

IN THE MATTER OF the *Public Inquiries Act*, S.O., 2009

AND IN THE MATTER OF the *Municipal Act*, 2001, S.O. 2001

AND IN THE MATTER OF the *Town of Collingwood Judicial Inquiry*

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**SUBMISSIONS ON BEHALF OF MAYOR SANDRA COOPER**

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**SANDRA COOPER – PERSONAL HISTORY**

Sandra Cooper was born in Collingwood, Ontario, on September 29, 1953. She is a third generation Collingwood native, her parents both being born in Collingwood as were her maternal grandparents. She is the eldest of five (5) children. Her brother, Paul Bonwick, is the youngest sibling, being born in the year 1964.

Sandra Cooper completed her grade 12 education in Collingwood, Ontario and, upon graduation, went directly into the work force. She was employed over a five year period with two industrial corporations located in Collingwood. Both positions of employment involved working on the production floor of the company. Sandra then moved on to join the Loblaw's store in Collingwood where she worked as a cashier for 32 years, retiring in the year 2010, upon being elected Mayor for the Town of Collingwood. Sandra has had continuous employment in the Town of Collingwood over her working life. In the year 1973 Sandra Cooper married and, at the age of 20 years left the parents' residence. She and her husband, Ken, have resided in Collingwood throughout their marriage. They have two children, Shawn and Krista, both adults and both residents of the Town of Collingwood.

Sandra Cooper was first elected to the Town of Collingwood Council in the year 1997. As a member of council she served two consecutive terms whereupon she campaigned successfully and was elected Deputy Mayor for the Town of Collingwood. She served two terms in the capacity of Deputy Mayor. During the course of those four council terms Sandra remained working with the Loblaw's store in Collingwood. In 2010 Sandra was elected Mayor of the Town of Collingwood. She was elected with a plurality of the vote. She became the first female-elect Mayor in the history of the Town of Collingwood dating from the Town's incorporation in 1858. During her 2010 election campaign she ran foremost on a platform to reduce debt for the Town of Collingwood and to bring public spending under control and to do so in a responsible fashion. Mayor Cooper headed up a council whose members had similar determinations. As Mayor, Sandra left her employment with Loblaw's in order to devote exclusively her time to the role of Mayor for the Town of Collingwood.

As the Mayor of the Town of Collingwood she was appointed a Director of Collus Power Corporation. Collus Power was the electrical utility for the Town of Collingwood. The Town of Collingwood is the sole shareholder of Collus Power Corporation.

Mayor Cooper was re-elected in the year 2014 and with a plurality of the vote.

Sandra Cooper's father, Jack Bonwick, served as a Municipal Councillor in the 1960's. Her cousin, Cal Patterson, served as Mayor for Wasaga Beach over a number of years and was Warden of Simcoe County over a total of 4 years. Paul Bonwick, her brother, served a term on the municipal council and two terms as a federal member of parliament for the riding of Grey Simcoe.

Mayor Cooper describes the position of Mayor as being challenging to her both as to the quantity and variety of work involved with the position and the balancing of the work demands attendant to the County of Simcoe responsibilities. As well, the demands of her personal life as wife, mother, and as daughter involved with the responsibilities attendant to aging parents and their care.

It is submitted that the public record for Sandra Cooper establishes the following: As concerns the County of Simcoe she has participated on the Warden's Committee, the Governance Committee, Performance Management, and Corporate Services Committee. In addition, she has been a member of the Ontario Automotive Mayor's Caucus. In 2010 Mayor Cooper became active with a group of Mayors from across Georgian Bay region regarding water level concerns. She was among 100 Mayors selected to the Executive Committee for Great Lakes St. Lawrence Cities Initiative (GLSLCI). She has served as Chair Person of that organization. Additionally, she has served on the Ontario Provincial Police Services Board for the Town of Collingwood, the Collus Board of Corporations, the Harbour Lands Advisory Committee, the Museum Building Committee and the Nottawasaga Valley Conservation Authority. In the year 2017 Mayor Cooper was appointed by the International Joint Commission (USA and Canada) to the Water Quality Board for a 3 year term. Additionally, and as a volunteer, she assumed a position as Co-Chair for the Great Lakes Collaborative in 2018 and 2019.

In the year 2018 Mayor Cooper decided not to seek re-election. She retired from Municipal Politics. During her 21 years in council she prided herself as someone who was available and

accessible and responsive to the residents of Collingwood. She believes she gave appropriate attention to the residents and their stated concerns and opinions. She believes she consistently advanced the interests of the Town's people and attempted to advance the best interests of the Town of Collingwood in her decision-making. In her decision making she believes that she considered and advanced the appropriate input from the public interest, from fellow council members and with the knowledge and experience and expertise of staff members.

#### **TERM OF COUNCIL (2010 TO 2014)**

In October 2010, Sandra Cooper was elected Mayor for the Town of Collingwood. It was her first term in office as Mayor-Elect.

#### **THE COLLINGWOOD JUDICIAL INQUIRY TERMS OF REFERENCE**

The CJI Inquiry Terms of Reference are broadly defined. The Inquiry is engaged in a number of issues, one of which is whether Mayor Cooper's conduct in the circumstances outlined in the Inquiry was appropriate and in keeping with her responsibilities as outlined in the Oath of Office and Code of Ethics.

#### **OATH OF OFFICE**

On December 6, 2010, upon assuming the office of Mayor, Mayor Sandra Cooper was administered the Oath of Office. She swore to the Oath of Office that she would “truly, faithfully, and impartially exercise this office to the best of my knowledge and ability”.

The words “truly, faithfully and impartially” are not defined in the Oath of Office. I would submit that the terms “truly and faithfully” be given their common meaning respectfully as: “truly” being in a “reliable and sincere and accurate manner”; and “faithfully” be given its

common meaning as being “true to fact”. As well, the terms “impartial and impartially” are not defined. In my submission, the concept of the words is addressed by the common law rules on bias and, in particular, by the prejudgment (closed mind) rule. I would submit that according to the prejudgment (closed mind) rule, the municipal council member is disqualified by reason of bias if the council member has prejudged the matter to be decided to the extent that he or she has a closed mind and is no longer capable of being persuaded. Also, I would refer to the opinion of Mr. Leo Longo, Solicitor for the Town of Collingwood, wherein he testified to a similar view of the requirement on a member to approach with “an open mind” any matter to be decided.

I submit that the oath of office is not absolute or unconditional as concerns the “exercise this office” by the member. The knowledge and ability of the member is a material consideration as concerns any alleged contravention of the oath. I submit that an honest mistake of law and/or fact is a relevant consideration in an assessment of the members exercise of the oath of office. I will be dealing with the concepts of honest mistake of law and/or fact later in these submissions.

### **CODE OF ETHICS**

On December 6, 2010, Mayor Cooper and her fellow council members acknowledged they had read the information in the Code of Ethics<sup>1</sup> in its entirety and accepted the Code of Ethics by affixing their signatures to the Code.

The Code of Ethics for members of Collingwood Council was a Code advanced and enacted by the Town of Collingwood. The Code of Ethics contains a Preamble which, inter alia, reads as follows:

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<sup>1</sup> Document TOC0534828.

## Preamble to the Code of Ethics

Attaining an elected position within one's community is a privilege which carries significant responsibilities and obligations. Members of Council (comprising the Mayor, Deputy-Mayor and Councillors) are held to a high standard as leaders of the community and they are expected to become well informed on all aspects of municipal governments, administration, planning and operations. They are also expected to carry out their duties in a fair, impartial, transparent and professional manner.

I submit that the term “fair” be given its common meaning as being “just and reasonable”.

Further, the preamble refers to the following obligations expected of each member:

- a) that they solemnly promise, declare and carry out their responsibilities as prescribed in the Oath of Office,
- b) that they learn and follow the procedural by-law for council and its committees;
- c) that they read, understand and follow the provisions of the Municipal Act and Municipal Conflict of Interest Act which apply directly and indirectly to the role of member of council.

The preamble to the Code of Ethics states: “It is hoped that this will be viewed by each member of council as a valuable added resource and guideline to assist them in fulfilling their mandate in an effective open and efficient manner.”

## **COLLINGWOOD CODE OF ETHICS FOR MEMBERS OF COUNCIL**

The Town of Collingwood Code of Ethics for members of council commences:

The Town of Collingwood’s members of council fundamentally understand that:

- a) the proper operation of democratic and representative municipal government requires that they be independent, impartial and responsible to the people;
- b) there are open and proper channels for decision making and approval policy;
- c) conflicts between the private interests of elected representatives and their public responsibilities represent an ethical challenge to maintaining an open, accountable and transparent process;
- d) as leaders of the community, they are held to a higher standard of behaviour and conduct.

The Code of Ethics continues:

“Although areas of ethical exposure are generally consistently understood in municipal governance, the following areas and guidelines have been specifically identified in our community, as being paramount to the municipal political process”

The Code of Ethics enumerates eleven areas in which guidelines have been specifically identified in our community as being paramount to the municipal political process. For the purpose of these submissions I would refer to the following paragraphs as set out in the Code of Ethics, namely:

Par.2. Use of information

In their decision making process, members of council are sometimes privy to information which may be confidential or controversial such as, but not limited to “in camera” meetings. It is imperative that they (they, inter alia):

- Not use confidential information for their personal advantage
- Not use confidential information to cause detriment or benefit to others
- Respect the status of confidential (personnel, legal property acquisition) information until the matter ceases to be confidential as determined by council

Par. 7. Conflicts of Interest

Members of council will recognize their obligations to:

- Follow and respect both the letter and spirit of the provisions of the Municipal Act and the Municipal Conflict of Interest Act, as amended from time to time.

For the purposes of this written submission I do not intend to set out the MCIA in its entirety. Rather, I do refer to and adopt the Foundation Document paragraphs 12 through 16 inclusive as pertains to the MCIA legislation. In addition, I would advance the transcript of Leo Longo's evidence dated May 27, 2019, pages 13 through 38 and in reference to his MCIA legislative review.

As concerns the MCIA legislation I would advance the following:

A. Conflict of Interest

The common meaning attributed to the term conflict of interest is: "a situation in which a person has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties as, say, a public official, an employee, or professional."

B. Pecuniary interest

"Pecuniary interest" is not defined in the MCIA but has been judicially held to be a financial, monetary or economic interest. Further, it is submitted that while the pecuniary interest is not to be narrowly defined the matter to be voted on must have the potential to affect the pecuniary interest of the individual member.

C. Direct Interest

A direct pecuniary interest is one that expressly and unequivocally has an impact on the individual members' finances, economic prospects or property value. The impact may be positive (i.e. the member stands to gain financially) or negative (i.e. the member is able to avoid a loss).

D. Indirect Interest

Section 2 of the MCIA. I submit this is not applicable to the inquiry proceedings.

E. Deemed Interest: Interest of certain persons deemed that of the member

Section 3 of the MCIA:

For the purposes of this Act the pecuniary interest direct or indirect of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

Section 5 of the MCIA:

Further, for the purposes of the MCIA councillors who had a direct or indirect pecuniary interest in a matter as defined by the MCIA were required by the act to:

- a) disclose their interest in the matter before the matter was considered by council;
- b) not take part in any discussions, votes or questions regarding the matter; and
- c) not attempt to influence councillors votes on the matter before, during or after the relevant meeting.

Further, if a matter was being considered at a closed meeting the MCIA also required councillors with a pecuniary interest to leave the room for the part of the meeting during which the matter was discussed.<sup>2</sup>

In the years 2010-2012, Mr. Leo Longo was the solicitor for the Town of Collingwood. He testified on the inquiry hearing. He reviewed paragraph 7 of the Code of Ethics (conflict of interest) and expressed his opinion that paragraph 7 recites that the member must be aware of his or her obligations under the *Municipal Conflict of Interest Act* (“MCIA”) and adhere to the MCIA.

**JANUARY 6 & 7, 2011: COUNCIL ORIENTATION**

On January 6 & 7, 2011, an orientation program was presented to the newly-elected council. On January 7, 2011 Mr. Longo, the Town Solicitor, made a presentation in which he conducted a review of the MCIA legislation.

In the orientation program Mr. Longo advised that the MCIA had been enacted in 1972 and there had been no legislative changes made thereafter. He considered his presentation to be “an overview” of the legislation. He expressed his sense of time constraint given the time allotted in

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<sup>2</sup> Foundation Document, paragraphs 14 & 15 and MCIA section 5

his presentation which limited his topic elaboration. Mr. Longo noted that he would have expressed his opinion that the “sibling” omission from the legislation (section 3 MCIA) was a “glaring omission”. He recalled providing his opinion that the MCIA was not as broad as the general public might consider it to be due to the fact of a pecuniary interest requirement in the legislation. He recalls advising that conflict of interest was self-policing in the sense that the responsibility to declare the pecuniary interest which presented the conflict was that of the member. Mr. Longo recalled making a general reference to the MCIA case law and decisions thereunder which were considered to be inconsistent and difficult to comprehend; the decisions were often fact-specific and as determined in the individual case. Further, he advised the members that neither he nor his legal firm could provide advice pertaining to conflict of interest on the part of a member due to being conflicted as a result of being the Town of Collingwood legal counsel. Mr. Longo suggested that a member in need of advice on a potential conflict of interest situation should consider retaining his or her own lawyer; although his experience and that of others was that the advice provided was often wrong.

In testimony on the Inquiry hearing Mr. Longo acknowledged that he was aware of the Mississauga Inquiry and the ruling by Commissioner Cunningham on conflict of interest dated July 8, 2010. Mr. Longo could not recall whether he mentioned this during the orientation presentation. He further acknowledged that his failure to make comment would have been due to time constraints in the presentation of the program he had undertaken to provide. In my submission this is indeed a most unfortunate circumstance. I submit that the fact of Commissioner Cunningham’s ruling has significant impact on the interests pertaining to Mayor Cooper under consideration in your Honour’s Judicial Inquiry. The July 8, 2010 ruling was clear

and concise in its reasoning; the ruling was less than 10 pages in length. The ruling clearly addressed the common law consideration of conflict of interest as concerns an apparent or perceived conflict of interest which stands separate and apart from a consideration of MCIA legislation. In my submission, a knowledge of this ruling by Mayor Cooper would have been of significant interest and assistance to her in the unfolding of events in which she was destined to become involved and as presently under consideration in the Judicial Inquiry.

Mr. Longo is an experienced lawyer and a certified specialist in Municipal Law. Given his remarks that even experienced municipal lawyers are often wrong in their advice, one wonders how a council member not versed in the law could possibly properly and adequately consider and determine a conflict of interest issue. As noted, during this period the Town of Collingwood was without an Integrity Commissioner. Members of council had limited access to advice regarding conflicts of interest. Essentially, they were left to determine on their own whether an issue posed a conflict of interest. Since appointing an Integrity Commissioner, the Integrity Commissioner provides written advice to members of council. In this way members can now confidently take the appropriate steps to avoid contravention of conflict of interest situations.

