



“When You Talk - We Listen!”



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

November 27th, 2019

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1 --- Upon commencing at 10:06 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: So
4 before Ms. Bellamy begins her remarks, I just want to
5 bring you all up to date. As all of you know, we have
6 completed two (2) parts of the Inquiry. The first
7 part dealt with the sale of the municipal asset, and
8 the second dealt with the application of funds from
9 the sale.

10 This is the third phase of the Inquiry,
11 which is directed towards the future, and it's
12 directed towards issues of government -- governance
13 that we might usefully consider, and -- and the
14 purpose of it is to inform the Inquiry about matters
15 in respect of which we make recommendations for Town
16 Council to consider in -- in the future.

17 The recommendations will form part of
18 the report, which really, the writing of the report's
19 the -- the final phase of this Inquiry, and it will
20 commence immediately after we've heard the last of the
21 policy witnesses on Monday. Then we will start
22 writing our final report.

23 I'd like to thank Ms. Bellamy for
24 coming here this morning, and go ahead. Let's get
25 started. So -- so counsel just --

1 MS. DENISE BELLAMY: Thank you. Thank
2 you for inviting me to beautiful Collingwood. It was
3 a little nicer yesterday than it is today, but a
4 better day to be inside than yesterday was.

5 THE HONOURABLE FRANK MARROCCO: M-hm.

6

7 DISCUSSION:

8 MS. KATE MCGRANN: Just by way of
9 brief introduction for anyone who hasn't had the
10 opportunity to read the biography that is posted on
11 our website, or is otherwise unfamiliar with your
12 work, Ms. Bellamy is a retired Justice of the Ontario
13 Superior Court of Justice.

14 Of particular relevance to what we're
15 dealing with here today, she was the Commissioner of
16 two (2) judicial inquiries involving the City of
17 Toronto. Her report from those inquiries included two
18 hundred and forty-four (244) recommendations relating
19 to good government, including recommendations relevant
20 to governance, ethics, lobbying, and procurement.
21 Those recommendations continue to be instructive and
22 relevant today, and there is a more detailed biography
23 available on our website.

24 So thank you again for coming to speak
25 to us today.

1 MS. DENISE BELLAMY: Thank you. Well,
2 I thought what I would do here today is just give you
3 very, very brief comments about public inquiries
4 generally. A little bit about my Inquiry that went
5 from 2002 to 2005 and then deal with the policy phase
6 of my public Inquiry, and then answer any questions.

7 So very briefly, comments about public
8 inquiries, they seem to be very much a part of our --
9 our Canadian culture. We've had over five hundred
10 (500) of them since confederation.

11 When I was writing my report in 2005,
12 there were ten (10) going on in Canada at exactly the
13 same time. Now, I don't have staff anymore, so I
14 haven't done any research around any -- are going in
15 Canada at the moment, but I know there are three (3)
16 in Ontario right now. This one, there's one (1) in
17 Toronto, and there is one (1) in Hamilton.

18 They are often long, and expensive, and
19 almost always longer and more expensive than -- than
20 the government thinks they're going to be when -- when
21 the Inquiry is set up. They can also be very painful
22 experiences for a lot of people, and for those
23 involved, their lives and decisions they made, often
24 many, many years before, are put under a very public
25 microscope.

1 And finally, by law, this is not a -- a
2 public Inquiry is not a criminal or a civil trial, as
3 I'm sure you've heard Commissioner Marrocco mention it
4 many times before. And I certainly refer to it quite
5 a few times in my own Inquiries.

6 But because we have no power to send
7 anyone to jail, no power to make somebody pay back any
8 money, but the -- the purpose is to investigate what
9 happened, and make a -- do a report, and come out with
10 recommendations.

11 So this can be disappointing for the
12 public. I finished my report fourteen (14) years ago,
13 and I still have people say to me, How come no one
14 went to jail? Even though I -- at almost every speech
15 I ever gave, I referred to the fact that I -- I didn't
16 have that power. But the -- the public expects it,
17 and -- and I think some of them feel, well, why are we
18 spending all this money doing a public Inquiry if
19 nobody goes to jail, or nobody is held to account?
20 People are, in fact, held to account, but not in the
21 way where we can make them pay money or -- or have
22 them be charged criminally.

23 So in terms of the Inquiries that I
24 did, in 2002, I was a judge of the Superior Court of
25 Justice in Toronto, and I was appointed to do a public

1 Inquiry for the City of Toronto. They had had a
2 computer leasing deal that had gone a bit awkward. It
3 ballooned into far -- further -- it -- it just
4 ballooned far beyond anything Toronto City Council had
5 expected it would.

6 And so I started doing that Inquiry,
7 and then -- I -- I can't remember, four (4) or five
8 (5) months after that, they asked me to do another one
9 while I was already doing the first one, and that one
10 was called -- the first one was called the Toronto
11 Computer Leasing Inquiry, the second one was the
12 Toronto External Contracts Inquiry. And that was to
13 look at some contractual transactions that had gone
14 on.

15 So as far as I know, that's the first
16 time in Canadian history that someone has had to do
17 two (2) public inquiries going on at the same time,
18 and that had something to do with why it took a --
19 took a long time.

20 So the City basically asked me to
21 figure out what happened, what went wrong, and make
22 recommendations to try to prevent something like this
23 from happening again in the future. And ultimately, I
24 wrote one (1) report, and I separated it into four (4)
25 volumes. So instead of writing one (1) report for the

1 Toronto Computer Leasing Inquiry, and one (1) for the
2 Toronto External Contracts Inquiry, I just wrote one
3 (1) report.

4 And I -- I base -- I broke down into
5 four (4) volumes. One (1) was called Facts and
6 Findings, which was about what had happened, and the
7 other one was called Good Government, and that's the
8 part that I think is probably the most relevant to
9 this Inquiry. The third one was called Inquiry
10 Process, and it was a primer on how to do a public
11 inquiry, because nothing had really been written, at
12 least not a whole book on -- on it before, and I had
13 had to do so much research at the front end, so I was
14 trying to help all the people who came after me. And
15 I'm happy to say, though, that has been used by every
16 public Inquiry in Canada since. And then the fourth
17 was the Executive Summary.

18 Sorry, I have a cold, so I may have to
19 have a lot more water than the average person sitting
20 here. So obviously, I had to investigate what went
21 wrong. I had to find out why things ended up going so
22 badly, and how this happened when the City was
23 spending the public's money. The way I like to think
24 of it was that the -- the -- this was a story about
25 how the City went shopping with the public's money.

1 That's sort of how I thought about it.

2 But not only did I have to find out
3 what went wrong, but a significant part of my mandate
4 was to make recommendations that would be useful to
5 the City afterwards. And the Supreme Court of Canada
6 was a bit of a help, here. There have only been a
7 very few cases where the Supreme Court has discussed
8 public inquiries, and one (1) of them was incidentally
9 a case that dealt with a public Inquiry in Sarnia.

10 They said:

11 "Good government depends in part on
12 the availability of good
13 information."

14 I decided I wanted to get good
15 information that would help me to make good
16 recommendations for the City of Toronto.

17 Because I was, essentially, shining a
18 spotlight on the inner workings of the City of Toronto
19 and it was clearly vulnerable in places. So I decided
20 to try to provide a roadmap that would give direction
21 on how to prevent something like this from ever
22 happening again.

23 So I concluded that I would write a
24 separate stand-alone volume on good government that
25 would survive long after the public had forgotten the

1 facts that led to the Inquiry in the first place, so I
2 wrote this little -- this little skinny volume here.
3 Ironic, I guess, if this is on the transcript. This
4 is one -- this is the thickest of the volumes that I
5 have.

6 And just so you know, these are not all
7 my little stickies here. I borrowed this book from
8 Anna Kinastowski, who is from the City of Toronto, and
9 she lent it to me in case I need it today.

10 So I did -- this -- this policy phase
11 on good government. We -- I did it for both inquiries
12 at the same time. So we did -- finished the first
13 Inquiry, had the good government phase, the policy
14 phase that you're doing here now, and then after that
15 I started the second Inquiry, and it took three (3)
16 weeks for us to do the policy phase.

17 We heard from forty-one (41) witnesses,
18 and these people were people who had expertise in a
19 broad range of issues relating to municipal
20 government, such as the relationship between lobbyists
21 and public officials, elected or otherwise; the power
22 and influence of the mayor; the role of councillors
23 and City Council; the role of the Chief Administrative
24 Officer and senior staff in municipal government;
25 effective procurement practices; ethics, codes of

1 conduct, and conflict of interest policies.

2 The information I got from three (3)
3 weeks of listening to all these experts in different
4 areas was absolutely first rate and was significant in
5 helping me formulate my views and also prepare my
6 recommendations.

7 And ultimately, as you've heard, I made
8 two hundred and forty-four (244) recommendations,
9 addressing all of those issues. Two -- two hundred
10 and forty-one (241) of those recommendations were
11 directed to the City and the others were, I think, to
12 the province. Fourteen (14) years, I can't remember
13 if I -- if I directed them to somebody else as well.
14 And I boiled them down into four (4) general areas.

15 First was ethics, then municipal
16 governments, then lobbying, and then finally
17 procurement, and my overriding principle while I was
18 writing the report was this: How can these
19 recommendations improve city government? How can
20 these recommendations prevent these kinds of mistakes
21 or misconduct from happening again so that the public
22 would trust -- would have trust in the public
23 officials who spend their money?

24 I'm happy to say that the good
25 government volume continues to have "legs." It

1 continues to be used by the City of Toronto. It has
2 been used in municipalities across Canada. It's used
3 by lawyers who practice municipal law and its used by
4 professors who teach a number of different issues, but
5 some of which is also public inquiries but other
6 things as well.

7 And in the final analysis, the most
8 valuable part of the report turned out to be this good
9 government volume, and this is the one that really
10 continues to be used long after, as I said, the facts
11 and findings part have -- has been forgotten to a
12 certain extent.

13 Some people remember some of the
14 individuals in the inquiry bit in terms of the actual
15 facts I think, you know, people don't remember those
16 as much as this good government phase that is being
17 used by so many people now.

18 I aimed the recommendations at the City
19 of Toronto, because obviously they were the ones who
20 called the Inquiry, they were the ones who were
21 footing the bill, but I tried to write it so that at
22 least parts of it would be useful for other cities or
23 towns, regardless of the size of the city or town. I
24 never intended or expected my recommendations to be a
25 one-size-fits-all model, but it is definitely possible

1 to take my report and use the general principles in
2 the report to develop a culture of integrity and
3 transparency.

4 So that's all I wanted to say up front,
5 and if Ms. McGrann has any questions, I'm -- or anyone
6 else, I'm happy to respond.

7 MS. KATE MCGRANN: Thank you very much
8 for that. Following on your concluding remark there,
9 the first question that I have for you is, based on
10 what -- what you thought about and recommended, how do
11 you create a culture of integrity within a municipal
12 government?

13 MS. DENISE BELLAMY: I had to think
14 about that quite a lot, and I think the first seventy
15 (70) or so of my two hundred and forty-four (244)
16 recommendations dealt exactly with -- with integrity
17 and with ethical behaviour.

18 Every large institution has a culture,
19 whether it's government or -- or otherwise. Culture
20 may be formal as in a written code of conduct, or it
21 may be informal as a just general practice, and
22 informal is learned from watching what others do.

23 In my view, a government should make
24 sure that there is a written code of conduct and that
25 it remains current, and that -- that's a task that

1 takes work, attention, and encouragement.

2 And it's fine to have a code of conduct
3 on the wall, and in fact a lot of places you see that
4 on a wall, and I -- I'm very happy when I see that I'm
5 in an organization that has their code of conduct --
6 conduct placed prominently on a wall, but at a certain
7 point, the principles and the concepts laid down in
8 the code of conduct on the wall need to be taken down
9 and make sure that everyone who is supposed to be
10 guided by it actually does understand it.

11 And it can be tempting to start cutting
12 corners when you're busy, cutting ethical corners.
13 People think they won't get caught; maybe they won't.
14 But when you work in the public sector operating with
15 the trust of the public, when you work in government,
16 in an environment that is governed by freedom of
17 information legislation, and when you work for bosses,
18 internal auditors, and possibly even judges, can
19 examine your behaviour, not only can you get caught,
20 you can lose your job, create huge embarrassment to
21 yourself, family, colleagues, employer, the community.

22 So ethics matters, and -- and I -- I
23 did have someone in my Inquiry who -- who said that
24 they didn't do what they were supposed to have done
25 because they didn't think they would get caught, and

1 they certainly didn't think that there would be a
2 public inquiry looking into exactly what they had
3 done.

4 MS. KATE MCGRANN: Focusing on the
5 notion of -- of ethics for a second, is there a
6 difference between ethics as they apply within the
7 government as opposed to ethics in the -- in the
8 private sector?

9 MS. DENISE BELLAMY: I think there is.
10 I -- I would say yes, and I'm -- I think probably
11 reasonable people could disagree, but I would say yes,
12 and here's why.

13 Government officials have a duty of
14 trust to the public. They are trustees for the
15 public, and every minute of the job, every decision
16 that they make, they are required to put the public
17 interest ahead of their own interest, and that's what
18 I think makes it so different from maybe in the
19 private sector where, you know, could -- there --
20 there is still -- there's still should be a -- a
21 responsibility to act ethically, but the private
22 sector does not have a duty of trust to the public the
23 way that the -- that the public sector does.

24 So not everyone is cut out to work in
25 the public sector, and if you can't do that, if you

1 can't put the public interest before your own
2 interest, then you shouldn't work in the public sector
3 because that's not the place for you. There are lots
4 of other good places that you could work, but that's
5 not -- that's not it.

6 So, for me, it's simple. I think that
7 -- that there is a higher duty in government because
8 of the public trust component.

9 THE HONOURABLE FRANK MARROCCO: Did --
10 did you give any thought to how you -- how you protect
11 people who see something and come forward -- want to
12 come forward with it?

13 The -- the reason I ask that question,
14 is a person who does that, is -- you know, exposing
15 themselves internally potentially, and I'm -- and I'm
16 not sure that heroism should be expected, if -- if --
17 if you know what I -- I mean.

