, p. 159, lines 20-23.

(a) SPTT scoring on non-financial criteria

156. The non-financial criteria were scored out of 70 points. The individual scores of the nine SPTT members were tallied, meaning an individual bidder could achieve a maximum total score of 630 points (9 members x 70 points each).
157. On the non-financial criteria, PowerStream achieved a final score of 594 points.¹⁵⁵ This was more than 100 points ahead of the next bidder (Horizon) and more than double the lowest-scoring bidder (Hydro One).

	Horizon	Hydro One	PowerStream	Veridian
Provision of strategic and specialized resources, support in growing COLLUS	200	120	265 (1 st)	105
Support for employees and their careers	65	49	80 (1 st)	55
Customer experience and satisfaction, supporting the interests of the communities	75	44	89 (1 st)	81
Competitive distribution rate and cost structure of COLLUS	88 (1 st)	37	72	75
Cultural and synergistic fit	63	38	88 (1 st)	43
Totals	491	288	594 (1st)	359

158. Eight of the nine SPTT members scored PowerStream's as the first place non-financial proposal.¹⁵⁶ The ninth member scored PowerStream in second place. No SPTT member awarded PowerStream fewer than 62 out of 70 points. In contrast, only one other bidder received a score of over 60 points, and that occurred in only one SPTT member's ranking (Member 7 awarded Horizon 67 points).

¹⁵⁵ ALE0005133.0002 (Exhibit 124), "Strategic Partnership Request for Proposal – Results and Evaluations: Update to Council" (December 5, 2011), slide 13.

¹⁵⁶ ALE0005133.0002 (Exhibit 124), "Strategic Partnership Request for Proposal – Results and Evaluations: Update to Council" (December 5, 2011), slide 12.

Maximum Point Value: 70	Horizon	Hydro One	PowerStream	Veridian
Task Team Member 1	59	41	67 (1 st)	40
Task Team Member 2	51	28	67 (1 st)	38
Task Team Member 3	51	37	69 (1 st)	36
Task Team Member 4	49	30	63 (1 st)	38
Task Team Member 5	58	26	68 (1 st)	36
Task Team Member 6	54	25	65 (1 st)	40
Task Team Member 7	67 (1 st)	26	62	51
Task Team Member 8	45	38	65 (1 st)	39
Task Team Member 9	57	37	68 (1 st)	41
Totals	491	288	594 (1st 8 of 9)	359

159. PowerStream was the clear first-place finisher after the non-financial criteria scoring.

(b) The Reputation of Hydro One

160. Several witnesses at the Inquiry, including some of those who served as members of the SPTT, spoke about Hydro One’s reputation in the community, and a general distrust of or dislike for Hydro One. This was due to perceptions that Hydro One has higher rates and poor customer service, and that it was unlikely to support the employees of Collingwood.

161. In the scoring of the non-financial criteria on the RFP by the SPTT, Hydro One scored last of all bidders on four of the following five criteria: support for employees, customer experience and community support, competitive distribution rates and cultural and synergistic fit.¹⁵⁷

162. Deputy Mayor Rick Lloyd, who was an SPTT member, gave evidence at the Inquiry of his perception that Hydro One rates were much higher than those of Collus and other distribution companies:

A: I know that Ontario Hydro¹⁵⁸ rates are higher. I live out in the township, and I get hydro from Ontario Hydro. And I just see what my hydro bill is compared to our own municipality. And when you look at what the rates are, Ontario Hydro, I believe, is one of the -- the highest.

Q: Right. Now, ... you understood -- I take it, and so you thought that -- just dealing with Hydro One and PowerStream, I take it then what you're saying is you thought that the rates would be higher under Hydro One than under PowerStream?

¹⁵⁷ ALE0005133.0002 (Exhibit 124), “Strategic Partnership Request for Proposal – Results and Evaluations: Update to Council” (December 5, 2011), slide 13.

¹⁵⁸ Ontario Hydro is the former name of what is now Hydro One.

A: I believe that the rates from -- from Hydro One were higher. I believed it. And also PowerStream weren't as -- as high up in this as what Horizon and Veridian.¹⁵⁹

163. When it was pointed out to Mr. Lloyd that the Hydro One bid said that there would be no rate harmonization in the immediate term, Mr. Lloyd's evidence was that he did not believe that would be the case over the long term:

A: If they were successful, you're right at that point in time. But I believe down the road that there would be harmonization. They were going through this deal, and it was supposed to be independent. I don't have a great positive feel of Ontario Hydro. I've seen how long it takes them to react to -- to outages and so on.¹⁶⁰

164. Collus was not simply looking for the highest price for its electrical utility; it was seeking a long term partner that would benefit its entire community. This is reflected in the non-financial elements chosen for the RFP and the weightings attributed to those elements. It is clear from the evidence that many in the Collingwood community, including some members of the SPTT, did not believe that Hydro One was the type of partner that Collus was seeking.

(c) SPTT Scoring on Financial Criteria

165. In his evidence John Herhalt of KMPG said that the SPTT members scored the financial proposals and added them to the non-financial tallies. The totals showed that PowerStream had the overall highest score:

People were asked to score the financial bid, which I was asked to do again, which was consistent.

And then my recollection is that the conclusion in this meeting, based on the -- now the accumulation of the financial bid scores and the non-financial bid scores, it showed that the overall highest score was with PowerStream.

And then there was a conversation, I can't remember exactly how it -- it developed, but I -- I think it was led by Mr. Muncaster, which was okay, so let's stand back and have sober second thought here. Yes, we have now all done this and PowerStream's bid is the one that is ranked the most highly overall. But we do have a bidder that has proposed more financially, let's just make sure we've all thought about that and that still makes sense.¹⁶¹

166. Mr. Muncaster led a discussion after all the scoring had been completed about whether the SPTT was comfortable with the overall highest scoring bidder not having the highest

¹⁵⁹ Evidence of Rick Lloyd, May 2 Transcript, p. 93, lines 5-21.

¹⁶⁰ Evidence of Rick Lloyd, May 2 Transcript, p. 96, line 24 -- p. 97, line 6.

¹⁶¹ Evidence of John Herhalt, May 22 Transcript, p. 125, lines 8-24.

score on the financial criteria.¹⁶² The SPTT decided to meet with PowerStream to discuss whether PowerStream could offer anything else on the financial bid. Mr. Herhalt confirmed that such a meeting was not an unusual approach at this stage in an RFP when there is a preferred bidder.¹⁶³ On December 1, 2011, Mr. Houghton, Mr. Muncaster and John Herhalt met with Mr. Bentz, Mr. Nolan, Mr. Glicksman and Mark Henderson to discuss PowerStream's financial bid.¹⁶⁴ As a result of that meeting, Mr. Bentz agreed to increase PowerStream's financial bid from \$7.3 million to \$8 million, as is discussed in Section Q(c), below.

(d) PowerStream had the Highest Scoring Overall Bid

- 167. PowerStream received the highest overall score of the four bidders.
- 168. All SPTT members agreed that Hydro One had the strongest financial proposal. However, Hydro One was the lowest-scoring bidder on the non-financial components. Horizon received less than half the points that PowerStream was awarded on the non-financial criteria – 288 points compared to PowerStream's 594 points.

Proposal Evaluation Totals				
	Horizon	Hydro One	PowerStream	Veridian
Payment for up to 50% of shares and other considerations in 3.1				
Provision of strategic and specialized resources, support in growing COLLUS	200	120	265	105
Support for employees and their careers	65	49	80	55
Customer experience and satisfaction, supporting the interests of the communities	75	44	89	81
Competitive distribution rate and cost structure of COLLUS	88	37	72	75
Cultural and synergistic fit	63	38	88	43
Totals	491	288	594	359

- 169. The SPTT was clearly of the view that PowerStream had the strongest proposal to obtain maximum value for the sale of 50% of Collus shares while also ensuring that the utility achieved key objectives.

(e) Approval of Strategic Partner

- 170. On December 2, 2011, the SPTT presented its findings from the RFP scoring to the Collus Board. The Board accepted the findings and approved a recommendation to go

¹⁶² Evidence of John Herhalt, May 22 Transcript, p. 125, lines 8-24.

¹⁶³ Evidence of John Herhalt, May 22 Transcript, p. 126, lines 10-17.

¹⁶⁴ CPS0002693 (FD1 at para 416), Email from Rockx to Collus re: meeting with PowerStream, November 29, 2011; KPM0001901 (FD1 at paras 419-420), Email from Herhalt to Rockx re: meeting with PowerStream, December 1, 2011.

to Town Council that Collus “be directed to undertake negotiations with PowerStream Inc. for the purpose of entering into a Strategic Partnership arrangement”.¹⁶⁵

171. At its December 5, 2011 meeting, Town Council discussed the strategic partnership. Mayor Cooper provided an overview of the RFP and the potential partnership opportunities and Mr. Houghton reported on the process to date, including the evaluation process. Mr. Houghton confirmed that PowerStream scored first place in four of the six evaluation criteria.¹⁶⁶
172. Following these presentations, Town Council approved a motion directing “the Collus Board to continue negotiations with the preferred proponent, being PowerStream Inc., for a potential strategic partnership arrangement.”¹⁶⁷

	Horizon	Hydro One	PowerStream	Veridian
Total cash consideration to Town of Collingwood	3rd	1st	2nd	4th
Provision of strategic and specialized resources, support in growing COLLUS			1 st 9 out of 9	
Support for employees and their careers	1 st 2 out of 9		1 st 6 out of 9	1 st 1 out of 9
Customer experience and satisfaction, supporting the interests of the communities			1 st 9 out of 9	
Competitive distribution rate and cost structure of COLLUS	1 st 8 out of 9			1 st 1 out of 9
Cultural and synergistic fit			1 st 9 out of 9	
	1 st	1 st	1 st	1 st
	Totals 10 out of 45	0 out of 45	33 out of 45	2 out of 45

M. The Communications Strategy regarding RFP

173. Mr. Bonwick’s company, Compenso, specialized in providing communications services. In or around October 2011, Mr. Bonwick approached Ed Houghton and offered to assist with communications strategy relating to the RFP.¹⁶⁸ However, Mr. Houghton had already put together a communications strategy on his own, which he shared with Mr. Bonwick and Mr. Fagen, PowerStream’s Director of Communications.¹⁶⁹ Mr. Bonwick said he had very little involvement in the development of the Collus Power

¹⁶⁵ CPS0007026_0001 (Exhibit 122), Minutes of Collus Power Corp. and Collus Solutions Corp. Board Meeting, December 2, 2011.

¹⁶⁶ ALE0005133.0002 (Exhibit 124), “Strategic Partnership Request for Proposal – Results and Evaluations: Update to Council” (December 5, 2011).

¹⁶⁷ TOC0512149 (Exhibit 68), In-Camera Minutes of Council Meeting, December 5, 2011.

¹⁶⁸ Evidence of Paul Bonwick, June 13 Transcript, p. 171, lines 20-25, p. 172, lines 1-2.

¹⁶⁹ Evidence of Paul Bonwick, June 13 Transcript, p. 174, lines 1-6; Evidence of Ed Houghton, June 7 Transcript, p. 152, lines 3-8, lines 17 -25, p. 152, lines 1-2.

communications strategy, and beyond looking at dates, did not make any substantive changes to the strategy slide deck that Mr. Houghton had already prepared.¹⁷⁰

174. Emails sent from Paul Bonwick to each of Mr. Bentz and Mr. Glicksman at PowerStream suggest that Mr. Bonwick may have discussed the communications strategy with each of them.¹⁷¹ Mr. Bentz could not recall specifically whether that occurred.¹⁷²
175. Mr. Houghton presented the communications strategy slide deck that he had prepared to the Collus Board on October 26, 2011.¹⁷³ It referenced the need for Collus Power to respond to “rumours surrounding the Sale of Collus Power” once the RFP had been called, and suggested that a Public Information Centre be held on November 21, 2011. David McFadden, John Rockx of KPGM, Ed Houghton and Sandra Cooper were to speak at the Public Information Centre. Much of the content of Mr. Houghton’s communications strategy slide deck was copied from an earlier presentation that he had made to Town Council Monday on June 27, 2011, entitled, “Confidential Review of Options”. This supports Mr. Houghton’s evidence that he was the author of the communications strategy.¹⁷⁴
176. On November 13, 2011, before the results of the RFP had been released, Eric Fagen sent an email to Mr. Bentz, Mr. Nolan, Mr. Glicksman and Mark Henderson reporting on a conference call that he had with Mr. Houghton and Mr. Bonwick that morning, concerning public disclosure and decision timelines relating to the RFP.¹⁷⁵
177. Mr. Nolan agreed in his evidence that, because the result of the RFP had not yet been decided, a communication of this nature was likely premature.¹⁷⁶
178. On November 14, 2011, Ed Houghton sent a draft press release that he had prepared in connection with the RFP to Mr. Bonwick, who forwarded it to Mr. Fagen. Mr. Fagen provided a few minor stylistic edits to the press release.¹⁷⁷ Mr. Nolan explained that

¹⁷⁰ Evidence of Paul Bonwick, June 13 Transcript, p. 173, line 25, p. 174 lines 1-12.

¹⁷¹ ALE0000646 (FD1 at para 348), Email from Bonwick to Glicksman, October 25, 2011; ALE0000655 (FD1 at para 348), Email from Bonwick to Bentz, October 25, 2011.

¹⁷² Evidence of Brian Bentz, May 31 Transcript, p. 218, lines 18-25, p. 219, lines 1-2.

¹⁷³ CPS0002623 (FD1 at para 349), Collus Power Corp. “Communications Strategy” presentation, October 26, 2011.

¹⁷⁴ CPS0004397 (Exhibit 21), Collingwood Utility Services “Confidential Review of Options” presentation, June 27, 2011; see for example, slide 8, “The Electricity Industry Environment”, slide 9, “Tax Liability On Sale of Municipal Electric Utility, slide 10, “Financial Pressures”, slide 11, “Regulatory Oversight”, slide 12 “Implications of the Industry Environment”.

¹⁷⁵ ALE0000894 (Exhibit 257), Email from Fagen to PowerStream re: RFP timelines, November 14, 2011.

¹⁷⁶ Evidence of Dennis Nolan, May 30 Transcript, p. 96, lines 6-11.

¹⁷⁷ This is evident from the almost identical content of the draft press release forwarded to Mr. Fagen and the final version of the press release. See ALE0024271 (FD1 at para 371),

while Mr. Fagen reported to Mr. Nolan, he did not tell Mr. Nolan about “every conversation he was having”.¹⁷⁸ Mr. Nolan could not recall whether Mr. Fagen had told Mr. Nolan that Mr. Bonwick had forwarded Mr. Houghton’s draft press release to Mr. Fagen for review and comment. Mr. Nolan said that the press release would not have been brought to him for approval.¹⁷⁹

179. It was suggested in questioning of PowerStream witnesses at the Inquiry that PowerStream ought not to have had involvement in Collus’ communications strategy concerning the RFP while the RFP was on-going. While PowerStream agrees that such involvement may have been premature, the following must be noted:
- (i) Mr. Houghton of Collus, and not PowerStream, prepared both the communications strategy and the press release.
 - (ii) There is no evidence to suggest that PowerStream made any changes to Mr. Houghton’s communications strategy.
 - (iii) PowerStream made only minor stylistic edits to Mr. Houghton’s press release.
 - (iv) As a result, PowerStream’s 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.