In considering a conflict of interest pursuant to the Collingwood Code of Ethics, I submit that the Code of Ethics restricts the conflict of interest consideration to the provisions of the MCIA. A member's only recourse would be to incur the expense of retaining a private lawyer to obtain a legal opinion.

On this issue Clerk Sara Almas testified to the effect that her practice was not to provide a legal opinion or advice referencing the interpretation of the MCIA. Mr. Longo confirmed that as being his understanding of her practice as well. Clerk Almas testified that she restricted conflict of interest information to the MCIA.<sup>3</sup>

Mayor Cooper testified she often had recourse to consult the MCIA in company with or without the assistance of her Clerk.<sup>4</sup>

In my submission, having properly acquainted herself with the MCIA and the Collingwood Code of Ethics, it appears Mayor Cooper had a one-dimensional view of the conflict of interest provisions governing her Council activities. She relied exclusively on the MCIA to the exclusion of common law conflict of interest.

At the time in question, the Town of Collingwood did not have a Code of Conduct for Council members, nor had an Integrity Commissioner been appointed. These two situations were addressed during Mayor Cooper's terms of office as Mayor. The Town of Collingwood has since implemented a Code of Conduct and has appointed an Integrity Commissioner.

**MISSISSAUGA INQUIRY: RULING BY COMMISSIONER CUNNINGHAM OF JULY 8, 2010**

In his ruling of July 8, 2010 Commissioner Cunningham determined the terms of reference of his inquiry were sufficiently broad so as not to constrain his consideration of conflict of interest to that which is set out in the MCIA. At page 146 of his report he states as follows:

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3 Transcript of Sara Almas, 15 April, 2019, page 35

4 Transcript of Sandra Cooper, 25 April, 2019, pages 335 to 338

“As I found in my July 8, 2010, ruling on the meaning of “conflict of interest” (see appendix J)<sup>5</sup>, the MClA does not constitute a complete codification of the law governing conflicts of interest for members of municipal councils. The common law also applies. The MClA is restricted to the pecuniary interests of members of council in the deliberative and legislative context, but the common law is much broader and recognizes conflicts of interest involving non-pecuniary interests.”

Commission Cunningham continued at page 148:

“A conflict of interest may be real or apparent. A real conflict of interest has three prerequisites: (1) the existence of a private interest, (2) that is known to the public office holder; and (3) that has a nexus with his or her public duties responsibilities that is sufficient to influence the exercise of those duties and responsibilities.”

“An apparent conflict of interest arises when a reasonably well-informed person could reasonably conclude, as a result of the surrounding circumstances, that the public official must have known about the connection of his or her involvement with a matter of private interest.”

I submit that Mayor Cooper had no real common law conflict of interest as she had no personal interest as to matters which may be in conflict with her public duty. In other words, she was possessed of no private advantage. In my submission the issue under review is that of the apparent or perceived conflict of interest which may have arisen by virtue of the potential employment of Mayor Cooper's brother Paul Bonwick with PowerStream, a potential proponent in an RFP concerning Collus Power Corp.

Commissioner Cunningham considered the judicial conduct of municipal councillors and stated as follows:

“The member of council stands as trustee for the local community, and he is not so to vote or deal as to gain or appear to gain private advantage out matters over which he, as one of the council, has supervision for the benefit of the public. The councillor should not be able to invoke the political or legislative character of his act to secure immunity from control, if the take of personal interest sufficiently appears therein.”

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5 July 8, 2010 ruling of Commissioner Cunningham on conflict of interest, appendix J, pages 372 to 381

Commissioner Cunningham continued:

“The important words I take from that paragraph are “deal”, “gain” and/or “appear to gain”. Members of city council are entrusted by those who elect them to act in the public interest. Optics are important. In other words, members of a municipal council must conduct themselves in such a way as to avoid any reasonable apprehension that their personal interest could in any way influence their elected responsibility. Suffice it to say the members of council (and staff) are not to use their office to promote private interests, whether their own or those of relatives or friends. They must be unbiased in the exercise of their duties. That is not only the common law, but the common sense standard by which the conduct of municipal representatives ought to be judged.”

Before engaging in a consideration of the facts relevant to the apparent or perceived conflict of interest issue, I would note that the City of Mississauga had enacted no Code of Conduct at the time of the Mississauga Inquiry. Similarly, the Town of Collingwood had not enacted a Code of Conduct during the relevant time period involving the current Inquiry.

### **THE CURRENT SITUATION REGARDING CONFLICT OF INTEREST**

I submit that the following reasons provide a good understanding of the current situation regarding municipal conflict of interest concerns:<sup>6</sup>

[21] The *Municipal Conflict of Interest Act* (‘MCIA’) applies with respect to the pecuniary interests (direct, indirect and deemed) held by Members of Council. The fact that the MCIA codifies some, but not all, of the common law dealing with conflicts of interest has led to significant confusion for members of municipal councils. When municipal members were governed only by the MCIA, this issue was resolved by looking only at the MCIA. However, with the adoption of municipal codes of conduct for members of council over the past several years, the common law concept of conflicts of interest is introduced into the ethical framework for municipal members of council. When the code makes reference to conflicts of interest, that reference must be understood to encompass the broader common law concept of conflicts of interest.

[22] Put another way, common law requirements respecting the broader concept of conflicts of interest for members of municipal councils have helpfully been introduced in codes of conduct so that members are more readily aware of these additional obligations, beyond the MCIA.

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6 *Cooper (Re)* 2018 ONMIC 29

[23] The broader common law concept requires members to avoid ‘apparent’ conflicts of interest, including an interest which arises because a family member, business partner or other close associate may have a pecuniary interest in a matter being decided by the member.

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[36] A conflict of interest which exists because of a close familial or business relationship should be treated as a disqualifying interest, and the member should disclose the interest and not participate in the matter.

I submit that Mayor Cooper relied exclusively on the MCIA, compliance with which also resulted in compliance with the Code of Ethics. She was not aware of any additional obligation to consider common law principles regarding conflict of interest in relation to this matter.

I submit that Mayor Cooper committed no violation of the MCIA.

I submit that Mayor Cooper committed no violation of the Code of Ethics.

I submit that Mayor Cooper committed no violation of the Oath of Office.

In my submission Mayor Cooper did not have any actual conflict of interest arising from common law principles, as she had no personal interest in the matter, ie. as posed by Mr. Bronwick's relationship with PowerStream.

In my submission any breach of her duty to recuse herself related solely to what could be perceived as an apparent conflict of interest. In my further submission, any such error on Mayor Cooper's part in failing to recuse herself in consideration of the matter was a result of her honest but mistaken belief as to the law and/or facts.

## **MISTAKE OF FACT AND/OR LAW**

A mistake of law is a legal concept with rigorous requirements which occurs only where a person has an honest but mistaken belief in the legality of his or her actions. Confusion or uncertainty as to the lawfulness of one's actions does not meet the legal requirements for mistake of law.

I submit that her ill informed but honestly held belief that she had no conflict of interest may, in the circumstances, suffice to establish an honest mistake of law. I submit that Mayor Cooper made a true mistake of law in that she honestly but mistakenly believed in the lawfulness of her actions. She was sure of her conviction that there was no conflict of interest; in her conviction she had no uncertainty or confusion in her mind as to the lawfulness of her actions.<sup>7</sup>

I will review the evidence in more detail in the remainder of these submissions, but in this regard

I would provide the following summary:

- She conducted her own review of the MCIA
- She consulted with Clerk Sara Almas in her MCIA review
- She determined that there was no violation of the MCIA referencing her sibling Paul Bonwick<sup>8</sup>
- She was in attendance at orientation sessions including the session of January 7, 2011
- She attended seminars as put on by provincial authorities such as the AMO
- She had adopted the practice of making no inquiry of her siblings pertaining to their business matters in accordance with her obligations pursuant to the MCIA
- In her opening remarks to the invitees in the meeting of June 29, 2011 she mentioned that her brother would not be in contravention of the MCIA if he had been or was going to be employed by PowerStream<sup>9</sup>

In terms of her understanding of the relevant facts as to Paul Bonwick's relationship with PowerStream, Mayor Cooper believed that, while there was a prospect of employment, Mr.

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7 Generally, *R. v. Suter* SCC 2018 2 S.C.R. 496

8 Transcript of Sandra Cooper April 25, 2019, pp. 335-338

9 Transcript of Brian Bentz May 31, 2019, p. 147

Bonwick had not been so employed as of June 29, 2011. Unbeknownst to her, Mr. Bonwick had not made full disclosure to her as to his relationship with PowerStream.

An honest mistake of law is fact dependant on the individual circumstances of the case. In this regard, I intend to expand on the relevant facts in my submissions.

It is submitted that an error in judgment can arise from either a mistake of law and/or fact. It would undermine a consideration of the common law conflict of interest if a subjective belief about the meaning or application of the law was sufficient to excuse a contravention or breach of common law principles. When an individual seeks to rely on an error of law, good faith requires that he or she make some inquiry about the meaning and application of the law, rather than rely on his or her interpretation. Accordingly, a member must prove not only that he or she had an honest belief, he or she must also show that their belief is not arbitrary and that they have taken some reasonable steps to inquire as to their legal obligations. It is relevant to consider the diligence of the member respecting her obligations when considering the good faith of the member. For example, her efforts to learn about her obligations and her efforts to ensure respect for them.<sup>10</sup>

Given her understanding the MCIA did not apply to this matter, Mayor Cooper did not make further inquiry as to the factual relationship of her sibling Paul Bonwick with PowerStream, beyond her understanding that he had some potential for employment with them. Had she not made this potential mistake of law, she might have made further inquiry in to this factual situation. Therefore in this case, any mistake of fact that she may have held, was largely

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<sup>10</sup> *Magder v. Ford* (2013) 113 O.R. (3d) 241

resultant on her mistake of law, if any. Her honest & truthful apprehension of the law applicable to her situation, rendered any potential factual inquiry irrelevant.

### **THE INQUIRY HEARING**

For some time prior to the year 2010 the provincial government of Ontario had been conducting a review of the electrical industry and a reduction in the large number of local distribution corporations providing electrical services to communities throughout Ontario. The government set out to thereby encourage consolidations and amalgamations within the industry with a hope to reducing significantly the number of LDCs. It was thought that this policy would create greater efficiencies and savings in industry operations; the savings to be passed on to the ratepayer/customer.

Ed Houghton and Paul Bonwick were long-standing friends. Ed Houghton was the CEO and President of Collus Power. Paul Bonwick was the sole principal of Compenso Communications Inc.(CCI), a company he incorporated on 7<sup>th</sup> September 2004.<sup>11</sup> CCI conducted business in government relations and communications. The business was located in the Town of Collingwood.

In the summer of 2010 Ed Houghton and Paul Bonwick discussed business opportunities in the electrical industry which may be of interest to Paul Bonwick and his company CCI. Brian Bentz was the CEO of PowerStream Corporation. In November 2010 Ed Houghton reached out to Brian Bentz. They spoke and agreed to a meeting between the two of them on December 3,

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11 Document CJI0007702

2010. Mr. Bentz made notes of the discussions. His notes made reference to confidential disclosures on the part of Ed Houghton pertaining to:

- (i) Town of Collingwood financial difficulties
- (ii) Options available to the Town as sole shareholder of Collus Power referencing a potential sale of Collus Power
- (iii) Mr. Houghton's dollar range evaluation of Collus Power
- (iv) The potential process to be employed in the event of the sale

With the assistance of Ed Houghton on January 10, 2011 Paul Bonwick sent an introductory email to Brian Bentz, which is reproduced as follows:

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

I live in the Town of Collingwood operating a government relations and communications firm servicing clients in Canada and the USA.

I proudly served as a member of parliament for several years and part of that served as a Municipal Councillor for Collingwood.

Throughout this period of time I had the pleasure of building an extensive network of individuals; friends; colleagues throughout the municipal, county, provincial and federal governments. This network has proved invaluable in representing clients and their needs.

Over the course of the last few years and more specifically the last few weeks I have followed with interest the situation presently being experienced by Collingwood Council. More specifically their financial situation and the need for a significant capital injection. As I reviewed options that might help council address this need I remembered that during the time I spent in elected office the potential sale of Collingwood's utility services had been raised with mix 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.”

Mr. Bonwick was examined by Commission Counsel on the content of his email dated January 10, 2011. The relevant portion of the transcript is as follows:

MS. KATE MCGRANN: If we could scroll down a little bit, I just want to ask you a question about something towards the end of your email here. Difficult because of

the formatting, but if we start from the bottom, it's -- about four (4) lines up, it starts with "Municipal Council." Are you with me?

MR. PAUL BONWICK: I am, yes.

MS. KATE MCGRANN: "Municipal Council is in the process of beginning their budget considerations, and as a result, timing is potentially a critical factor." Can you help me understand why timing was a critical factor for this conversation?

MR. PAUL BONWICK: Right. So municipal councils, generally speaking, commence -- they're a bit different than the corporate world. Municipal governments generally start their budget considerations sometime in late January, February. They move through March with getting feedback from department heads or utilities. There's typically presentations, and quite often I think in Collingwood's case, they quite often adopted budgets in -- in April.

So if, as part of those budget deliberations something was going to transpire with Collus, and it was going to be part of those budget deliberations, there was a sense of -- they needed to be con -- consider the timing element as it -- as it related to what Council may or may not do.

MS. KATE MCGRANN: Did you have any information that Council may or may not be doing something with respect to Collus?

MR. PAUL BONWICK: No, and in fairness, at that point in time I did not have a -- as thorough understanding of how Collus might or might not move forward in relationship to the budget deliberations of Council itself, and so in my mind at that point in time it would have been specific to Council -- a new council coming in and the deliberations they would have as it related to budget.

MS. KATE MCGRANN: Your sister, Sandra Cooper, at this point in time is both the Mayor of the Town of Collingwood and a director of the Collus Power Board of Directors.

At the time that you sent this email, had you considered whether your sibling relationship with her may cause any conflict of interest concerns for PowerStream, for yourself, or for your sister in either of the -- the two (2) hats that she was wearing?

MR. PAUL BONWICK: No, I did not. The -- I did not give consideration at the time to her sitting on the Board of Collus. I certainly gave consideration to her position as Mayor.

Having been involved in the political arena for a number of years, I was familiar with many examples, both in rural communities and in urban centres, whereby siblings of elected officials were not in conflict when they were conducting business with a particular municipality, and so that was not a consideration in her position as Mayor, and I did not feel -- I believe strongly that there was no conflict under the Municipal Conflict of Interest Act.

MS. KATE MCGRANN: So that's a -- that's a mental exercise that you went through before you sent this email?

MR. PAUL BONWICK: Yes.