18 MS. DENIS BELLAMY: M-hm.

19 THE HONOURABLE FRANK MARROCCO: That
20 the person should -- person who has a mortgage to pay
21 or rent to pay, a family to educate, should be
22 required to put themselves in kind of jeopardy because
23 they're not playing ball.

24 I -- I don't mean, I should say for the
25 benefit of anybody watching, I don't mean by my

1 questions to signal that I've formed a conclusion
2 about anything, but I think the issue flows naturally
3 out of a situation where a public employee sees
4 something that they don't agree with.

5 Did you give any thought -- did that
6 come up at all in -- in what you were looking at?

7 MS. DENISE BELLAMY: Well, I -- I see
8 two (2) components to your question. One may have to
9 do with whistleblowing, and the other might be
10 speaking truth to power.

11 And I didn't have anything specifically
12 with whistleblowing, although I'm reaching back here,
13 there was one witness who I ended up having more
14 evidence from one witness who said she was being
15 penalized, I think, because of something that she had
16 said during the Inquiry. And so I conducted my own
17 investigation into that during the hearing of the
18 Inquiry.

19 But if -- if the question is really
20 directed at how does one speak truth to power, and
21 that is something I think that happens all the time in
22 government, it is part of the responsibility in
23 government to speak truth to power.

24 And -- and in terms of my inquiry, that
25 came up pretty much all the time. It came up

1 regularly in questions that -- cross -- examination
2 in-chief and cross-examination of government
3 witnesses, the issue of speaking truth to power would
4 come up.

5 And it is a difficult concept and it is
6 hard. I worked in the Provincial Government for
7 seventeen (17) years before I became a judge, and I
8 worked for -- in governments, there was the
9 Conservative Government, the Liberals, the NDP, and so
10 as a public servant you have a responsibility to be
11 neutral, and the more senior you are, I think the more
12 you have a responsibility to speak truth to power.

13 And it is difficult, because you're
14 right, that somebody has a mortgage may not -- may be
15 concerned about saying something that might end up
16 getting them fired.

17 That may be a whistle-blowing thing and
18 it may be that there's, I don't know in -- whether
19 there's any legislation protecting Municipal employees
20 from whistleblowing, I don't know, I never had to
21 consider that and I -- and I've just been too out of
22 the area for too long to know whether that exists.

23 But in terms of speaking truth to
24 power, I think the closer -- the more senior you are,
25 the more of a responsibility that you have to speak to

1 truth to power.

2 Now, you can -- you know, there are
3 ways of saying things that are unpalatable to people,
4 and I certainly had to do it with certain cabinet
5 ministers and tell them that, you know, they had run
6 on a platform and they came in and they wanted to do
7 something and I'd have to say I'm sorry, you can't --
8 you can do it if you want, but it's not legal. So,
9 I'm telling you it's not legal. What you do with that
10 information is now up to you.

11 And -- and I think in Municipal
12 Government, I'm not so naive as to think that -- that
13 someone who is working in a junior administrative role
14 should have to take on the mayor, for example, just to
15 give that as an example, or even the deputy mayor or
16 the -- or the town manager.

17 But in government, there is a
18 hierarchy, everybody has someone that they can talk to
19 and everybody has a boss until you get to the top one.

20 And so these people, each one (1) of
21 them can go to the next level higher up from them, and
22 if they see something that -- that should be reported,
23 then they have somebody that they can tell.

24 And once they've told that person,
25 they've done their job. You know, once a person who

1 sees something says I feel like I need to tell
2 somebody this, then they tell their boss and a --
3 their job is now done.

4 If their boss chooses not to go any
5 further with that because, let's say the boss says,
6 you know, that really isn't a big issue, you may think
7 it is, but it really isn't, then that's a decision
8 that that person makes.

9 But I think that -- that in government,
10 there is a responsibility to tell truth to power. I
11 think the councillors and the mayor have a right to
12 expect that public servants will give them the best
13 and most honest advice that they possibly can.

14 They have a responsibility to be
15 neutral and not political, if they're staff, but they
16 have -- they do have a responsibility to provide the
17 best, honest, truthful information that they can to
18 council, to allow council or a councillor to come to
19 the decision that they need to come to.

20 I don't know if -- I don't know the
21 fact situation that you might have, so I'm not sure if
22 I'm answering.

23 THE HONOURABLE FRANK MARROCCO: No,
24 no, it wasn't -- you are answering the question. It
25 wasn't directed so much specifically towards our

1 facts, as it just seems to me that's a general problem
2 you have if you want to come forward, and I was just
3 curious what you thought of it.

4 MS. DENISE BELLAMY: Well, I think --
5 I actually think it's a fundamental duty of public
6 servants to do that. I think when you -- when you
7 take on that job, you have a fundamental duty, for
8 senior public servants in particular, to speak truth
9 to power.

10 And you know, if people -- it can be --
11 it can be difficult.

12 You know what? I refer to this,
13 actually, I think it's page 87 of my report.

14 MS. KATE MCGRANN: And we can pull
15 that up on the screen as well, it's at CJI114537.

16 MS. DENISE BELLAMY: It's
17 recommendation 87, not --

18 So recommendation 87, because this was
19 where I had to deal with speaking truth to power.

20 So I wrote:

21 "The substance of staff reports
22 should always be guided by the maxim
23 that one must tell truth to power.
24 Staff have a duty to give the best
25 and most accurate impartial advice

1 possible without regard for policies
2 or for what they think councillor
3 does or does not want to hear.
4 Councillors should understand this
5 important aspect of staff's role and
6 not shoot the messenger when staff
7 advice is politically unwelcome."

8 So that says in writing what I -- what
9 I'm sort of ad-libbing here in front of you now.

10 But I think they have a duty to tell
11 councillors, or their own supervisors, what they need
12 to hear, not necessarily what they want to hear.

13 And they have -- that is a
14 responsibility that they have as public servants.

15 MR. WILLIAM MCDOWELL: If I could just
16 --

17 MS. DENISE BELLAMY: I agree that it's
18 not always easy.

19 MR. WILLIAM MCDOWELL: If I could just
20 jump in with a question.

21 THE HONOURABLE FRANK MARROCCO: Yes,
22 just -- just before you do that, that's the general
23 format here, so you shouldn't hesitate to -- to ask a
24 question if it occurs to you. There's no particular
25 order to this.

1 MR. WILLIAM MCDOWELL: That's what I'd
2 understood from Ms. McGrann.

3 So, just on this point about staff
4 reports, I take it it's your view that when staff are
5 forming their advice, they should do that
6 independently and in isolation from the politicians
7 that -- you know, the advice is the advice to the
8 politicians, it's not the politicians saying here's
9 the kind of advice we'd like to receive.

10 Does that follow, or...?

11 MS. DENISE BELLAMY: I wasn't thinking
12 that -- well, I mean, I'm not sure where you're going.

13 I was thinking that -- that public
14 servants have a duty to speak truth to power. So in
15 my view, that's just an absolute responsibility that
16 they have.

17 I'm acknowledging that the more junior
18 you are, the harder it is to do that. But what I'm
19 saying is that you still have a duty to tell your
20 supervisor, then -- who then has the duty to go
21 further with it, depending on what the information is.

22 I see a separate role for politicians,
23 for elected officials, and for staff. And I think
24 that -- that the political people are the ones who
25 decide what the policy should be, and that the staff

1 are the ones who work out how to implement that policy
2 if the policy is one that can be implemented.

3 I think they have a responsibility to
4 tell them, the staff have a responsibility to tell the
5 elected officials if -- if they say, you know, we
6 actually can't do that, the Municipal Act doesn't
7 allow it or something like that. They have that
8 responsibility to tell them.

9 In the final analysis, the decision is
10 a political one and it's the politicians who have to
11 decide if they want to go forward with something when
12 they've been given information that it's not -- that
13 it's illegal, say.

14 MR. WILLIAM MCDOWELL: Right. Can I
15 ask another question? I actually do have your reports
16 on my bookshelf from prior experience, and the -- most
17 recently, they've been borrowed by the people who were
18 looking at the Hamilton Inquiry. So --

19 MS. DENISE BELLAMY: Okay.

20 MR. WILLIAM MCDOWELL: -- there is a
21 currency to your work that carries on. One (1) of the
22 features of your inquiry was that there were certain
23 people in Toronto who, whether they were formally
24 lobbyists or not, had tremendous access to both the
25 political level and the staff, one (1) prominent

1 lawyer that I can -- can think of.

2 And I think when you were doing your
3 inquiry it was a bit of a surprise to all of us that
4 this was going on because we had no idea.

5 MS. DENISE BELLAMY: Uh-huh.

6 MR. WILLIAM MCDOWELL: What sorts of
7 recommendations did you bring to bear in this
8 phenomenon of -- of powerful individuals who have --
9 who have all of these contacts and are able to carry
10 on sub rows of what they're doing where public money's
11 being spent as a result?

12 MS. DENISE BELLAMY: I refer to it
13 specifically in the facts and findings part of the
14 report. In fact, it was re -- it was quoted in the
15 Toronto Star just the other day in relation to Jim
16 Karygiannis.

17 And it was -- that individual that
18 you're talking about was referred to in that article.
19 In terms of the recommendations, I chose to -- to use
20 -- to put all of those recommendations of some -- into
21 the area of lobbying.

22 And I thought that lobbying was,
23 instead of dealing with just that one (1) individual,
24 which I did in the course of the facts and findings
25 part of the inquiry, I -- I recommended that there be

1 a lobbyist register -- registry.

2 They didn't have a la -- a lobbyist
3 registrar at that time, and I recommended that there
4 be one (1). And then I made a whole mess of
5 recommendations, a hu -- I know I can't remember, a
6 hundred or so, I think, on lobbying itself to get
7 around, not just that one (1) issue, but to, you know,
8 branch it out into other things because in Toronto
9 then, a lobbyist used to sit right -- right around --
10 I assume this is city council's -- council chambers.

11 Well, they would come into the council
12 chambers and -- and chat to the -- the councillors.
13 And sometimes they would give them the money that
14 others had -- had asked them to give to the particular
15 councillor when an election was coming up or whatever.

16 So, what I was looking at was trying to
17 formalize something or make it a bit more formal
18 system so that -- that that sort of lobbying by
19 someone who happens to know every one of the
20 councillors didn't happen, that it was more of a level
21 playing field for everybody who might -- I -- because
22 I didn't have a problem with the concept of lobbying.

23 I mean, I -- I -- in fact, I think I --
24 I said something about lobbying, that -- that it --
25 it's fine as long as there are controls on it.

1 But one (1) of the things that was
2 happening is that somebody would lobby -- you know,
3 lobby outside of council, outside of the office, and
4 you'd have no way of knowing. No one would know what
5 was going on then.

6 And so, that was the sort of thing I
7 was trying to regulate.

8 MR. WILLIAM MCDOWELL: Right. But --
9 but --

10 MS. DENISE BELLAMY: Does that address
11 what you're --

12 MR. WILLIAM MCDOWELL: Absolutely.
13 And -- and part of the thrust of what you said in your
14 report is that there is regulatory force just to
15 having the fact of -- of the law being disclosed.

16 MS. DENISE BELLAMY: M-hm.

17 MR. WILLIAM MCDOWELL: So, in other
18 words, lobbying's not going to stop if it has to be
19 registered --

20 MS. DENISE BELLAMY: No.

21 MR. WILLIAM MCDOWELL: -- if it's on a
22 website and people can see it. But --

23 MS. DENISE BELLAMY: No.

24 MR. WILLIAM MCDOWELL: -- at least we
25 know what the influences are that are being brought to

1 bear.

2 MS. DENISE BELLAMY: No. I thought
3 there was some -- there -- there is actually some very
4 good stuff that can come out of lobbying because you
5 can find out information that you might otherwise not
6 know anything about.

7 But it -- it -- if it's controlled,
8 then I think it works better than if it's uncontrolled
9 because in an uncontrolled setting, you know, we -- we
10 ha -- you do have a situation where one (1) or two (2)
11 kingpins can come in.

12 And everybody knows that this is the
13 person who can help you get re-elected because they
14 have access to so much more money. I can talk about
15 that later if you'd like or I can talk about lobbying
16 now, whatever.

17 THE HONOURABLE FRANK MARROCCO: Just
18 before we -- we get to the lobbying, you touched on it
19 a few minutes ago, this issue of public confidence in
20 -- in the governance process.

21 Sometimes people can have an attitude
22 that the end result is important and a good thing and
23 that the process gets in the way of getting there is
24 and, therefore, more burdensome than it is beneficial.

25 And I wondered if -- if you had

1 encountered that kind of -- of thinking in your -- not
2 necessarily in your report, but just in your
3 experience preparing --

4 MS. DENISE BELLAMY: No. Even -- even
5 during the Inquiry, one (1) of the things that made it
6 so difficult for the city of Toronto was that there
7 had -- that there -- they dealt with amalgamation
8 which was a huge deal.

9 And -- and there was all of the stuff
10 going on with Y2K. We forget about it all now but, at
11 the time, the -- the earth was going to fall apart if
12 the number of zeros weren't in the right spot or
13 something.

14 And -- and when -- and when there was
15 amalgamation, there were different mayors for each of
16 the munic -- the -- the city -- the municipalities
17 before. And then suddenly, there was one (1) mayor
18 for all.

19 And different regions of Toronto had
20 different views about how to conduct business, and --
21 and they were very open about that. I think Mayor
22 Lastman was -- was very open about saying we are open
23 for business, the city is open for business and North
24 York was the city with heart.

25 And they were more focussed on getting

1 things done and getting things done quickly and trying
2 not to have too much red tape, which is not uncommon,
3 you know, for -- different people come in.

4 And -- and I think Rob Ford, when he
5 became the mayor in Toronto, ha -- also had the view,
6 well, I just want to get it done, I don't want to have
7 to worry about all the red ta -- the process.

8 So, I think different politicians come
9 in and different -- some of them want to go -- are
10 prepared to go through whatever the steps are. Some
11 want to get right to the end.