N. Information provided by Collus to Other Bidders

(a) Introduction

180. In a transaction involving the potential acquisition of a commercial enterprise, interested bidders commonly seek out information to assist them in valuing the target, and preparing their bids, and often from the head of the target corporation. During the course of his retainer, Mr. Bonwick received and relayed information to PowerStream concerning Collus that he obtained from sources that, even after the evidentiary hearings, are not known with certainty.
181. It was reasonable for PowerStream to expect that other proponents bidding for the strategic partnership with Collus would similarly obtain whatever information they could in order to assist them in their valuations and in preparing their bids.

Email from Bonwick to Fagen, November 14, 2011; ALE0024271.0001 (FD1 at para 371), attached draft press release; TOC0000812 (FD1 at para 374), final version of press release.

¹⁷⁸ Evidence of Dennis Nolan, May 30 Transcript, p. 95, lines 2-5.

¹⁷⁹ Evidence of Dennis Nolan, May 30 Transcript, p. 98, lines 2-6.

(b) The September 2011 individualized meetings with the four potential bidders

182. Collus and the Town issued the RFP on October 4, 2011. A month earlier, Dean Muncaster (Chair of Collus Power) sent a letter inviting each of the four potential bidders for a strategic partnership to an interview meeting in Collingwood to take place on either September 12 or 19. The letters were identical except for the date and time of each potential bidder's scheduled meeting.¹⁸⁰
183. The invitation letters informed each bidder that:
- (i) two hours had been set aside for the interview;
 - (ii) the first 45 minutes would be allocated to a presentation by the bidder on 12 listed topics;
 - (iii) "after the presentation we will then have an opportunity for questions from both sides and disclosure of other thoughts and ideas. At the close of the meeting we will discuss the Request for Proposal (RFP) and outline our proposed time schedule."
184. This third point made it clear to each bidder that half of each interview would consist of individualized interaction between the SPTT and that bidder. The message being conveyed, it is submitted, was that information would be exchanged on an individual basis based on the questions posed by each side and the "other thoughts and ideas" exchanged between the SPTT and the bidder. Clearly the SPTT did not intend that these discussions with the four potential bidders would be identical, or that the information that would be conveyed between the SPTT and the four bidders would necessarily be identical.
185. PowerStream does not in any way complain about this process or take the position that it was improper. The Town, Collus, and the SPTT had the right to determine exactly how it would go about getting the best deal by way of a strategic partnership. If the SPTT decided, as it did, to have separate meetings with the potential bidders that would be individualized and not identical, then in the period prior to the RFP being issued it had that right. This aspect of the procedure that the SPTT chose to follow does, however, put somewhat into context the contacts that PowerStream had through Mr. Bonwick and the information that PowerStream received through him.
186. Since a source or sources within the SPTT was or were prepared to provide certain information to PowerStream, presumably in the best interest of Collus and the Town, it was reasonable for PowerStream to assume that other bidders might similarly receive information of which PowerStream was not aware.

¹⁸⁰ CPS0002374 (FD1 at para 264), Collus letter to PowerStream re: Strategic Partnership Interview Meeting, September 6, 2011.

**(c) Confidential contact and private information exchange between Ed Houghton and Horizon Utilities Corporation
(See Foundation Document 1, para. 229-233, para. 265)**

187. An example of contact between Mr. Houghton and another potential bidder (that did in fact submit a bid in response to the October 2011 RFP) was the July 2011 phone call between Houghton and CEO Max Cananzi of Horizon Utilities Corporation. In his July 12, 2011 email to Horizon's CEO, Mr. Houghton said "Max: I was hoping that you could allow me a few moments of your time in the near future so that I may give you a confidential phone call".¹⁸¹ Although Mr. Cananzi was originally on the list of witnesses to be called to give evidence at the hearing, ultimately he was not called as a witness.
188. Mr. Houghton spoke with Mr. Cananzi on the same day, and two days later Mr. Cananzi wrote to Mr. Houghton, saying: "It was great hearing from you on Tuesday. I am very interested and excited by what you had to say and look forward to discussing more about this with you when we meet. I am available to meet with you on Tuesday July 26th and Thursday July 28th."¹⁸²
189. The fact that other bidders were similarly gathering information concerning Collus is reflected in Horizon's obtaining the Collective Agreement applicable to Collus employees in July, 2011.¹⁸³
190. In July and August 2011, Mr. Houghton invited Horizon to participate in the solar vent initiative, about which there was much evidence at the Inquiry hearings. In connection with that initiative, Horizon Vice President Neil Freeman reported to Mr. Cananzi having had "an extended conversation" with Mr. Houghton on August 22, 2011.¹⁸⁴ He wrote:

He [Houghton] says he really likes Horizon's approach to business and **I asked him if he did so more than PowerStream, to which he said they are the same.** [Emphasis added.]

Clearly Mr. Houghton was prepared privately to discuss potential bidder PowerStream with another potential bidder.

191. On September 2, 2011 (four days before Collus Chair Dean Muncaster sent letters to the four potential bidders inviting them to make presentations to the SPTT in the second half of September), Mr. Freeman reported to Mr. Cananzi that he had toured Collus:

¹⁸¹ ALE0049393 (Exhibit 328), Email exchange between Houghton and Cananzi, July 12, 2011.

¹⁸² TOC0052060 (FD1 at para 230), Email from Cananzi to Houghton, July 14, 2011.

¹⁸³ ALE0049450 (FD1 at para 233), Email with attached collective agreement for Collus, July 28, 2011; ALE0049451 (FD1 at para 233), attached Collective Agreement.

¹⁸⁴ ALE0049484 (FD1 at para 235), Email from Freeman to Cananzi, August 22, 2011.

I toured the LDC and its satellite locations yesterday so that we could speak intelligently about the business and communities on the 19th [the scheduled date for the horizon presentation to the SPTT]. I also have lots of pictures.¹⁸⁵

192. In response to questions from Mr. Cananzi, Mr. Freeman also reported having spoken to Mr. Houghton on September 2 and having received information from him about the forthcoming presentations:

I spoke to Ed. He says he will be sending us a letter and NDA on Tuesday. We will have up to 45 minutes to speak about Horizon, what is important to us, how Collus would fit with Horizon, creative ways we can work together, but we can hold back the good stuff for the RFP. The purpose, from his perspective, is to cover the bases so that we are not surprised by the RFP.¹⁸⁶

193. On November 16, 2011 (the day when the responses to the RFP were due), Mr. Cananzi spoke with Mr. Houghton, and the next day reported to Horizon executives about that conversation as follows:

I was speaking to Ed Houghton (CEO) about our bid to smooth the waters for us and for him to have the background to our thinking. He 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 and was asked what he was doing since they were considering something similar. As expected we may see more of these not less.¹⁸⁷

**(d) Private contact between Veridian Connections and KPMG (Collus's consultant) during the RFP process
(See Foundation Document 1, para. 339)**

194. Very little documentation was produced in preparation for and at the hearing involving Veridian Connections. One email that was produced was from Veridian executive Michael Angemeer to Ed Houghton on July 20, 2011, in which Mr. Angemeer wrote "After 4.00 today or after 10.00 tomorrow? ... Sorry I didn't get back to you earlier."¹⁸⁸ Obviously this was in response to a communication from Mr. Houghton, but we don't know the nature or date of that communication.
195. In October 2011, after the RFP had been issued but about three weeks before the responses were due, Veridian had private contact with Collus's consultant KPMG asking whether it would be disqualified if Veridian submitted an alternate proposal to purchase

¹⁸⁵ ALE0049495 (FD1 at para 265), Email from Freeman to Cananzi, September 2, 2011.

¹⁸⁶ ALE0049495 (FD1 at para 265), Email from Freeman to Cananzi, September 2, 2011.

¹⁸⁷ ALE0050014 (FD1 at para 333), Email from Freeman to Cananzi, November 17, 2011.

¹⁸⁸ CPS0002235 (FD1 at para 227), Email from Angemeer to Houghton, July 20, 2011.

more than 50% of Collus Power. KPMG discussed this question with Mr. Houghton, who said that Veridian should be informed that the answer was “yes”.¹⁸⁹

(e) Conclusion

196. It is clear that Mr. Houghton was quite prepared to communicate privately with any potential bidder who took the initiative to contact him to ask for information. PowerStream takes no issue with this. There was nothing untoward about business competitors and potential bidders on a forthcoming RFP attempting to obtain whatever information senior management of the strategic partner was prepared to provide. PowerStream did this through its consultant and agent, Paul Bonwick. Horizon and Veridian did so directly through its senior officers.

O. Information provided to PowerStream by Collus, Nov. 2010 – March 2012

(a) Introduction

197. With the benefit of all of the evidence that was presented at the Inquiry, it has become apparent, and PowerStream’s witnesses candidly acknowledged, that PowerStream received some confidential information that it was not appropriate for PowerStream to receive.

198. PowerStream acknowledges that at the time it should have done the following with respect to this information:

- (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 of this nature ;
- (iii) have informed Collus and/or the SPTT that it had received such confidential information through Mr. Bonwick.

199. PowerStream also submits, however, that:

- (i) much of the information that it received was prior to the issuance of the RFP and was therefore of little utility in or relevance to the RFP process;
- (ii) much of the information that it received was already available to or could be surmised by PowerStream, and therefore was not very useful to PowerStream in formulating its response to the RFP; and
- (iii) there is no evidence that the information that PowerStream received gave it any significant advantage over the other bidders or led to a different result on the

¹⁸⁹ KPM0001441 (FD1 at para 339) and TOC0540520 (Exhibit 165), Emails from Veridian re: alternative proposal, October 28, 2011.

evaluation of the RFP responses than would have been the case if no such information had been received.

(b) *Ed Houghton's preliminary discussions with Brian Bentz, November – December 2010*

200. These discussions are dealt with at Section D, "PowerStream Learns of Potential Collus Opportunity – November-December 2010", above.
201. PowerStream states that it was entirely appropriate and logical for Mr. Houghton to contact PowerStream at an early stage to gauge whether there would be any interest in the LDC community for a transaction with Collus. This is exactly what the CEO of a corporation would do and should be doing in circumstances of great change and challenges in the LDC market, and particularly when the possible sale of Collus had been a subject of ongoing discussion in the Town.
202. Similarly, it was entirely appropriate and logical for Mr. Bentz to have agreed to speak to Mr. Houghton about Collus considering its path forward in the rapidly changing LDC market. The PowerStream board of directors was relying on Mr. Bentz to remain knowledgeable of market dynamics, as would be the boards of any LDCs at the time.
203. It was also completely understandable and logical that Mr. Houghton would have contacted PowerStream first. Mr. Houghton and Mr. Bentz had known each other for many years and respected each other. As various witnesses said, and as is obvious from the circumstances that existed at the time, PowerStream was probably the most logical candidate either to be a purchaser of Collus in whole or in part, or a strategic partner with Collus.
204. As would have been obvious at the time, therefore, and as Mr. Houghton would have known, if PowerStream wasn't interested in a transaction with Collus, then it would be highly questionable whether any other LDC would be interested.
205. Further, Collus and its shareholder, the Town, might well be interested in a sale of only some rather than all of the shares of the utility. This is exactly what transpired, of course. In that case the potential universe of interested LDC partners might be smaller than it would be for a sale of the entire LDC. This point was made by Collus's consultant KPMG in its May 2011 "Review of Options" report to Collus, where in connection with the partial sale of shares option it said:

Only certain buyers may entertain a partial sale transaction, thus reducing the potential pool of purchasers.¹⁹⁰

¹⁹⁰ KPM0001032 (Exhibit 19), KPMG report, "Collingwood Utility Services – Review of Options", May 24, 2011, p. 16.

206. It was clear from the discussion between Messrs. Houghton and Bentz that the discussion was exploratory only, and that no decision on a possible sale or other transaction had been made by the Town or Collus.

(c) Information PowerStream received that a valuation of Collus had been initiated and then completed

207. On February 1, 2011 Mr. Bonwick sent an email to Mr. Bentz, informing him that “the Chairperson [of Collus, Dean Muncaster] and Executive Director [CEO Ed Houghton] have now received direction to commence a valuation of the utility [Collus].¹⁹¹ At their December 3 first discussion, Mr. Houghton and Mr. Bentz had discussed an approximate value of Collus in round numbers.¹⁹²

208. As Mr. Bentz said in his evidence, if Collus or the Town were to consider a sale of the LDC, the obtaining of a valuation would be a logical step. Indeed, it is impossible to imagine such a sale process proceeding any distance at all without the Town receiving a valuation of the asset that it was considering selling.¹⁹³

209. Mr. Bentz was asked whether the information that a valuation of Collus was underway was useful:

Q: Was the information that Collus was commencing a valuation useful information for you?

A: I just thought it was a logical next step in the process. Was it useful? I mean, it indicated to me the process was moving forward, so that maybe it was more likely that -- it doesn't necessarily mean it was going to happen, it's just information that they would use in considering whether it would happen.¹⁹⁴

210. On June 3, 2011 Mr. Bonwick informed PowerStream by email, among other matters, that “As an fyi, I have learned that Collus has completed their evaluation using KPMG.”¹⁹⁵

211. PowerStream submits that this information, while it may have been confidential to the Town and/or Collus, (i) was clearly information that Mr. Houghton wanted PowerStream to have; (ii) at that early point in the process, before any decision to proceed with a sale of Collus had been made, was not obviously confidential; and (iii) was of no great significance, other than indicating to PowerStream that the Town appeared to be

¹⁹¹ ALE0000071 (Exhibit 50), Email from Bonwick to Bentz, February 1, 2011.

¹⁹² ALE0000008 (Exhibit 246), Undated notes of Brian Bentz; ALE0050195 (FD1 at para 110), Transcription of Brian Bentz Notes, p. 1.

¹⁹³ Evidence of Brian Bentz, May 31 Transcript, p. 53, line 12 – p. 54, line 15.

¹⁹⁴ Evidence of Brian Bentz, May 31 Transcript, p. 57, lines 4-13.

¹⁹⁵ ALE0000178 (Exhibit 88), Email from Bonwick to Glicksman (copying Bentz), June 3, 2011.

sufficiently interested in a possible transaction that it was directing this next logical step to be taken and that this step had been completed. Indeed, the PowerStream witnesses were not cross-examined about having received this information.