MS. KATE MCGRANN: Did you discuss the fact that you were going to send this email with your sister before you sent it?

MR. PAUL BONWICK: No.

MS. KATE MCGRANN: Did you think that you should allow her to -- to perform a similar analysis about whether she would be in conflict as a result of -- of your attempt to connect with Mr. Bentz?

MR. PAUL BONWICK: No.

MS. KATE MCGRANN: Why not?

MR. PAUL BONWICK: I do not -- so in my various working relationships, we typically sign non-disclosure agreements with our clients. In some cases, the relationship is profiled, especially if you're involved in outward negotiations or providing communications or public relations work for them.

In some cases, the work we do, or that I do, is of a confidential nature and we don't pref -- profile my involvement. Irrespective of what the relationship is, I don't recall ever having a business involvement where there wasn't NDAs signed, and so as a result of that I do not confer with my sister on any of my business dealings, unless it's required.

MS. KATE MCGRANN: Now, you hadn't signed any contracts with PowerStream at this time. This is your first reach-out to them. Is that correct?

MR. PAUL BONWICK: Correct.

MS. KATE MCGRANN: Was there any non-disclosure agreement in operation at the time that would have prevented you from disclosing this to your sister?

MR. PAUL BONWICK: No.

MS. KATE MCGRANN: Did you have any concerns that if you spoke with your sister about this opportunity that you are pursuing, it may get in the way of you actually being able to enter into an arrangement with PowerStream?

MR. PAUL BONWICK: No. I'll go back to my initial answer. I did not consult my sister, or Mayor Cooper, on any matters related to my ongoing business dealings within the Town of Collingwood, within the County of Simcoe, recognizing she was a county councillor as well. It was just simply something I did not do.

MS. KATE MCGRANN: At any point before you signed your retainer with PowerStream, did you consider the fact that one (1) of the reasons that they may want to hire you is because you are the Mayor's brother?

MR. PAUL BONWICK: No. I --

MS. KATE MCGRANN: Please go ahead.

MR. PAUL BONWICK: Okay. Quite the contrary. I felt that, as a former municipal councillor, I felt, as a former Member of Parliament for the riding for a number of years, I felt that, based on my experience within the community, my contacts within many municipal governments as well as county and provincial and federal, and understanding that there's not a lot of government relation/public relation firms that actively work within the -- north of the Moraine, that I had enough experience and strengths that I would be -- I don't want to make this sound silly -- an ideal candidate, or my company would be an ideal candidate to work for PowerStream.

I viewed the relationship with Sandra as somewhat of an impediment -- or sorry, I'll start calling her Ms. Cooper, Mayor Cooper, as somewhat as a -- of an impediment and in fact approached it in that way.

MS. KATE MCGRANN: Why did you view it as an impediment?

MR. PAUL BONWICK: Well, it was my firm belief that the mayor is not in conflict as it relates to ongoing activities of their siblings. You've heard testimony and I'm certainly aware of the fact that, as a person that had some profile in the community, any of my business -- any of my involvement in business is -- is viewed through perhaps a difference lense, and so I've always got to be cognizant of the fact that people will draw a line between myself and Mayor Cooper.

And not to make it sound like too small of a village, but the mayor of Wasaga Beach in the day was my cousin, so, again, you get into situations where you're concerned about the optics rather than the realities.

MS. KATE MCGRANN: And the optics that you would be concerned about, would that be the perception that your sibling relationship is somehow affecting the business that you're doing and the way that people interact with you and your sister?

MR. PAUL BONWICK: No. Maybe that was too quick. No, I -- I would be more concerned about the fact that muni -- the -- the option of declaring a conflict of interest is, from my understanding, the sole responsibility of the individual councillors sitting around the table.

Some councillors will use conflict of interest to not engage in issues when in fact they rightly know they do not have a conflict. Some councillors or some elected officials will declare conflicts of interest, in my experience, when they're concerned about optics when in fact they don't have a conflict.

And so, in a situation like this, if we think it through, you would not want to run into a situation where if in fact PowerStream was bringing the best offer to the

community where it was the ideal situation for the community whereby one (1) of the councillors as a result of a relationship with me would simply declare -- declare a conflict because they're concerned about the optics rather than the realities.

MS. KATE MCGRANN: And the optics that they would be concerned about is that their relationship with you somehow impacted decisions made about PowerStream by the Town. Is that right?

MR. PAUL BONWICK: Yes.<sup>12</sup>

I submit that, a review of the transcript as set out above, establishes a clear indication that from the very outset of his communications with PowerStream, Mr. Bonwick had no intention of making any disclosure to the Town of Collingwood or any of its councillors or staff, including Mayor Cooper, of any potential employment with PowerStream.

Two days following the email of January 10, 2011 discussed above, on January 12, 2011, a meeting was held between Brian Bentz and Paul Bonwick at the PowerStream offices. Mr. Bentz made notes of that meeting to the following effect:<sup>13</sup>

“A couple of weeks later; received email from Paul Bonwick...also indicated he was the brother of Mayor Sandra Cooper, knows Ed Houghton for a long time  
May be of assistance to PowerStream

Fiscal situation

Compenso Communications

So I got to check this guy out internal conflict federal politician

Called Ed – said I received call from him (i.e. Paul Bonwick) and what was his view

(Ed’s response)

Knows him, thought it was good, I called Ed – tell him I will meet you for – knows him – respects him

Considers him a friend

Could help you

You have to decide

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12 Transcript of Paul Bonwick dated June 12, 2019, pp. 246-253

13 Document CJI0009233

Met with Paul. Told him we may be interested in hiring him, would like to receive a proposal

Something I would need to bring to our AFC

In particular issue with you being brother to Mayor

Is that a conflict?"

Brian Bentz testified to checking out Paul Bonwick. He contacted Ed Houghton who "vouched" for him.<sup>14</sup>

As concerns the potential conflict of interest with Paul Bonwick being brother to Mayor Cooper, Paul Bonwick enlisted the support of his friend Deputy-Mayor Lloyd. On January 17, 2011 Deputy-Mayor Lloyd emailed Clerk Almas requesting that she provide "her understanding" that if the brother of Deputy-Mayor were employed by the Town of Collingwood, the Deputy-Mayor would not have a conflict of interest. Clerk Almas responded by email as follows:

You are correct in that the *Municipal Conflict of 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.

Deputy-Mayor Lloyd forwarded this email to Paul Bonwick on January 27, 2011. On January 29, 2011 Mr. Bonwick forwarded the email to Brian Bentz. Mr. Bentz was advised that it was a legal opinion and that the Clerk is the person responsible for the interpretation of the *Municipal Act* for council. On an earlier occasion, on January 20, 2011, Paul Bonwick had emailed Mr. Bentz and stated:

I wanted to be perfectly clear on my understanding of the conflict guidelines contained in the *Municipal Act*. The town's solicitor provided a legal opinion to the Deputy-Mayor clarifying that there was no breach of conflict of interest guidelines in this situation.

Mr. Longo testified he provided no such opinion. The conflict guidelines are not contained in the *Municipal Act*, but in the *Municipal Conflict of Interest Act*.

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<sup>14</sup> Brian Bentz transcript, 31 May 2019, page 66

I do not intend to advance the particulars of other areas of purported disclosure on the part of Mr. Bonwick to PowerStream. I submit it is clear on the evidence that Mr. Bonwick never intended to comply with any conditions of disclosure required by PowerStream. I submit it is clear that he did not comply with the terms of disclosure as expressly set out in the draft retainer agreement of June 1, 2011, which was incorporated verbatim in the retainer agreement dated June 7, 2011. The disclosure condition reads as follows:

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 any additional disclosure(s) that may be prudent or required by applicable law, during the course of this engagement, or any extension thereof. Further, Bonwick nor CCI, will advocate on PowerStream's behalf to the Province of Ontario, or any Ministry or Agency thereof, without PowerStream's express written direction, and further, any such authorized activity shall comply with applicable law, including the *Lobbyists Registration Act*, 1998.

On January 15, 2011 Ed Houghton emailed John Glicksman, the CFO of PowerStream, requesting a recommendation for a valuator for Collus. In his email Ed Houghton advised he was going to his Audit and Finance Committee ("AFC") this week to get authorization for a valuation of Collus and wondered if PowerStream knew anyone other than KPMG they had used or would recommend. The Collus AFC met on January 21, 2011. The minutes of that meeting do not record a discussion about obtaining a valuation of Collus. The next meeting of the Collus AFC took place on April 20, 2011.<sup>15</sup>

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15 Foundation Document pars. 119-121

On January 19, 2011 Paul Bonwick sent Ed Houghton a copy of the CCI proposal to PowerStream. He requested that Ed Houghton review the proposal. Ed Houghton did review it, and acknowledged making a few minor changes to the document.<sup>16</sup> The proposal was provided to PowerStream on January 20, 2011 as an attachment to the email of Paul Bonwick.<sup>17</sup>

### **EVENTS OF JANUARY 30, 2011 TO FEBRUARY 2, 2011**

Early in her term of office Mayor Sandra Cooper had consulted with Town of Collingwood department heads and had collectively asked them to review their departments with a purpose to assess areas in which efficiencies and savings could be achieved. With the same purpose she had discussions with Ed Houghton. For some time prior to January 30, 2011 Mayor Cooper was aware of the political landscape as it pertained to the subject of LDC amalgamation. She had reviewed this landscape with Ed Houghton. Requests were made of him to draft a letter on her behalf to be sent to Collus Power referencing a similar request to consider opportunities as to greater efficiencies.<sup>18 19</sup>

On Sunday afternoon, January 30, 2011, Ed Houghton emailed Paul Bonwick. The email chain is as follows:

Ed Houghton: “We have a board meeting tomorrow morning and I was wondering if we should chat?”

Paul Bonwick: “Good idea. I will call you in a few minutes if that works.”

Ed Houghton: “It is so important that Rick does not know what I am doing.”

Paul Bonwick: “No kidding...that applies to absolutely everyone...”

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16 Foundation Document par. 127

17 Foundation Document par. 128

18 Transcript of Sandra Cooper, April 23, 2019, pages 101 to 103

19 Document TOC0038169

Mayor Cooper was examined on these excerpts. She agreed one could assume that “Rick” was the Deputy Mayor Rick Lloyd; and that “everyone” could refer to members of council”.<sup>20</sup>

Later, that same day at 9:51pm Ed Houghton prepared a draft letter which he ostensibly composed on Mayor Cooper's behalf and emailed it to Paul Bonwick. Mayor Cooper was not copied on the email. She was unaware as to Ed Houghton's actions. Ed Houghton testified that he directed the email to Paul Bonwick on instructions of Mayor Cooper; he could present no email or written direction to this effect. Ed Houghton stated that Mayor Cooper considered Paul Bonwick as a “trusted advisor”. Hence, her instructions to him to provide the draft letter to Paul Bonwick. Mayor Cooper testified that she was unaware that Mr. Houghton was discussing instructions from her (to Mr. Houghton) to be given to Paul Bonwick.<sup>21 22</sup> Paul Bonwick testified on the Inquiry Hearing to the effect that he had no recollection whatsoever as to any discussions had with Ed Houghton on January 30, 2011 nor did he recall receiving any email correspondence from Mr. Houghton. He had no specific recall of any draft letter being provided to him on 30 January 2011. In addition he had no specific recall of any draft letter. During testimony, Mr. Bonwick stated that for the first time during the Inquiry Hearing he had heard the term “trusted advisor” used in reference to him. He indicated that he had never heard that term used in reference to himself before.

The text of the 9:51pm January 30, 2011 email reads as follows:

As you know, my council was elected to get our spending and our municipal debt in control. I have asked our CAO and our Department Heads to look for opportunities within their areas of responsibility to reduce costs and still offer similar levels of service.

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20 Transcript of April 25,2019, pages 59 & 60

21 Transcript of April 23, 2019, page 108

22 Transcript of April 25, 2019, page 50

I would like to ask that Collus looks for similar opportunities to help reduce our debt. Make no mistake, I see significant value in Collus and I recognize the significant contribution that the Collus Team has given to our municipality.

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

I trust you and I know that you will take our municipality's best interest when doing this review. This request and your review must be kept in strictest confidence. I must also say that this is not a "done deal" that Collus will be sold. If after the review we are asked about selling Collus we can provide the details that suggest the contrary if that is the right thing.

Respectfully.....

On January 31, 2011 at 7:59am, the Collus Power board met. The minutes do not record any board approval for a valuation of Collus Power.<sup>23</sup> Later that day at 1:40pm Mayor Cooper directed the following email to the Collus chairman, Mr. Muncaster:

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

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

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

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

I would appreciate this review being treated with confidence until myself and council have an opportunity to be presented with a report.<sup>24</sup>

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23 Foundation Document par. 143

24 TOC0038164

This lack of recall on Mr. Bronwick's part may be evidence of a selective memory given the fact of the email as directed by Mr. Bonwick to Mr. Bentz on February 1, 2011 which is set out as follows:

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

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

A bit of a backgrounder is now being prepared to present to the Audit Committee in order to secure approval on the sole source option as it relates to the valuation. The preparation of this background is currently underway and will be presented in three weeks.

I completely understand that PowerStream will not be in a position to formally consider my proposal until the end of February.

Should you require any information during that time please feel free to call.

I look forward to hearing from you in once you have your Board in place.<sup>25</sup>

In this email communication it would reasonably appear that Mr. Bonwick takes credit for initiating “the beginning of the process we discussed” as it relates to the valuation i.e. “as a result the chairperson and executive director have now received direction to commence evaluation of the utility.” In addition, the email refers to a bit of a backgrounder being prepared to present to the Audit Committee in order to secure approval on the sole source option as it relates to evaluation -i.e. KPMG; the preparation of this background is currently underway and will be presented in three weeks”.<sup>26</sup> In her testimony Mayor Cooper acknowledged the following:

- Valuable commercial information was being provided in that Town of Collingwood was serious about selling the company and in fact was going to get an evaluation.
- Mayor Cooper acknowledged that this was a confidential and sensitive matter and for a whole bunch of reasons.

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25 Document ALE0000071

26 Document ALE0000071

- She knew nothing of what Mr. Bonwick was talking about in his speaking of “initiating a process”.
- She acknowledged that she was not aware of Mr. Bonwick having any role in the initiation of discussions about selling Collus Power; she had no knowledge of that.
- She acknowledged the fact of her email comment referencing her direction to the chairperson of Collus that Ed Houghton be directed to commence an evaluation of the utility. She had provided that direction to Mr. Muncaster, Ed Houghton and no other person.
- The content of the letter of direction was noted confidential.