12 And sometimes getting right to the end
13 is not necessarily a bad thing if it can be done well
14 and with consensus and people all agree that it should
15 it be done.

16 I'm not a big fan of bullying, but
17 sometimes -- sometimes there's a reason to go through
18 a process, and procurement is one (1) of those for
19 sure reasons where you have -- you should go through -
20 - in my view anyway.

21 I ended up spending a lot of time on
22 procurement and -- and gave a lot of recommendations
23 on procurement, so.

24 THE HONOURABLE FRANK MARROCCO: But in
25 -- in -- procurement's a good a point of reference or

1 -- or touchstone as any other. You said there's a
2 good reason to go through it.

3 I -- I'd like to get a sense of the
4 reason why you res -- that it's important to respect a
5 process where you're dealing with a procurement issue
6 from -- from your perspective.

7 MS. DENISE BELLAMY: Well, getting
8 back to my phrase of shopping with the public's money.
9 Procurement is the -- the -- the biggest shopping with
10 the people's money that gets done in -- in government.

11 And I think that the public has a right
12 to expect, because it's their money that's being spent
13 -- they have a right to expect that -- that the
14 elected officials, the staff, everybody is going to
15 spend their money, the public's money, in an honest,
16 reasonable, transparent way.

17 And in procurement, I feel that the
18 politicians -- oops, sorry -- should -- have --
19 definitely have a role to play, but it's at the front
20 end and the back end and not much in the middle or
21 during.

22 So, you know, they -- do they have --
23 should they participate in the policy, the -- the
24 elected officials? Absolutely. They should be
25 developing the policy.

1 Am I going in the wrong -- off on a
2 wrong tangent here? No. Okay. They should develop
3 the policy for sure, and that's a political decision.
4 They should maybe decide the timing of when something
5 will go on.

6 But once they've made the decision to
7 have a request for a proposal or request for
8 quotations or whatever the terminology that keeps
9 changing -- whatever they have, once they've done
10 that, then it goes to the public servants.

11 And then they are the ones who should
12 have exclusive jurisdiction over the tendering process
13 because, if the politicians come in at that point,
14 let's say one (1) councillor comes in and starts
15 talking to one (1) public servant about stuff, well,
16 that councillor is only speaking for himself or
17 herself. They're not speaking for all of Council.

18 And -- and the -- in -- the -- the --
19 the tendering process has to be protected from a
20 conflict of interest that a councillor might have or
21 that Council has as a rule or whatever. And it's the
22 public servants, I think, who can put all of that
23 together better and that they're the ones who should -
24 - who should deal with the details of the tendering
25 process.

1 And once the -- once something has gone
2 out for tender, then the elected official should have
3 no involvement whatsoever until the -- they receive a
4 recommendation from the -- the staff as to which one
5 or ones that the staff is recommending. And at that
6 point, then they discuss it in committee or in Council
7 as a whole, and then they make a decision. But I
8 don't think they should have any involvement in the
9 actual -- once it has actually gone to tender, because
10 that just gets them into trouble.

11 THE HONOURABLE FRANK MARROCCO: All
12 right.

13 MS. KATE MCGRANN: A theme, I think,
14 that -- pardon me, I see in your recommendations, at
15 least, is the importance of the public trust being
16 foremost in the minds of -- of councillors and staff
17 and also that being apparent to members of the public,
18 so it must be done, and it must also be seen to be
19 done.

20 MS. DENISE BELLAMY: M-hm, m-hm.

21 MS. KATE MCGRANN: Can you help us
22 understand why that's important?

23 MS. DENISE BELLAMY: Well, we have a
24 legal maxim that is, not only must justice be done, it
25 must be seen to be done. And I think -- again, I feel

1 that when we're spending the public's money, the
2 public has a right to expect that the -- that what --
3 those people who have been given that trust are doing
4 everything that they are required to do, that they're
5 all playing together so that, you know, everybody
6 knows what's going on who need -- everyone who needs
7 to know knows what's going on, and that at the end of
8 the day -- let's say, on a procurement. This happens
9 quite often in -- or, not often, but it can happen in
10 procurement that somebody contests afterwards the
11 results of the deci -- the tendering decision.

12 Well, if it's not transparent, then
13 there's no way to tell whether or not the winners
14 should really have been the winners. That's not fair
15 to the winners, and it's not fair to the losers, and
16 it's not fair to the public, because the public, I
17 think, has a right to expect that the staff will be
18 working together and will have appropriate processes
19 in place so that they can go through the procurement,
20 go through the tendering process, and -- and in the
21 final analysis, you know, make the appropriate
22 recommendation.

23 But if there is no transparency, if
24 there's no accountability, then -- then they're
25 misspending the public's money.

1 THE HONOURABLE FRANK MARROCCO: How
2 does -- how do you -- how do you -- how do you ensure
3 transparency? Like, how do you -- how do you address
4 it?

5 MS. DENISE BELLAMY: I think that
6 transparency is a -- is, let's say, a form of ethical
7 behaviour. That's how I would look at it. And in
8 ethical -- in ethics, the -- you -- I -- you have to
9 start at the top. The mayor is the public face of
10 city government, or a town government, and it's the
11 mayor and Council who have to understand that you have
12 to be transparent and that you have to put the public
13 interest first.

14 They're all kind of interrelated, I
15 think, but it starts at the top. It has to be the
16 mayor, and it has to be councillors, and -- and then
17 from there -- because the mayor is the most visible
18 public servant. The mayor is the one (1) who is
19 generally on the news, the public face of municipal
20 government, and that's the person people go to, and
21 that's the people -- who is elected by all of the
22 individuals, as opposed to just somebody in one (1)
23 riding.

24 And it's the mayor who sets the tone.
25 The mayor sets the tone on transparency, on ethics, on

1 integrity, all of that. Now, maybe that's naive on my
2 part, but I think that -- that in all of these things,
3 the tone has to come from the top, and if it doesn't,
4 then the people at -- in the bottom or lower down
5 think, Oh, I don't have to do this. Why do I have to
6 do this? He or she isn't even doing it, so why -- and
7 I did see that in my inquiry. The people said, Sure,
8 let's go to this golf game or that hockey thing
9 because I saw -- I saw a -- a councillor there. So if
10 the councillor is there, then why can't I go?

11 But I think that it -- it applies to
12 anyone in leadership position who is -- who is in the
13 situation where they're spending public money has a
14 responsibility to act with integrity and to be
15 transparent, because it's not -- it's not their money.
16 It's our money. It's our tax-paying money, our
17 ratepayers, whatever you want to call it -- all of us
18 are the ones who -- we have no choice, even, about
19 giving Council our money or the City our money, the
20 Town. We have to.

21 So -- but we do it with the expectation
22 that it's going to be used properly, and one (1) of
23 the ways that we, the taxpayers, can know that it's
24 being used properly is if the work that's being done
25 is transparent, if we know that the people who are --

1 are in charge are ethical people and who are committed
2 to integrity. I think integrity is one -- is a very
3 important role for the mayor, as it would be for the
4 premier or -- or the prime minister. I think the top
5 -- the top person has -- has to demonstrate integrity,
6 ethical conduct, transparency, and that all trickles
7 down.

8 THE HONOURABLE FRANK MARROCCO: Would
9 you -- would you say the -- the same thing about
10 accoun -- accountability for the dec -- for the --

11 MS. DENISE BELLAMY: Well, ultimately
12 --

13 THE HONOURABLE FRANK MARROCCO: --
14 pending decision?

15 MS. DENISE BELLAMY: -- the buck stops
16 with the mayor, or -- or the town manager, depending
17 on what level it is. But yeah, I think -- I mean,
18 you're -- you're being accountable because you have
19 the public trust, because you have the public's money.
20 You're accountable for the public's money, so you have
21 a responsibility.

22 When you're going shopping with that
23 money -- when you're going shopping with my money, I
24 want you to be accountable, I want you to be
25 transparent, I want you to -- I want you to be honest,

1 I want you to be ethical, because you're spending my
2 money.

3 THE HONOURABLE FRANK MARROCCO: It --
4 it -- it seems to me, it's -- it's -- it's difficult -
5 - can be difficult to hold people accountable, because
6 a problem always -- doesn't always present itself
7 immediately.

8 MS. DENISE BELLAMY: M-hm.

9 THE HONOURABLE FRANK MARROCCO: People
10 are --

11 MS. DENISE BELLAMY: M-hm.

12 THE HONOURABLE FRANK MARROCCO: -- are
13 gone, and the decision's been made.

14 MS. DENISE BELLAMY: That, for sure,
15 can happen. I mean, people are being held accountable
16 every day on all sorts of things in -- in -- in all
17 levels of government, but there are times when
18 decisions are made, and then it's only quite a long
19 time after that that one discovers that there was a
20 problem. And I'd venture to say that that's probably
21 the case in the facts of most public inquiries,
22 because it's only after you realize that something has
23 gone awry that you think, Whoa, what happened here?
24 We have to find out what happened.

25 Sometimes, you can find out what

1 happened fairly easily. Sometimes, maybe you need an
2 auditor to come in. Sometimes, you need a public
3 inquiry. But I think it --

4 THE HONOURABLE FRANK MARROCCO: What's
5 -- what's the -- what's the end product? If you're
6 conducting the Inquiry, and -- and you -- you inve --
7 you investigate, you're -- you make recommendations,
8 but what's the ultimate -- in your view, what's the
9 ultimate goal?

10 MS. DENISE BELLAMY: Of the
11 recommendations?

12 THE HONOURABLE FRANK MARROCCO: Of the
13 Inquiry process.

14 MS. DENISE BELLAMY: Well, that's a
15 big philosophical question, I guess. I think, I mean,
16 it's a very -- to me, it's practical. In -- in my
17 case, I felt if people are shopping with my money,
18 they have a responsibility to do it ethically,
19 transparently, et cetera. They have to be accountable
20 for the decision they made.

21 And in this case, in my case, it was --
22 the City of Toronto decided to have a public inquiry,
23 not just on -- on the leasing contract that had gone
24 wrong, but then afterwards, a whole bunch of other
25 contracts in the second Inquiry. And so my job, then,

1 as the commissioner was to find out what happened, and
2 by doing what you did I -- in the first two (2) phases
3 is -- is hearing evidence and people testifying under
4 oath or affirmation, and then making a decision about
5 what -- what I thought happened, and then making
6 recommendations based on those decisions and the
7 policy panel that I thought would help move the
8 government forward.

9 What I did in mine was that -- I think
10 the last recommendation I made was that the mayor
11 should report within a year on all my recommendations
12 to council and say what -- what he had done to fulfill
13 those recommendations, which was a different mayor by
14 then, and -- and he did.

15 THE HONOURABLE FRANK MARROCCO: Do you
16 think it's a purpose of the Inquiry to -- I wouldn't
17 say restore, because that implies something's been
18 lost, but to -- to enhance or to -- to make sure that
19 there's public trust in the -- in the public
20 institution, in the decision-making process of the
21 institution?

22 MS. DENISE BELLAMY: That's a good
23 question. I don't know if it's the role of the
24 commissioner to make -- to -- to do that. But I think
25 that what does happen, just by the very process, is

1 that by airing out the dirty linen, as it were, in
2 such a public way, that what can happen is that the
3 public, the people whose money has been spent, can
4 take a look and say oh, so that's what happened, okay,
5 well, you know, they might say oh, that's not so bad
6 then. Or they might say oh, my goodness, that's
7 terrible, that's the worst -- that's even worse than
8 what I expected.

9 I think the process of the public
10 inquiry itself can go some way to restoring confidence
11 in -- in the -- in the town or the city, because what
12 is happening is by having called the public inquiry,
13 in essence, they're saying we want you, judge, if it's
14 a judge, we want you and we're giving you carte
15 blanche to take a look at everything and it's all
16 being aired in public and we want you to tell us what
17 you think happened.

18 But as that's going along, it's being
19 reported and people are seeing what's happening, and I
20 -- it reminds me of Leonard Cohen, the first -- my
21 Leonard Cohen quote that I started the Inquiry with is
22 "There is a crack in everything, that's how the light
23 gets in."

24 And I think that what the public
25 inquiry does, is it shines a light through the crack

1 that has been discovered, which is why the government
2 ordered or asked for the public inquiry in the first
3 place.

4 MS. KATE MCGRANN: I'd like to turn to
5 some more specific questions about recommendations
6 that you made in your report, and you've talked this
7 morning about the importance of transparency and
8 you've referenced conflicts of interest and the
9 importance of addressing those.

10 MS. DENISE BELLAMY: M-hm.

11 MS. KATE MCGRANN: The question I have
12 for you is: Do you see a difference between a conflict
13 of interest and an apparent conflict of interest?

14 MS. DENISE BELLAMY: I think there
15 will be others addressing this as a full panel, but to
16 me they are two (2) sides of the same coin, and I
17 think they're both equally important.

18 Apparent conflict of interest, as
19 opposed to actual conflict of interest tends to get
20 short shrift, and I don't think it should. I think
21 there's two (2) sides of the same coin and apparent
22 conflict of interest is sometimes even more important
23 than actual conflict of interest.

24 And -- and the reason for that is when
25 it's a -- when the person has an actual conflict of

1 interest, the presumption generally is that people
2 will prefer their own personal interests over, say,
3 the public good.

4 In an apparent conflict of interest,
5 it's not so obvious. What does it look like? What's
6 the perception? How does -- how does this look?
7 Would a reasonably informed person conclude that the
8 person does or doesn't have a conflict of interest, or
9 might be swayed in making a decision because it looks
10 -- it looks a bit fishy.

11 And during my good government policy
12 phase, one (1) of the people who -- who was present
13 was retired Court of Appeal Justice Coulter Osborne,
14 he was then the city -- the integrity commissioner.

15 And he said that when he talked to
16 provincial politicians about apparent conflict of
17 interest, he framed it this way: so if you wake up in
18 the morning and you see this matter being explored on
19 the front page of Toronto's papers, how is that going
20 to affect you politically?

21 You might not have an actual conflict
22 of interest, but it doesn't look good. It doesn't
23 smell good. How is that going to affect you
24 politically? That was how he framed it.