(d) Information that PowerStream received about the deliberations of the SPTT

212. Mr. Bentz's evidence was that he may have found out that a strategic task team (the "SPTT") would be working on the Collus sale at the July 7, 2011 meeting that he had with Dean Muncaster and Ed Houghton of Collus.¹⁹⁶ This makes sense, since Messrs. Muncaster and Houghton met with all four potential bidders (plus St. Thomas Energy, which was subsequently dropped from the process) in the month of July. As well, the plan at that point was to have the potential bidders make presentations to the SPTT, which ultimately took place two months later, in September. The creation of the SPTT could not fairly be described as confidential.
213. Mr. Bentz also acknowledged that in the summer of 2011 Mr. Bonwick provided PowerStream with information about the SPTT's progress and the milestones that it was setting, including the fact that "they were going to continue with the RFP and that would likely occur in the fall, and that ... there would likely be interviews in advance of the RFP".¹⁹⁷
214. The SPTT met for the first time on August 3.¹⁹⁸ That day Mr. Bonwick sent an e-mail to Mr. Bentz saying "I can provide you with an update as it relates to Collus presentation this morning."¹⁹⁹ While he could not specifically remember receiving this email, in his evidence Mr. Bentz said that during the summer of 2011 he received an update about the Collus presentation in early August, that the information came from Mr. Bonwick, and that he learned the following:

the Chair and the CEO had met with the bidders and that they were still planning on proceeding with the RFP and the fall time line, and that there could be interviews involved.²⁰⁰

He was then asked whether the information was useful to PowerStream:

Q: Was that information of use to -- to PowerStream?

A: Well, with respect to the process, yes, it's helpful to know what the process is going to be, as we move forward.

¹⁹⁶ Evidence of Brian Bentz, May 31 Transcript, p. 169, lines 3-17.

¹⁹⁷ Evidence of Brian Bentz, May 31 Transcript, p. 169, line 18 – p. 170, line 17.

¹⁹⁸ CPS0002342 (Exhibit 61), Strategic Partnership Team Meeting Notes, August 3, 2011.

¹⁹⁹ ALE0000246 (Exhibit 205), Email from Bonwick to Bentz, August 3, 2011.

²⁰⁰ Evidence of Brian Bentz, May 31 Transcript, p. 172, lines 21-24.

Q: Did PowerStream take any steps in response to receiving that information?

A: Not really. I mean, it was just let -- let the process unfold.²⁰¹

215. The identity of the potential bidders was not secret, confidential information. When asked about this, Mr. Bentz said:

Mr. Houghton, in my early meeting, in December 3rd, indicated who he thought the bidders would be, anticipated who the bidders would be, and he ... identified Hydro One, Veridian, Horizon, he may have mentioned St. Thomas, so that's who I assumed they were.²⁰²

Justice Marrocco than asked Mr. Bentz about this point:

Q: Just - - just before you do that. Based on your experience in the industry, would it have been -- would you have been able to guess at who might -- who the bidders might be in a fairly informed way?

A: Yes.²⁰³

216. In fact, in its presentation made to the SPTT prior to the release of the RFP, Horizon set out charts comparing various data of all of the eventual bidders.²⁰⁴ Neil Freeman confirmed in his evidence that Horizon had been advised by Mr. Muncaster or Mr. Houghton in July, 2011 (well before the release of the RFP), who would be invited to bid on the RFP.²⁰⁵

217. PowerStream accepts that the information that Mr. Bonwick received in the summer of 2011 about the SPTT's deliberations was confidential and should not have been disclosed to Mr. Bonwick and to PowerStream.

218. However, it is clear that at least some of that same information was also conveyed to at least some the other bidders.

219. Further, information about the process and the timing of the RFP was revealed to all of the potential bidders when the RFP was issued on October 4. Further, in the cover letters that Collus sent to the four bidders on September 6, 2011 under the signature of Collus Chair Muncaster the bidders were told that:

²⁰¹ Evidence of Brian Bentz, May 31 Transcript, p. 173, line 24 – p. 174, line 8.

²⁰² Evidence of Brian Bentz, May 31 Transcript, p. 173, lines 3-11.

²⁰³ Evidence of Brian Bentz, May 31 Transcript, p. 174, lines 11-16.

²⁰⁴ TOC0059332 (Exhibit 221), Horizon Utilities "Strategic Partnership Discussion: Collus Power" presentation, September 19, 2011.

²⁰⁵ Evidence of Neil Freeman, May 29 Transcript, p. 205, line 6 – p. 207, line 7.

After the presentation we will then have an opportunity for questions from both sides and disclosure of other thoughts and ideas. At the close of the meeting we will discuss the Request for Proposal (RFP) and outline our proposed time schedule.²⁰⁶

220. Notes taken by Mr. Herhalt during PowerStream's September 19, 2011 presentation reveal that the SPTT provided PowerStream with information concerning the RFP during that presentation, including the timing of the RFP, and the proposal that the RFP be for 50% of the shares.²⁰⁷

(e) Information about the September 2011 presentations to the SPTT by the four potential bidders

221. When he gave evidence at the hearing, PowerStream CEO Brian Bentz was asked in detail about information that PowerStream had received by way of feedback on PowerStream's September 19 presentation to the SPTT. PowerStream received this information by way of a September 20 e-mail from Mr. Bonwick.²⁰⁸

222. Mr. Bentz readily agreed that PowerStream should not have received at least some of the information that Mr. Bonwick had conveyed, such as "that one (1) of our competitors (Horizon) will submit a proposal providing a 50 percent ownership scenario".²⁰⁹ Mr. Bentz said that he didn't give the matter as much attention as he should have. He also offered – by himself and without the suggestion being put to him – that:

in retrospect, yes, probably should have told Mr. Bonwick that that information was not appropriate to have and we don't want that information", and "advising the ... task team as well, or other parties."²¹⁰

223. PowerStream's Vice-President and General Counsel Dennis Nolan also acknowledged in his evidence that various pieces of information that PowerStream received, particularly in connection with the September bidders' presentations, was confidential and was covered by the NDAs that the bidders had signed with the Town and Collus.²¹¹
224. PowerStream's then Chief Financial Officer John Glicksman was also asked at the hearing about PowerStream receiving confidential information. With respect to the

²⁰⁶ CPS0002374 (FD1 at para 264), Collus letter to PowerStream re: Strategic Partnership Interview Meeting, September 6, 2011.

²⁰⁷ KPM0003234 (FD1 at para 275) Handwritten Notes of John Herhalt, PowerStream Presentation, September 19, 2011; KPM0003234.0001 (FD1 at para 275) Transcription of Herhalt Notes.

²⁰⁸ ALE0000412 (FD1 at paras 279-280), Email from Bonwick to Glicksman (copied to Bentz, Nolan), September 20, 2011.

²⁰⁹ Evidence of Brian Bentz, May 31 Transcript, p. 209, line 25 – p. 215, line 14.

²¹⁰ Evidence of Brian Bentz, May 31 Transcript, p. 215, lines 6-9, 13-14.

²¹¹ Evidence of Dennis Nolan, May 30 Transcript, generally at pp. 175-185.

information that PowerStream received in September 2011 on the reaction of the SPTT to PowerStream's presentation, he was straightforward in answering this way:

So definitely in retrospect, we should not have been receiving any feedback indirectly on our presentation. How Mr. Bonwick got that information is a good question. Likely somebody breached confidentiality. Well, somebody must have breached confidentiality.

At that time, we, you know, had been reminded that we already had signed a disclosure agreement when we got the letter inviting us to the presentation. So realizing that today, it's quite obvious that we should not - - and we should have -- we should have given that feedback to Mr. Bonwick at that time that we're not to get this type of information, whether any of the information here was very useful.

So in the end, we probably didn't take appropriate attention to the fact that we were getting feedback. And likely because in other engagements that we had, it wasn't unusual for us to get feedback on a presentation we'd given to Council or some -- that someone would -- a CAO or someone would normally get back to us and say, here's some feedback on your presentation.²¹²

225. Mr. Glicksman also explained how it was that PowerStream didn't focus on the issue of receipt of confidential information at the time:

A: We already had known that they wanted -- they only wanted a partial sale; that had been made clear to Brian and -- and us earlier on, and we'd offered something of partial sale without giving a number, I think, in the earlier -- when Brian -- in Mr. Bentz's presentation. So in the end, we probably didn't take appropriate attention to the fact that we were getting feedback. And likely because in other engagements that we had, it wasn't unusual for us to get feedback on a presentation we'd given to Council or some -- that someone would -- a CAO or someone would normally get back to us and say, here's some feedback on your presentation.

Q: At the time, do you recall being aware of any of the issues that you -- you've just identified, including that Mr. Bonwick was providing feedback from the STT and whether or not he should have had that feedback. Do you recall that issue coming to your consciousness at the time?

A: To the best of my ability, I don't know why it wouldn't have, but it did not. And I think partly because I don't -- I think we might have thought we weren't in our RFP process yet. ... We had never been through an RFP process. I don't think I read the disclosure letter that came from the invitation with Mr. -- from Mr. Muncaster. And so I might not have -- it might not have clued in

²¹² Evidence of John Glicksman, June 3 Transcript, p. 250, line 18– p. 252, line 9.

to me that we were getting information that was confidential that we should not have got. ... none of us really clued in on that at that time.²¹³

(f) Information that PowerStream's external legal counsel obtained from David McFadden

226. Mr. Bentz made PowerStream's presentation to the SPTT on September 19, 2011.
227. Nine days later, at the request of PowerStream, the company's external legal counsel contacted and spoke with Mr. McFadden, who was a director of Collus Power and a member of the SPTT.²¹⁴ PowerStream wanted to know the relevant dates for the forthcoming RFP (the issuance date and the due date for responses) in order to be able to put a team in place to prepare PowerStream's response to the RFP.
228. Mr. Nolan gave evidence that he asked PowerStream's external counsel Robert Hull to contact Mr. McFadden. The purpose was to find out, if McFadden felt that he was free to give the information, (i) whether there was assurance that the Town/Collus would be proceeding with the RFP; (ii) whether he could give clarity on the proposed 50/50 share sale, as to whether there was room for an alternative proposal; and (iii) the timing of the process. Mr. Nolan appreciated that Mr. McFadden might not feel at liberty to provide information, and what he was looking for was whatever information Mr. McFadden felt he could provide.²¹⁵ Mr. Nolan also said that he and Mr. Hull agreed that the basis of a discussion with Mr. McFadden would be that McFadden would be asked to give only information that he felt he was at liberty to provide, and that Mr. Hull reported back that he had made that basis clear in his discussion with Mr. McFadden.²¹⁶
229. Mr. McFadden conveyed certain information to PowerStream's legal counsel:²¹⁷
- (i) that the "WG" (the "working group" – the SPTT) would be meeting on the following day;
 - (ii) "haven't scoped yet" (presumably the RFP);
 - (iii) the expected dates for the issuance of the RFP and responses from the bidders were Oct. 4 and Nov. 16;

²¹³ Evidence of John Glicksman, June 3 Transcript, p. 251, line 21 – p. 253, line 11.

²¹⁴ AFF0000007 (Exhibit 226), Affidavit of Robert Hull, paras 3-7.

²¹⁵ Evidence of Dennis Nolan, May 30 Transcript, p. 9, line 5 – p. 11, line 15.

²¹⁶ Evidence of Dennis Nolan, May 30 Transcript, p. 11, lines 5-15; p. 12, line 21 – p. 13, line 10; p. 36, lines 6-24.

²¹⁷ AFF0000007 (Exhibit 226), Exhibits A and B to Affidavit of Robert Hull, Notes of discussion between PowerStream's external counsel and Mr. McFadden.

- (iv) that it was better for a bidder not to submit a bid with alternatives proposals (i.e. for (A) the purchase of 50% of Collus shares; and (B) the purchase of 100% of the shares);
- (v) that PowerStream's presentation "was great";
- (vi) that the RFP likely would not require a full purchase agreement;
- (vii) that there was concern about the number of politicians who were on the PowerStream board of directors; and
- (viii) the "other bidders seemed OK with 50/50" (i.e. that the other bidders indicated in their presentations that they were content to bid for 50% rather than all of the shares of Collus).

230. Mr. Nolan explained in his evidence that the information received from Mr. McFadden was probably not very useful to PowerStream.²¹⁸ Further, Mr. McFadden was likely of the view that he was at liberty to convey the information that he provided to Mr. Hull.

231. Nonetheless, PowerStream accepts that it would have been better had PowerStream not asked Mr. Hull to contact Mr. McFadden. In his evidence Mr. McFadden also agreed with the suggestion that "in retrospect ... it probably would have been better to have not had any discussions with Mr. Hull about this".²¹⁹

(g) The NDAs Signed by the Town and the Four Potential Bidders

232. On September 6, 2011, Dean Muncaster (Chair of Collus Power) sent a letter inviting each of the four potential bidders for a strategic partnership to an interview meeting in Collingwood to take place on either September 12 or 19. The letters were identical except for the date and time of each potential bidder's scheduled meeting.²²⁰

233. The letters attached a form of Mutual Non-Disclosure Agreement ("**NDA**"), and said the following:

Enclosed is a Non-Disclosure Agreement that you should be prepared to sign at the meeting. This agreement is drafted to protect all parties from the disclosure of highly confidential and proprietary information of each party.²²¹

²¹⁸ Evidence of Dennis Nolan, May 30 Transcript, p. 19, lines 8-24, p. 31, line 19 – p. 32, line 7, p. 34, lines 12-17, p. 35, line 22 – p. 36, line 5.

²¹⁹ Evidence of David McFadden, May 16 Transcript, p. 61, lines 4-9.

²²⁰ CPS0002374 (FD1 at para 264), Collus letter to PowerStream re: Strategic Partnership Interview Meeting, September 6, 2011.

²²¹ TOC0516278 (Exhibit 238), PowerStream Mutual Non-Disclosure Agreement.

234. The signatories to each NDA were (i) the Town of Collingwood, (ii) Collus Power Corporation, and (iii) the applicable potential bidder (one of them being PowerStream).
235. Under the NDA, each party agreed not to disclose “Confidential Information” of any of the other parties and to take commercially reasonable steps to maintain the confidentiality of such information and protect it from unauthorized use, access and disclosure. “Confidential Information” was defined in wide terms.
236. When giving his evidence at the hearing, Dennis Nolan was asked about the NDA. He said the following:
- (i) He signed the NDA on behalf of PowerStream in or around the time of the first September presentation.
 - (ii) He would have assumed at the time that the other potential bidders would have entered into the same form of NDA, if he had turned his mind to it at the time.
 - (iii) The definition of “Confidential Information” was quite broad, and standard customary language for an NDA. The definition also included exceptions, such as information that “became part of the public domain” before disclosure of the information.
 - (iv) The NDAs were a serious matter, and the potential bidders would have expected that the Town and Collus would comply with the NDAs.
 - (v) Aspects of the presentations that the potential bidders would be making to Collus and the Town at the September presentations would fall under the definition of “Confidential Information” in the NDAs.
 - (vi) Some aspects of those presentations would be publicly available information, however, and therefore would not fall under the protection of the NDAs.²²²
237. In his evidence Mr. Nolan also candidly agreed that certain information that Mr. McFadden (who was on the Collus board and was a member of the SPTT) conveyed to PowerStream’s external legal counsel about the approach that other bidders had taken in their September meetings with the SPTT was confidential and should not have been disclosed to PowerStream.²²³
238. On all of the evidence, the following appears clear in connection with the NDAs:
- (i) PowerStream itself did not breach the NDA that it had signed with the Town and Collus Power.