Further, she acknowledged the confidentiality of this information. She agreed with the suggestion of Inquiry Town Counsel that the information was obviously “leaked”. She confirmed that she was not responsible for the “leak”. Further, Mayor Cooper believed that the Audit Committee as referred to in the email was the Audit Committee of Collus Power and, from her review of the email, she “would take it in the sense the Audit Committee was looking at sole sourcing for valuation purposes and finally Mayor Cooper acknowledged that Mr. Bonwick seems to know an awful lot about what’s going on at Collus Power and its respective sale and that Paul Bonwick should have known nothing of that.”<sup>27</sup>

On an objective overview of the circumstances as outlined herein, there may be a reasonable inference to be drawn that Paul Bonwick and Ed Houghton had advanced an agenda directed to promoting the interests of PowerStream. It is submitted that the overtures to PowerStream could be so interpreted.

Mayor Cooper acknowledges seeing the draft email letter from Ed Houghton. She acknowledged conducting a review of his draft retaining in her subsequent letter of direction the specific request that Mr. Houghton be directed to undertake an evaluation of Collus. Mayor

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<sup>27</sup> Transcript of Sandra Cooper, April 25, 2019, pages 54 to 58 inclusive

Cooper agreed that that was a good direction to go in.<sup>28</sup> Mayor Cooper agreed that she acceded to Mr. Houghton's suggestion that the concept of doing an evaluation review should be on a confidential basis.<sup>29</sup>

The email chain establishes that Mayor Cooper's letter of direction to Collus occurred on Monday January 31, 2011 post 1:00 o'clock in the afternoon and after Mayor Cooper had attended a Collus Board meeting at 8am same day. Mayor Cooper cannot recall details of the Board meeting.<sup>30</sup>

Mayor Cooper knew nothing of the content of the email chain as between Ed Houghton and Paul Bonwick on January 30, 2011.

In her testimony on the Inquiry Hearing Mayor Cooper acknowledged that council did not become aware of the Collus evaluation until an in camera council meeting of June 27, 2011. The decision as to when council would be told of the evaluation was delegated to her and on the basis of the letter of direction from her to Mr. Muncaster and Mr. Houghton dated January 31, 2011.<sup>31</sup> The January 31, 2011 letter of direction was confidential to Collus Power. It also directed the evaluation be brought back to council no later than May 30, 2011.

The subsequent retainer agreement was between Collus Power and KPMG. The Collus Board knew of the retainer and participated in discussions with KPMG and received the KPMG options analysis and evaluation report on 24 May 2011. Mayor Cooper acknowledged the close working

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28 Transcript of Sandra Cooper, April 23, 2019, page 120

29 Transcript of April 23, 2019, page 107

30 Transcript of April 23, 2019, pages 110 to 113

31 Transcript of April 25, 2019, page 60

relationship as between Mr. Muncaster and Ed Houghton. While she could not recall having conversation with them as to when or how to involve the shareholder (the Town) she did depend on the knowledge that they had in the business sector and the knowledge of Mr. McFadden, an experienced board member in the electrical distribution area. Her reliance on them provided Mayor Cooper with information as to involving of the shareholder i.e. inform the council as to the Collus evaluation. Mayor Cooper testified that once the evaluation information was all pulled together that would be the appropriate time to provide it and present it to council. A consensus was obtained as to that.<sup>32</sup> She acknowledged that the Collus Board was aware of the circumstances.<sup>33</sup> The board included councillor Mike Edwards.<sup>34</sup> Mayor Cooper testified her letter of direction dated January 31, 2011 confirmed it would be council's consideration as to what, if anything, should be recommended in reference to the Collus corporation.<sup>35</sup>

Mayor Cooper testified she had no knowledge of any contact as occurring between Paul Bonwick and Brian Bentz until mid-May 2011. Referencing that point in time she stated:

“Paul Bonwick said that he would be providing some services for PowerStream and he felt that it would be in a good light, in my terms, to put a letter together and provide to Mr. Bentz who I didn't know.”<sup>36</sup>

Mayor Cooper met with Paul Bonwick on June 2, 2011 on his request. At that time the draft letter was presented to her. This was the first time that she had seen the draft letter. Mayor Cooper testified that she was comfortable with the letter as it “let Mr. Bentz know that we were related”. As well, the letter provided notice to Mr. Bentz that “any work would be based on ability and not due to relationships, as it was noted in the letter.”<sup>37</sup>

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32 Transcript of Sandra Cooper, April 23, 2019, pages 145 to 150 inclusive

33 Transcript of April 23, 2019, page 153

34 Transcript of April 23, 2019, page 153

35 Transcript of April 25, 2019, page 53

36 Transcript of Sandra Cooper, April 24, 2019, page 42

37 Transcript of Sandra Cooper, April 24, 2019, page 44

On the Inquiry Hearing, Mayor Cooper was referred to her letter of June 2, 2011:

MR. WILLIAM MCDOWELL: ... "I would emphasize [you say in your letter] that should you choose to engage Compenso in some manner of service, it should be based entirely on the merits of the proposal and completely unrelated to his relationship with me and that of my office." Right?

MS. SANDRA COOPER: Yes.

MR. WILLIAM MCDOWELL: My understanding of your evidence is that you made no inquiries of Mr. Bonwick about the type of advice he was going to be getting to PowerStream.

MS. SANDRA COOPER: I was of a – I felt it was public relations and communications.

MR. WILLIAM MCDOWELL: Those were the -- that -- that's -- that was what the advice and what the services were going to be as you understood it?

MS. SANDRA COOPER: That's what I understand, yes.

MR. WILLIAM MCDOWELL: But you made no inquiries?

MS. SANDRA COOPER: That is correct.

...

MR. WILLIAM MCDOWELL: Did you – let me ask you this. When you wrote your letter, did you give any independent thought as to the content of your letter or did you just look at his and say, that looks fine, I'll sign off on that?

MS. SANDRA COOPER: I looked at his letter and thought it was fine to -- to sign at the time.

...

MR. WILLIAM MCDOWELL: "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." Do you see that?

MS. SANDRA COOPER: Yes, I do see that.

MR. WILLIAM MCDOWELL: As I understand your evidence, you understood that he was going to be acting for PowerStream, but only in public relations activities?

MS. SANDRA COOPER: Public relations, communications. That was what I understood.

MR. WILLIAM MCDOWELL: Can we agree, then, that Mr. Bonwick did not disclose the scope of his -- these activities as this required him to do?

MS. SANDRA COOPER: I had not seen financials or that detailed scope.

MR. WILLIAM MCDOWELL: All right, but if he was supposed to disclose the scope of his activities, he didn't do that, did he?

MS. SANDRA COOPER: Correct. That is right.<sup>38</sup>

A review of Mayor Cooper's testimony on the Inquiry would support the following:

- Paul Bonwick described to her the potential services he would be providing to PowerStream. She cannot recall details being provided.
- She could not recall any conversation with Mr. Bonwick about strategic planning that he may be doing for PowerStream.
- She had no recall of conversation with Mr. Bonwick about acquisition-related work he might be doing.

Later in her examination Mayor Cooper was asked:

“Can you see how a plain reading of this letter suggests that Mr. Bonwick described the potential services his company would be providing to include public relations, strategic planning, acquisitions, and media relations.”

To which Mayor Cooper responded:

“I'm reading that as it stands out now.”

Question: “Was the statement in your letter accurate at the time that you signed the letter?”

To which Mayor Cooper responded:

“I do not recall that - - public relations and media relations were certainly ones that I felt that that was fine. Acquisitions I had no idea what - - that meant nor did I ask.”

And further:

Question: “You thought it was a good idea to send it?”

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38 Transcript of Sandra Cooper April 25, 2019 pp. 67-75

Answer: “Yes.”

Question: “Why didn’t you take steps to understand what was written in the letter that you signed?”

Answer: “I had a focus on clarifying the relationship - - - as related to the Conflict of Interest Act, and that was - - at the time that was my focus on this, that it was whatever work you are doing it has nothing to with me as Mayor. I’m not your parent, I’m not your spouse, I’m not your child. You’re not my child, either way.”

Question: “If that was the portion of the letter that was important to you why not simply remove the other parts that you didn’t fully understand?”

Answer: “Good question. I can’t answer that.”<sup>39</sup>

The draft letter was copied verbatim into a letter on the Mayor's letterhead dated June 2, 2011 signed by Mayor Cooper and directed to Brian Bentz at PowerStream.<sup>40</sup>

Mayor Cooper testified that in her review of the letter she was comfortable with it and with what was stated in the body of the letter. She agreed to forward it as per Paul Bonwick’s request. She made no changes to the draft of the letter.<sup>41</sup> Further she confirmed that in the June 2, 2011 meeting she was told nothing pertaining to the proposal which Paul Bonwick had submitted to PowerStream on January 20, 2011; nor was she shown a copy of same, although she acknowledged she did not ask to see a copy. She testified at this point in time i.e. June 2, 2011 Paul Bonwick was simply “bringing to my attention that he would be proposing to work with PowerStream...”<sup>42</sup> She was of the view as it was a proposal, if there was nothing coming from it, then there would be no need to have a subsequent meeting.<sup>43</sup> Mayor Cooper testified that she did not ask to see a copy of the proposal as “I didn’t feel that it was - - it was my business to read

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39 Transcript of Sandra Cooper, April 24, 2019, pages 43 to 76

40 Document TOC0048812

41 Transcript of Sandra Cooper, April 24, 2019, page 67

42 Transcript of Sandra Cooper, April 24, 2019, page 44

43 Transcript of Sandra Cooper, April 24, 2019, pages 72 & 73

through a proposal between Mr. Bentz and Paul Bonwick”.<sup>44</sup> Paul Bonwick did not produce the June 1, 2011 draft retainer agreement. Nor was the Mayor advised as to its existence.

I would submit that a review of the June 2, 2011 letter would reasonably establish that the letter is so vague it approaches a point of uncertainty. The substance of the letter addresses matters which may occur in future with certain conditions, which are not described, but may be conditions which “come into play”. Nothing had been crystalized in terms of Paul Bonwick's employment with PowerStream. The potential hiring was uncertain and subject to various qualifications and contingencies over which neither Paul Bonwick nor PowerStream would have control, ie. whether a RFP would be presented by Collus.

I submit that the possibility of future employment would not *per se* be evidence of conflict of interest.

Additionally, I submit that the term “acquisition” is a broad and general term lacking in specificity. Mr. Leo Longo testified on the inquiry. On his review of the June 2, 2011 letter he admitted to “having some difficulty really understanding what the undefined certain conditions are that are mentioned in paragraph 2 and paragraph 3 should these conditions come into play. That is so vague to me that it could – it could mean anything.”<sup>45</sup>

Brian Bentz testified to receiving a copy of the May 18, 2011 draft letter from Paul Bonwick. He believed it would not be unreasonable for Paul Bonwick to draft a letter on behalf of Mayor

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44 Transcript of Sandra Cooper, April 24, 2019, page 44

45 Transcript of Leo Longo, May 28, 2019, page 99

Cooper as he believed Mayor Cooper would review the letter, amend it as necessary and make a determination for her own purposes as to whether the letter was appropriate or not.<sup>46</sup> Likewise, he had no concerns that Paul Bonwick was providing him with a draft letter because he believed it had been made clear to Paul Bonwick that PowerStream wanted disclosure and, specifically, disclosure from Mayor Cooper. On the Inquiry Hearing the content of the June 2, 2011 letter was reviewed with Mr. Bentz and, specifically paragraphs 1 through 3 inclusive. Mr. Bentz confirmed that PowerStream and the Mayors on the Audit Finance Committee wanted Mr. Bonwick to disclose that he was being retained to assist PowerStream in responding to a potential Collus Power RFP. He was asked, inter alia, the following questions:

Question: Was this letter sufficient disclosure in your mind of that?

Answer: It - - it was disclosure.” It probably could have been more explicit with respect to the last sentence, the RFP, but I think it referred - - I think the Mayor would know what that meant, that it was the potential sale of Collus.

Question: So am I right in understanding you to be saying that the reference to “certain conditions unfolding in the coming months” in the Town of Collingwood is a reference to the RFP?

Answer: The whole notion of the town considering the sale, yes.

Question: At the time did you consider whether the reference to the potential RFP maybe should be a bit more specific than this?

Answer: I didn’t think that at the time, but in retrospect, maybe, yes.

Question: I understand that the way the letter was worded this meeting is going to happen if certain conditions come into play, just to be clear is what’s contemplated here your understanding that there will be a meeting if the Town intends to proceed with an RFP.

Answer: I interpreted more well maybe twofold if they proceed with an RFP and when we engage Mr. Bonwick’s firm.

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46 Transcript of Brian Bentz, May 31, 2019, pages 90 & 91

Question: But irrespective of whether or not there is going to be an RFP it is contemplated that PowerStream is going to meet with Mr. Bonwick.

Answer: Yes.

Question: If there isn't going to be an RFP what interest would PowerStream have in retaining Mr. Bonwick?

Answer: Very little although I guess he could still help us with the regional consolidation strategy.

Question: Did you have any discussions with Bonwick about what he said to his sister or what he disclosed to her in advance of her signing the letter?

Answer: I may have yes the language likely would have been I have fully briefed the Mayor on this matter, something like that

Question: Do you have a recollection of Mr. Bonwick explicitly telling you that he had advised anyone in the Town up to this point that he was going to be working on an RFP if for you if Collus Power issued one?

Answer: I assumed he did.

Question: I do understand that, my question is a little bit different, do you remember him telling you that he had specifically told people at the Town, anyone at the Town, I'll be working on an RFP if there is one?

Answer: It likely would have been language I have fully briefed and I am assuming that that means that he had conveyed to them that he would be working with us on an RFP.<sup>47</sup>

That same morning on June 2, 2011 Paul Bonwick attended on the office of the Clerk, Sara Almas. The Clerk made notes of the meeting which disclosed, inter alia, the following:<sup>48</sup>

Electrical Distributing

PowerStream - Utility Company out of Vaughan

Paul Bonwick

Check "(CHEC)" as one of region

In Collingwood as a member PR activities/community outreach

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47 Transcript of May 31, 2019, pages 92 -109

48 Foundation Document paragraph 193

President

CEO – PowerStream Brian Bentz

Clerk Almas testified she knew Paul Bonwick to be the brother of Mayor Cooper, knew of his company Compensio Communications. While she knew CCI was a PR communication type of company she was not aware of the full portfolio. She confirmed in her inquiry testimony that Mr. Bonwick had made a proposal to PowerStream “to provide PR activities/community outreach”.<sup>49</sup> She confirmed Mr. Bonwick had put in a proposal with PowerStream and that the proposal related to areas of work as described in her notes. No proposal was produced to her and no reference was made to the June 1, 2011 retainer contract, nor was it produced.