25 And I've heard -- and I'm sure all of

1 us here have heard people say well, you know, that's
2 just hogwash, I can't be bought. Nobody can buy my
3 vote.

4 Well, that might be true. It may very
5 well be true that nobody can buy that person's vote or
6 that they can't be bought. But how would a reasonably
7 informed observer, with the facts that they have, ever
8 know that that person isn't being bought. And that's
9 why I think apparent conflict of interest is just as
10 important as conflict of interest.

11 And -- and in my inquiry I'll honestly
12 -- I tried so hard to make sure that -- that none of
13 us in the Inquiry were having either an actual
14 conflict of interest or an appearance of a conflict of
15 interest, because I was examining that.

16 So I didn't want any of my staff to
17 have that problem. And it made it difficult even
18 finding lawyers, because the City had so many lawyers
19 on retainer, so many law firms on retainer, that I
20 didn't want it to look like I was hiring somebody who
21 might favour the City because they had, you know, they
22 made money from the City and -- and it might not even
23 have been a big contract, but I just thought it was so
24 important when I was examining something like this in
25 the first place not to do anything myself that would

1 bring any disrepute to the Inquiry.

2 MS. KATE MCGRANN: Shifting focus
3 somewhat, you made a series of recommendations about
4 the benchmarks of good governance and you've spoken --

5 MS. DENISE BELLAMY: About what,
6 sorry?

7 MS. KATE MCGRANN: The benchmarks of
8 good governance. I'm sorry.

9 MS. DENISE BELLAMY: Oh, yes. M-hm.

10 MS. KATE MCGRANN: And you've spoken
11 this morning already a bit about the respective roles
12 of council and staff.

13 MS. DENISE BELLAMY: M-hm.

14 MS. KATE MCGRANN: I wonder if you
15 could discuss some of the recommendations that you
16 made with respect to the importance of those roles and
17 how they can be encouraged and maintained, the
18 boundaries between those two (2).

19 MS. DENISE BELLAMY: Okay. I probably
20 covered a little bit of this already, but in -- as I
21 said earlier, the mayor is the face of the city
22 government, both internally and externally.

23 And I believe that maintaining the
24 integrity of government should be really -- if not the
25 mayor's top priority, then one (1) of them, because

1 everything stems from integrity and integrity should
2 inform all of his or her decisions.

3 In terms of benchmarks of good
4 governance, I was actually quite troubled by the
5 massive workload that faced the mayor and councils --
6 councillors.

7 I -- I was quite taken aback when I saw
8 how much they had to go through at every meeting that
9 they had, there would just be hundreds and hundreds of
10 pages, thousands sometimes, that they had to read.

11 And so I recommended that they urgently
12 find ways to reduce their workload. And to me, an
13 obvious way was to concentrate on matters of policy
14 and delegate the administrative day-to-day operations
15 to -- to their staff. Because what -- what I saw was
16 a lot of councillors were very involved in the day-to-
17 day detail of stuff.

18 And they had all these perfectly
19 competent public servants there who could do all of
20 that work for them.

21 So I recommended that they stick to
22 policy and that the -- the staff deal with
23 implementing that policy.

24 And then with respect to staff and good
25 governance, and I mentioned this earlier in talking

1 about speaking truth to power, is that they should be
2 neutral and not politicized in any way, that they --
3 they have to remember that they answer to council as a
4 whole, not to one (1) individual councillor. They
5 answer to council as a whole.

6 And they're supposed to provide
7 impartial advice and direction to councillors in the
8 discharge of their duties to council, not in their
9 discharge of the duties as the individual councillor.

10 So they have to be careful, I felt, to
11 ensure that any close working relationship that they
12 developed with a councillor didn't override that --
13 that duty, or did not cross into the political sphere,
14 because it -- it can happen.

15 You know, people work very closely
16 together and -- and as I say, I was a public servant
17 for seventeen (17) years in the Ontario Government and
18 I worked for three (3) different political stripes, I
19 knew what each one (1) wanted and it would be easy at
20 times to just say well, you know, I know that they're
21 not even going to think of this as an option.

22 But I felt that they should know if it
23 was a viable option, that there was -- they should
24 know that it was a viable option, and -- and then give
25 that information to those individuals.

1 In terms of the mayor, I -- I did make
2 some comments about the mayor and in my case it was
3 the -- the city, the manager, in your case I guess it
4 would be the town manager, I think.

5 MS. KATE MCGRANN: Chief
6 Administrative Officer.

7 MS. DENISE BELLAMY: Oh, the CAO.
8 Okay. That there should be a -- a clear division of
9 responsibility between those two (2) positions; that I
10 acknowledge that they each -- that -- that they should
11 acknowledge they each have a role, but it's different
12 from the other person. The political role is
13 different from being the head of the public service.

14 And there's a separation between the
15 political and the administration. And for each of
16 them, in their own sphere, the buck stops with them.
17 But they each have to respect that -- that the public
18 servant is not a political person, not supposed to be
19 a political person.

20 And you know, when you work closely
21 together it can be easy to forget that sometimes, but
22 in -- in the final analysis, when the buck stops with
23 them, they each have to remember that they have a
24 different role.

25 MS. KATE MCGRANN: In our discussion

1 this morning you've made reference to recommendations
2 that you made in your report about lobbying activity.

3 MS. DENISE BELLAMY: M-hm.

4 MS. KATE MCGRANN: You've referenced
5 the fact that you recommended that a code of conduct
6 be implemented for lobbyists. I wonder if you could
7 speak a little more specifically about the elements of
8 the code of conduct that you recommended and why you
9 felt they were important?

10 MS. DENISE BELLAMY: I made a lot of
11 recommendation -- well, maybe -- maybe not as many as
12 on procurement, maybe only thirty (30) or thirty-five
13 (35) or something like that.

14 But my main thing was that they needed
15 to get a lobbyist registry because that -- that simply
16 didn't exist at the time. And then what I did is I
17 gave them a list of the sorts of things that a
18 lobbyist registrar should do and that some of the
19 things that -- that lobbyists should or shouldn't do.

20 So, for example, one (1) of the things
21 I said was that lobbyists should lobby during regular
22 office hours and -- and office locations wherever
23 possible and that they should not place an elected
24 official or city staff member in a conflict of
25 interest.

1 Now, this wasn't always so easy. And -
2 - and I -- I know -- I have a farm in Bruce County.
3 And when my report came out, I talked to a guy, a
4 neighbour, who was on cou -- council.

5 And he says, Well, what am I supposed
6 to do, I'm in the Independent Grocer and somebody
7 comes up to me and starts talking to me about
8 something that's coming up before council, and they're
9 clearly lobbying me, you know, what am I supposed to
10 do, you want me to meet them in my office.

11 And I said, Well, that's true, I do
12 because my concern is, to be accountable, you have to
13 be transparent. And there are ways of getting around
14 that. You know, there are ways in a -- in a -- not
15 just a small community, but even a large community, of
16 saying, well, why don't you come and meet me in my
17 office or why don't we get together or make -- here's
18 my card, make an appointment, we'll -- we can talk
19 about.

20 And then there is at least a paper
21 trail of what's going on. But otherwise, I just felt
22 that there was a lot that was happening that nobody
23 knew anything about. And I was trying to make it more
24 -- more transparent so that they could be more
25 accountable.

1 THE HONOURABLE FRANK MARROCCO: Do you
2 think that financial arrangements between the lobbyist
3 and the client -- lobbyist's client should be
4 disclosed?

5 MS. DENISE BELLAMY: To whom?

6 THE HONOURABLE FRANK MARROCCO: To the
7 public.

8

9 (BRIEF PAUSE)

10

11 MS. DENISE BELLAMY: I -- I think I
12 made recommendations about that in the -- in the -- on
13 the part on lobbying on what sorts of things should be
14 in there.

15 I'm not really sure myself. I think --
16 you have people coming to talk about lobbying, and
17 they might be -- know that better than I because I've
18 sort of been out of the lobbying business for a while
19 now.

20 THE HONOURABLE FRANK MARROCCO: Oh,
21 and I -- I wouldn't he -- I won't hesitate to ask --
22 ask them --

23 MS. DENISE BELLAMY: Yeah.

24 THE HONOURABLE FRANK MARROCCO: -- the
25 question. It -- it was just --

1 MS. DENISE BELLAMY: Well, I -- I
2 think -- sorry.

3 THE HONOURABLE FRANK MARROCCO: --
4 depending on the size of the fee or the method by
5 which it's -- it's calculated, this may or may not
6 change the appearance of what's going on.

7 MS. DENISE BELLAMY: Yeah. I -- I'm
8 just -- I'd have to think about the privacy component
9 of -- of that for the individual who's making money as
10 a lobbyist, and I just have not thought that one --

11 THE HONOURABLE FRANK MARROCCO: Yeah.

12 MS. DENISE BELLAMY: -- all the way
13 through.

14 MR. WILLIAM MCDOWELL: Just on that --

15 MS. DENISE BELLAMY: I don't mean to
16 duck the question, but --

17 THE HONOURABLE FRANK MARROCCO: No,
18 no, no. I -- I don't think it begets a simple answer
19 necessarily. I just --

20 MR. WILLIAM MCDOWELL: No, but I guess
21 thinking about that, if -- if you only lobby during
22 regular business hours --

23 MS. DENISE BELLAMY: Yes.

24 MR. WILLIAM MCDOWELL: -- if you
25 disclose the fact of the lobbying, so each time

1 there's a contact, you know that the contact is there,
2 I mean, the more that you know about the process, I
3 guess the less important it is to know about the
4 global fee?

5 MS. DENISE BELLAMY: M-hm.

6 MR. WILLIAM MCDOWELL: But it's -- but
7 it's --

8 MS. DENISE BELLAMY: Yeah. Well, and
9 I -- I think --

10 MR. WILLIAM MCDOWELL: It's a tricky
11 question.

12 MS. DENISE BELLAMY: I'm just worried
13 about the -- the privacy component of it. You know,
14 if -- if I'm a lobbyist and I'm working for 'A', 'B',
15 'C', and 'D' company and one (1) is paying me -- one
16 (1) I managed to get a higher fee than I did for the
17 others, or the others -- is the one who -- that I paid
18 the higher fee for, are they going to say, well, look
19 at, I just found out that you -- you're not charging
20 these others as much, and I want to be charged the
21 same as them.

22 I don't know. I just -- that's the
23 only -- I -- I'm just trying to think on my feet here
24 -- or not my -- whatever, that --

25 MR. WILLIAM MCDOWELL: But I guess the

1 worry is that there does seem to be something
2 insidious if there were enormous success fees attached
3 to gaining public business because that -- that at
4 least potentially changes the perception --

5 MS. DENISE BELLAMY: M-hm.

6 MR. WILLIAM MCDOWELL: -- in the
7 public mind about whether or not the procurement
8 decision has been made on its merits or whether or not
9 the success fee somehow or other has kind of inserted
10 itself into the --

11 MS. DENISE BELLAMY: M-hm.

12 MR. WILLIAM MCDOWELL: -- into the
13 analysis?

14 MS. DENISE BELLAMY: I think I made a
15 recommendation on success fees. Did I? You probably
16 know better than I.

17 MR. WILLIAM MCDOWELL: I --

18 MS. DENISE BELLAMY: I can't remember.
19 I remember success fees certainly had come up. And
20 it's fourteen (14) years since I wrote the report, so
21 I didn't look specifically at success fees. But I
22 think I made a recommendation that success fees should
23 not be --

24 MR. WILLIAM MCDOWELL: Yeah. Yeah, I
25 think you did.

1 MS. DENISE BELLAMY: -- allowed.

2 MR. WILLIAM MCDOWELL: I was trying to
3 find it, but I --

4 MS. DENISE BELLAMY: Yeah.

5 MR. WILLIAM MCDOWELL: -- I couldn't
6 quickly because you have to go through the PDF, which
7 is --

8 MS. DENISE BELLAMY: I know.

9 MR. WILLIAM MCDOWELL: -- a hundred
10 pages long.

11 MS. DENISE BELLAMY: I know. We
12 should talk to the city about that, you know, because
13 it used to not be on PDF.

14 MR. WILLIAM MCDOWELL: Now, can I ask -
15 - this is sort of an odd question, but it's one (1)
16 that comes up from time to time, and that is where you
17 have elected officials who have charity golf
18 tournaments or charity events. It was a feature in
19 Mississauga I know, and it came up the other day with
20 Premier Ford, Premier Ford taking people to charity
21 dinners or people --

22 MS. DENISE BELLAMY: M-hm.

23 MR. WILLIAM MCDOWELL: -- purchasing
24 ta -- seats at the table at a charity event where the
25 premier was present. How do you regulate that?

1 Because the defence of these events is always that,
2 look, this is for a good cause and it's raising money
3 and there's -- you know, it's in public and -- but
4 it's something that seems to pop up as an issue every
5 few years.

6 MS. DENISE BELLAMY: It's not
7 something I've spent a lot of time thinking about as
8 it certainly never came up in the --

9 MR. WILLIAM MCDOWELL: No, I don't --
10 I don't recall it, but --

11 MS. DENISE BELLAMY: Did that come in
12 my report? I mean, certainly things came up in terms
13 of golf games and charity things. But --

14 MR. WILLIAM MCDOWELL: Flights to
15 Philadelphia?

16 MS. DENISE BELLAMY: But I seem to
17 remember that the -- that the liberal government had
18 developed a policy on it. And then that got changed
19 recently with the -- the next government that came in.

20 So, I -- it looks like reasonable
21 people can disagree about how something should be
22 dealt with, but it's not something that I have any
23 particular expertise in --

24 MR. WILLIAM MCDOWELL: And --

25 MS. DENISE BELLAMY: -- unless I've

1 totally forgotten.

2 MR. WILLIAM MCDOWELL: I don't think
3 so. I mean -- but it's -- the problem is that you
4 want transparency in all of these dealings. And I
5 guess if -- well, I mean, the -- the worry is that
6 it's a way of covertly allowing a lot of contact --

7 MS. DENISE BELLAMY: M-hm.

8 MR. WILLIAM MCDOWELL: -- under the
9 shelter of this charitable event, number 1. Number 2,
10 the worry is always that, if you're the patron of the
11 event, you know, if you're the premier or you're the
12 mayor or whoever and people are buying tables to these
13 event, that you'll look more favourably on them than
14 you might on people who weren't as free with their
15 charitable spending.