²²² Evidence of Dennis Nolan, May 30 Transcript, p. 164, line 6 – p. 170 line 17.

²²³ Evidence of Dennis Nolan, May 30 Transcript, p. 171 line 4 – p. 173 line 7.

- (ii) By providing to PowerStream at least some information that can properly be characterized as confidential to the other potential bidders, Collus Power failed to comply with its confidentiality obligations under the NDAs that it had signed with those bidders.
- (iii) PowerStream received that information, and did not consider either sufficiently or at all whether (A) it ought to have received the information, and (B) in providing the information, the Town or Collus had failed to comply with the NDAs that they had signed with the other bidders.

(h) The Source(s) of the Information that PowerStream Received

239. The PowerStream witnesses stated without hesitation that they did not ask Mr. Bonwick about the source or sources of his information. PowerStream also accepts that they should have done so.
240. When he was asked about this, Mr. Bonwick's evidence about where he got his information was vague. In connection with the August 3 meeting of the SPTT and his email to Mr. Bentz of the same day, for example, Mr. Bonwick said that he didn't recall whether that email was a reference to the SPTT meeting or whether he had any conversations with members of the SPTT about that meeting.²²⁴ He did say that from time to time he had discussion with three members of the SPTT concerning SPTT meetings: Dean Muncaster, Ed Houghton and Rick Lloyd.²²⁵
241. As for his draft September 14, 2011 memo to PowerStream, Mr. Bonwick said this about the source(s) of his information:²²⁶

Q: Where did you get that information from?

A: From what I recall, it was a compilation of various sources. Again, not so much in a formal meeting environment, I was following up with people like Mr. Lloyd. I had a meeting with Mr. Muncaster, tried -- the way I tend to try to garner information is break it into pieces that aren't necessarily of importance from the person that's discussing them. While I don't -- there was no one particular conversation where an individual that sat on the committee walked me through in detail saying, here's what Horizon did; here's what Hydro One did; here's what PowerStream did. I would say it was me trying to source out little bits of information as it related to how we stood and how the others stood. I think I took some say -- most people might not agree with this -- but some artistic liberties in terms of -- or latitude in terms of pulling information from OEB and from other websites as well but more specific to the information that was shared with the Task Team. There was really only two meetings -- or sorry -- two people that I had any level of discussion with on it. And that was Mr. Muncaster and Mr.

²²⁴ ALE0000246 (Exhibit 205), Email from Bonwick to Bentz, August 3, 2011.

²²⁵ Evidence of Paul Bonwick, June 12 Transcript, p. 193, line 17 – p. 195 line 12.

²²⁶ TOC0059013 (Exhibit 92), Memo from Bonwick to PowerStream re: LDC presentations.

Houghton. You'll remember during the cross-examination of Mr. Houghton when Mr. Houghton brought it my attention that he had concerns about this memo, and thought that there was information in there that was sensitive but not commercially sensitive, and that he was going to take it to his chair. I recall at the time -- and as I said in the cross-examination to Mr. Houghton -- that should be an interesting conversation when you take it to Mr. Muncaster.²²⁷

242. It is clear, and PowerStream accepts this, that the confidential information that PowerStream acknowledges it received had to have come from someone – or more than one person – inside the SPTT. From PowerStream's position as the recipient of that information, the source of that information doesn't matter, and PowerStream makes no submissions as to whose evidence, if any, the Inquiry should accept as accurate.

(i) Conclusion

243. There is no evidence that any of the information that PowerStream received and ought not to have received had any effect on the outcome of the RFP process. To the contrary, the evidence is clear that:

- (i) the RFP was, as SPTT member Deputy Mayor Rick Lloyd described it, "PowerStream's to lose"²²⁸, for various reasons; and
- (ii) the information was very general and, where it was specific, either (A) it concerned minor matters such as a contribution fund that Veridian was prepared to offer; or (B) PowerStream could well have surmised the information itself without having been told by someone on the SPTT through Mr. Bonwick.

244. When he was cross-examined by the Town's legal counsel, Mr. Bentz explained why PowerStream was the logical choice as a strategic partner for Collus. It is submitted that all of the evidence at the hearing fully supports the following statements by Mr. Bentz:

... in the context of the broader decision, I think ... the decision with respect to who the Strategic Partnership Task Team was going to choose to negotiate the agreement with that the -- the real consideration would be ... the real value if you step back and say where's the value in the transaction? The value in the transaction for us was something that we had a natural advantage on, and that was our geographic proximity.

So we had been in the north of Simcoe County, the metropolitan hub of Simcoe County, the south in Simcoe County. We're going to fill in the board here, and that's why a lot of mergers occur with -- with utilities that are close geographically. Indeed, Veridian is close geographically. It has some satellites, but it's Ajax,

²²⁷ Evidence of Paul Bonwick, June 13 Transcript, p. 159, line 24 – p. 161, line 9.

²²⁸ Evidence of Rick Lloyd, April 30 Transcript, p. 238, lines 5-17.

Pickering -- they just did a deal with Whitby, which is geographically continuous. Horizon's with Hamilton and St. Catharines and people know that.

And the reason is if you look at the ... criteria that was ultimately put in, they said -- they said strategic or specialized resources, and they talked about engineering, and they talked about construction, and they talked about a call centre. We were right there.

We could provide -- you know, if they had an emergency response, we could dispatch crews. If they needed back-up call centre, we could give them a back-up call centre. If we wanted to transfer employees for opportunities, we could move them between. And the other utilities couldn't do that. So to me, that was the key thing, notwithstanding price. That was -- but the other 30 percent was those two items. And it was also the ability to manage organic growth. So in the region, we're dealing with the same sort of developers and that sort of thing and manage the growth strategy, and we have a presence there.

I think in the broader issue, the thing that really turned the deal for us was our natural advantage we have because of our ... The true differentiator was location.²²⁹

245. In summary:

- (i) PowerStream agrees that, during the course of the Collus RFP process and Transaction, it received certain confidential information that it should not have received.
- (ii) PowerStream ought to have realized this at the time, and should have taken steps -- certainly with its consultant, Mr. Bonwick -- to put an end to its receipt of such information.
- (iii) The information that it received was of some but very limited utility to PowerStream in the RFP process.
- (iv) There is absolutely no reason to believe, on all of the documentary and oral evidence, that PowerStream being the recipient of such information had any effect on the outcome of the RFP, and that the result would have been any different if PowerStream had not received such information.
- (v) PowerStream won the RFP because (A) of its natural advantages, which Mr. Bentz set out above, and (B) because it put together a superior bid, as the evaluations of the bids by every member of the SPTT demonstrates.

²²⁹ Evidence of Brian Bentz, May 31 Transcript, p. 291, line 25 -- p. 294 line 9.

- (vi) The Town's transaction with PowerStream was to the great benefit of the Town, whatever were the justifiable complaints about certain events that took place during the RFP process and the closing of the Transaction.

P. Terms of the Transaction – Transition to Sale of Collus Holding Company rather than Collus Power and Shotgun Buy-Sell Provisions

246. During the hearing, witnesses were questioned by counsel for the Inquiry and for various parties about various terms of the Transaction. Some witnesses were critical of some of these terms.

(a) *The Town and Collus were represented by the experienced, capable Aird & Berlis law firm*

247. In evaluating this questioning and these criticisms, PowerStream submits that the Inquiry should remember that the Town and Collus were represented by the experienced, capable law firm Aird & Berlis. That firm drafted and gave its blessing to the documents underlying the Transaction, being the Share Purchase Agreement and the Shareholders Agreement.

248. Two lawyers from the law firm Aird & Berlis, were called as witnesses at the hearing: Mr. Ron Clark and Mr. Leo Longo.

249. Mr. Clark was a lawyer at the law firm Aird & Berlis, which was the long-time legal counsel to the Town of Collingwood. He was contacted in October 2011 by Mr. Houghton to act on the Collus share sale transaction.²³⁰ Mr. Houghton was the point person on the Transaction.²³¹ The firm's "client management form" for the retainer showed the firm's client as being an existing client, namely "Collingwood Utility Services Corp."²³²

250. Mr. Clark did not know whether he was being asked to represent The Town of Collingwood or one of the companies in the Collus family, of the Board of Directors of Collus, but his impression from the beginning was that Aird & Berlis were being asked to represent both the Town and Collus.²³³ His view was also, however, that "in the context of the retainer and the transaction, and at the time, it didn't matter".²³⁴ PowerStream understood that it was dealing with a single counterparty, negotiating with both the Town and Collus at the same time.²³⁵

²³⁰ Evidence of Ron Clark, May 24 Transcript, p. 28, lines 10-16.

²³¹ Evidence of Ron Clark, May 24 Transcript, p. 28, line 21 – p. 31, line 5.

²³² ARB0001739 (Exhibit 182), Aird & Berlis Client Management Form, dated October 27, 2011.

²³³ Evidence of Ron Clark, May 24 Transcript, p. 28, lines 18-25.

²³⁴ Evidence of Ron Clark, May 24 Transcript, p. 32, lines 5-12.

²³⁵ Evidence of Brian Bentz, May 31 Transcript, p. 253, lines 17-25.

251. Various documents show that the drafting of the transaction documents was primarily done by one Corrine Kennedy, who was another lawyer at Aird & Berlis. Ms Kennedy was not called as a witness at the hearing.

(b) Change in transaction from a sale of shares of Collus Power Inc. to a sale of shares of Collus Utility Services (“Collus Holding”)

252. The RFP contemplated that 50% of the shares of Collus Power Corp. (being the LDC) would be sold to a strategic partner.²³⁶

253. Ultimately, after Town Council selected PowerStream as its preferred strategic partner, the Transaction was restructured so that the shares that would be sold to PowerStream would be 50% of the shares of Collus Holding rather than 50% of the shares of Collus Power. This is the form of Transaction that Town Council ultimately approved on January 23, 2012.

254. Some evidence was led at the hearing about how this change came about, through the witnesses (i) Ron Clark of the Aird & Berlis law firm (lawyers for Collus and the Town), (ii) John Rockx of KPMG (the financial advisor to Collus), and (iii) Ed Houghton (CEO of Collus Power).

(c) The January 16, 2012 Town Council Meeting and the Aird & Berlis presentation

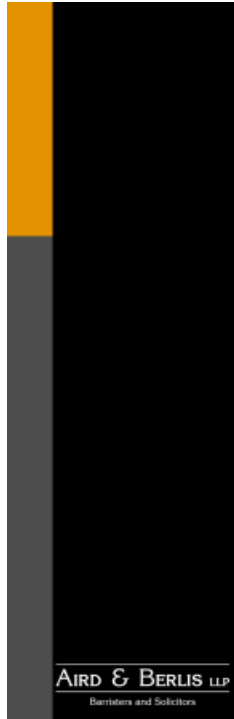
255. This meeting of Town Council took place about a month and a half after the December 3, 2011 meeting at which Council had approved the selection of PowerStream as the preferred strategic partner for the Town. It also came several weeks after Aird & Berlis, the Town’s lawyers, had drafted the share purchase agreement and shareholder agreement and had sent them to PowerStream’s lawyers for review.

256. At the January 16 meeting, Mr. Clark of Aird & Berlis made a PowerPoint presentation to Council.²³⁷ The presentation included the following explanation as to why the Transaction was being changed from a sale of shares of Collus Power to a sale of shares of Collus Holding:²³⁸

²³⁶ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p. 1.

²³⁷ TOC0531801 (FD1 at paras 488-489), Ron Clark presentation to Town Council re: strategic partnership between Collus and PowerStream, January 16, 2012.

²³⁸ See FD1 at para 489.



I. Why sale of shares of CUS rather than COLLUS directly?

NOTE: Original Request for Proposals ("RFP") from Collus Power Inc. ("Collus") contemplated purchase of shares of Collus from CUS

KPMG LLP review determined transaction was more beneficial from a tax perspective when Vendor was Town and target was CUS, rather than Collus

Implications:

- a) Collus Energy Corp. ("Energy") and Collus Solutions Corp. ("Solutions") are also part of the transaction
- b) Pre-closing adjustments to Energy, Solutions and Collus
- c) More due diligence
- d) Avoid capital gains tax on the transaction (estimated at \$350,000)

PRIVILEGED & CONFIDENTIAL

3

257. While Mr. Clark had little recollection of the discussion at this meeting, Mr. Houghton (who attended the meeting), did give evidence on that point.²³⁹ In cross-examination he said the following:²⁴⁰

- (i) Mr. Ron Clark was acting as legal counsel for both the Town and Collus.
- (ii) "Mr. Clark primarily was the presenter", but "in the financial aspects, John Rockx [of KPMG], who was also there, gave the financial aspects of it".
- (iii) It was explained to Town Council that the change was to the benefit of the Town.
- (iv) The tax issue that gave rise to the change had been discovered by Mr. Rockx and Shawn Stern, and also by Collus CFO Tim Fryer.

258. John Rockx of KPMG gave evidence by way of affidavit, and he was also examined and cross-examined. In his affidavit, he said the following about the structure of the sale of shares:

37. Although I was not involved in developing the RFP, in hindsight I would suggest that the RFP could have been structured as the sale of a 50% interest

²³⁹ Evidence of Ron Clark, May 24 Transcript, p. 180, lines 4-14.

²⁴⁰ Evidence of Ed Houghton, June 7 Transcript, p. 63, line 6 – p. 66, line 11.

in Collus Utilities, the holding company of Collus Power. This made more sense for tax minimization purposes. ...²⁴¹

259. In his oral evidence Mr. Rockx confirmed that he attended the January 16, 2012 Town Council meeting at which Mr. Clark made his presentation. He said that he did not have input into the Aird & Berlis presentation, and that he did not recall speaking at the meeting. He confirmed that he was aware of the change from a sale of the shares of Collus Power to a sale of the shares of Collus Holding.²⁴²

(d) Conclusion on the change from Collus Power to Collus Holding shares

260. The evidence is clear, PowerStream submits, that:

- (i) the change from a sale of shares of Collus Power to a sale of shares in Collus Holding was because of a significant tax saving that the change would bring to the Town;
- (ii) the tax advantage of the change was discovered by Collus's financial advisor KPMG;
- (iii) the lawyers for Collus and the Town, Aird & Berlis, were aware of the change and explained the benefit to Town Council; and
- (iv) PowerStream, which did not seek or propose it, agreed to the change.