Ms. Almas related that Paul Bonwick had told her the CEO of PowerStream had indicated to him a concern with potential conflict if he was to do any work with Collingwood, he being the Mayor’s brother. Paul Bonwick wanted to obtain from Clerk Almas an opinion that there was no conflict of interest. Ms. Almas confirmed that she could not give legal advice or an opinion to Mr. Bonwick; but she agreed to the suggestion that he send an email to PowerStream and copy her and as long as he did not state that the Clerk was giving him “legal advice”.<sup>50</sup>

On 2 June, 2011 Paul Bonwick sent an email to Brian Bentz and John Glicksman and copied Sara Almas.<sup>51</sup> He confirmed the meeting he had with the Clerk and stated “during the meeting I described the services my company would be providing to PowerStream throughout the region as well as specific to Collingwood.” The following morning on June 3, 2011, Paul Bonwick emailed John Glicksman of PowerStream with copy to Brian Bentz. Clerk Almas was not

<sup>49</sup> Transcript of Sara Almas, April 15, 2019, pages 42 & 43

<sup>50</sup> Transcript of April 15, 2019, pages 39 & 40

<sup>51</sup> Document ALE175

copied. He disclosed “the Clerk has been thoroughly briefed by me.”<sup>52</sup> Mr. Bentz interpreted the “services my company would be providing to PowerStream” amounted to a full disclosure to the Clerk.

Mr. Bentz was questioned on May 31, 2019. The transcript discloses the following:

MS. KATE MCGRANN: You'll agree with me that this email doesn't make any reference to work on a potential RFP, right?

MR. BRIAN BENTZ: Right.

MS. KATE MCGRANN: And I understand that disclosure of the work on the RFP was an important requirement for PowerStream before it retained Mr. Bonwick, is that correct?

MR. BRIAN BENTZ: Yes.

MS. KATE MCGRANN: Why was this satisfactory to you?

MR. BRIAN BENTZ: I'd assumed that he had described the scope of services to her.

MS. KATE MCGRANN: Do you know if you -- did you reach out and ask and -- to confirm that?

MR. BRIAN BENTZ: No, I did not.

MS. KATE MCGRANN: Do you know if anyone at PowerStream reached out to ask --

MR. BRIAN BENTZ: I don't.

MS. KATE MCGRANN: Once again, there's no reference to an RFP in this email at all.

Did you consider going back and -- and asking for clarification about what specifically Mr. Bonwick had disclosed to the clerk?

MR. BRIAN BENTZ: He said he described the services of his company, that they would be providing to PowerStream. I assumed that meant providing advice on the RFP process.

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52 Documents ALE175 and ALE178

MS. KATE MCGRANN: I understand that you made an assumption. Did you consider or did anyone at PowerStream actually go back for clarification about whether Mr. Bonwick had fulfilled his obligation to disclose the fact that he'd be working on an RFP if one was issued?

MR. BRIAN BENTZ: No.<sup>53</sup>

Your Honour will recall that Associate Commission Counsel reviewed with Clerk Almas the consulting engagement entered into between PowerStream and CCI and dated June 7, 2011. The June 7, 2011 consulting engagement is the exact equivalent of the June 1, 2011 draft consulting engagement. That draft engagement letter was available to Mr. Bonwick at the time of his meeting on June 2 with both Mayor Cooper and Clerk Almas. Mr. Bonwick chose not to produce that document or to disclose any of its terms specifically as concerns scope of work and methodology and deliverables contained therein. Clerk Almas confirmed in her testimony that she “had no idea that it was for opportunities to actually purchase a company or merge with a company or a strategic partnership with a company.”<sup>54</sup> Brian Bentz testified that PowerStream drafted the retainer agreement with reference to the scope of work as described by Paul Bonwick in his proposal to PowerStream dated January 18, 2011.<sup>55 56</sup>

Clerk Almas was shown the June 7, 2011 consulting engagement letter.<sup>57</sup> She was asked “do you recognize this document?” to which she responded “I have never seen this document before the inquiry showed it to me” Clerk Almas acknowledged she had reviewed the “scope of work” set out in the consulting engagement letter.<sup>58</sup> She was asked:

Question: Did Mr. Bonwick say at your meeting do you recall did he say this is the sort of work he would be doing for PowerStream?

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53 Transcript of Brian Bentz May 31, 2019, pp. 102-105

54 Transcript April 15, 2019, page 45

55 Document ALE159

56 Transcript of Brian Bentz May 31, 2019 p. 113

57 Document ALE192

58 Transcript of Sara Almas, April 15, 2019, page 44

Answer: I had no idea it had anything to do – and obviously he probably wouldn't have shared with me either because we hadn't even had conversations about selling the LDC, so I had no idea that it was for opportunities to actually purchase the company or merge with the company or a strategic partnership with a company.

Question: So that says the first bullet point that says “identify potential opportunities for the purchase, merger, other business combinations of LDC's” he didn't talk about that in terms of what he'd be doing?

Answer: No

And further:

Question: Did he say anything about assisting in the preparation of any proposals that PowerStream intends to submit?

Answer: I don't know for sure but I wouldn't be taking proposals in the context of an acquisition or merger. It was more of a communications, PR, or working with a cooperative together.<sup>59</sup>

In my submission a review of Clerk Almas' evidence would reasonably establish she was grievously misled by Mr. Bonwick in reference to his potential working involvement with PowerStream. Clerk Almas recalled having no further conversations with Mr. Bonwick about his work for PowerStream. There was evidence that the attendance on Clerk Almas was “due to a misunderstanding” as to disclosures Mr. Bonwick was to make to PowerStream. As a result of the misunderstanding Mr. Bonwick was to specifically disclose the scope of his employment with PowerStream and that he may be working on a RFP.

On June 10, Paul Bonwick proposed a meeting with CAO Kim Wingrove, writing that he, “would like to discuss a company that I have recently started to provide services. The purpose of the meeting is to provide disclosure as well as purpose an additional meeting.”<sup>60</sup> CAO Wingrove

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59 Transcript April 15, 2019, pages 45-47  
60 Document T0C049604 and Foundation Document 200

agreed and the two met at her office on June 14, 2011. When asked about the meeting CAO

Wingrove testified as follows:

“he indicated that he would be doing some work with PowerStream with regard to assisting them with their communications and government relations work as it related to this idea of the utilities needing to amalgamate.”

CAO Wingrove testified that she took this information at face value, and that she really didn't read anything into it at the time. She testified:

“Compenso was a communications company. That's what they did. And so the fact that he was going to do this work, he was going to do it with a utility that neighboured our own that we had some interaction, I didn't take that to be anything that I needed to be overly concerned about at the time.”

Further, she was asked:

“Do you recall if you had an understanding or formed a belief about what he would be doing based on his conversation with you?”

Response:

“Not in any depth or detail.”<sup>61</sup>

In the Inquiry Hearing the CAO was shown the consulting engagement letter dated June 7, 2011 between Mr. Bonwick and PowerStream. She stated she had not seen the retainer letter at any point between June 7, 2011 and July 31, 2012. In the meeting Paul Bonwick did not produce the retainer letter, nor did he make reference to it. She first observed it in the Foundation Document materials provided to her. As to scope of work as outlined in the consulting engagement Ms. Wingrove confirmed that Paul Bonwick did not disclose the kinds of activities as set out in the first two bullet points of the agreement nor did anyone else disclose that Mr. Bonwick would be doing that kind of work. Further, she acknowledged that apart from the “strategic advice” relating to communications Mr. Bonwick did not disclose involvement in the preparation of any proposals that PowerStream intends to submit. She testified the term “mergers and acquisitions”

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61 Transcript of April 16, 2019, pages 239 to 242

term was never used in a conversation with me.<sup>62</sup> In reviewing the methodology and deliverables section of the retainer agreement CAO Wingrove acknowledged that “build the case and enhance profile” and “develop a personalized contact program and the particulars of same”, that this information was not disclosed to her at any point between June 2011 and July 2012.<sup>63</sup> Further, as to “Access Key Decision Makers“, “issue monitoring”, those terms were never used nor referred to by Mr. Bonwick.<sup>64</sup> Ms. Wingrove testified that “issue monitoring” was not disclosed to her.<sup>65</sup> “Scope of services” was not reviewed with her, nor disclosed to her.

Commission Counsel put the following question:

Question: “If this information had been disclosed at any point between June 2011 and July 31, 2012 what would your reaction to it have been?”

Answer: “I would have been, I think, extremely concerned that the idea of being retained to provide access to municipal officials especially in a time where there was the potential for a transaction between the parties, that simply would not have passed my own perception of what was correct. And I think I would have made that known that was just not possible to do.

I would have – if I can continue I would have definitely engaged with the Town’s legal counsel, if that had been brought to my attention and would have asked for their advice about how best to proceed.”

Question: “Then when you refer to the Town’s legal counsel who are you referring to?”

Answer: “Aird and Berlis, Leo Longo and John Mascarin”<sup>66</sup>

Mr. Bonwick was examined on the Inquiry Hearing referencing his meeting with Kim Wingrove.

The transcript reads, in part as follows:

MS. KATE MCGRANN: Were you able to make the disclosure you intended to make to Ms. Wingrove before the end of your meeting with her?

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62 Transcript of April 18, 2019, pages 12 & 13

63 Transcript of April 18, 2019, page 14

64 Transcript of April 18, 2019, page 14

65 Transcript of April 18, 2019, page 15

66 Transcript of April 18, 2019, page 15 & 16

MR. PAUL BONWICK: I did make the disclosure, yes. I felt that I'd made the disclosure.

MS. KATE MCGRANN: What do you remember telling her?

MR. PAUL BONWICK: I remember talking to her about -- again, a very short meeting, about public relations, media relations, government relations, specific -- I remember having a very brief discussion about the LDCs, generally speaking, more specifically to Collingwood as it related to mergers and acquisitions and it was sort of in that time frame that this call took place and there was no opportunity even to say goodbye.

MS. KATE MCGRANN: Did you explain to Ms. Wingrove that your work for PowerStream would involve a potential transaction with the Collingwood LDC?

MR. PAUL BONWICK: Yes.

MS. KATE MCGRANN: What do you remember saying to her about that?

MR. PAUL BONWICK: I just told you.

### **THE MEETING OF JUNE 29, 2011**

On June 22, 2011 Mayor Cooper's Executive Assistant invited Ed Houghton, Deputy Mayor Lloyd, Dean Muncaster, and CAO Wingrove to an introductory meeting with Brian Bentz. Mr. Bentz extended the invitation to Barrie Mayor and PowerStream Chair Jeff Lehman.<sup>67</sup> On same date Ed Houghton and Paul Bonwick accepted the invitation. However, neither was in attendance at the meeting on June 29, 2011.

CAO Kim Wingrove recalled attending the June 29, 2011 meeting. She recalled it as being of an introductory nature and while it was not clear to her that there was a specific purpose to the meeting she indicated there were discussions of the PowerStream company and the work that they did. Further, she confirmed that it was not a meeting that stuck out in her mind as providing

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<sup>67</sup> Foundation Document, paragraph 207

any information that was concerning to her or of a various specific nature.<sup>68</sup> Ms. Wingrove testified that “this was an opportunity for them to talk about who they were” and she “did not come out of that meeting feeling like I have no recollection of feeling like information was shared during that specific particular meeting that made me feel uncomfortable or that, you know, they talked about what they did.”<sup>69</sup>

Mayor Cooper testified and confirmed that the June 29, 2011 was an introductory meeting involving Mr. Bentz and what PowerStream may be planning to do in the area but did not recall any specifics in relation to that.<sup>70</sup> Mayor Cooper acknowledged that it was quite common for business interests to be involved in an introductory meeting and she felt it important the CAO be present to have conversation with the business group. Mayor Cooper did not equivocate this meeting to the reference in the June 2, 2011 letter. She had no specific recall as to what PowerStream intended to do in the area nor did she recall any discussion as to work which Mr. Bonwick may be going to do for PowerStream. At the meeting Mayor Cooper did not recall any discussion as to whether PowerStream may respond to a RFP proposal. She confirmed her understanding to be Paul Bonwick’s area of work could be in communications, public relations and in those areas. She was asked the following questions by Commission Counsel:

Question: “Did you think that he would be working on media relations and public communications with respect a potential Collus Power RFP?”

Response: “For - for the Collus RFP?”

Question: “m-hm”

Response: “No”

Question: “You didn’t think that he would be doing any work on that?”

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68 Transcript of April 18, 2019, pages 6 through 8

69 Transcript of May 17, 2019, pages 256 & 257

70 Transcript of Sandra Cooper, April 24, 2019, page 81

Response: "On - - for Collus, no."

Mayor Cooper was asked:

Question: "How did you come to that conclusion?"

Response: "I did not see anything with Paul Bonwick's name on any presentations or RFP's or Compenso, I guess I should say."

Question: "At any point between January 1, 2011 and July 31, 2012 did you ever ask Mr. Bonwick if he would be assisting PowerStream, or if he had been assisting PowerStream in its response to the Collus RFP?"

Response: "No I did not ask that question."

Question: "Did you ask him any questions about the work that he was doing for PowerStream?"

Response: "No I did not. I was attending Collus board meetings. Many of the things that I was involved in, and I did not have a conversation to ask specifically if he was involved in an RFP."

The following question was put:

Question: "At any point between the period of time that starts when Mr. Bonwick advises you he may be doing some work for PowerStream through to July 31, 2012 did you ask him any questions about the work that he was doing for PowerStream?"

Response: "No"

Question: "Why not?"

Response: "I had a focus on council and the board and going through the task force RFP process criteria that was my focus, not to say "hey how's it going, what are you doing for PowerStream" I did not ask that question."

Mayor Cooper acknowledged that the focus, as described, not have prevented her from asking questions of Mr. Bonwick about the work that he was doing for PowerStream; but that her thoughts were to concentrate on the RFP, listening to the Board of Directors, listening to the task

team and their comments, listening to KPMG, listening to staff, that's where I had my concentration.<sup>71</sup>

Mayor Cooper confirmed that while she did not recall specific details of the meeting, no alarms or particular concerns were raised pertaining to matters as reviewed in the meeting.

She testified seeing reference to “acquisitions” in the June 2, 2011 letter. She acknowledged her understanding that Mr. Bonwick might be involved with PowerStream with respect to the prospect of acquisitions to be made in the future by PowerStream. She acknowledged as well that the letter made reference to some future development with Collingwood which could require a revisiting of Mr. Bonwick’s involvement with PowerStream and as to considering opportunities for Collus. She concurred with the suggestion of counsel that the meeting of June 29 was a follow up meeting to the letter and to the effect that if things developed i.e. the possible sale of Collus, that we would meet again to discuss the position of Mr. Bonwick with PowerStream.<sup>72</sup>

Mr. Brian Bentz testified on the inquiry hearing confirming that he was in attendance at the June 29, 2011 meeting. He confirmed that he had made no notes of the meeting itself or of events prior or subsequent to the meeting. He recalled that the meeting resulted from a suggestion by Mr. Bonwick that was incorporated into the Mayor’s June 2, 2011 letter. He was asked by Commission Counsel:

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71 Transcript of April 24, 2019, pages 83 to 87

72 Transcript of Sandra Cooper, April 25, 2019, pages 141 to 148

Question: “did you interpret this meeting - - the fact that it was being scheduled and happening - - as an indication that the Town intended to proceed with the RFP?”