16 MS. DENISE BELLAMY: I do have
17 somewhat of a rele -- recollection of Mayor Lastman
18 talking about that.

19 But my -- my recollection is that he --
20 he was at something like that, where somebody paid to
21 sit at a table with him, but he didn't know who any of
22 the people were anyway and -- and he didn't really
23 talk to all of them anyway.

24 So, I don't think I made any
25 recommendations about it or -- or that there was

1 anything specific. But I know that the former city
2 solicitor of Toronto is here, and so she might
3 remember if there's anything, but I don't recall
4 anything.

5 THE HONOURABLE FRANK MARROCCO: I
6 think from my perspective, I just wanted to get an
7 impression.

8 MS. DENISE BELLAMY: Yeah.

9 THE HONOURABLE FRANK MARROCCO: I
10 think what I might do is take the short morning break
11 for about fifteen (15) minutes or so.

12

13 --- Upon recessing at 11:15 a.m.

14 --- Upon resuming at 11:33 a.m.

15

16 MS. DENISE BELLAMY: I wonder if I
17 might just a -- add a couple things. It's been
18 brought to my attention that I made some
19 recommendations that -- my recommendation in number
20 112, in answer to Mr. McDowell's question on success
21 fees, I recommended that:

22 "Lobbyists dealing with the City
23 should not be permitted to receive
24 contingency fees or any other type
25 of bonus or commission tied to a

1 successful outcome."

2 So -- and then on Recommendation
3 119(h), I addressed the question about the amount pay
4 -- being paid to a lobbyist. I said:

5 "The total amount paid to the
6 lobbyist for the lobbying activity
7 should be included. To -- to accord
8 the lobbyist some privacy on
9 financial matters, the amount paid
10 can be a choice of preset ranges" --
11 -- and then I give a range.

12 MS. KATE MCGRANN: Thank you.

13 MS. DENISE BELLAMY: Hard to remember
14 all two hundred and forty-four (244).

15 MS. KATE MCGRANN: All important, but
16 it's quite a number.

17 MS. DENISE BELLAMY: I should have
18 made only ten (10) or something. I'd remember ten
19 (10).

20 THE HONOURABLE FRANK MARROCCO: Not --
21 not a memory test.

22 MS. KATE MCGRANN: In your comments,
23 you -- you've discussed procurement processes, and I
24 wanted to ask you a couple of more specific questions
25 about recommendations you made with respect to

1 procurements. First of all, could you comment on --
2 on the appropriateness of lobbying during a
3 procurement process?

4 MS. DENISE BELLAMY: Sure. There
5 shouldn't be any. I mean, during -- during the
6 procurement process -- I don't think there should be
7 any lobbying of any kind during a government
8 procurement process, and I did make recommendations
9 about that.

10 And -- and part of the reason for that
11 -- this is what scandals are -- are made of.
12 Government procurement is one (1) of those areas that
13 is subject to the most intense lobbying, because
14 that's where the private sector makes their money,
15 generally, is on -- on procurement issues. And if
16 lobbying didn't work, lobbyists wouldn't do it.

17 So this is -- during the procurement
18 process, there should be none, absolutely none. I'm
19 not very flexible on that, but maybe, maybe. Depends
20 on the question.

21 THE HONOURABLE FRANK MARROCCO: In --
22 in your view, when does that process start?

23 MS. DENISE BELLAMY: Well, I think it
24 can probably be fluid, because sometimes, the one (1)
25 I saw -- and I don't profess to be an -- an expert on

1 procurement, but I did see a situation where,
2 sometimes, there was an invitation to people who would
3 likely lobby -- not lobby, but would likely bid on
4 something to get a sense of what the quote should even
5 contain, because sometimes the -- the subject matter
6 is pretty esoteric and -- and the government doesn't
7 even really know the questions it should be asking.

8 THE HONOURABLE FRANK MARROCCO: M-hm.

9 MS. DENISE BELLAMY: So it invites
10 people to come in and talk to them about, What
11 questions should we be asking? So in a way, that's a
12 start, but I wouldn't describe that as a start from a
13 lobbying perspective. To me -- is once there is a
14 fixed date for the tender to be dropped in the mailbox
15 or whatever the -- the slot -- that once that fixed
16 time happens, that's it.

17 From then until probably when the --
18 the public servants have made a decision and
19 recommendations to Council, there should be no
20 lobbying of public servants who are doing the analysis
21 at that point and no lobbying of councillor --
22 councillors should cer -- certainly not be getting
23 involved at that point and talking to staff about --
24 about the tender, in my view. But, you know, if you
25 have people here who know more about procurement, then

1 I would a hundred (100) percent defer to them.

2 THE HONOURABLE FRANK MARROCCO: You --
3 and as I say, we'll ask the question probably of more
4 than one (1) person.

5 MS. DENISE BELLAMY: M-hm.

6 THE HONOURABLE FRANK MARROCCO: You
7 did -- I don't think you dealt with this in your
8 report -- correct me if -- if I'm wrong -- but were
9 you dealing with a sole-source purchase?

10 MS. DENISE BELLAMY: M-hm.

11 THE HONOURABLE FRANK MARROCCO: Does
12 that -- does -- does that result in any kind of --
13 does that suggest anything else to you other than what
14 you've said? And as I say, I appreciate I don't think
15 you had that situation, but --

16 MS. DENISE BELLAMY: I did -- well, I
17 -- I didn't have the situation, but I -- I did make a
18 recommendation on sole -- single-source processing.

19 It's Recommendation 146. I said:

20 "There -- there should be a strong
21 presumption in favour of mandatory
22 competitive tendering for all
23 significant city prosec --
24 procurements. Critar -- criteria
25 for exemption from mandatory

1 tendering should be tightly defined
2 in advance."

3 So I think there are definitely times
4 when single-source procurement or tendering makes
5 sense. So for example, let's say one (1) supplier has
6 a monopoly, or it's necessary to ensure compatibility
7 with products that the Town already has, or maybe it
8 wouldn't be economical or -- or the -- the -- the --
9 the service or the product is urgently needed.

10 So I think there are certain
11 circumstances where single-source tendering is fine,
12 but -- and -- but I see that as an exemption, as an
13 exception and an exemption. But Council should be the
14 one to decide when there would be an exemption from
15 mandatory tendering and what that criteria should be.

16 THE HONOURABLE FRANK MARROCCO:

17 Thanks.

18 MS. DENISE BELLAMY: This might be a
19 good area to get the -- legal services involved, if
20 there happens to be one (1) in the community, because
21 the -- the more complicated it is, and the more likely
22 it's to go into single sourcing, and sometimes that
23 can create a -- a problem, and I certainly would
24 recommend that they get appropriate legal advice.

25 THE HONOURABLE FRANK MARROCCO: And I

1 -- I wondered if it -- you know, if you -- if you, as
2 you did, pose the idea that there's a point where
3 there should be no further lobbying.

4 MS. DENISE BELLAMY: M-hm.

5 THE HONOURABLE FRANK MARROCCO: If
6 it's a single-source procurement, people are kind of
7 fixed on who is going to -- who the supply --

8 MS. DENISE BELLAMY: M-hm.

9 THE HONOURABLE FRANK MARROCCO: -- I'm
10 just trying to figure out when that --

11 MS. DENISE BELLAMY: Well, I think
12 Coun --

13 THE HONOURABLE FRANK MARROCCO: --
14 procurement starts, if you like. So it would be from
15 the -- maybe -- I'll see what the other panel thinks,
16 but perhaps from the moment you decide that that's
17 what you're going to do.

18 MS. DENISE BELLAMY: That's what I was
19 going to -- to say, that once Council decides that
20 they're going to veer away from single-source
21 procurement, then at that point -- and -- and then the
22 staff send out the tendering documents or send out the
23 request for -- Request For Proposal. Once they get
24 that, right? I don't even know -- I don't know
25 exactly how it works when you have only one (1)

1 person. You don -- I don't know if you even have a
2 request for a proposal --

3 THE HONOURABLE FRANK MARROCCO: No, I
4 don't know.

5 MS. DENISE BELLAMY: -- or you just
6 approach the pers --

7 THE HONOURABLE FRANK MARROCCO: You
8 could, I guess.

9 MS. DENISE BELLAMY: -- entity and
10 say, What have you got here?

11 MS. KATE MCGRANN: You've talked about
12 the importance of -- the public interest being the
13 guiding principle in everything that the municipal
14 government does.

15 With respect to procurement, spending
16 the public's money in the public interest, in your
17 mind, does that necessarily mean pursuing the lowest
18 price in every event, for example?

19 MS. DENISE BELLAMY: I -- I don't
20 think that hav -- getting the lowest price is -- is
21 the only result that can happen. I think price is,
22 obviously, an essential ingredient of value, but it's
23 not the only ingredient. And it's not the only
24 ingredient when we're talking about sound governance
25 in the public sector, because the public sector

1 considers something that maybe the private sector
2 wouldn't necessarily consider, and that is the
3 government's overall objectives.

4 So let's just say, to -- to give an
5 example, if one (1) of their -- their objectives is to
6 stimulate the local economy, and somebody else comes -
7 - somebody not from the local area comes up with
8 something that is cheaper than what the local person
9 or company has -- has -- has put forward, then it
10 might be more expensive because it's local, but it is
11 fulfilling one (1) of the -- of the policy goals of
12 Council. So while generally, lowest price tends to be
13 what people think about, it does -- that's not
14 necessarily the best value for a government.

15

16 (BRIEF PAUSE)

17

18 MR. WILLIAM MCDOWELL: Just while Ms.
19 McGrann's looking for --

20 MS. DENISE BELLAMY: Yes.

21 MR. WILLIAM MCDOWELL: -- her next
22 area of inquiry, let me -- let me -- this may be
23 skipping to the end or not, but could we pull up, if
24 you have it, from the executive summary of Justice
25 Bellamy's report, as she then was, paragraph 56.

1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: Or I guess it
4 would be Recommendation 56.

5 MS. DENISE BELLAMY: Is that the --
6 about code of conduct?

7 MR. WILLIAM MCDOWELL: This is the one
8 -- I can just read it to you --

9 MS. DENISE BELLAMY: M-hm.

10 MR. WILLIAM MCDOWELL: -- and get you
11 to expand on it. So --

12 MS. DENISE BELLAMY: Is this:
13 "The city should include a term in"
14 --

15 MR. WILLIAM MCDOWELL: That's the one.

16 MS. DENISE BELLAMY:
17 -- "in all procurement documents
18 providing sanctions if a business
19 fails to adhere to the city's
20 relevant codes of conduct"?

21 MR. WILLIAM MCDOWELL: Right.

22 MS. DENISE BELLAMY: Right.

23 MR. WILLIAM MCDOWELL: Because the
24 question -- and this is prompted by the circumstances
25 here, but not -- not just those circumstances. It

1 seems to me there have to be real -- there have to be
2 real teeth in this --

3 MS. DENISE BELLAMY: M-hm.

4 MR. WILLIAM MCDOWELL: --
5 recommendation so that if you discover that there's
6 been illicit lobbying or there's been some kind of
7 improper conduct in the midst of the procurement, you
8 can actually disqualify the bidder on the spot or --
9 or cancel the RFP or whatever it is. But I,
10 obviously, would like to hear your thoughts about
11 that.

12 MS. DENISE BELLAMY: Yeah. I remember
13 thinking about it at the time and wondering -- I think
14 I sort of left that up to -- up to the city to decide,
15 I think, because I don't know that I had enough
16 information at that time to be able to -- to say
17 categorically that something should be disqualified as
18 a result of something.

19 And in some things, for example, like
20 the code of conduct, I said these are the general
21 things that should be in a code of conduct, but I
22 didn't say, here's the code of conduct that I think
23 you should have, because I was trying to provide
24 general guidance, but I wanted them to also decide for
25 themselves what would -- what is going to work best

1 for you, and is it going to work best for you to have
2 me say, this is what you should do.

3 I thought it would be best for the City
4 to have some of that come from the bottom up.

5 MR. WILLIAM MCDOWELL: Right.

6 MS. DENISE BELLAMY: And when they
7 were developing our lobbyist registry, than -- but
8 that -- but I -- I know what you're saying. I
9 understand what you're saying, because it's -- if
10 there's no teeth in it, then why -- why bother working
11 to -- to come within the code of conduct?

12 MR. WILLIAM MCDOWELL: Right, because,
13 I mean, the central thing that kicked off your Inquiry
14 was really prompted, the Toronto Council that called
15 your Inquiry, was there had been this lease extension
16 for \$80 odd million that was done in a very mysterious
17 way, and --

18 MS. DENISE BELLAMY: Hmm.

19 MR. WILLIAM MCDOWELL: -- and so I
20 guess the -- the thought is that where you discover
21 that there's been some kind of improper sharing of
22 confidential information or something, it's probably
23 not good enough to -- to be able to say in a reactive
24 way, well, we're going to impose sanctions now that
25 you've got the \$85 million contract, or whatever it

1 is. You want to be able to unwind it on the spot, or
2 regularize the process.

3 But -- but I hear you, that in -- in
4 the peculiar circumstances of your Inquiry --

5 MS. DENISE BELLAMY: M-hm.

6 MR. WILLIAM MCDOWELL: -- there was
7 a bit of a -- you didn't have quite enough information
8 to ground that recommendation.

9 MS. DENISE BELLAMY: M-hm. I -- I was
10 trying to give them as many thoughts that I had about
11 what they should consider including in a lobbyist
12 registry, and -- and on the ones where I was comp --
13 that I felt pretty certain should be in there, I would
14 say that.

15 But if I -- on something like that, the
16 implications could be just so different, you know,
17 with -- it could be that it's not a big transgression,
18 but it's a transgression, or it could be a massive
19 one, and, you know, to have -- to sort -- I wouldn't
20 want to do a one (1) size fits all kind of
21 recommendation.