261. There was some suggestion in the questioning of witnesses at the hearing that the change from Collus Power to Collus Holding was unfair to the unsuccessful bidders because they did not have the opportunity to bid on the different transaction structure.

262. The following must be borne in mind, however:

- (i) Town Council's selection of PowerStream on December 5, 2011 was simply the first step in pursuing a transaction. The motion that Town Council passed was merely to "direct the Collus Board to continue negotiations with the preferred proponent, being PowerStream Inc., for a potential strategic partnership arrangement".²⁴³ Town Council did not approve or direct the entering into of any specific form of strategic partnership. The details of the strategic partnership were yet to be worked out and negotiated between the parties, and the final negotiated transaction would come back to Council for approval.

²⁴¹ AFF0000011 (Exhibit 360), Affidavit of John Rockx at para 37.

²⁴² Evidence of John Rockx, June 17 Transcript, p. 105, line 23 – p. 107, line 23.

²⁴³ TOC0512149 (Exhibit 68), In-Camera Minutes of Town Council Meeting, December 5, 2011.

- (ii) There is no evidence that either of the Town’s advisors (legal counsel Aird & Berlis, and financial advisor KPMG):
 - (1) expressed any concern about a lack of fairness to the other bidders; or
 - (2) raised with Town Council the possibility of redoing the RFP process to ask for bids all over again, this time for a sale of shares of Collus Holding.
- (iii) Redoing the RFP would entail a delay of several additional months, and there was no reason to believe that the result of the RFP process would have been any different.

263. In the result, the change from a sale of shares of Collus Power to a sale of shares of Collus Holding was recommended by the Town’s advisors and was beneficial to the Town.

(e) *The Shotgun Buy-Sell Provisions*

264. Various witnesses were questioned during the hearings about the “Buy-Sell Provisions” that were included in Article 9 of the Shareholders Agreement.²⁴⁴ These provisions were referred to throughout the hearing by the colloquial term “shotgun” or “shotgun buy-sell”.

265. Specifically, some witnesses expressed a concern that the 20-day response period in the buy-sell provisions of the USA would not be sufficient to permit the Town to evaluate and respond, if at some point the strategic partner were to trigger the buy-sell provisions.²⁴⁵

266. It is important to remember that the shotgun buy-sell was not the idea of either PowerStream or any of the other bidders. Rather, the SPTT itself decided that this provision was necessary, and the team included this requirement in the RFP, in these words:

The shareholders’ agreement will require the inclusion of buy-sell arrangements to include both right of first refusal and “shotgun” provisions.²⁴⁶

267. In his evidence, former Collus CFO Tim Fryer said that he believed that he was the one who mentioned to the SPTT the need for a shotgun clause, because of the decision to

²⁴⁴ ALE0003296 (Exhibit 234), Unanimous Shareholder Agreement (“USA”); Article 9, “Buy-Sell Provisions”.

²⁴⁵ See, for example, Evidence of Tim Fryer, May 14 Transcript, p. 109, line 3 – p. 111, line 13.

²⁴⁶ CPS0006891 (Exhibit 17), Collus Power Corp Request for Proposal – Strategic Partnership, p. 5, s. 3.1.

look for a 50-50 strategic partner. He thought, however, that the 20-day response period was too short.²⁴⁷

268. Mr. Fryer also explained, as is obvious, PowerStream submits, that “the whole idea of a shotgun buy sell is to get a fair price at which either party may be prepared, fair market value, for example, to buy or sell at that price. It’s a price levelling mechanism”.²⁴⁸
269. The particular buy-sell provisions in the USA operated in a way that protected the Town from being forced to sell its 50% of the utility and thereby lose all control over this asset of the Town. This is because the shotgun buy-sell required that the party giving notice was required to offer both to buy and to sell its shares at a specified price. Mr. Fryer agreed that, under this particular buy-sell mechanism, “the Town had it within its power ... not ever to incur the risk of having its ... shares sold out from under it ... [s]imply by not making an offer”.²⁴⁹
270. The evidence also showed that first drafts of both the Share Purchase Agreement and the USA (which included the buy-sell provisions) were prepared in December 2011 by Aird & Berlis, who were the lawyers for the Town and Collus, and were sent on December 14 to the lawyers for PowerStream.²⁵⁰
271. The first draft of the USA that the Town’s lawyers prepared included buy-sell provisions in Article 10, and provided for the same 20-day response period that was included in the final executed USA, and that some witnesses criticized at the hearing.²⁵¹ Whatever the merit of the criticism, however, the evidence is clear that the 20-day period was proposed by the Town’s lawyers.
272. As matters developed, of course, it was the Town in November 2017 and not PowerStream that ultimately triggered the buy-sell provision of the USA.²⁵²

Q. The Consideration paid by PowerStream

273. The total consideration provided by PowerStream to the Town was far above the fair market value of the shares alone. Quite apart from the great benefits to the Town and Collus of the strategic partnership, the financial terms made the transaction a very good deal for the Town.

²⁴⁷ Evidence of Tim Fryer, May 14 Transcript, p. 99, line 9 – p. 101, line 19; p. 159, lines 6-19.

²⁴⁸ Evidence of Tim Fryer, May 14 Transcript, p. 212, lines 5-9.

²⁴⁹ Evidence of Tim Fryer, May 14 Transcript, p. 214, line 21 – p. 217, line 21.

²⁵⁰ ALE0001183 (Exhibit 190), Email from Aird & Berlis to Gowlings, December 14, 2011, with attached drafts. See also Evidence of David McFadden, May 16 Transcript, p. 83, line 6 – line 23.

²⁵¹ ALE0001185 (FD1 at para 457), First Aird & Berlis draft of USA, December 14, 2011, Article 10, p. 25.

²⁵² Evidence of Tim Fryer, May 14 Transcript, p. 215, line 14 – p. 216, line 7.

(a) The KPMG Valuation of Collus

274. In February / March 2011, Collus retained KPMG to prepare a report for Collus and the Town (i) evaluating the strategic options for ownership of Collus, and (ii) analyzing the potential sale value of Collus.²⁵³
275. On May 20, 2011, KPMG prepared a draft report titled “The Calculation of Value prepared for Collus Power Corp.” In that report, KPMG concluded as follows:²⁵⁴

Based upon the scope of our review (Appendix A), and subject to the assumptions and restrictions as noted herein (Appendix B), we have calculated the fair market value of all the issued and outstanding Shares of Collus Power to fall in the range of \$14.1 million to \$16.3 million as at December 31, 2010. The midpoint of this value range is CDN. \$15.2 million.

276. The KPMG valuation yielded a fair market value in the range of \$7.05 million to \$8.15 million for 50% of the shares of Collus Power.

(b) The Timing of Recapitalization Dividend: A Further Benefit to the Town

277. The evidence of several witnesses was that Collus Power was undercapitalized, in that its capitalization consisted of an excess of equity (i.e., provided by its sole shareholder, the Town of Collingwood) and a deficiency of debt, which is lower in cost than equity. The ratio of Collus’s debt to equity was lower than the 60:40 ratio assumed by the Ontario Energy Board (“OEB”) in approving rates for LDCs in Ontario.
278. All of the four bidders recognized this situation, and all of them proposed that Collus Power be recapitalized to be in line with the OEB’s assumed 60:40 capitalization ratio. Doing so would make additional funds available to Collus, which could then pay a significant recapitalization dividend to the Town.
279. Each of the bids submitted in response to the RFP contained, as part of the consideration that would be paid in connection with the purchase of 50% of the shares, such a recapitalization Collus. The amount of any recapitalization dividend that the Town would receive, however, depended on whether the dividend would be paid before or after the closing of the transaction. If the recapitalization dividend were to be paid before closing, 100% of the dividend would go to the Town, because at that point the Town would still be the 100% shareholder of Collus. If the recapitalization dividend were to be paid after closing, however, it would be split 50/50 between the Town and the new strategic partner, which at that point would own 50% of the shares of Collus.
280. The bids submitted by the three bidders other than PowerStream all provided for payment of the recapitalization dividend after closing. These bids therefore appeared

²⁵³ KPM0000600 (Exhibit 107), KPMG engagement letter, sent to Collus on Feb. 24, 2011; signed by Collus on Mar. 11, 2011.

²⁵⁴ KPM0001031 (FD1 at paras 163-164, 167), p. 18, para 105.

artificially high, because (although this was not stated in those three bids), half of the recapitalization dividend would flow back to the bidder, rather than being paid to the Town.

281. PowerStream considered it to be more transparent to structure its bid with payment of the recapitalization dividend occurring *before* closing. On November 28, 2011, Mr. Glicksman emailed John Rockx of KPMG on this issue, noting as follows:

When we put our bid together we considered building in half of the recapitalization dividend into the price for the equity under the assumption that the utility would move to its deemed capital structure after the transaction took place, and that a recapitalization dividend would be paid out post closing to both shareholders on a 50-50 basis. This would have resulted in: an initial payment to the Town of Collingwood of 10.05 \$M (7.3 \$M + 3.75 \$M) with a recapitalization dividend after the transaction (eg. post closing) of 2.75 M\$ to each shareholder. We thought it was more transparent to instead make an offer of a cash payment for the equity of 7.3M\$ and a pre-closing recapitalization dividend of approximately 5.5 M\$ facilitated by PowerStream.

In both cases the Town of Collingwood receives a total cash amount of 12.8M\$ (assuming they do not want their note of 1.7 M\$ redeemed).²⁵⁵

(c) The consideration paid by PowerStream for 50% of Collus shares

282. In its proposal in response to the RFP, PowerStream set out the following financial terms that it was prepared to offer to the Town:²⁵⁶

The Town of Collingwood would receive total cash consideration of \$14,510,170 upon closing. The payment is comprised of:

Sale of 50% Equity of Collus Power	\$7,300,000
Recapitalization Dividend	\$5,500,000
Repayment of Town of Collingwood Note	\$1,710,170
TOTAL CASH TO TOWN OF COLLINGWOOD	\$14,510,170

283. A couple of weeks after PowerStream had submitted its proposal, members of the Strategic Partnership Task Team asked to meet with PowerStream to discuss the financial aspects of PowerStream's proposal. This was after the SPTT had met and had

²⁵⁵ ALE0001072 (Exhibit 275), Email from John Glicksman to John Rockx, copy to Brian Bentz, Paul Bonwick, Mark Henderson, Daniel Miller, John McNeil, November 28, 2011.

²⁵⁶ ALE0000966 (Exhibit 127), PowerStream's Response to Collus Power Corp RFP (financial component), p. 2.

scored the proposals from the four bidders, and PowerStream had emerged as the clear winner.

284. In response to the SPTT's request, Mr. Houghton, Mr. Muncaster and Mr. Herhalt met with Mr. Bentz, Mr. Nolan, Mr. Glicksman and Mr. Henderson of PowerStream on December 1, 2011.²⁵⁷
285. At that meeting, Collus (either Mr. Houghton or Mr. Muncaster) asked PowerStream whether it would be prepared to increase the amount that it would pay for the Collus shares above the \$7.3 million that PowerStream had stated in its RFP proposal.²⁵⁸ It was intimated to PowerStream that the financial offer by Hydro One was higher than PowerStream's offer, and that PowerStream "needed to get ... [its] bid up".²⁵⁹
286. Mr. Bentz then agreed to increase PowerStream's offer for the 50% of Collus shares from \$7.3 million to \$8.0 million, which was the maximum amount that he had been authorized by the PowerStream Board to pay. PowerStream's view was that \$8 million was a very high price to pay, and that even the originally offered \$7.3 million was "at the high end of the range".²⁶⁰
287. In the result, on closing the Town received (i) \$8,000,000 cash for the share purchase; (ii) a recapitalization dividend of \$4,363,960; and (iii) an additional closing dividend of \$234,429.²⁶¹ PowerStream also committed to repayment of a promissory note from Collus to the Town in the amount of \$1,710,170 if and when requested by the Town.²⁶²

²⁵⁷ CPS0002693 (FD1 at para 416), Email from Rockx to Collus re: meeting with PowerStream, November 29, 2011; KPM0001901 (FD1 at paras 419-420), Email from Herhalt to Rockx re: meeting with PowerStream, December 1, 2011.

²⁵⁸ AFF0000011 (Exhibit 360), Affidavit of John Rockx (KPMG), para 27.

²⁵⁹ Evidence of Dennis Nolan, May 29 Transcript, p. 322, line 3 – p. 232, line 6; May 30 Transcript, p. 116, lines 1-19.

²⁶⁰ Evidence of Dennis Nolan, May 30 Transcript, p. 116, line 11-25, p. 117, lines 1-9.

²⁶¹ These amounts are final dividends declared, after adjustments. See FD1 at para 646; CBB0000166 (FD1 at paras 612, 644, 646), Collus Power Corp, Declaration of Dividend, July 30, 2012; ALE0003962 (FD1 at paras 644-646), Collus Solutions Corp., Declaration of Dividend, July 30, 2012; ALE0003939 (FD1 at paras 644-646), Collus, Declaration of Dividend, July 30, 2012; CBB0000202 (FD1 at paras 576, 607, 645-646), Collus Power, Audited Financial Statements at July 31, 2012; CPS0004139 (FD1 at paras 645-646), Collus PowerStream Consolidated Audited Financial Statements at December 31, 2012; CBB0000203 (FD1 at paras 576, 645-646), Collus Solutions, Audited Financial Statements at July 31, 2012; TOC0510002 (FD1 at paras 645-646), Town of Collingwood, Audited Financial Statements at December 31, 2012.

²⁶² ALE0002782 (Exhibit 26), Share Purchase Agreement, March 12, 2012, Schedule A; CJI0008908 (FD1 at para 656), Staff Report T2015-06-C, April 7, 2015.

(d) The consideration paid by PowerStream was among the highest price to enterprise or book value multiples paid for an Ontario LDC at the time

288. A review of comparable utility acquisition transactions in the decade leading up to the Collus Transaction was conducted and presented to the PowerStream Board at its October 24, 2011 meeting. That review concluded that the ratios between the prices paid for the utilities and the enterprise or book values of those utilities were between 1.26 and 1.69:

Transaction Date	Utility Acquired	Purchaser	Enterprise price/book
May-00	Uxbridge	Veridian	1.69
Jun-00	Carleton Place	Hydro One	1.32
Apr-01	Thorold	Hydro One	1.60
Apr-01	Owen Sound	Hydro One	1.26
May-01	Lindsay	Hydro One	1.60
May-01	Quinte West	Hydro One	1.38
May-01	Port Hope	Veridian	1.35
Jul-01	Brampton	Hydro One	1.29
Aug-01	Caledon	Hydro One	1.25
Dec-01	Richmond Hill	Markham/Vaughan	1.33
Avg			1.41
May-02	Cornwall Electric	Fortis	1.25
Sep-05	Gravenhurst	Veridian	1.56
Sep-05	Aurora	PowerStream	1.29
Sep-05	West Nipissing	Sudbury	1.28
Jan-09	ELK Energy	Town of Essex	1.36
Aug-09	Great Lakes Power	Fortis	1.26
Avg			1.33
Overall Avg			1.37

289. By the calculation of PowerStream's CFO John Glicksman, the consideration paid by PowerStream for the purchase of 50% of the Collus shares represented 1.6 times the book value of the shares. This was significantly higher than the average of multiples paid in the previous decade, and the second highest of all LDC transactions during that

period. On December 1, 2011, Mr. Glicksman made this point in an email to Mr. Houghton and Mr. Bentz.²⁶³

290. In selling 50% of the shares of Collus to its strategic partner PowerStream, therefore, the Town received among the highest premiums to the book value that had been paid in recent times. Moreover, the Town received that premium while still maintaining significant control over its utility, through the substantial protections contained in its Shareholders Agreement with PowerStream.