Answer: “I thought it was more likely. As I said there was sort of two tests I was thinking about, was the engagement as to Bonwick and the RFP - - but likelihood not the RFP proceeding.”

Question: Right. And the engagement had already happened so this is the second one we are talking about. So you thought it was more likely but not conclusive? Is that fair?

Answer: Yes

Question: Do you recall any discussions about whether or not Mr. Bonwick should attend this meeting?

Answer: No

Neither Mr. Bonwick nor Ed Houghton were present at the meeting of June 29, 2011.

Mr. Bentz' recall was that the meeting began with comments from Mayor Cooper. His recall was as follows:

“And I believe she referenced the letter that she had saying that she was aware that PowerStream - - I don't know if I had or was going to engage her brother. And I think she also mentioned about the Municipal Conflict of Interest Act that – you know, if he was – if he were engaged he would not be in contravention of the Municipal Conflict of Interest Act and that, you know, PowerStream's decision to do that would be their own decision.”<sup>73</sup>

The Mayor's comments were brief; Mr. Bentz estimated a few minutes. He recalls that Mayor Cooper neither shared copies of the June 2, 2011 letter nor did she read from it.

Following the Mayor's words, there were introductions and then Mr. Bentz spoke generally as to PowerStream and the fact they were a product of a merger. Mayor Lehman then spoke about his experience with the Barrie merger. Mr. Bentz then testified as follows:

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73 Transcript of Brian Bentz, May 31, 2019, pages 145 to 151

“Then we talked about the engagement with Mr. Bonwick and the fact that the purpose of this meeting was to advise the people at the table that we had engaged Mr. Bonwick and if there were and RFP that h would assist us in that regard. And did they have any problems with that? Did they have any concerns about that? 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, it may have been Dean Muncaster or Deputy Mayor Lloyd, if anything he would enhance the quality of your response because of his knowledge of the community.”

Commission Counsel asked:

Question: “Do you remember specifically what was said about Mr. Bonwick’s retainer”

Answer: Just that if the RFP was going to proceed that he – he would may be of assistant to us in that regard.

Question: We’ve heard from Mayor Cooper. She’s already appeared as a witness. At a high level she doesn’t recall any disclosure of Mr. Bonwick’s retainer with PowerStream being made at this meeting. So when you say she started the meeting, referencing the letter, and discussing the Municipal Conflict of Interest Act, and her brother’s retainer what do you remember her saying?

Answer: “It was sort of setting the stage for the meeting. So she had – she had signed the letter acknowledging that on June 2<sup>nd</sup> I think – acknowledging that PowerStream was going to retain her brother. And I think there was ya know I believe she talked about the Clerk. So my recollection is that was the sort of the context for, you know, why are we meeting. So – because in the letter, it says it would – my brother thinks it would be a good idea that we hold this meeting. So that would be the logical stepping off point to introduce the meeting.”

And finally, Mr. Bentz was asked:

Question: “and at the close of that meeting were you satisfied that the disclosure that PowerStream and more specifically the Audit and Finance Committee had been made?”

Answer: Yes.

Question: What was your expectation with respect to what the other attendees would do with that information?

Answer: I’m not sure if I had a specific expectation of them. It was more the expectation of us that we had made them aware of the situation and that was the purpose of the meeting.<sup>74</sup>

Mr. Bentz acknowledged that the meeting was informal and that he knew of no reason why Paul Bonwick could not have been at the meeting. After the meeting Mr. Bentz and Mayor Lehman met Paul Bonwick and Ed Houghton at the Georgian Bay Club to play golf. Mr. Bentz acknowledged that the responsibility to make disclosure as to his employment relationship with PowerStream was a condition of the retainer letter contract of June 7, 2011. He acknowledged that the content of the June 2, 2011 letter did not set out the scope of duties as set out in the retainer agreement.

In considering and assessing Mr. Bentz' evidence as to what may have been discussed and disclosed at the June 29, 2011 meeting one should not lose sight of the fact that Mr. Bentz had been under the incorrect impression (having been misled by Mr. Bonwick) for some time that Mr. Bonwick had made full disclosure. I submit that this situation may have had some affect on his understanding of what may have disclosed at the meeting and is a fact that ought to be considered in the assessment of his evidence.

### **JUNE 27, 2011 COUNCIL MEETING**

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74 Transcript of Brian Bentz, May 31,2019, pages 145 to 151

On 24 May 2011 KPMG presented their options and evaluation report to Collus Power. Discussions ensued at the board level concerning the options analysis. Discussions evolved to a determination that a strategic partnership option would be included in the options analysis and would be presented to council. On June 27, 2011 an in camera council meeting was held. The recorded minutes are of little assistance, if any, in an attempt to understand what occurred at the meeting. The minutes do record that Ed Houghton provided an update for council's information on a study that Collus Power is undertaking to investigate their strategic opportunities. The minutes note that Mr. Houghton and Mr. Fryer addressed questions from Council including concerns with valuations, partnerships, assets, staff and, shared resources and high use customers. The minutes concluded that:

“Mr. Houghton confirmed that following the completion of the study a detailed report will be provided to counsel”

Mayor Cooper testified on the inquiry hearing. She was asked if slides 24 and 25 of the now Collus presentation to council were shown to Mayor Cooper. While she was unable to recall specific discussion she did identify some topics that were of interest and of discussion. Mayor Cooper determined that council was interested in the opportunity as presented by a strategic partnership option consideration and did verbally request that Mr. Houghton move forward and pursue further interest in that opportunity. There was no written direction provided by council and no member of council strongly opposed the verbal indication to Mr. Houghton.

I would advance the transcript of Mayor Cooper's evidence of April 24, 2019, pages 29 to 40. I would submit that a reasonable review of the evidence establishes that any reference to an RFP consideration was a future consideration given the understanding that Mr. Houghton would have to first determine if there was an interest out there in the energy field as concerns the

strategic partnership opportunity. In my submission the minutes of the council meeting do not establish that Mr. Houghton received instruction or direction from council to proceed with the RFP process. This conclusion, I submit, is in concert with document EHH054 as filed on the inquiry hearing by Mr. Houghton. That document notes that on June 27, 2011: “Met with council and received approval to investigate strategic partnership.” Also, I would refer to slide 24, document CPS0004397, which lists RFP considerations as numbers 4 and 5 of a five step “next steps” consideration.

In my submission the circumstances as they existed on June 27, 2011 would be the same circumstances existing in the meeting of June 29, 2011 as concerns the RFP process and submit it was in the proposal stage.

#### **OTHER AREAS OF INQUIRY CONCERNING MATTERS OF CONDUCT**

There was evidence received on the inquiry hearing to the effect that KPMG was retained by Collus Power in the month of February 2011. KPMG proceeded to act in accordance with the retainer and on May 24, 2011 presented the Collus Power board with an evaluation and option analysis report. Discussions ensued as amongst board members, which included Mayor Cooper, which resulted in a change to the option analysis. A new option was added, that being of a strategic partnership option. On June 27, 2011 members of Collus appeared before the Town of Collingwood council and Ed Houghton presented the amended evaluation and option analysis report. Mayor Cooper chaired the council meeting. A fulsome discussion ensued regarding the options discussed in the KPMG report in which council was actively involved. Apparently no copy of the actual KPMG evaluation and option analysis report was requested by any of the councillors who may not have seen it to that date.

Mayor Cooper's conduct is being called in to question in that it is alleged she failed to ensure the Town received copies of KPMG's valuation and option analysis report. In response to the allegation, Mayor Cooper assumes that "the Town", refers to members of council.

My submission is that the task of ensuring Town councillors received copies of the KPMG report would fall within the scope and duties of the Clerk for the Town of Collingwood. In my submission the Mayor would not be responsible to ensure that council received copies. In addition, In addition I would submit that the evaluation and option analysis reports ought to have been obtained by the Clerk in order to ensure that the minutes of the in camera council meeting would be made more comprehensible. I would also submit that the onus of receiving and reviewing a report they are debating in council is incumbent on the councillor debating the report. There is no evidence that the report was requested by any Town councillor, or that production of the report was resisted by Mayor Cooper. In addition I would submit that the onus would be on Collus and/or Ed Houghton who presented to either provide copies of the report prior to or during the presentation, or to respond to requests for copies following the presentation. To attribute the responsibility to disseminate the report exclusively to Mayor Cooper is not appropriate. KPMG was actively involved in discussions throughout, in accordance with the terms of their retainer, and provided appropriate independent professional advice to Collus and on behalf of the Town of Collingwood.

Mayor Cooper's conduct is being called in to question in that it is alleged she failed to ensure the Town received appropriate and independent legal counsel to advise it on the share sale transaction.

When Mayor Cooper signed the share sale transaction, she did so in a 'ceremony' of sorts, surrounded by no fewer than ... lawyers, several of whom purported to provide appropriate and independent legal counsel to the Town of Collingwood, as was as the Town's solicitor, Mr. Leo Longo. lawyers being....

Mr. Leo Longo of the legal firm Aird and Berlis (A&B) was the Town of Collingwood solicitor starting in the year 2003. He provided services to the Town at the Town's request on an “as needed basis.” His legal work was provided to the Town under a general retainer agreement which was entered in to prior to the year 2010. He did not draft a separate retainer specifically for the share sale transaction.

I submit that at all material times during the share sale transaction, Mr. Leo Longo represented the interests of the Town of Collingwood. On his testimony Mr. Longo acknowledged “my client was the Town”.<sup>75</sup>

Mr. Ron Clark of the legal firm Aird and Berlis was initially retained by Collus Power to represent Collus Power in its dealings with the successful proponent on the share sale. He later indicated that he had a joint retainer in that he represented Collus and the Town of Collingwood. Although there was some confusion as to the actual nature of |Mr. Clark's retainer, on his

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<sup>75</sup> Transcript of Mr. Leo Longo May 27, 2019 p. 198

testimony during the Inquiry, town solicitor Mr. Longo acknowledged the joint retainer of Mr. Clark and that one of Mr. Clark's focus points was protecting the interests of the “the shareholder” ie. the Town of Collingwood<sup>76</sup>

Mr. Clark was assisted in providing legal services by his associate counsel at A&B Corrine Kennedy.

Mr. Longo was assisted in providing legal services by his associate counsel at A&B Mr. John Mascarin.

These four lawyers were all members of the legal firm Aird & Berlis.

I believe the evidence on the inquiry establishes that Mr. Mascarin provided services to the Town of Collingwood; he provided no services to the Collus Power.

Mr. Clark was retained and became involved in the “share sale transaction” in October 2010. He described his role as one in which to “paper the transaction” Mr. Clark considered Ed Houghton to be the “point person” on the transaction.

Mr. Longo became involved in the share sale transaction on January 7, 2012. This is confirmed in a February 27, 2012 legal account referencing telephone discussions with C. Kennedy referencing Collus PowerStream negotiations and share purchase agreement. On the 10<sup>th</sup> of January 2012 the account notes that Mr. Longo attended to the file and that on the following date

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<sup>76</sup> Transcript of Mr. Leo Longo May 27, 2019 pp. 201-202

11 January 2012 attended on the conference call with the Mayor, Deputy Mayor, Ed Houghton respecting the Collus transaction and a further discussion with Corrine Kennedy. The account also references that Mr. Mascarin became involved in the transaction file on the January 6, 2012.

Mayor Cooper testified that she believed that both John Mascarin and Leo Longo were representing the Town of Collingwood at all times during the period relating to the share sale transaction. I submit that Mayor Cooper's belief is fairly substantiated given the evidence upon the Inquiry.

Mayor Cooper described having a particular comfort in knowing that Mr. Longo was involved in representing the Town of Collingwood. I would submit at all times referencing the share sale transaction that Mayor Cooper believed appropriate and independent legal counsel was retained and were providing appropriate legal services as required on the share sale transaction.

Mr. Ian Chadwick was a member of council from 2010 to 2014. He testified on the inquiry as to his firm belief that considerable oversight was provided by council at all points of the share sale transaction. He believed the whole process involving the transaction was transparent, informed and adequately and properly presented at all times.

Mayor Cooper's conduct is being called in to question in that it is alleged she failed to respond appropriately to the warnings of the Town's municipal lawyer that the Town's legal interests may not be represented in the negotiation and finalizing of the share sale transaction.

I believe that this allegation arises out of the content in the email chain of January 16, 2012 filed as document CJI0006303. Reference may also be made to the Foundation Document paragraphs 482-487. In the email chain, Mr. Longo expressed a concern and noted that “Ron and Corrine are advising Collus, not the town. I just want to note that the Town’s interest may not be identical to Collus”. Both Mayor Cooper and Deputy-Mayor Lloyd responded to this comment. The email chain sets out Mayor Cooper's response to this note, which I submit was appropriate as the Mayor and Deputy Mayor confirmed the involvement of KPMG, A&B, and David McFadden in the share sale transaction. In addition I submit that by January 16, 2012, the date of the email exchange, Mr. Longo and Mr. Mascarin had been significantly involved in the share sale transaction on behalf of the Town of Collingwood.

Throughout the share sale transaction, Mayor Cooper and members of council had determined that the Town and Collus interests were common that, as a result of the Town being the sole shareholder of Collus, that Collus was under the umbrella of the Town of Collingwood.

I submit this issue under review was resolved in the evidence provided by Mr. Longo in the Inquiry Hearing on May 27, 2019:

MR. LEO LONGO: ... in my emails to the client I didn't allege there were interests that were different. I raised the question are there any differences in interest.

MR. FREDERICK CHENOWETH: Thank you. That's -- that's helpful. And I take it that throughout the course of the time that you were involved in this matter, which appears to have been from January 7th -- and I'll use the phrase 'on and off', okay. From January 7th to on or about March 2nd, I take it that you didn't see anything in the relationship between Collus and/or the Town and/or the people you were dealing with and/or the documents that -- that you read that suggested that their interest had diverged and they should be considering other solicitors?

MR. LEO LONGO: Between January 7 on that first call with Corrine to January I had the involvement that I've described to the -- to the commission. And I didn't have any independent knowledge base to -- to form an opinion one (1) way or the other.

MR. FREDERICK CHENOWETH: So, the answer to my question is you didn't see anything during that period of time that raised any query in your mind because you queried it earlier, so, obviously, it was on your mind. You didn't see anything in your observation that suggested that there was some sort of divergence in interest between those two (2) parties?

MR. LEO LONGO: One (1) was not apparent to me.<sup>77</sup>

I would now deal with the contention that Mayor Cooper while knowing that her brother, Paul Bonwick, sought and or had a professional relationship with PowerStream failed to make prudent inquiries into the nature, scope and terms of Mr. Bonwick's work for and retainer by PowerStream and accordingly violated her Oath of Office as signed on December 6, 2010 to "truly, faithfully, and impartially exercise this office to best of my knowledge and ability."