22 MR. WILLIAM MCDOWELL: Well, I guess
23 you could make it presumptive, so that if -- if you
24 have breached the code in some way, the presumption is
25 that you will be disqualified, or you'll lose the

1 contract that had been awarded, but make the case that
2 -- that shouldn't happen, for whatever reason, that it
3 was inadvertent conduct, or it was minor conduct, or
4 whatever.

5 MS. DENISE BELLAMY: Well, you know, I
6 -- I really don't know the answer to that. You -- you
7 have -- you have a bunch of people coming in in the
8 next few days who do nothing but that kind of work,
9 and --

10 MR. WILLIAM MCDOWELL: M-hm.

11 MS. DENISE BELLAMY: -- I would defer
12 to them, just --

13 MR. WILLIAM MCDOWELL: Well, the --
14 the other thing is, we're fourteen (14) years on --

15 MS. DENISE BELLAMY: Yeah.

16 MR. WILLIAM MCDOWELL: -- you know,
17 from --

18 MS. DENISE BELLAMY: Longer, really.
19 Fourteen (14) years was just the --

20 MR. WILLIAM MCDOWELL: Right.

21 MS. DENISE BELLAMY: -- the result.

22 MR. WILLIAM MCDOWELL: But the -- but
23 frankly, the world changed because of your --

24 MS. DENISE BELLAMY: Yeah.

25 MR. WILLIAM MCDOWELL: -- report, and

1 we're -- we're building on that. So we'll hear from --

2 MS. DENISE BELLAMY: Right, right.

3 And -- and I know -- I -- I have spoken to the
4 integrity commissioner at certain times, and I -- and
5 I know there are things that got developed after I
6 made recommendations. Some things they accepted, some
7 they -- they didn't, I think. I don't know which.

8 But, you know, it's an ongoing learning
9 process, for -- at least for the City of Toronto's
10 integrity commissioner --

11 MR. WILLIAM MCDOWELL: M-hm.

12 MS. DENISE BELLAMY: -- or lobbyist.
13 I -- I haven't really talked so much to the lobbyist
14 registrar. It's really the integrity commissioner.

15 MR. WILLIAM MCDOWELL: Thanks.

16 MS. KATE MCGRANN: The -- that is the
17 end of the specific questions that I had for you, so
18 I'll just turn to -- to everybody else in here, and
19 see if anybody else wanted to jump in with anything
20 further before I ask you if our questions raise any
21 closing remarks that you'd like to make, or if there's
22 anything else you'd like to add to -- to what you've
23 said to us this morning.

24 MS. DENISE BELLAMY: I might just wish
25 you all a lot of good luck.

1 THE HONOURABLE FRANK MARROCCO:

2 Thanks. I wish -- I wish -- I wish you didn't think
3 we needed good luck, but --

4 MS. DENISE BELLAMY: Well, I know it's
5 --

6 THE HONOURABLE FRANK MARROCCO: --
7 thank you for the thought.

8 MS. DENISE BELLAMY: -- it -- it's
9 difficult. It's a difficult thing. It's difficult
10 for everybody concerned, the -- as I said, you know,
11 at the very beginning, some peoples' jobs are at
12 stake, or -- or the -- the community loses a bit of
13 respect for the process, or the community itself can
14 suffer, and so it's -- it's a -- it's tough, and it's
15 a -- I -- I have the greatest of respect for this
16 Commissioner, and I wish you all the best of luck in -
17 - in getting good recommendations and timely
18 recommendations.

19 As I said, there -- the inquiries are
20 always longer and more expensive than anyone ever
21 thought.

22 THE HONOURABLE FRANK MARROCCO: We're
23 working it timely, but thank you for an excellent --

24 MS. DENISE BELLAMY: Thank you.

25 THE HONOURABLE FRANK MARROCCO: --

1 kickoff to the policy phase, very much appreciated.

2 Thank you.

3 We will -- we will stand down until --
4 what -- do you have --

5 MS. KATE MCGRANN: We're back at two
6 o'clock.

7 THE HONOURABLE FRANK MARROCCO: Two
8 o'clock, so we'll stand down until two o'clock.

9

10 --- Upon recessing at 11:50 a.m.

11 --- Upon resuming at 2:02 p.m.

12

13 THE HONOURABLE FRANK MARROCCO: Good
14 afternoon. I should have said this morning, on behalf
15 of the Inquiry, emphasized the fact that the panels
16 are contributing their time and expertise to our
17 effort, and to thank all of you for that, and to thank
18 Ms. Bellamy, who is still here, and to thank the
19 panels in advance, the ones that are coming tomorrow,
20 Friday, and Monday. Thank you for your contribution.

21 Mr. Mather, go ahead.

22

23 DISCUSSION:

24 MR. JOHN MATHER: So the first panel
25 we have will be discussing roles and responsibilities

1 in municipal government. There are three (3) members
2 of this panel. Detailed biographies for each member
3 are available on the Inquiry's website, but by way of
4 brief introduction, I will introduce each of you
5 before we begin.

6 The first panelist is John Fleming.
7 Mr. Fleming runs and operates a consulting company
8 called Occasional Consulting, where he provides
9 governance and teaching advice, mentoring services,
10 and other consulting services to a wide range of
11 clients. Mr. Fleming is currently the integrity
12 commissioner for the Town of Caledon. Beyond that, he
13 has significant experience in government and in the
14 private sector.

15 Speaking to his government experience,
16 he has spent twenty-five (25) years working for
17 several municipalities, and has served as CAO for two
18 (2) municipalities. Mr. Fleming has also spent
19 several years as a deputy minister for the provincial
20 government with multiple portfolios.

21 The next speaker -- or panelist is Anna
22 Kinastowski. Ms. Kinastowski was the City solicitor
23 for the City of Toronto for fourteen (14) years prior
24 to her retirement in 2016. Before working as City
25 solicitor, Ms. Kinastowski held several senior

1 positions with the former City of Scarborough, and on
2 amalgamation, became the director of planning and
3 administrative tribunal law with the Amalgamated City
4 of Toronto.

5 As City solicitor, Ms. Kinastowski
6 oversaw the largest municipal legal division in
7 Canada. She's been certified by the Law Society of
8 Upper Canada as a specialist in municipal law, local
9 government, land use plan -- land use planning, and
10 Ms. Kinastowski has received several awards for her
11 work in the area of municipal law.

12 Our final panelist is Greg Levine. Mr.
13 Levine practices administrative municipal and
14 government ethics laws in Ontario. Mr. Levine also
15 has significant experience in the area of government
16 ethics. He -- Mr. Levine has acted as an integrity
17 commissioner for several municipalities, and he's the
18 author of three (3) books, including on the law of
19 government and eth -- I'm sorry, on the law of
20 government ethics, municipal ethics regimes, and the
21 ombuds -- ombudsman legislation in Canada. So again,
22 we thank you for joining us today to speak about
23 municipal roles and responsibilities.

24 As -- as we have framed this, each
25 panelist is going to give a brief presentation,

1 following which, Commission counsel, the Commissioner,
2 and the Town will engage in a dialogue about the
3 topics covered in the presentation.

4 So I turn it over to you.

5

6 ROLES AND RESPONSIBILITIES IN MUNICIPAL

7 GOVERNMENT PANEL:

8

JOHN FLEMING

9

ANNA KINASTOWSKI

10

GREG LEVINE

11

12

MR. JOHN FLEMING: Thank you, Mr.

13

Mather. I'm going to -- I'm going to bat first, and I

14

-- I'd like to say that I will be -- be speaking from

15

the position of a lot of -- of years of experience in

16

municipal government, particularly eleven (11) as the

17

chief administrative officer, and in two (2) different

18

places.

19

Making clear that I am -- I'm not a

20

lawyer. I am a -- a practicing public servant at

21

executive level. And I really want to focus today on

22

the importance in my judgment, and certainly in my

23

experience on the clear definition of roles and

24

responsibilities. So I -- I commend the Inquiry for

25

looking into that particular topic. I believe it to

1 be really important.

2 Well, one (1) of the things that I'm
3 doing in my -- my so-called retirement, I do a fair
4 amount of teaching and consulting on governance and,
5 in fact, sit on several boards right now, some of
6 which I Chair. And I'm -- I'm rather struck by the
7 similarities of good governance practice in -- in the
8 broader not-for-profit -- profit and -- and private
9 sector with what happens in the municipal Council
10 where you -- governance folks talk a lot about
11 fiduciary responsibility.

12 This morning, we heard is Ms. Bellamy
13 speak about the fact that municipal councillors are
14 trustees in the public interest. I -- I see some
15 significant -- significant parallels between those two
16 (2), and that will be some of the flavour of -- of
17 what I have to say to you today.

18 I think it's really important that
19 elected officials -- councils have a clear
20 understanding of what their role is, and likewise, the
21 -- the staff who work for the municipality. I have to
22 say, one (1) of the things that we were provided with
23 is -- is a March 1st, 2019 policy on council staff
24 relations.

25 This, to me, in a lot of ways, and I've

1 just read it quickly, really reflects best practice,
2 and I congratulate the Town of Collingwood for -- for
3 having done that. Council's role really needs to be
4 seen as one (1) of setting policies and -- and
5 priorities, allocating resources, giving direction to
6 staff on material, operational, and financial
7 undertakings and otherwise pretty much, if I can be
8 colloquial, staying out of the way of staff doing the
9 jobs that they were hired to do.

10 The role of staff is really one of
11 providing expert information, recommendations, and
12 advice to inform Council's decision-making. Those are
13 key words, inform in Council's decision-making. I
14 think there really needs to be a clear separation and
15 understanding of what I've come to refer to as the
16 bright line between the -- those two (2) bodies, the
17 governing body and -- and the staff.

18 Certainly true in my experience as a
19 municipal chief administrative officer, and equally
20 true in my several years as a deputy minister, having
21 been most successful when my minister and I had a
22 really clear understanding of what his job and what my
23 job was, and where the difference was. And perhaps
24 equally important, how we would resolve any issues
25 where it appeared that one (1) of us or another was --

1 was merging towards the line.

2 I'm sensing somebody's trying to tell
3 me something here.

4 MS. ANNA KINASTOWSKI: No.

5 MR. JOHN FLEMING: No? Okay.

6 THE HONOURABLE FRANK MARROCCO:

7 Actually, let me tell you, at 2:15, I think
8 everybody's cell phone will go off because of some
9 provincial test, just -- just so everybody knows that.

10

11 (BRIEF PAUSE)

12

13 MR. JOHN FLEMING: I -- I think I was
14 just saying, one (1) of the -- one (1) of the
15 challenges is -- is for the head of Council and the
16 head of staff, when it appears as though someone is
17 coming close to the line, for them to have, in the
18 best of all worlds, an agreement as to how to resolve
19 how that -- that particular issue is going to be dealt
20 with.

21 We need to understand the fact that
22 heads of Council have no real power. There's been a
23 recent change to the Municipal Act in -- in recent
24 years that now designates the mayor as chief executive
25 officer. In my governance training, I've learned that

1 CEO means power to commit the corporation, and I think
2 we all know that mayors do not have that power.

3 And I think, with all due respect to
4 the legislature, I think the indication of mayors
5 being CEO, and the Act goes on immediately to describe
6 what that means, may have blurred the lines a little
7 bit between the head of Council and the head of staff,
8 and I think it's something that municipalities who
9 were working towards best -- best practice need to --
10 to pay attention to.

11 I'm a firm believer that the head of
12 staff, whether you call that person the CAO, or a Town
13 manager, or a City manag -- manager needs to have the
14 necessary authority to direct all subordinate staff
15 and to direct all subordinate staff on how the line
16 between the political body and staff organization is
17 to be interpreted, and respected, and followed, and I
18 can speak more about that later, if you wish.

19 Clearly, with that authority, the CAO
20 directing all subordinate staff, that does not extend,
21 certainly to the CAO interfering with the -- the
22 judgments and the decisions of professionals. I
23 wouldn't expect, as a CAO, to be giving my lawyer
24 direction on what their legal opinion would be, or the
25 chief of police on how to enforce the law, but

1 certainly fitting within the -- the overall
2 organization.

3 Indeed, the CAO needs to have that kind
4 of authority, and in my experience when that works
5 best is when the bylaw that appoints the Chief
6 Administrative Officer is clear about what the CAO's
7 authority mandate extends to.

8 I want a few -- say a few words about
9 motivation and about ethics that goes to my more
10 recent experience as an integrity commissioner. And
11 by the way, you will probably hear some differences of
12 opinion amongst the three (3) of us today, and that's
13 a good healthy way to -- to approach this, but one (1)
14 of the challenges about codes of conduct and some of
15 those other processes is whether or not councils, when
16 they approve those things, really believe in them and
17 really commit to them.

18 We talked this morning -- you talked
19 this morning about culture and integrity and it's
20 really important as councils consider and ultimately
21 improve things like -- approve things like codes of
22 conduct, that there should be commitment and support
23 to following those. Otherwise, they're just
24 meaningless documents, and I'm pretty sure Greg will
25 talk a little bit about the potential spread between

1 the law and what happens in practice.

2 So we, in our approach today, decided
3 that we would just present for a few moments each.
4 I'm going to turn in a moment to my esteemed
5 colleague, Greg Levine, to give you a 10,000-foot view
6 of the statutory framework that -- that applies here,
7 and then Anna will -- will follow on from there.

8 We were quite intrigued, Anna and I, as
9 we listen to the discussion this morning with your
10 interest in -- in asking a number of -- of questions,
11 both general and specific, so we've tried to leave
12 lots of time for that.

13 So with that, I will stop and turn to
14 my -- to my colleague, Greg Levine.

15 MR. GREG LEVINE: Okay. Thanks.
16 Could I get the...

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: Just one moment. I
21 think we're just going to get it in presentation mode
22 and then -- okay.

23

24 (BRIEF PAUSE)

25

1 MR. GREG LEVINE: Okay. I am going to
2 talk a bit about the statutory framework. I'd like to
3 start in a different way though, if I may, and it's a
4 step back from why we want to talk about ethics and
5 public service.