R. PowerStream Receipt of Slide Deck Summarizing Bids, After RFP Process Complete

291. John Glicksman was asked about an email sent from Scott Stoll of Aird & Berlis to Colin MacDonald of PowerStream on January 4, 2012, with re-line: "Collus MAADs Application," and noting an "[a]ttached presentation".²⁶⁴ Mr. Glicksman explained that at this point, PowerStream had already been selected as the successful proponent, and PowerStream was working in partnership with the Town to prepare a MAADs application, the type of application required in order to obtain OEB approval of the Transaction. Mr. MacDonald had considerable expertise in preparing MAADs applications, and in order to reduce costs for the Town, PowerStream volunteered to have Mr. MacDonald do most of the work on the MAADs application, working together with Aird & Berlis and the Town.²⁶⁵
292. In this context, Mr. MacDonald asked Mr. Stoll to provide him with a copy of the public information session presentation that had been made concerning the Transaction, because it was supposed to be included in the MAAD's application.²⁶⁶ However, what was attached to Mr. Stoll's email instead was the Strategic Partnership Task Team's "Strategic Partnership Request for Proposal Results and Evaluations" slide deck presented to Town Council on December 5, 2011.²⁶⁷
293. Mr. MacDonald forwarded that email and attachment to John Glicksman, who in turn forwarded it to Mr. Bentz.²⁶⁸ Mr. Glicksman testified that some but not all of the information contained within the December 5, 2011 slide deck may have been of use to Mr. MacDonald in preparing the MAADs application.²⁶⁹ Mr. Nolan believes that the slide deck may have been sent by Mr. Stoll intentionally, to provide information to be

²⁶³ ALE0001099 (Exhibit 224), Email from Glicksman to Houghton and others re: LDC premiums; ALE0001100 (Exhibit 225), LDC premiums presentation attachment.

²⁶⁴ ALE0001296 (FD1 at para 469), Email chain.

²⁶⁵ Evidence of John Glicksman, June 4 Transcript, p. 20, lines 20 – p. 21, line 10.

²⁶⁶ Evidence of John Glicksman, June 4 Transcript, p. 21, lines 11-15.

²⁶⁷ ALE0001297 (FD1 at para 469), attachment to email chain.

²⁶⁸ ALE0001296 (FD1 at para 469), Email chain; ALE0001307 (Exhibit 258), email from Glicksman to Bentz re: MAADs application.

²⁶⁹ Evidence of John Glicksman, June 4 Transcript, p. 22, lines 8-16.

referenced in the MAADs application, but is not certain.²⁷⁰ Mr. Glicksman, Mr. Nolan and Mr. Bentz all acknowledged that PowerStream ought not to have been provided with all of the information contained in the December 5, 2011 slide deck,²⁷¹ and that as a courtesy, PowerStream should have informed Aird & Berlis that this information had been received in error.²⁷²

294. Mr. MacDonald was not called as a witness at the Inquiry to provide his evidence as to these events.
295. Among the documents produced by PowerStream to the Inquiry was an Excel spreadsheet setting out a summary of the financial portions of the bids submitted to Collus during the by-then completed RFP process, as summarized in the December 5, 2011 slide deck.²⁷³ The metadata associated with the Excel spreadsheet indicate that the Excel spreadsheet was prepared on January 17, 2012, but the author is unknown. John Glicksman said that he was not the author of the document, because he does not work with the Excel program.²⁷⁴ He believes that Mr. MacDonald likely prepared the Excel spreadsheet,²⁷⁵ but does not know for certain.²⁷⁶ Mr. Glicksman does not believe that the spreadsheet was circulated internally at PowerStream, and there is no evidence to suggest that it was.²⁷⁷
296. Because the electricity industry in Ontario is so highly regulated, a great deal of financial and operational information concerning electrical utilities carrying on business in Ontario is publicly available, through regulatory filings that all utilities are required to make on an annual basis. The Inquiry heard evidence that much detailed financial information relating to LDCs in Ontario is publicly available on the Ontario Energy Board's website. Neil Freeman of Horizon provided evidence concerning the OEB's Yearbook,²⁷⁸ which he described as "essentially a compendium of financial statements of all of the utilities based on their regulatory financial statements".²⁷⁹ Mr. Freeman confirmed that detailed financial information, including balance sheets and income statements, relating to all of the bidders who participated in the RFP was available to anyone, in the OEB

²⁷⁰ Evidence of Dennis Nolan, May 30 Transcript, p. 124, lines 9-16, p. 125, line 11 – p. 126, line 4.

²⁷¹ Evidence of John Glicksman, June 4 Transcript, p. 22, lines 6-8; Evidence of Brian Bentz, May 31 Transcript, p. 247, lines 11-13.

²⁷² Evidence of Dennis Nolan, May 30 Transcript, p. 125, lines 4-10.

²⁷³ ALE0001490 (Exhibit 233), Collus Power Proposals.

²⁷⁴ Evidence of John Glicksman, June 4 Transcript, p. 23, lines 5-9.

²⁷⁵ Evidence of John Glicksman, June 4 Transcript, p. 23, lines 10-12.

²⁷⁶ Evidence of John Glicksman, June 4 Transcript, p. 24, lines 15-16.

²⁷⁷ Evidence of John Glicksman, June 4 Transcript, p. 23, lines 4-19.

²⁷⁸ ALE0050218 (Exhibit 222), 2010 Yearbook of Electricity Distributors, Ontario Energy Board.

²⁷⁹ Evidence of Neil Freeman, May 29 Transcript, p. 207, lines 13-19.

Yearbook.²⁸⁰ Mr. Freeman agreed that it is no secret in Ontario how any particular LDC is performing from a financial or operational perspective.²⁸¹

297. By the time PowerStream received the December 5, 2011 slide deck, the parties to the Transaction had already agreed on the price to be paid by PowerStream for 50% of the shares of Collus Power. As a result, the information concerning the financial components of the bids made by other bidders did not provide PowerStream with any advantage in its negotiation with the Town.²⁸² What is more, given the detailed financial and operational information already publicly available concerning all of the bidders, the financial information contained in the December 5, 2011 slide deck was not surprising to or of any significant use to PowerStream.

S. Drafting of the By-Law Authorizing the Transaction

298. In mid January, work began drafting the by-law that Collingwood Town Council would be required to enact in order to grant authorization for the execution of the Transaction documents. On January 17, 2012, the first draft of the by-law was prepared by Leo Longo,²⁸³ a municipal lawyer at Aird and Berlis with no commercial transaction experience.²⁸⁴ Mr. Longo admits he had never prepared a by-law of this kind before.²⁸⁵

299. Mr. Longo sent the draft by-law to Ed Houghton, asking him to complete the “whereas” clauses of the by-law, because Mr. Longo did not have sufficient background to understand how best to describe the Transaction.²⁸⁶ Ed Houghton in turn requested Dennis Nolan’s assistance in reviewing and amending the authorizing by-law.²⁸⁷ Mr. Nolan testified that he had previously been involved in numerous transactions with municipal corporations in which he provided input into the wording of the by-law authorizing the transaction.²⁸⁸ Mr. Nolan assumed that whatever wording he proposed for the by-law would be reviewed by the Town’s lawyers, Aird & Berlis.²⁸⁹

300. PowerStream states that there is nothing inappropriate in the counterparty to a commercial transaction with a municipal corporation providing input into the wording of the by-law authorizing the transaction. This is particularly so when the municipality’s

²⁸⁰ Evidence of Neil Freeman, May 29 Transcript, p. 212, line 23 – p. 213, line 16.

²⁸¹ Evidence of Neil Freeman, May 29 Transcript, p. 214, lines 6-14.

²⁸² Evidence of Dennis Nolan, May 30 Transcript, p. 126, lines 5-11, 18-21; Evidence of Brian Bentz, May 31 Transcript, p. 246, lines 5-10.

²⁸³ CJI0008820 (Exhibit 22), p. 156 (email) and p. 157 (attachment).

²⁸⁴ Evidence of Leo Longo, May 27 Transcript, p. 6, lines 20-23.

²⁸⁵ Evidence of Leo Longo, May 27 Transcript, p. 104, lines 5-7.

²⁸⁶ Evidence of Leo Longo, May 27 Transcript, p. 104, lines 15-25.

²⁸⁷ Evidence of Dennis Nolan, May 30 Transcript, p. 138, lines 14-16.

²⁸⁸ Evidence of Dennis Nolan, May 30 Transcript, p. 128, lines 10-22.

²⁸⁹ Evidence of Dennis Nolan, May 30 Transcript, p. 129, lines 3-5.

own legal counsel is involved in the drafting process, and signs off on the final wording of the by-law.

301. During his evidence, Ron Clark, the lead lawyer at Aird & Berlis acting for Collus and the Town on the Transaction, said that in his experience it is typical for a counterparty in a municipal transaction to provide input to the drafting of the authorizing resolution.²⁹⁰ Mr. Clark stated that it is important for the counterparty to provide input on the by-law, to ensure that the by-law accurately reflects the underlying transaction.²⁹¹ He was not surprised to learn that Mr. Nolan had provided input into the drafting of the authorization by-law, and was not concerned that Mr. Nolan had done so.²⁹²
302. On January 18, 2012, Dennis Nolan revised Mr. Longo's draft by-law. Mr. Nolan's draft:
- included "whereas" clauses;
 - replaced the requirement that the Share Purchase Agreement and the Shareholders Agreement be "in a form and content to the satisfaction of the Town solicitor", with a requirement that the agreements be "in a form and content to the satisfaction of the Mayor";
 - removed the requirement that Town Staff and the Town Solicitor report back to Council before the closing of the Transaction; and
 - added a clause authorizing the Mayor and the Town Clerk to execute any documents related to the Transaction.
- (a) Requirement that SPA and USA be "in form and content to the satisfaction of the Town Solicitor"**
303. It was not in keeping with the Town's own by-law practices, and in this case would have been redundant, to include a requirement in the by-law that the Share Purchase Agreement and Shareholders Agreement be in a form and content to the satisfaction of the Town Solicitor.
304. Ms Wingrove suggested in her evidence that a clause requiring agreements to be in form and content to the satisfaction of the Town Solicitor was "standard practice."²⁹³ However, she admitted that as Town Clerk, Sarah Almas had far greater involvement in and knowledge of the drafting of the Town's by-laws. Ms Wingrove said that "our regular practice would have been that the drafting of a by-law is something that the clerk had carriage over".²⁹⁴

²⁹⁰ Evidence of Ron Clark, May 24 Transcript, p. 141, lines 13-18.

²⁹¹ Evidence of Ron Clark, May 24 Transcript, p. 239, lines 12-16.

²⁹² Evidence of Ron Clark, May 24 Transcript, p. 239, lines 1-8, p. 240, lines 3-5.

²⁹³ Evidence of Kim Wingrove, April 18 Transcript, p. 84, lines 10-11.

²⁹⁴ Evidence of Kim Wingrove, April 18 Transcript, p. 90, lines 2-4.

305. In her evidence, Town Clerk Sarah Almas explained that there is no need for the Town to include a requirement in its by-laws that agreements be in form and content to the satisfaction of the Town Solicitor, because Town staff take the advice of the Town's solicitors as a matter of course before signing agreements:

A: We generally wouldn't, you know, indicate actually within the by-law to the satisfaction of the Town's solicitors because Town staff, you know, take the advice of their solicitors before we signed an agreement anyways, so it was common practice, you know, whether it was included in -- within the -- the specificity of the by-law or not.

Q: So just to make sure I understand, it wasn't your practice to include satisfaction of the Town's solicitor, instead it would be the satisfaction of the staff member under the understanding that that staff member would be taking advice from the solicitor?

A: No. Basically [it] would say that the mayor and clerk be authorized to execute whatever documents are necessary to effect the decision of council, in a very broad sense.

...

A: We wouldn't say to the satisfaction of anyone.²⁹⁵

306. The clause in the draft by-law prepared by Mr. Longo requiring that the SPA and USA be "in form and content to the satisfaction of the Town Solicitor" was amended by Mr. Nolan to require that the agreements be in a form and content to the satisfaction of the Mayor. Town Clerk Almas stated that she was not terribly concerned about this amendment, as she knew that the Mayor would be relying on legal and staff advice in executing documents relating to the Transaction.²⁹⁶

307. As Mr. Nolan explained, he fully expected that the Mayor and Clerk would seek advice from Aird & Berlis (the Town's lawyers on the Transaction) before executing the agreements.²⁹⁷ At the time, Mr. Nolan did not know who the Town Solicitor was, and was concerned that someone who was not familiar with the Transaction could be required to approve the Transaction.²⁹⁸ This could present a problem if an entire re-evaluation of the Transaction were required, even if no material changes were made to the Transaction that had previously approved by the Town.²⁹⁹

²⁹⁵ Evidence of Sarah Almas, April 15 Transcript, p. 79, lines 24-25, p. 80, lines 1-16, 18-20.

²⁹⁶ Evidence of Sarah Almas, April 15 Transcript, p. 88, lines 1-10.

²⁹⁷ Evidence of Dennis Nolan, May 30 Transcript, p. 130, lines 5-8.

²⁹⁸ Evidence of Dennis Nolan, May 30 Transcript, p. 129, lines 6-11.

²⁹⁹ Evidence of Dennis Nolan, May 30 Transcript, p. 132, lines 4-11.