In response I would refer to the transcript of Paul Bonwick's evidence given June 12, 2019 pp. 246-253. The relevant portions of this transcript were reproduced above at pages \*\*\*\* of these submissions, with a submission that the evidence therein established a clear intention that from the very outset of his communications with PowerStream, Paul Bonwick had no intention of making any disclosure to his sister Mayor Cooper.

I would submit that evidence on the inquiry hearing establishes that there was no relevant communication as between Mayor Cooper and her brother, Paul Bonwick, at any time after June 2, 2011 when he attended her office for purposes of producing the draft letter to Brian Bentz. From that point forward to December 5, 2011 there was no contact or communication relevant to the Inquiry issues. As concerns Mayor Cooper, he literally dropped out of sight.

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<sup>77</sup> Transcript of Mr. Leo Longo May 27, 2019 pp. 202-203

I have made submissions as to the June 2, 2011 letter which spoke to potential future events evolving and Mayor Cooper's reaction to that fact. I would submit her evidence establishes that she made no further inquiry because there was no reason to make any inquiry as to something that may or may not occur in future, given that there was no triggering further information, and given that Mr. Bonwick had dropped out of sight.

I would advance similar argument in reference to the June 27, 2011 in camera town council meeting and in reference to the June 29, 2011 meeting with Mr. Bentz and others. I adopt prior arguments as advanced in this area and as set out in these submissions. I would submit that nothing had transpired between June 2 and post the June 29, 2011 meeting which would require further inquiries be conducted by Mayor Cooper.

On the inquiry hearing a considerable testimony was directed to the formation of the strategic task team and the presentations made to them by the four LDC proponents. I submit that the evidence in reference to Mayor Cooper's involvement as Mayor, Collus director and member of the strategic task team (STT) has in any way violated her Oath of Office to truly, faithfully and impartially exercise the office to the best of her knowledge and ability. Her involvement with the evaluation of the four proponents presentation is a matter of public record. That evidence has been produced on the inquiry hearing. In addition thereto Mayor Cooper was examined specifically as to her scoring on the RFP concerning non-financial matters. She testified to the STT discussions being frank honest fair and that members could and did express their views on particular issues in the RFP.<sup>78</sup> No bias, either actual or perceived, can be attributed to the

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78 Transcript of Sandra Cooper, April 25, 2019, pages 165 to 172

conduct of Mayor Cooper during any of the relevant evaluations. She had no knowledge as to Paul Bonwick's relationship with PowerStream, nor was there any reasonable prospect of her obtaining any information from him. Further I submit, Paul Bonwick would be the only source for information as to his employment relationship, if any, with PowerStream.

On 25 April 2011, Mayor Cooper testified at the Inquiry Hearing. At that time she reviewed and disclosed her personal considerations and evaluation as to scoring on the RFPs. Her scoring was consistent with other members scoring. The public record confirms this. In addition she responded to her personal concerns and interest involved in her scoring, all of which, I submit reasonably establishes that she acted entirely in consideration of the best interests of the Town of Collingwood.<sup>79</sup> Accordingly I submit that she acted in compliance with her Oath of Office and the ethical obligations attendant thereto.

As concerns the consideration of making prudent inquiries of Paul Bonwick I would refer you to his obvious reluctance and continuing attempts to deceive PowerStream as to his providing disclosure of the nature, scope and terms of his employment not only to them but to Mayor Cooper, Clerk Sara Almas and CAO Kim Wingrove. My submission is that prudent inquiries as to that subject would not be adequately responded to if there were a response at all.

Mr. Bonwick testified on the inquiry hearing. He was examined by Commission Counsel on June 12, 2019. He was referred to the January 10, 2011 email which he forwarded to Brian Bentz of PowerStream.<sup>80 81</sup> Mr. Bonwick was questioned and responded as follows:

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79 Transcript of Sandra Cooper, April 25, 2019, pages 287 to 298

80 Document ALE045

81 Transcript of Paul Bonwick, June 12, 2019, page 246

Question: Your sister, Sandra Cooper at this point in time is both the Mayor of the Town of Collingwood and a Director of the Collus Power Board of Directors. At the time that you sent this email had you considered whether your sibling relationship with her may cause any conflict of interest concerns for PowerStream, for yourself, or for your sister in either of the two hats that she was wearing?

Answer: No I did not. I did not give consideration at the time to her sitting on the board of Collus. I certainly gave consideration to her position as Mayor having been involved in the political arena for a number of years, I was familiar with many examples both in rural communities and in urban centres whereby siblings of elected officials were not in conflict when they were conducting business with a particular municipality so that was not a consideration in her position as Mayor and I did not feel – I believe strongly that there was no conflict under the Municipal Conflict of Interest Act.

Question: So that's a mental exercise that you went through before you sent this email?

Answer: Yes

Question: Did you discuss the fact that you were going to send this email with sister before you sent it?

Answer: No

Question: Did you think that you should allow her to perform a similar analysis about whether she would be in conflict as a result of your attempt to connect with Mr. Bentz?

Answer: No

Question: Why not?

Answer: I do not - - so in my various working relationships we typically sign non-disclosure agreements with our clients. In some cases, the relationship is profiled, especially if you are involved in outward negotiations or providing communications or public relations work for them. In some cases the work we do or that I do is of a confidential nature and we don't profile my involvement. Irrespective of what the relationship is I don't recall every having a business involvement where there wasn't NDA's signed (non-disclosure agreements) and so as a result of that I do not confer with my sister on any of my business dealings, unless it's required.

Question: Now you hadn't signed any contracts with PowerStream at this time. This is your first reach out to them is that correct?

Answer: Correct

Question: Was there any non-disclosure agreement in operation at the time that would have prevented you from disclosing this to your sister?

Answer: No

Question: Did you have any concerns that if you spoke with your sister about this opportunity that you are pursuing it may get in the way of you actually being able to enter into an arrangement with PowerStream?

Answer: No. I will go back to my initial answer. I did not consult my sister of Mayor Cooper, on any matters related to my ongoing business dealings within the Town of Collingwood, within the County of Simcoe, recognizing she was a county councillor as well. It was just simply something I did not do.

Question: At any point before you signed your retainer with PowerStream did you consider the fact that one of the reasons that they may want to hire you is because you are the Mayor's brother?

Answer: No. I - -

Question: Please go ahead

Answer: Ok. Quite the contrary. I felt that, as a former municipal councillor, I felt as a former member of parliament for the riding for a number of years, I felt that based on my experience within the community my contacts within many municipal governments as well as county and provincial and federal, and understanding that there's not a lot of government relation/public relation firms that actually work north of the Moraine, that I had enough experience and strength that I would be - - I don't want make this sound silly - - and ideal candidate, or my company would an ideal candidate to work for PowerStream. I viewed the relationship with Sandra as somewhat of an impediment - - or sorry, I will start calling her Ms. Cooper, Mayor Cooper as somewhat of an impediment and in fact approached it that way.

Question: Why did you view it as an impediment?

Answer: Well it was my firm belief that the Mayor is not in conflict as it relates to ongoing activities of their siblings. You've heard testimony and I'm certainly aware of the fact that as a person who had some profile in the

community, any of my business any of my involvement in business is – is viewed through perhaps a different lens and so I've always got to be cognizant of the fact that people will draw a line between myself and Mayor Cooper. And not to make it sound like too small of a village, but the Mayor of Wasaga Beach in the day was my cousin, so again, you get into situations where you're concerned about the optics rather than the realities.

Question: And the optics that you would be concerned about, would that be the perception that your sibling relationship is somehow effecting the business that you are doing and the way that people interact with you and your sister?

Answer: No. Maybe that was too quick. No I would be more concerned about the fact that the option of declaring a conflict of interest is, from my understanding, the sole responsibility of the individual councillors sitting around the table. Some councillors will use conflict of interest to not engage in issues when in fact they rightly know they do not have a conflict. Some councillors or some elected officials will declare conflicts of interest, in my experience, when they're concerned about optics when in fact they don't have a conflict. And so, in a situation like this, if we think it through, you would not want to run into a situation where if in fact PowerStream was bringing the best offer to the community where it was the ideal situation for a community whereby one of the councillors as a result of a relationship with me would simply declare a conflict because they are concerned about the optics rather than the realities.

Question: And the optics that they would be concerned about is that their relationship with you somehow impacted decisions made about PowerStream about the Town. Is that right?

Answer: Yes

### **SOLAR ATTIC VENT LAUNCH EVENT: AUGUST 11, 2011**

On June 10, 2011 Ed Houghton brought a model of a solar roof ventilation unit to the meeting of the Board of Directors of Collus Power Corp. The minutes of the meeting record that Mr. Houghton described the way in which the unit operates and stated that Collus has an opportunity to get involved with the project in the sense that they could become a pilot community, run a beta test on the unit and then approach other LDC's. The minutes record that a discussion ensued as to how Collus could get the project to work.

Mayor Cooper was in attendance at the board meeting. The minutes record that she left the meeting after the brief presentation by Mr. Houghton of the solar roof ventilation demo unit. The board minutes record that, after Mayor Cooper left the meeting, there was agreement by the Board that Collus should move forward with this initiative as it shows Collus as being a leader with a positive message for our utility and council to get the message out regarding conservation. On July 8, 2011, at the Collus Power board meeting, Collus employee Glen McAllister presented the cost of Collus Power participating in the solar attic vent as being \$90,000.00. The board approved this expenditure. Mayor Sandra Cooper, as a director, voted in favour of this expense.<sup>82</sup>

I submit that the evidence on the inquiry establishes that Mayor Cooper had no further involvement with the solar attic vent initiative until August 8, 2011 when she was emailed by Ed Houghton and advised of a solar attic vent launch event scheduled to take place on Thursday, August 11, 2011 at 10am in Collingwood. Next, on August 10, 2011, Mayor Cooper received an invitation to the launch event.

The participating LDC groups in the solar launch event were five in number, Collus Power, PowerStream, Orangeville Hydro, St. Thomas Energy, and Wasaga Beach Distribution.

She forwarded the event invitation to her brother, Paul Bonwick. On the inquiry hearing Mayor Cooper was asked as to why she would give her ticket to her brother Paul Bonwick. She

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<sup>82</sup> Foundation Summary Document 1-3, paragraphs 7 through 11

indicated there was no real reason but she knew he was going to be attending the Mayor's Golf Tournament scheduled to be played later that same day.

Mayor Cooper spoke briefly at the launch event. The agenda of the event indicates she was allotted five minutes to address the attendees as "Mayor, Town of Collingwood." She was one of five speakers. Collus Power board members and staff were in attendance at the launch as were members of council and the strategic task team.<sup>83</sup>

The evidence on the Inquiry would establish that Mayor Cooper had no involvement with any prior or ongoing discussions in reference to the solar attic vent project. She was not privy to any marketing or ownership issues which pertained to the solar vent project.

Later that same day Mayor Cooper attended the Mayor's Golf Tournament. Subsequently, on August 18, 2011 she wrote to Pam Hogg at Collus to request contact information for the PowerStream executive management team members who had been in attendance at the Mayor's Golf Tournament. Her purpose was to send a thank you note to the executive management team for participating in the Mayor's Tournament, a charity event. Mayor Cooper's practice was to send a thank you note to each and every player who participated in the Mayor's Golf Tournament.

Mayor Cooper has been asked to respond to her failure to make prudent inquiries into the nature, scope and terms of Mr. Bonwick's work for and retainer by PowerStream after attending the solar attic vent launch event. It is alleged this failure on the part of Mayor Cooper violated the

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<sup>83</sup> Foundation Summary Document 1-3, paragraphs 27 & 28

declaration office and her oath to truly, faithfully and impartially exercise this office to the best of my knowledge and ability. As indicated in these submissions and, on behalf of Mayor Cooper, it should be emphasized that Mayor Cooper had no specific knowledge of any involvement on the part of PowerStream the solar attic vent launch event. She spoke at the event as Mayor for the Town of Collingwood. I submit that circumstance was recognized by Brian Bentz who on August 16, 2011 forwarded an email to Ed Houghton referencing other matters but wherein he stated “it was great to have Mayor Cooper there – she is a true ambassador for the town.”<sup>84 85</sup>

I would submit that the Mayor’s involvement in the solar vent launch is really of no particular consequence. The event was initiated by Mr. Houghton and Collus due to its endearing quality of being an energy conservative initiative. The event was to promote a product which was keeping with an object of good intention and value to the Collingwood community and beyond. As such, I would submit that any interest other than her interest of general good intent on the part of Mayor Cooper in the solar vent launch was a remote interest and of no significance referencing the oath of office and her declaration to “truly, faithfully and impartially exercise this office to the best of my knowledge and ability”.

Her involvement with the solar vent initiative was confined to the launch event and I respectfully submit that there is no necessity for her to make any further inquiry into the project or the matters arising therefrom.

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84 Document ALE14138

85 Transcript of Sandra Cooper, April 24, 2019, pages 101 to 108

**DECEMBER 5, 2011: PAUL BONWICK'S COMMUNICATIONS WITH MAYOR COOPER**

Prior to voting in favour of continued negotiations as between Collus Power and PowerStream at the December 5, 2011 in camera town council meeting, Mayor Cooper received an email from Paul Bonwick.

Paul Bonwick's email of December 5, 2011 was unsolicited by Mayor Cooper. She had no contact with him referencing the email. While she may have reviewed the content of the email, she had formulated her intended remarks to be advanced during the council meeting in advance. To her the email was of no import whatsoever and had no prejudicial effect on her consideration as to the proposed share sale transaction.

On April 25, 2019 Mr. Bonwick asked the following questions of Mayor Cooper:

Question: One of the other points that I wanted to touch on is there has been reference to some of the emails that I've sent to you, some of the speaking notes that I prepared for you, some of which you've used, some of which you haven't, I think it's fair to say, based on your response, many of them were unsolicited?

Answer: Yes

Question: I would agree with that and so, like any person that is a strong advocate or supporter, I likely am a little more tenacious than I should be. But I recognize the fact that I'm sending you information sometimes and, quite frankly, afterwards you in speaking say that's not relevant and do you remember those occasions where you would comment about where you don't need to send me this or send me that?

Answer: Yes

Question: So I just want to make it clear that it wasn't you in fact reaching out to me on a regular basis asking for assistance, but rather me reaching out to you and suggesting that it would be done this way best, or I think it would be done that way best

Answer: I would agree<sup>86</sup>

**EVENTS POST-DECEMBER 5, 2011**

It is contended that Mayor Cooper failed to make prudent inquiries in to the nature, scope and terms of Mr. Bonwick's work for and retainer by PowerStream prior to engaging in any discussions with Mr. Bonwick about the documents related to the share sale transaction.