6 The word "service" is really about
7 putting others before self. The idea -- an ideal of
8 service is putting others before self. It's a noble
9 idea, it's a noble calling. Public service is a
10 necessity in a society with a complex division of
11 labour, and that -- to serve effectively, that service
12 has to be ethical.

13 It takes place in a context of liberal
14 democracy. Shugarman and Greene have told us in two
15 (2) books, "Honest Politics" and "Honest Politics
16 Now," democracy is ultimately grounded in mutual
17 respect and equality, which in turn are expressed in
18 the rule of law and practices which promote fairness.

19 To understand the roles of council, and
20 council members and staff, and the unique role of the
21 mayor and others, it's important to understand the
22 underpinnings of democratic institutions, and to
23 recognize that government and administration are
24 different, and -- and John has already outlined --
25 indicated the importance of the difference of the

1 governor and the govern -- and the administration.

2 Legislators at all levels really must
3 respect the need for a neutral and impartial civil or
4 civic service which gives its best advice based on the
5 merits of question before it. Municipal government
6 can be more complex in some ways, but these -- its
7 functions are statutorily based.

8 And I want to talk a bit about the
9 statute but not -- and you'll see the slide deck is
10 quite large, and I want to talk a bit about the role
11 of council, powers exercised by council, et cetera.

12 Essentially council is the directing
13 body for the municipality. It's a -- council as a
14 whole is the directing mind of the municipality, and
15 it represents the interests of the whole municipality.

16 The powers of a municipality are
17 exercised by council -- by council. Council delegates
18 to others, but it's council that's the directing mind
19 of the corporation.

20 Just briefly mention, and -- that a
21 mayor as the head of the council has an odd kind of
22 relationship because of -- it is also the Chief
23 Executive Officer, as John has also mentioned.

24 Canada -- we don't use the term often
25 in Canada, about strong mayors, as in the United

1 States where they have constitutional powers that are
2 different. If we used that though, we would say that
3 in Canada the mayoral system is a system of weak
4 mayors. They are responsive and responsible to
5 council, and that's really brought out in the act.

6 What's missing in a sense is that
7 council members have no defined role. Other provinces
8 incidentally have statutory sections which outline the
9 role of council. Manitoba's Municipal Act, for
10 example, has a section outlining the role of council
11 members. Ontario doesn't.

12 Ontario does provide guidance though,
13 and it's -- is worth looking at the municipal
14 councillor's handbook. I've cited the 2018 version,
15 but that version has -- versions of it have been
16 around for over a decade, and they outline the
17 representative policymaking and stewardship roles of a
18 council member. None of those roles are about
19 directing staff directly. They -- council members
20 have to act in quorum as council to direct staff.

21 The other thing I'd mention, which I
22 don't have a slide of, is the new note, if one can put
23 it that way, for demanding integrity, and the
24 Municipal Conflict of Interest Act in Section point --
25 1.1, highlights the importance of integrity,

1 independence, and accountability in local government.

2 I would urge everyone to have a look at that.

3 Interestingly, their role --
4 administrative role in Section 227 neatly captures the
5 role of implementation and advice giving in the civic
6 service.

7 I'm just going to skip over the CAO.
8 Interesting that the CAO is not a mandatory role. If
9 the CAO is appointed, they have responsibilities, as
10 again, John has outlined. They are the managing force
11 for the affairs of the mini -- municipality.

12 Okay. There is provision now for
13 integrity commissioners to help with and help guide
14 questions of integrity in the municipalities.
15 Interestingly, it's a mandatory function. You don't
16 have to have an officer, but then you have to make an
17 arrangement to have a commissioner, and the
18 commissioner deals with a whole bunch of things,
19 application of code of conduct.

20 One (1) of the interesting changes in
21 recent times is that they can deal with requests for
22 advice on the code and on the Municipal Conflict of
23 Interest Act, and now of course they can also take
24 cases to the court about conflict of interest issues
25 under the Municipal Conflict of Interest Act.

1 Finally, the code, it's required, but
2 interestingly there are no contents required; that's
3 intriguing. There should be -- well, there have
4 become standard, if you will, sections. I won't go
5 through a code with you, but two (2) I'd mention that
6 seem interesting in the context in which we're about
7 to have a discussion, one (1) is improper influence of
8 office and the other is relationships with staff.
9 Typically the codes now have these, and I'd like to
10 quote a code of ethics.

11 It says this on relationships with
12 staff, because it sort of covers in a nutshell what I
13 have to say:

14 "Members of council will acknowledge
15 that only council as a whole has the
16 capacity to direct staff members to
17 carry out specific tasks or
18 functions, refrain from using their
19 position to improperly influence
20 members of staff in their duties or
21 functions or to gain an advantage
22 for themselves or others, and
23 finally, refrain from publicly
24 criticizing individual members of
25 staff in a way that casts aspersions

1 on their professional competence and
2 credibility."

3 And you may well recognize that because
4 that is from the 2010 Code of Ethics for the Town of
5 Collingwood. And that really sums up, in my view, the
6 proper relationship.

7 So I'd just end by saying three (3)
8 core ideas: Public service matters, should be
9 conducted fairly and in the public interest; council
10 members ought not to act without clear public
11 authority as given by council; council as a whole is
12 the directing mind of the municipality; and council
13 members act in a council forum to help direct that
14 mind, to ensure ethical conduct that meets the
15 enforcement of codes with known and well-articulated
16 ethical rules.

17 Codes establish common roles necessary
18 in a multi-cultural society. Although I think the
19 bottom line, if I may say as the son of a Jewish
20 father and a Christian mother, you can look actually
21 in the Talmud and in the Bible and you will find rules
22 like Matthew 7:12, which says:

23 "In everything, do to others what
24 you would have them do to you."

25 That sums up the law. That's what I

1 have to say.

2 THE HONOURABLE FRANK MARROCCO: Thank
3 you, Mr. Levine.

4 MS. ANNA KINASTOWSKI: I guess I'll
5 finish up this introductory part.

6 So I was appointed the City Solicitor
7 for the City of Toronto in 2002, just as Ms. Bellamy
8 was starting her Inquiry, and I was a Planning and
9 Development lawyer, and all of a sudden I was thrust
10 into dealing with an Inquiry which we thought at the
11 beginning was a tempest in a teapot and which
12 obviously turned out to be much, much more.

13 And I was very disappointed actually
14 when I was asked to participate here, and one (1) of
15 the first things that crossed my mind is that those
16 who don't know history are bound to repeat its
17 mistakes, and I think that the recommendations
18 prepared by Madam Justice Bellamy at the time speak to
19 many similar issues obviously, and they're as relevant
20 today as they were when she wrote them almost twenty
21 (20) years ago. They have stood the test of time.

22 When the report was initially released
23 in 2005, I had a number of solicitors representing
24 cities, towns, and they all commented that it was an
25 excellent report, had very useful recommendations

1 for them in dealing with their councils.

2 But there was a -- a theme that they
3 lamented, that the politicians were not particularly
4 interested in the report, or its recommendations,
5 which is actually very sad.

6 The role of the city solicitor in a
7 municipality is very difficult. It can be very
8 lonely, and I can assure you that it is stressful.

9 You understand the business of the
10 city. You're involved with the people. So -- but who
11 is the client? That's something the lawyer always
12 thinks about. Who is the client?

13 And it gets complicated within a
14 government environment. Council is the client. City
15 council is the actual client, not the mayor, not
16 individual council members, neither are staff.

17 But in reality, or in practice in the
18 day to day world, the solicitor has to work with staff
19 to identify legal risks and, in many cases, to provide
20 legally acceptable implementable alternatives.

21 We spoke this morning for quite a while
22 about speaking truth to power. And I think it's a
23 fundamental duty, as Ms. Bellamy said, of senior
24 officials within any organization.

25 It -- it is not easy to do that, but it

1 is essential, particularly for the solicitor. The
2 duty is to make council aware of any legal risks as a
3 result of their actions or decisions.

4 Many people don't know the City of
5 Toronto has -- had, at the time, when I was retiring,
6 approximately one hundred and thirty (130) lawyers.
7 And I didn't expect them to speak truth to power,
8 although they did. They didn't have difficulty, and
9 sometimes it's very easy to say to a councillor, and
10 I've done it many a time, I have to admit, they say
11 but my residents want this, my residents want that.
12 And I'd say blame it on me. As the lawyer, I told you
13 that legally you can't implement it. My shoulders are
14 broad, I'll take it, blame it on me.

15 But what I did say to my staff was that
16 if they were faced with that situation and they were
17 having difficulty with -- with a politician or with
18 members of the public or anything like that, they had
19 to come to me and I would deal with it. That was my
20 job, that was my responsibility, and I took it very
21 seriously.

22 Now, I tried to be very diplomatic.
23 There are many ways to say "no" to somebody. And I
24 don't think I would have survived fourteen (14) years
25 as city solicitor if I had not been diplomatic or

1 tried to find alternatives.

2 Many city solicitors, and frankly
3 senior officials have lost jobs over it. But I think
4 that if you have integrity and you know there is
5 something going on that is really troubling you and
6 nothing is being done, you may have to leave. I mean,
7 yes, your job may be at stake.

8 Where staff do not respect legal
9 advice, notwithstanding being told and -- and
10 receiving legal opinions in writing, we would always
11 say that I was prepared to sign a stand alone report
12 to city council saying why the staff report was not
13 workable for whatever reasons.

14 And usually just that very gentle
15 suggestion that I was certainly prepared to do that
16 was enough to re-orient staff and to have them draft a
17 report that really set out different options or gave
18 them risks.

19 The solicitor is part of an ethical
20 framework of an organization, and certainly as an
21 officer of the court has a duty to act ethically.

22 And I worked very closely with the
23 integrity commissioner in the City of Toronto and we
24 were a team. Certainly we discussed a lot of issues,
25 she had to keep a lot of things confidential, but we

1 also followed the recommendations in the Inquiry
2 report and had ethics advisors, for example. So a
3 number of senior staff were appointed as ethics
4 advisors, as I was, and where people could come and
5 talk to us and talk over issues and sort of say what
6 do you think, this is the situation I'm facing, am I
7 sort of blowing things out of proportion or not.

8 I think in terms of there was
9 discussion again this morning about conflicts of
10 interest and they're hard to avoid and the sort of
11 tenure of relationships in the community may be
12 different in a smaller municipality, but people know
13 each other in Toronto as well.

14 There are certain areas that the -- the
15 people working in that area are fairly small, they
16 have connections be it through education, background,
17 be it through professional organizations, all kinds of
18 different ways.

19 But what I always told my staff is that
20 what would you -- or even worse, what would your
21 mother say if she saw your behaviour splashed on the
22 front page of the Toronto Star?

23 And I've seen it and I've been stunned
24 at senior officials who always felt this can't
25 possibly happen to me. There's no way this will come

1 out. Well, it does. It gets splashed on the front
2 page of the paper and nowadays with social media it's
3 even worse. It will never go away, it's always there.

4 And then at the end of the day you end
5 up having to testify either in a court action or at a
6 judicial inquiry, as many have had to do here, which
7 is also not the most pleasant thing to do.

8 Just an interesting fact. I know the
9 integrity commissioner gave advice on conflicts. But
10 what I was faced with during a council meeting would
11 be that the councillor would be looking at the
12 reports, going to council and go oh my gosh, I think
13 I've got a conflict on this, and of course they
14 couldn't reach the integrity commissioner or literally
15 it was two (2) minutes until the item was going to be
16 dealt with. And they would come running to me to try
17 and get some advice.

18 I did advise as best as I could. I put
19 the proper caveats on that I was not the integrity
20 commissioner, they couldn't rely on my advice.

21 A few times it was obvious that there
22 was absolutely no conflict, I didn't know why they
23 were asking me. But in so many other cases I'd say
24 out of an abundance of caution, you need to declare an
25 interest and leave the room and not -- not be involved

1 in this matter at all.

2 At the beginning of a new term of
3 council, there are generally training sessions and
4 briefing books are prepared by staff to try and assist
5 council members. And unfortunately, very few council
6 members attend these briefing sessions, and even fewer
7 of them read the actual books, which is really a
8 shame.

9 But I want to also emphasize, which has
10 already been said, that there should be no political
11 input into staff reports. Staff are hired for their
12 expertise in a particular area, and council should
13 take advantage of that expertise.

14 Reports need to provide the best
15 professional advice. I'm not saying there isn't any
16 consultation or there's no discussions with
17 politicians, depending on the issue, certainly I would
18 have had a huge problem if somebody tried to tell me
19 what my legal advice was, but I recognize that there
20 are other issues where there has to be some kind of
21 consultation and councillors have the pulse of the
22 community. That's part of their job.

23 But the recommendations in the report
24 must be those of staff and not political
25 recommendations. If council disagrees with those

1 recommendations they must be amended or deleted on the
2 floor of council so that it is transparent that it's a
3 political decision being made and not a professional
4 one.

5 Now, once council makes a decision,
6 even if it's one that I disagreed with or I thought
7 could get them into trouble, I would draft motions for
8 council to move. I always told the member of council
9 that I disagreed with that particular motion, but I at
10 least tried to craft it to do the least amount of
11 damage to the municipality.

12 And in closing my few remarks, I wanted
13 to reinforce how special public service is. And I'm
14 going to read from Madam Justice Bellamy's report as
15 she was at the time. That I think this -- and I read
16 this many, many times to my staff in numerous staff
17 meetings, everyone who works in democratic government,
18 staff member or elected official, is discharging the
19 function of a trustee for the public in every minute
20 of the job, in every decision at every level, they
21 must put the public interest ahead of their own.

22 Public service is a noble calling and
23 the word "servant" in public servant is meant in the
24 most admirable sense of contributing to something
25 greater than one's own self-interest.

1 In all of its many forms, public
2 service can be one (1) of the most rewarding ways to
3 earn a living, but public service is not for everyone.

4 People who work in government should be
5 fundamentally content to devote their talent and
6 ability to serving the public good.