(b) Requirement that Town Staff and the Town Solicitor report back to Council before Closing

308. The Town was represented by Aird & Berlis throughout the Transaction, and during the period of time leading up to the closing of the Transaction, provided instructions to and received advice from Aird & Berlis in connection with the Transaction. Leo Longo acknowledged that at the time of the Transaction, he (and more generally, Aird & Berlis) acted as the Town Solicitor.³⁰⁰
309. PowerStream states that there would be no need for Mr. Longo of Aird & Berlis to report back to Council before closing, as Aird & Berlis would already be providing advice and updating the Town on the Transaction throughout the period leading up to closing. In addition, there would be no benefit to have Mr. Longo, a municipal lawyer with no transactional experience, report to Council on the status of the Transaction. Ed Houghton said that both Mayor Cooper and Rick Lloyd expressed the view that there was no need to have Mr. Longo report back to Council in respect of the Transaction, because they could speak to Ron Clark if any issues arose. He said their words were, "Why would we want to pay Mr. Longo, who's, as they said, down the hall from the people who are doing all this work".³⁰¹
310. Ms Almas gave evidence that she found this clause proposed by Mr. Longo odd, and not in keeping with the Town's past practices:
- ...it's not something that we would normally do prior to closing. An analogy would be if I am authorized to execute agreements on behalf of a corporation for a purchase and sale, I don't then go back, sign the agreement, and report back to Council to say I did what you told me to do before it closes. So I -- I did think that it was a little odd.³⁰²
311. Similarly, it was Rick Lloyd's evidence that in his experience, once an authorizing by-law was passed authorizing a transaction, it would not need come back to council unless there was an issue.³⁰³
312. In an email to Mayor Cooper, Rick Lloyd, Kim Wingrove, Sara Almas, and Ed Houghton, Mr. Longo said (in reference to the clause requiring that the Town Solicitor report back to Council before closing, which he had inserted in his original draft), "if it is felt that such provision is unnecessary or undesirable, you can remove it".³⁰⁴
313. Ron Clark's evidence was that in his experience in transactions involving municipal corporations, an approval by-law is usually prepared at a time when the transaction documents are sufficiently advanced that the parties are comfortable bringing them to

³⁰⁰ Evidence of Leo Longo, May 28 Transcript, p. 150, lines 1-2.

³⁰¹ Evidence of Ed Houghton, June 11 Transcript, p. 251, lines 20-22.

³⁰² Evidence of Sarah Almas, April 15 Transcript, p. 81, lines 20-25, p. 82, lines 1-2.

³⁰³ Evidence of Rick Lloyd, May 1 Transcript, p. 79, lines 7-12.

³⁰⁴ ARB0000234 (Exhibit 26), p. 11.

Council for approval. The parties to the transaction do not want to have to go back to Council to get approval for minor adjustments to the documents which may be made before closing occurs, so generally there is some authority given to a Mayor, a Clerk or a legal advisor to approve changes made to the transaction documents after the authorizing by-law is passed, and before closing.³⁰⁵

314. When asked how having the authorization of the Transaction take place at the “front end” would be a benefit to the Town, Mr. Clark noted that from a commercial perspective, there was an interest to both parties to be able to move forward with the Transaction. He said that as a municipal lawyer, Mr. Longo may not have appreciated this commercial perspective when preparing the initial draft of the authorization by-law:

Q: So you've helped us understand why a purchaser would want the authorization to take place at the front and how is having the authorization taking place at the front end useful to the Town?

A: I -- I think there's two perspectives on it, as a Municipal lawyer maybe you're used to building in checks, you know, opportunities for comment as much as possible, and perhaps that's what informs the original resolution.

As a corporate commercial lawyer, I -- I want to kind of lessen the possibility of the fewer variables the better variables the better. And this would add a-a variable.

So I'm kind of sitting here now looking at this that I -- I for -- I don't have a recollection of what the dynamic was at the time, but sitting here looking at this, I could, as I said, perfectly understand why the purchaser would consider this to be a big deal and wanted it.

But -- and that -- and that, by the way -- and I get your question -- to your question why does it matter from the vendor's point of view? It matters because the vendor wants to just move ahead with the deal at some point and if it's going to be a -- a deal breaker or an important obstacle, you know, fight over things that matter, not things that really don't matter.³⁰⁶

315. There was nothing inappropriate in the removal from Mr. Longo's draft of the clause that would have required the Town Solicitor to report back to Council again concerning the Transaction, after Council had already passed the by-law authorizing the Transaction. In fact, the removal of the clause was necessary to allow for an effective and efficient approval process.

³⁰⁵ Evidence of Ron Clark, May 24 Transcript, p. 146, line 18 – p. 147, line 5.

³⁰⁶ Evidence of Ron Clark, May 24 Transcript, p. 147, line 14 – p. 148, line 16.

(c) Clause authorizing the Mayor and the Town Clerk to execute any documents related to the Transaction

316. Ms Almas acknowledged that a clause authorizing the Mayor and Town Clerk to execute documents is standard in by-laws authorizing significant transactions.³⁰⁷ She further acknowledged it was a practical necessity to the closing of the Transaction. The clause was required in order to provide proper Council authorization to sign all of the agreements necessary to close the Transaction.³⁰⁸ This was important because the Town had represented and warranted in the Share Purchase Agreement that it had taken all action necessary to authorize the execution of the Transaction agreements.³⁰⁹

(d) Conclusion

317. In conclusion, there was nothing inappropriate in Mr. Nolan of PowerStream providing proposed amendments to the authorizing by-law, and each of the amendments was of benefit to the Town.

T. Further Amendments to Draft By-Law

318. Over the course of January 18 and January 19, 2012, further amendments were made to the authorizing by-law, both by Mr. Longo and by Ms Kennedy and Mr. Clark at Aird & Berlis. Ultimately, at 6:34 pm on January 19, 2012, Mr. Clark forwarded the final version of the by-law to Leo Longo, stating, "Please see attached. Ed took issue with some of our changes so we tried to shorten it and remove the focus on the 'draft' nature of the agreements."³¹⁰ This email from Mr. Clark appears to have been overlooked in the Foundation Document.

319. The final version of the by-law, approved by Mr. Clark of Aird & Berlis: (i) provided that the SPA and USA were to be in a form and content to the satisfaction of the Mayor; (ii) provided authority to the Mayor and the Clerk (among other things) to execute the SPA and USA, and (iii) did not require that the Town Solicitor report back to Council before closing.

U. Mr. Bonwick's Communications regarding January 19, 2012 Conference Call

320. On January 19, 2012, a conference call was held by Mayor Cooper, Rick Lloyd, Kim Wingrove, Sarah Almas, Ed Houghton, and Leo Longo to discuss the wording of the authorizing by-law.

321. Mr. Nolan testified that he was not aware of an email sent by Mr. Bonwick on January 19, 2012 to Mayor Cooper, Rick Lloyd and Ed Houghton, suggesting that Rick Lloyd and Leo Longo be brought into a meeting that Mayor Cooper had requested that afternoon

³⁰⁷ Evidence of Sarah Almas, April 15 Transcript, p. 89, lines 17-23.

³⁰⁸ Evidence of Sarah Almas, April 16 Transcript, p. 15, lines 20-24.

³⁰⁹ ALE0002782 (Exhibit 26), Share Purchase Agreement, p. 28.

³¹⁰ ARB0000234 (Exhibit 25), pp. 25-26 (email), pp. 27-28 (attachment).

with Kim Wingrove and Ed Houghton to discuss the proposed changes to the authorizing by-law³¹¹.

322. By January 19, 2012, Town Council had accepted the recommendation of the SPTT that the Town enter into a strategic partnership with PowerStream.³¹² From then on, the parties were moving toward a common goal of completing the Transaction, and finalizing the sale of the shares. Mr. Bonwick's evidence was that, acting on behalf of PowerStream, he suggested that Mr. Lloyd and Mr. Longo be brought into the meeting arranged by the Mayor, in order to keep the progression of the Transaction on track and moving forward.³¹³
323. On January 19, 2012, at 7:02 pm, Mr. Bonwick sent an email to Mr. Glicksman and Mr. Nolan reporting on the call that had taken place between the Town's lawyer, Mr. Longo, Mayor Cooper, Mr. Lloyd, Kim Wingrove and Ed Houghton concerning the by-law. That email stated:

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 subject to the satisfaction of the Mayor with no mention of their lawyer.

The discussion left no room for misinterpretation in regards to expectation Monday night.

The Mayor was agrees/approves of the format discussed in the Boardroom this morning. All is moving ahead as per our discussion.³¹⁴

V. Lawyer-Client Privilege in the Context of Commercial Transactions

324. Different considerations apply in assessing privilege in the context of commercial transactions, as opposed to in the adversarial litigation context. Courts have recognized that parties negotiating a commercial transaction have a common interest in successfully completing the transaction.³¹⁵ It has been recognized by courts and legal commentators that where two parties, each independently represented by separate counsel, are negotiating towards a mutually beneficial transaction, the parties may be found to share a common interest in the transaction being successfully completed.³¹⁶

³¹¹ Evidence of Dennis Nolan, May 30 Transcript, p. 137, lines 21-25.

³¹² TOC0512149 (Exhibit 68), In-Camera Minutes of Council Meeting, December 5, 2011.

³¹³ Evidence of Paul Bonwick, June 13 Transcript, p. 194, lines 21-24.

³¹⁴ ALE0001529 (FD1 at paras 502-503), Email from Bonwick to Glicksman (copying others), January 18, 2012.

³¹⁵ Law of Privilege in Canada, 11.80 – Privilege Outside Litigation Context.

³¹⁶ LSUC 7th Annual In-House Counsel Summit; Solicitor-Client Privilege, A Guide for In-House Counsel; page 25.

325. Transactional common interest privilege is not directly applicable to the matters at issue in this Inquiry, as there is no issue of a third party seeking access to otherwise privileged information shared between the counter parties to the Transaction. However, the rationale and policy arguments underlying transactional common interest privilege provide important context to the analysis of issues of privilege in the Inquiry.
326. It has been noted the rationale behind transactional common interest privilege appears to be an inherent public interest in facilitating commercial transactions.³¹⁷ As stated in *Fraser Milner Casgrain LLP v. Minister of National Revenue*:

To my mind, the economic and social values inherent in fostering commercial transactions merit the recognition of a privilege that is not waived when documents prepared by professional advisers, for the purpose of giving legal advice, are exchanged in the course of negotiations. Those engaged in commercial transactions must be free to exchange privileged information without fear of jeopardizing the confidence that is critical to obtaining legal advice.³¹⁸

W. What is covered by Lawyer-Client Privilege?

327. The Supreme Court of Canada has found that lawyer-client privilege extends when three pre-conditions are met:
1. there is a communication between a lawyer and a client;
 2. which entails the seeking or giving of legal advice; and
 3. which is considered to be confidential by the parties.³¹⁹
328. Lawyer-client privilege protects only communications.³²⁰ The privilege does not protect underlying facts that may be communicated by a client to the lawyer.³²¹ Acts are not privileged.³²² As stated in a leading text on lawyer-client privilege in Canada, “only communications are protected by the privilege, not client or lawyer actions”.
329. Mr. Bonwick’s email to PowerStream concerning the outcome of the Town’s January 19, 2012 conference call with Mr. Longo did not disclose the substance of any communication made by Mr. Longo to his clients during the January 19, 2012 meeting.

³¹⁷ Michael A. Marion and Laura M. Poppel, “Common Ground? The Doctrine of Common Interest in Canada” (2018) Archibald-AnnRevCivil.

³¹⁸ *Fraser Milner Casgrain LLP v. Minister of National Revenue*, 2002 BCSC 1344 (S.C.) at para 14.

³¹⁹ *Solosky v. The Queen*, [1980] 1 S.C.R. 821.

³²⁰ Adam Dodek, *Solicitor-Client Privilege* (Lexis-Nexis Canada Inc, 2014), para 5.4 [“Dodek”].

³²¹ Dodek, para 5.11.

³²² Dodek, para 5.19.

Rather, it imparted only the outcome of the meeting - the fact that the amendments requested by PowerStream to the authorizing by-law were acceptable to the Mayor and other Town representatives. This was all in the context of the parties working together toward the common goal of finalizing the Transaction which had been approved by Council.

X. Council approves the Transaction – January 23, 2012

330. On January 23, 2012, Staff Report CAO 2012-01 (the “**Staff Report**”) came before Town Council, providing information recommending that Council enact By-Law 2012-11 to execute the Share Purchase Agreement, and the Shareholders Agreement with respect to the sale of 50% of the shares of Collingwood Utility Services Corp. to PowerStream.³²³ The Staff Report provided a summary of and background to the Transaction, and noted that KPMG LLP and legal representatives from Aird & Berlis were engaged throughout the negotiation process. The Staff Report stated, “Under the terms of the Share Purchase Agreement, the Town of Collingwood will receive cash and other consideration valued at approximately \$15M”.³²⁴
331. When the Staff Report came before Council on January 23, 2012, a slide presentation was made to Council, by Mr. Houghton, Mr. Rockx of KPMG, Mayor Cooper and Mr. Bentz.³²⁵ Slide 14 in that presentation, entitled, “Financial Consideration”, said this:
- Estimated proceeds for the Town of Collingwood is \$14 - \$15 million
 - Calculation predicated on three considerations:
 - 50% share purchase
 - Recapitalization
 - Redeeming of historical promissory note
332. As set out in Section Q above, the consideration that PowerStream provided to the Town for 50% of the Collus shares was far above the fair market value of the shares. The figures presented in the Staff Report accurately reflected the value of the consideration paid by PowerStream, as determined through the detailed analysis conducted by KPMG during the RFP process.

³²³ ALE0001644 (Exhibit 159), Town of Collingwood Staff Report, CAO 2012-01, January 23, 2012.

³²⁴ ALE0001644 (Exhibit 159), Town of Collingwood Staff Report, CAO 2012-01, January 23, 2012, p. 4.

³²⁵ KPM0002403 (Exhibit 160), Collus Power Corp. “Strategic Partnership Initiative” presentation to Town Council, January 23, 2012.

Y. The Preparation and Signing of the Transaction Closing Documents

333. The Transaction closing documents were negotiated and prepared by Aird & Berlis on behalf of Collus and the Town, and Gowlings on behalf of PowerStream.
334. On February 29, 2012, Leo Longo emailed to Mayor Cooper, Sarah Almas and Ed Houghton copies of Transaction documents to be signed, along with a memorandum identifying the documents, and who was required to sign them.³²⁶ Ed Houghton forwarded the email to Paul Bonwick, asking him to ensure that the documents were signed before the end of Friday (March 2, 2012). Mr. Bonwick forwarded the email chain and attachments to Mayor Cooper on March 1, 2012, explaining that the documents needed to be signed by her by Friday afternoon, because a lead person in the Transaction was starting holidays on the Monday, for two weeks. Mr. Bonwick also forwarded the email chain and attachments to Ed Houghton, copying Brian Bentz, Dennis Nolan, John Glicksman, and Mark Henderson of PowerStream.³²⁷
335. The memorandum that was one of the attachments to Mr. Longo's February 29, 2012 email was an internal Aird & Berlis memorandum dated February 29, 2012. The memorandum was from Aird & Berlis lawyer Michael Ventresca and was addressed to Leo Longo and copied to Ron Clark and Corrine Kennedy. The subject line of the memorandum was "Documents to be signed by the Mayor and Clerk". The memorandum identified eight documents relating to the Transaction, briefly set out the purpose of each document, and identified who was required to sign each document.
336. In his evidence Dennis Nolan agreed that the internal February 29, 2012 memorandum from Aird & Berlis identifying the closing documents and setting out who needed to sign them was "strictly speaking" privileged, but said that he would not have any concerns if the other side in a commercial transaction saw a memorandum of this nature addressed to PowerStream.³²⁸
337. When asked whether he considered the February 29, 2012 memorandum to be privileged, Ron Clark gave a qualified answer:

... I mean, a lot of this -- things like Council resolutions, shareholder resolutions would have been public. And eventually, the documentation -- the documents themselves would have been public, although not right at that time. The director's resolutions, I'm not sure that they would have been public. So--although I don't know that there's anything worrisome in them, but -- but on their face, they're not documents that would have been public.