I would submit that Mayor Cooper had no discussions with Paul Bonwick about documents related to the share sale transaction which were of significance to her. I believe the evidence on the inquiry is clear that Mayor Cooper was relying on the expertise and legal involvement of Aird & Berlis referencing the transaction. There was evidence that Mr. Bonwick delivered a bundle of documents to reviewed and executed prior to the share purchase agreement being engaged. The evidence in my submission clearly establishes that Mr. Bonwick was asked to do so by Ed Houghton in order that the deal go forward and be concluded as one of the principals to the transaction would be available on the designated transaction closing date.

On April 25, 2019 Paul Bonwick examined Mayor Cooper on the inquiry hearing. Mr. Bonwick made reference to the scheduling of an appointment to sign legal documents as to what actually transpired Mr. Bonwick “was unsure as to why Mr. Houghton reached out to me to ask if I could help push along the meeting, other than the fact I knew that a number of signatures that were required, one person was going on holidays for two weeks.” Mr. Bonwick acknowledged that he couldn’t speak to why Mr. Houghton would make the request; and, in the course of making these comments, Mr. Bonwick asked:

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86 Transcript of April 25, 2019, pages 360 & 361

Question: But it seemed rather an innocuous request in terms of do you mind reaching out and suggesting that -- because you are working for the other company, the partnerships agreement is important to you, you don't want to delay it for two (2) weeks.

I wasn't involved in any of the document signing. I wasn't involved in giving instructions about changing any wording. It was simply centred around the scheduling of the appointment, is that correct?

Answer: Yes

Question: And so to suggest otherwise is simply just not the case.

Answer: Correct<sup>87</sup>

Reference to document ALE02077 confirms that Ed Houghton, on his own initiative, forwarded to Paul Bonwick the documents to be signed by Mayor Cooper and Clerk Almas and the explanatory memoranda. This occurred on February 29, 2012. The following day the documents were delivered. This email chain does not disclose that Mayor Cooper participated in the discussion.

During the course of the Inquiry Mayor Cooper expressed her annoyance that Paul Bonwick had delivered transaction documents to her, in circumstances as described herein, when sufficient legal talent had been retained to become involved and attend to those matters.

I submit that document CPS0009063-0001 indicates that Mayor Cooper made no response the email as directed to her by Paul Bonwick on January 19, 2012. The alleged response by Mayor Cooper is dated January 18, 2012, and therefore it cannot possibly be a response to an email not sent until the following day. In addition thereto, Mr. Longo testified he was not in the Town of

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87 Transcript of Sandra Cooper, April 25, 2019, pages 359 & 360

Collingwood on January 19, 2012 nor did he attend any meeting on that date. In addition, his bill of account submitted on February 27, 2012 attests to that fact.

A subsequent email dated 19 January 2012 as directed by Paul Bonwick to John Glicksman and Dennis Nolan of PowerStream is questionable as to its veracity. I submit that reference to the Town's lawyers as being in attendance at the meeting on the 19<sup>th</sup> of January 2012 cannot be substantiated given Mr. Longo's assertion to the contrary. Neither Mr. Mascarin nor Mr. Longo were at the meeting.

Broad allegations have been made in relation to Mayor Cooper's conduct from June 2, 2011 forward to the closing of the share sale transaction on March 6, 2012. Many of the allegations are overlapping and have been responded to. I adopt all of the various submissions made to this point in this document. I would adopt and refer to document EHH054 which references an outline of key events from June 27, 2011 to January 23, 2012. In addition I would refer to the examination of Mayor Cooper as occurring on April 25, 2019 commencing at page 192 and concluding at page 216. A review of the transcript would disclose the following as described by Mayor Cooper, namely:

- July 8, 2011 Collus Power board meeting: Unanimous decision in that the board supports a preferred option of a strategic partnership and fully supports management in the execution of that direction.<sup>88 89</sup>
- August 3, 2011: First meeting with strategic partnership task team (SPTT) review of informal meetings with five LDC's as reported by Mr. Houghton; agreement that the SPTT was investigating the strategic partnership with a purpose to making Collus stronger; inform staff of results following the RFP process; decision by the SPTT to not further pursue partnership possibilities with St. Thomas Energy due to the economies of

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88 Transcript April 25, 2019, page 192  
89 Document CPS0007018

scale and similar size of that utility; respective interview dates of the four LDC proponents.

August 29, 2011: Second Meeting of the SPTT<sup>90</sup>

Mayor Cooper confirmed that the August 29, 2011 meeting of the SPTT was a fulsome discussion which included a discussion with respect to evaluation criteria and the weighing of same referencing the 70/30 ratio to be applied to non-financial/financial weighing; proposal for KPMG to put together the RFP and, as well be present on the interview meetings with proponent LDC's; contact with LDC proponents to be interviewed; letter direction by Mr. Muncaster outlining the process of the interview meetings to the proponents; and Ed Houghton and Pamela Hogg to prepare the questions to be asked during interview contact.

September 28, 2011: Third Meeting of the SPTT

No minutes of this meeting were provided. Mayor Cooper thought it possible that further review of the RFP and its criteria was discussed.

October 3, 2011: In Camera Council Meeting<sup>91</sup>

The in camera council minutes refer to a discussion with Mr. Houghton and council on the potential to establish a strategic partnership with another electrical distribution company. Questions from council were addressed. Mayor Cooper believed the presentation to be a fulsome presentation to the Town as to the processes to be followed to pursue the prospect of a strategic partnership. Mayor Cooper confirmed that at this point in time council was aware that the strategic partnership approach was the approach Collus was continuing to pursue. In addition, council that observed a presentation referencing key events from June 27, 2011 and forward to October 4, 2011 at which time there was to be a presentation of the RFP. Mayor Cooper confirmed that details of the RFP as set out in the presentation were provided as concerns prospective dates in reference to the RFP process, proposed evaluation as to non-financial and financial matters. Finally a direction by council to proceed with the process, as reviewed.

October 4, 2011: RFP Released

November 16, 2011: RFP's returned

Mayor Cooper confirmed that on this date the four bids from the proponents were provided to each of the nine members of the SPTT for evaluation purposes by the individual member.

November 17, 2011:<sup>92</sup>

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90 Documents CPS0002341 and CPS0007465 (STPP meeting minutes)

91 Transcript page 207 and document TOC0512163

92 Document CJI10500

Town council was provided with an update from Mr. Houghton by way of a detailed presentation of the options; full sale, partial sale, status quo, hybrid strategic partnership option; that the bids were being reviewed by the SPTT members who would individually evaluate same in accordance with the criteria as earlier determined and of which council had been advised. And finally, a recommendation coming to council on December 5, 2011 as to the successful bidder. A news release was issued.

November 22, 2011: A public information session was held

November 23, 2011: Fourth Meeting of SPTT<sup>93</sup>

A review of valuation/scoring charts for each of the nine SPTT members and referencing the four proposals made by the proponent LDC's.

November 28, 2011: Fifth Meeting of SPTT

December 1, 2011: Meeting with PowerStream to Confirm RFP Analysis

December 2, 2011: Recommendation by Collus to Council<sup>94</sup>

At a joint meeting of the Board of CUS and the SPTT accepting the findings of the SPTT and determining that a recommendation to council with the request that council direct the Collus Power board to undertake negotiations with PowerStream for the purpose of entering into a strategic partnership agreement.

December 5, 2011: Meeting with Council to Update Council on the Findings of the SPTT; Recommendation of Council to Continue Negotiations with PowerStream

Continuing negotiations were conducted as between the two parties, PowerStream and Collus Power.

January 16, 2012: In Camera Council Meeting

Minutes are recorded in document CJI0009079. The minutes support the contention that Mr. Ron Clark reviewed in detail the share partnership agreement and the unanimous shareholders agreement. The January 16, 2012 meeting was a fulsome meeting in which council became fully informed as to developments post December 5, 2011 up to January 16, 2012 referencing negotiations and the determination that the holding company should be the object of sale given favourable tax consequences.

January 20, 2012: CUS Board Resolution as to Transaction

January 23, 2012: Town of Collingwood Approves 50% Sale to PowerStream

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93 Document CPS0010212

94 Document CPS0007026

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Mayor Cooper confirmed that she was not involved personally in the negotiations or the instructions provided to the Aird & Berlis team in respect to the eventual conclusion of the share sale purchase agreement and the unanimous shareholders agreement. Specifically, she stated she was not involved in negotiating the agreements; but was kept apprised as to developments.

Mayor Cooper was in attendance at a meeting of the Board of Directors of CUS held January 20, 2012.<sup>95</sup> She acknowledged the Collingwood Utilities Services Board recommended the Town of Collingwood execute the share purchase agreement and the unanimous shareholder agreement for the sale of 50% of the shares to PowerStream.

Mayor Cooper was in attendance at the council meeting of January 23, 2012 wherein the By-Law authorizing certain officers to sign the sale purchase agreement and the unanimous shareholders agreement was passed.<sup>96</sup>

Mayor Cooper acknowledged that in early March 2012 she attended a meeting with Town Solicitor Leo Longo, CAO Kim Wingrove, Ed Houghton and Clerk Sara Almas. There was telephone connection and contact with Corrine Kennedy and Ron Clark. In this meeting the details as to the share purchase agreement and unanimous shareholder agreement were reviewed and any and all questions were adequately and properly answered. Mayor Cooper agreed with the suggestion that the meeting could be characterized as an “educational meeting”. During the meeting the shared service agreements were addressed and it was determined that concerns

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95 Document EHH100  
96 Document CJI0008080

pertaining to those agreements would be deferred to allow for the closing of the transaction. In addition it was agreed that an undertaking would be provided to address the issue of a right of first refusal as to proposed acquisitions, mergers and amalgamations.

Mayor Cooper acknowledged that she felt that the process which had been employed throughout had obtained a proper and appropriate result. She felt “comfortable” in addressing the matters and was content to sign the various agreements on March 6, 2012. I would submit that in doing so Mayor Cooper was fully informed and executed the documents on March 6, 2012 in the presence of the A&B legal team.

As concerns the issue pertaining to the By-Law as executed by Mayor Cooper and Clerk Almas and which By-Law authorized the transaction there appeared to be some confusion or contention as between Mr. Longo and Ron Clark as to the form in which the By-Law should take. The issue was resolved in that the By-Law authorized the Mayor and Clerk to execute the documents on the transaction without having to return to council for a review. I would submit that this is standard business procedure wherein a purchaser must exercise due diligence in a transaction and specifically, place himself or herself in a position wherein the By-Law authority can be assessed and evaluated. Clerk Almas testified the final wording in the By-Law was consistent with her experience. She was of the opinion that what Mr. Longo was requesting was not required – ie. the by-law requirement of a return to council for approval. On January 18, 2012 Mr. Longo communicated to the Collus legal team referencing a by-law “if it is felt that such provision is unnecessary you can remove it.”<sup>97</sup> She was also of the view and stated that she and Mayor

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97 Document ARB0000234

Cooper were comfortable in the sense they had no concern in executing the transaction documents in the presence of the lawyers at the time. The issue .<sup>98</sup>

I submit that at no time did Mayor Cooper take “direction” from Paul Bonwick. I have a reference to unsolicited contact with Mayor Cooper on the part of Paul Bonwick. Throughout her testimony Mayor Cooper described any communication received by Paul Bonwick as being a “suggestion”. I submit there is a significant difference between the terms “direction” and “suggestion”.

In my submission Mayor Cooper is possessed of a fine sense of integrity, truthfulness and an acute sense of her fiduciary duty. As concerns the exercise of her fiduciary duty in the potential issues that arise as a result of the dual roles which she assumed as Mayor and Director on the Board of Collus Power I would refer to the evidence of David McFadden.

On May 15, 2019 Mr. McFadden testified on the Inquiry Hearing. He was asked the following questions by Commission Counsel:

MS. KATE MCGRANN: Do you recall ever having any discussions with Mayor Cooper about any potential conflict of interest she may be in due to her dual roles as mayor and director on the Board of Collus Power?

MR. DAVID MCFADDEN: Yes. She used to raise that from time to time. She felt that -- handicapped but what she felt she could say to Council. I remember two (2) or three (3) times over the years she was saying how she felt a bit handicapped, and she felt that she had a fiduciary relationship in the company, you know, to keep certain things confidence, whatever, but -- but then coming to Council, she felt -- she had a bit of a conflict, and I -- I know it bothered her. It certainly seemed to bother her more than I think some other mayors I've met.

MS. KATE MCGRANN: And what would you say to her when she raised that?

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98 Transcript of Sara Almas, April 15, 2019, pages 79 to 96

MR. DAVID MCFADDEN: Well, I – I suggested to her that as a representative of the shareholder, she should -- she shouldn't be worried about it and if she has to report to the shareholder what's going on, I mean, she should be reporting to shareholder. I – I didn't think she had a serious conflict in general.

There could be situations, personnel situations, for example, where maybe she shouldn't say anything, but in general when you're reporting on the business of the Company, you know, we -- we provided annually a very detailed annual report, so it wasn't this is a top secret operation, so there'd be – there would be no problem with -- with the mayor reporting on company activities, but there would be areas undoubtedly where confidentiality was very important.

It is alleged that Mayor Cooper failed to address Mr. Bonwick's inappropriate access to confidential information. This failure is alleged to relate to the events of March 1, 2012 and Mr. Bonwick's possession of the share sale transaction documents. It is alleged that this fact violated the Code of Ethics as concerns the use of information as set out in Section 2 of the Code. Prior reference has been made to this incident. The documents that Mr. Bonwick became possessed of were forwarded to him by Ed Houghton, not Mayor Cooper. Ed Houghton has acknowledged his conduct in providing these documents to Mr. Bonwick. I submit that, in any event, in the circumstances of the transaction the documents are not confidential as between the Town of Collingwood, Collus and PowerStream.

In her evidence of April 24, 2019 Mayor Cooper stated she did not know why she was receiving any email message from Mr. Bonwick about documents she needed to sign for the PowerStream share sale. She stated that Paul Bonwick had no involvement in scheduling a meeting for her to sign the transaction documents. She could not understand why Mr. Houghton would not have emailed her in the first instance. She described this episode as frustrating to her in receiving the documents in this way. She expected that Ed Houghton or someone else from Collus would have been involved. She thought that Mr. Houghton should bring the matter to her attention and consideration as Mr. Houghton was involved in the transaction throughout and given the timing

of the closing of the transaction she expected he would have contacted her. She was asked by Commission Counsel the following question:

Question: Did you know at this point in time whether Mr. Bonwick had been involved in the transaction on the PowerStream side at all?

Answer: My understanding was that he was involved in public relations and communication.

I submit that in these circumstances, there was no violation of the Code of Ethics Section 2 by Mayor Cooper.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 28, 2019

George A. Marron, Q.C.