³²⁶ ALE0002075 (Exhibit 70), Email from Bonwick to Houghton and others re: documents to be signed, March 1, 2012; ALE0002084 (Exhibit 71), attached memorandum.

³²⁷ ALE0002075 (Exhibit 70), Email from Bonwick to Houghton and others re: documents to be signed, March 1, 2012.

³²⁸ Evidence of Dennis Nolan, May 30 Transcript, p. 209, lines 20-25, p. 210, lines 1-6.

Therefore, prima facie, there would -- the -- certain aspects of this would be privileged, yeah.³²⁹

338. Ron Clark also confirmed that the Aird & Berlis memorandum did not contain any significant legal analysis, and did not contain any strategic advice. All the memorandum did was identify certain of the Transaction documents and who was to sign them. Mr. Clark indicated that he would not have any significant concern if the other party to the Transaction were to see the memorandum.³³⁰
339. PowerStream acknowledges that it did not take any steps to address with Mr. Bonwick that the Aird & Berlis memorandum that he forwarded to PowerStream was a privileged communication. However, the nature of the information contained within the memorandum must be borne in mind. The memorandum did not contain legal analysis or strategic advice. It simply identified Transaction documents that PowerStream and the Town had previously negotiated, and stated who was to sign them. PowerStream and the Town had a common interest in completing the Transaction. The disclosure of the memorandum in fact aided the common goal of completing the Transaction, in demonstrating that the Town was taking necessary steps towards the execution of the Transaction documents.
340. On March 6, 2012 the Town, the Collus entities and PowerStream entered into the Share Purchase Agreement. The Transaction closed on July 31, 2012.³³¹

Z. Non-Financial Benefits Flowing to the Town as a Result of the Transaction

341. In addition to the financial benefits of the Transaction, the Town of Collingwood saw many non-financial benefits from its Strategic Partnership with PowerStream:
- (a) David McFadden explained to the Inquiry that prior to entering in to its Strategic Partnership with PowerStream, Collus was able to run its control room for only eight hours a day, limiting its ability to provide service to the people of Collingwood.³³² Joining forces with PowerStream provided residents of Collingwood immediate access to PowerStream's 24-hour control room, greatly decreasing response times to outages and service calls, as well as providing a 24/7 call centre.³³³
- (b) Prior to partnering with PowerStream, Collus found it burdensome to deal with all of the regulatory requirements of the OEB, which were costly and complex. Collus did not have in-house counsel or a regulatory person on staff.³³⁴ Partnering with PowerStream

³²⁹ Evidence of Ron Clark, May 24 Transcript, p. 166, lines 13-24.

³³⁰ Evidence of Ron Clark, May 24 Transcript, p. 251, line 25, p. 252, lines 1-15.

³³¹ ALE0003296 (Exhibit 234), Unanimous Shareholders Agreement, July 31, 2012.

³³² Evidence of David McFadden, May 15 Transcript, p. 151, lines 2-6.

³³³ Evidence of Dennis Nolan, May 30 Transcript, p. 39, lines 23-25.

³³⁴ Evidence of David McFadden, May 15 Transcript, p. 151, lines 8-16.

allowed Collus to take advantage of PowerStream's regulatory expertise, and reap the benefits of joining forces on rate applications.

(c) In the period leading up to the Transaction, some of the increasing regulatory demand placed on smaller utilities involved changes to license conditions that introduced additional requirements for Conservation and Demand Management (“**CDM**”).³³⁵ PowerStream was a leader in many CDM programs, and had taken the initiative with developing CDM programs.³³⁶ As Mr. Houghton noted in his evidence, “PowerStream had more people in their conservation demand management department than we had in our entire utility”.³³⁷

342. In his message in the 2013 Collus PowerStream Annual Report Mr. McFadden noted:

In addition to PowerStream's contribution at the Board level, our company has benefitted greatly from services provided by PowerStream in such areas as conservation demand management, training regulatory compliance, and the provision of a 24/7 control room capability.³³⁸

AA. The Early Success of the Collus PowerStream Strategic Partnership

343. The Inquiry heard evidence that the new entity that arose from the strategic partnership, Collus PowerStream, was highly successful in its first year following the close of the Transaction. Witnesses spoke of a positive and constructive relationship between the leadership of Collus and PowerStream.³³⁹ The 2013 Collus PowerStream Annual Report was entered into evidence, and set out very favourable financial results of the first full year of the strategic partnership. The Report noted that in its first year, a Collus PowerStream customer survey resulted in a Utility PULSE Report Card of an “A”, and a first ever cash dividend of \$367,000 was paid to shareholders. The early success of Collus PowerStream is also reflected in a report prepared by Steven Haasz of Consol Asset Group dated February 23, 2014.³⁴⁰ The Consol Report listed many benefits and successes achieved in the first year of the strategic partnership, including the following:

- Shared vision, mission and values;
- Platform to leverage scale;
- Complementary geographic coverage and potential future diversity;
- Employee engagement and combined expertise;
- Value to customers;
- Leveraging key advancements in current and future technologies;

³³⁵ Evidence of Brian Bentz, May 30 Transcript, p. 369, lines 7-12.

³³⁶ Evidence of Brian Bentz, June 3 Transcript, p. 122, lines 16-22, p. 123, lines 4-23.

³³⁷ Evidence of Ed Houghton, June 4 Transcript, p. 278, lines 13-15.

³³⁸ ALE0040924.001 (Exhibit 104), Collus PowerStream Annual Report (2013), page 6.

³³⁹ See, for example, Evidence of Brian Bentz, June 3 Transcript, p. 139, lines 19-25.

³⁴⁰ TOC0485476 (Exhibit 101), Consol Report, “Third Party Review of the Collus PowerStream Strategic Partnership”, March 30, 2014.

- Cash proceeds from the sale of shares and dividend recapitalization;
- Increased financial and operational stability;
- Leveraging of the Collus PowerStream strategic partnership as a viable option in Ontario's LDC market.

BB. Arrival of New Town of Collingwood CAO John Brown

344. Several witnesses at the Inquiry spoke of a disintegration of the relationship between the Town and Collus PowerStream following the arrival at the Town of a new Chief Administrative Officer, John Brown, in July 2013. In a report dated March 31, 2016, Mark Rodger of the law firm Borden Ladner Gervais described “a breakdown in communication and mutual erosion of trust between Collus PowerStream and the Town with respect to matters, including the events [leading to the Transaction] in 2012”.³⁴¹
345. By his own admission, Mr. Brown did not have a background in or much experience with corporate law, and “needed a lot of advice” on corporate matters.³⁴² Mr. Brown struggled to understand the structure of the Transaction,³⁴³ and found it “very hard to understand” the status of pre-existing shared services agreements.³⁴⁴ In his examination-in-chief, Mr. Brown suggested that a July 31, 2012 letter agreement regarding shared services entered into between the Town and PowerStream had not been disclosed to him and had not formed part of the Transaction Closing Book.³⁴⁵ He later acknowledged on cross-examination that the agreement in question was in fact contained in the Transaction Closing Book.³⁴⁶ It was put to Mr. Brown that an effective way for him to have gained an understanding of how the shared services agreements were dealt with in the context of the Transaction would have been for him simply to contact Aird & Berlis and ask. He responded that it did not occur to him to do so.³⁴⁷
346. Witnesses spoke of complaints of bullying and harassment made against Mr. Brown, and a souring of the relationship between the Town and Collus PowerStream as a result.³⁴⁸ As Mr. Brown himself put it, “people were starting to be concerned with me and say that I was being overly aggressive or whatever”.³⁴⁹

³⁴¹ ALE0004057 (FD1 at paras 641-642), BLG Report, “The Collus Family of Companies: History, Orientation, Service Provider Role and “Go Forward” Options”, March 31, 2016, page 20.

³⁴² Evidence of John Brown, June 26 Transcript, p. 28, lines 12-19.

³⁴³ Evidence of John Brown, June 26 Transcript, p. 37, line 25, p. 38, lines 1-4.

³⁴⁴ Evidence of John Brown, June 26 Transcript, p. 66, lines 21-23.

³⁴⁵ Evidence of John Brown, June 26 Transcript, p. 31, lines 22-25, p. 32, line 1.

³⁴⁶ Evidence of John Brown, June 26 Transcript, p. 198, lines 24-25, p. 199, lines 1-2.

³⁴⁷ Evidence of John Brown, June 26 Transcript, p. 197, lines 13-19.

³⁴⁸ See, for example, Evidence of Brian Bentz, June 3 Transcript, p. 140, lines 9-19; Evidence of Cindy Shuttleworth, May 17 Transcript, p. 81, lines 10-16; Evidence of Pam Hogg, May 17 Transcript, p. 218, lines 2-25 and p. 219, lines 1-5.

³⁴⁹ Evidence of John Brown, June 26 Transcript, p. 50, lines 17-19.

347. David McFadden provided evidence that Mr. Brown's treatment of staff was so extreme that the Board of Collus PowerStream made a decision that at any meetings between Mr. Brown and female members of the Collus PowerStream staff, a Board member must be present.³⁵⁰ Mr. Brown agreed that the relationship between the Town and Collus PowerStream became dysfunctional.³⁵¹
348. Mr. Bentz said that in his view, the poisoned environment caused by the arrival of Mr. Brown as CAO was the reason that the early success of Collus PowerStream did not continue, and the strategic partnership ultimately failed:

Q: I think it will be helpful -- and I know you've touched on it briefly, but it might be helpful if you're prepared to expand on the post -- and I'll call it post-2014 time frame. New Council came in; Mr. Brown is now the CAO. Could you maybe speak to and provide greater detail in terms of how you feel that relationship fell apart or became dysfunctional?

A: From a director's point of view, there were a lot of issues that came to the Board with respect to HR-type issues with the senior leaders. They were concerned about bullying and harassment, and they brought it our attention and wanted us to deal with it. And it was -- I think from across all of the -- I would say Cindy and Larry and Pam and Mr. Houghton all made similar sort of comments around, you know, sort of the -- how the relationship had soured.

Q: Did you attempt to reconcile the relationship to try and get the Town of Collingwood post-2014 into a more positive mindset or a better working relationship with Collus PowerStream to allow you to achieve the growth strategy that you had spoke about?

A: Yes.

Q: And how receptive did you find the Town of Collingwood in terms of your desire and your commitment to try and get them to work in a more collegial or cooperative fashion?

A: I found -- I found it difficult.

Q: You care to expand on that?

A: Just it was--it was -- I think there was a -- you know, and Mr. Fryer earlier had some theories on why that might be. But there wasn't an alignment of -

³⁵⁰ Evidence of David McFadden, May 16 Transcript, p. 160, lines 1-5.

³⁵¹ Evidence of John Brown, June 26 Transcript, p. 104, lines 22-23.

- of interest. I think one wanted to look forward and one wanted to look backward. And so that -- that made it difficult.³⁵²

349. Mr. Brown admitted to having made repeated demands of Collus PowerStream staff for documents relating to the Transaction which had already been provided to him on multiple previous occasions.³⁵³ He further admitted that he did not bother to read all of the information that was in fact provided to him.³⁵⁴
350. It is extremely regrettable that Mr. Brown's lack of understanding, failure to properly inform himself and inability to work constructively with staff at Collus PowerStream made any continued success of Collus PowerStream unworkable.

CC. Conclusion

351. From the outset, PowerStream took reasonable steps to address any potential conflict due to Mr. Bonwick working as a consultant on PowerStream's potential acquisition of Collus Power, arising from the fact that Mr. Bonwick's sister was the Mayor of Collingwood. PowerStream obtained written confirmation from the Clerk of the Town of Collingwood that the Mayor had no conflict of interest arising out of Mr. Bonwick acting for PowerStream, and obtained a letter from the Mayor of Collingwood stating that she was aware that PowerStream had engaged Mr. Bonwick. PowerStream insisted that Mr. Bonwick's consulting agreement with PowerStream contain a provision requiring Mr. Bonwick to make all necessary and prudent disclosures of his engagement with PowerStream. Above all, notwithstanding Mr. Bonwick's request for one, PowerStream did not agree to pay, and did not pay, any success fee to Mr. Bonwick in connection with the Collus Transaction.
352. During a transaction of this nature, it is necessary for interested bidders to seek out information that will assist them in valuing the target, and putting together a bid. At the time when it retained Mr. Bonwick as a consultant, PowerStream had no reason to believe that the CEO of Collus (or anyone else at Collus) would release to PowerStream or to Mr. Bonwick, any information that it was not appropriate for PowerStream to obtain. With the benefit of all of the evidence that was presented at the Inquiry, it has become apparent, and PowerStream's witnesses have acknowledged, that PowerStream was provided with some confidential information that it was not appropriate for PowerStream to obtain. PowerStream acknowledges that it ought at the time to have made clear to Mr. Bonwick that it did not wish to receive confidential information of this nature and that it should have informed Collus, the Town and the SPTT that it had received the information.
353. Ultimately, the Town of Collingwood and the citizens of Collingwood received exceptional value from PowerStream in exchange for the sale of 50% of the shares of

³⁵² Evidence of Brian Bentz, June 3 Transcript, p. 140, line 1 – p. 141, line 15.

³⁵³ Evidence of John Brown, June 26 Transcript, p. 213, lines 15-19, page 220, lines 16-24.

³⁵⁴ Evidence of John Brown, June 26 Transcript, p. 215, 16-20 and p. 228, lines 6-22.

Collus. The financial consideration received for the shares was well in excess of the fair market value of the shares, and represented one of the highest premiums over book value paid for an LDC in Ontario at the time, despite the fact that the Town retained veto rights within the Shareholders Agreement, such that the Transaction did not bear a controlling interest premium. In addition to the financial benefits of the Transaction, PowerStream brought many other benefits to the table, including assistance with regulatory matters, information services, call centre, Conservation and Demand Management and other specialized services.

August 30, 2019

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

Michael S.F. Watson

Tel: 416-369-7245
michael.watson@gowlingwlg.com

Belinda Bain

Tel: 416-369-6174
belinda.bain@gowlingwlg.com

Heather Fisher

Tel: 416-369-7202
heather.fisher@gowlingwlg.com

Tel: 416-862-7525
Fax: 416-862-7661

Lawyers for Alectra Utilities Corporation
(successor to PowerStream Inc.)