7 Those who cannot commit themselves to
8 that principle should not choose public service as a
9 career.

10 And I think we are now open for
11 questions.

12 MR. JOHN MATHER: Thanks to all of
13 you.

14 Picking up on a term that Mr. Fleming
15 used in terms of the bright line between council and
16 staff members, I was wondering if each of you could
17 speak to why it is important to maintain that bright
18 line and what are some of the potential consequences
19 if it's not maintained.

20 MR. JOHN FLEMING: I -- I -- to me
21 it's -- it's perhaps self-evident that if the bright
22 line isn't respected it's the first step to what
23 potentially becomes chaos if the roles become confused
24 it -- to me, it's absolutely not in the -- in the
25 public interest and the best interest of the

1 community.

2 And it tends to supplant professional
3 staff advice with political opinion, and often times
4 that's not very desirable.

5 MS. ANNA KINASTOWSKI: Go ahead.

6 MR. GREG LEVINE: Sorry, you were
7 asking about council or council members?

8 MR. JOHN MATHER: Council members and
9 staff.

10 MR. GREG LEVINE: Yes, I would agree
11 with what John said. Yet, it really leads to
12 potential -- not only for politicization of -- of
13 advice giving, but it leads to potential for improper
14 influence for whatever purpose, whether that's self --
15 selfish or self-serving or just misinformed.

16 And yeah, it just has to be kept
17 separate.

18 MS. ANNA KINASTOWSKI: I can only echo
19 the comments of my colleagues. It's the first step to
20 chaos and in some cases the first step to an inquiry
21 or litigation.

22 MR. JOHN MATHER: So in each of your
23 experiences, how can a municipality effectively
24 maintain that line. What are some of the things that
25 can be done?

1 MR. JOHN FLEMING: I'd say the first
2 thing is -- is to really codify, and I mentioned that
3 earlier, what the -- what the expectations are and --
4 and I commented on your council staff relations policy
5 that was put in place earlier this year.

6 I think that's really a reflection of -
7 - of best practice. But when it comes to defining
8 those relationships, it's a little more difficult to
9 define that for the mayor and mayor's practice their -
10 - their craft very differently, one after another.

11 What is important, I believe, in -- in
12 well-establishing that bright line is for council, as
13 a body, to determine what it expects from its chief
14 administrative officer. It's kind of like in a -- in
15 a corporation, you would say the Board only has one
16 employee and that's the CEO and everybody else in the
17 organization reports to the CEO.

18 To me, there's an analogy and I know
19 it's not perfect, there's an analogy to an effective
20 relationship between a political body and -- and an
21 administrative body handled and managed through the --
22 through the chief administrative officer.

23 I know full well in my days as a CAO
24 one (1) of the things I watched very carefully was
25 whether any of my senior department heads appeared to

1 be favouring the opinion or favouring the input or
2 becoming a little too close to any particular member
3 of council or a group of members of council.

4 And I invariably would put a stop to
5 that behaviour because it -- it didn't fit with my
6 notion of how the bright line needed to be managed.

7 MS. ANNA KINASTOWSKI: I would just
8 reinforce that comments of Ms. Bellamy this morning,
9 that it starts at the top. It starts with the mayor
10 and the CAO, and if they are ethical and respect that
11 line, then staff will find it a lot easier to respect
12 that line as well.

13 If there is a blurring of those lines,
14 it has been mentioned, it just keeps going down the
15 ranks. And it becomes very chaotic, it becomes
16 difficult to manage, it becomes difficult for
17 professional staff to respond to council with one
18 voice.

19 MR. GREG LEVINE: Yeah, I agree with
20 what's been said, I -- the -- particularly example
21 using one's self as an example, and so it does start
22 at the top and needs to filter down.

23 MR. JOHN FLEMING: I'd just add --

24 MR. GREG LEVINE: Do -- do --

25 MR. JOHN FLEMING: -- one (1) more

1 comment, if I might. I -- I've seen members of
2 council who have adopted with senior staff,
3 particularly senior staff. The -- the big risk here in
4 my mind is -- is people that -- middle management and
5 up trying to be -- you scratch my back, I'll scratch
6 your back kind of attitude.

7 That's one (1) thing to deal with. The
8 other is quite different, and that's councillors who
9 attempt to bully, harass, and intimidate staff. And
10 I've experienced that directly, as well, and it's --
11 it's a challenge.

12 But, again, sitting in my chair, as the
13 CAO, I knew it was my problem, my responsibility to
14 try and figure that out sometimes with the support of
15 the mayor, sometimes with speaking truth to power to a
16 member of council and saying, Uh-uh, not having that.

17 THE HONOURABLE FRANK MARROCCO: Do --
18 do you think that a relationship between the mayor and
19 -- and staff, or at least the CAO, is really a kind of
20 separate and apart from the relationship between
21 councillors and staff, it can't be -- in other words,
22 that it can't be defined the same way?

23 MR. JOHN FLEMING: I -- I think that's
24 true, Mr. Justice, the -- because those two (2)
25 positions are ostensibly at the head of -- of the

1 organization. And, as Anna said a moment ago, all
2 flows from the top when it comes to integrity and --
3 and best practice.

4 So, that relationship, if it respects
5 the bright line, understands what the bright line
6 means, understands where it is and how it needs to be
7 protected, that's the beginnings of a very effective
8 relationship between council and staff.

9 It's a little different than people, if
10 you will, down the ranks who might be interacting with
11 members of council around specific ki -- kind of
12 concerns.

13 I have in mind at least in bigger
14 centres, probably here now too, traffic issues where
15 constituents are -- are bothering an elected person
16 for a specific area and maybe that councillor wants to
17 go and talk to whoever in the civic administration
18 deals with stop signs and all that kind of stuff.

19 Sometimes that kind of input is
20 helpful. Then the staff take that matter and -- and
21 put together their professional advise to council and
22 the body deals with it.

23 THE HONOURABLE FRANK MARROCCO: It
24 isn't only -- oh, sorry. Go ahead.

25 MS. ANNA KINASTOWSKI: I was just

1 going to add one (1) thing -- one (1) sort of thought.
2 In the city of Toronto, we initiated a 3-1-1 program
3 where residents could call directly to a hotline and
4 say that, you know, they were having -- there's a
5 pothole here or, you know, their neighbour's building
6 a fence that's too high, whatever.

7 And there was a lot of discussion at
8 the time that council was considering doing this
9 because cou -- there were certain members of council
10 who felt that was their job, to listen to Mr. so and
11 so who had, you know, a pothole and to listen to Mrs.,
12 you know, whatever whose neighbour was building a
13 fence, and she just didn't like it.

14 So, it comes -- it's -- it's not an
15 easy thing to manage. John calls it the bright line.
16 I always called it drawing a line in the sand. And
17 there was no way I was going to cross that line. And
18 I wasn't going to let councillors cross the line the
19 other way.

20 MR. WILLIAM MCDOWELL: Let me ask,
21 talking about the bright line and talking about
22 consultation with members of council, in your
23 experience, would council members in Toronto ever look
24 at draft reports and say, oh, this is too negative,
25 there are too many risks identified, I want something

1 softer and more positive?

2 MS. ANNA KINASTOWSKI: I can only
3 respond to legal reports. I know there was
4 consultation. And, I mean, sometimes when you're
5 dealing with a major policy issue that is going to
6 have huge consequences, there has to be some
7 recognition of where staff's going.

8 But I can assure you that nobody looked
9 at a legal report until it was signed. Now, where we
10 were dealing with -- and -- and this is such a
11 different area, development applications and matters
12 that are before the OMB and there's ratepayers
13 involved and, you know, the community is abuzz because
14 there's a 50-storey building going up in their --
15 their neighbourhood.

16 The councillors were not -- I would not
17 allow my staff to show the councillors the draft
18 report. But I said, Tell them that a reports coming
19 and, you know, there's going to be a settlement,
20 there's not going to be -- just general.

21 I said, Once the report was signed,
22 then you share it with the councillor, not before.

23 MR. WILLIAM MCDOWELL: Well, and
24 effectively, in the case of staff reports and -- and
25 in the case even with legal reports, the author of the

1 report comes to council -- or comes to a committee of
2 council and can be cross-examined, in effect, or the -
3 - if there are weaknesses in the report, you can see
4 where they are. It could be remitted back for further
5 consideration, but at least it's transparent?

6 MS. ANNA KINASTOWSKI: It's
7 transparent. The other thing that would happen with
8 some reports is, where a staff person at a lower
9 level, let's say a planner, just as an example, would
10 write a report but their manager or their director or
11 the chief planner would not agree with that direction
12 that was being put forward, in some cases, the planner
13 made it very clear, not to the political level but
14 within the division, I will not have my name on that
15 report.

16 So, you knew that there had to be some
17 discussions. And like a lot of things, there have to
18 be some compromises sometimes and some give and takes.

19 MR. WILLIAM MCDOWELL: Right. But the
20 discussions between senior and junior members of
21 staff, those are all on the same side of the bright
22 line --

23 MS. ANNA KINASTOWSKI: Yeah.

24 MR. WILLIAM MCDOWELL: -- if I can put
25 it that way?

1 MS. ANNA KINASTOWSKI: Yes,
2 absolutely.

3 MR. JOHN FLEMING: I just want to echo
4 that the whole notion of -- of members of council
5 having a -- let's call it a material say about what's
6 going into a staff report to me is -- is absolute
7 slippery slope stuff.

8 We start to argue about one (1) word,
9 and then it becomes one (1) sentence, and then it
10 becomes one (1) paragraph, and then it becomes, you
11 know, the substance of the report.

12 So, gathering information, as -- as
13 Anna says, floating some -- some sort of initial
14 directions may be situation dependent, but letting
15 members of council have a draft report? No.

16 MR. WILLIAM MCDOWELL: And you dealt
17 with a situation where -- because there tends to be in
18 a lot of things kind of a hothouse atmosphere, you
19 know, the political stakes are high, the community's
20 upset and so on.

21 But where staff makes an appraisal, we
22 -- we need more time than the political level would
23 like -- the -- the council would like to give us to
24 consider this.

25 How would you manage those to -- to

1 have adequate time to really reflect on what the
2 advice would be?

3 MS. ANNA KINASTOWSKI: Well, in my
4 experience, we tried as much as possible to say it was
5 not possible to bring a fulsome report forward with
6 the proper advice in that period of time, like, where
7 council's, like, come back in, you know, whatever, one
8 (1) month, two (2) months, three (3) months.

9 Other times, if you really were not
10 ready to come forward with it, and, I mean, you know,
11 sometimes you drop everything you're doing because you
12 have to meet that time line.

13 But if there was an opportunity, a
14 report would be done basically saying we're still
15 working on this, this, and this and we really need
16 more time and we're going to come in, you know, another
17 -- in three (3) -- three (3) more months.

18 And I don't know, John, how you handle
19 that.

20 MR. JOHN FLEMING: I just wanted to
21 sensitize you to another potential pressure point.
22 And I don't know the way that the Town of
23 Collingwood's council is -- is structured, but in --
24 in a lot of municipalities, council divides itself
25 into committees which are focussed on certain parts of

1 municipal operations, and those committees have a
2 chair.

3 And there are occasions where that
4 chair would be in dialogue with the commissioner or
5 department head who is submitting the bulk of the
6 report legitimately to talk about how's the meeting
7 going to play and what's the agenda look like so that
8 the chair can be properly prepared.

9 I always kelped -- kept a careful eye
10 on those in my CAO chair to make sure that that
11 relationship stayed on the right plain and it didn't
12 get, to be colloquial, to buddy buddy about those
13 kinds of things yet again a slippery slope.

14 THE HONOURABLE FRANK MARROCCO: Did
15 you ever -- how would you deal with a situation where
16 it's -- the councillor is not only affected by the
17 constituent, but they're affected by people who are --
18 are trying to -- you know, they -- by people who are
19 trying to sell a product, so -- so they go to the AMO
20 conference and they publicize their product.

21 And how -- how do -- I mean, that --
22 then they -- then -- now they've recruited a supporter
23 for the -- how did -- did you --

24 MR. JOHN FLEMING: It happens all the
25 time, Mr. Justice. People come back with great ideas

1 and -- and try and -- and bring those -- those
2 relevant staff onside with that thinking. And -- and
3 the standard response to that has to be thank you,
4 appreciate the input, we'll look into it.

5 And if we think this is appropriate to
6 bring to council as a product we should have or a
7 service we should buy or something we should change,
8 council will get our advice on that.

9 THE HONOURABLE FRANK MARROCCO: This
10 happens frequently?

11 MR. JOHN FLEMING: Not infrequently.
12 That sounded like a lawyer talking. That's scary.
13 Sorry, Greg.

14 THE HONOURABLE FRANK MARROCCO: Yes,
15 sorry.

16 MR. GREG LEVINE: No. I -- I didn't
17 want to say something before about the -- you had
18 asked about the mayor and the CAO. And John's
19 obviously had way more experience than I have, but it
20 seems to me the mayor is a -- the mayor's role is one
21 of a presider and a promoter. Presides over council,
22 needs to know what's going to happen in council,
23 probably has a close relationship with the clerk,
24 actually, so as opposed to necessarily the CAO and --
25 and -- but is also a promoter, but he isn't a director

1 of the staff per se, promotes the interests of the
2 municipality as a whole.

3 So, there really is a -- there's a
4 legal and, I think, a practical separation.

5 MR. JOHN FLEMING: I can recall one
6 (1) mayor, head of the council, that I served who
7 would ever now and again call me to that person's
8 office and, let's just say with vigour, tell me what
9 that mayor expected in terms of what was coming
10 forward.

11 And I would listen carefully and say,
12 okay, I hear you, I hear you. And I'd go upstairs to
13 my office and think about it and decide whether that
14 was something I was going to deal with or whether I
15 was, frankly, going to ignore because, again, it fell
16 my judgment.

17 And I knew that, just because the mayor
18 wanted that didn't mean there would be consensus on
19 council about that. In fact, that was a very divisive
20 council, so I learned really quickly not to be the
21 meat in the sandwich.

22 MR. JOHN MATHER: Looking in the
23 context of a smaller community, like Collingwood,
24 where there may not be the same level of resources,
25 staffing resources available to council, there may be

1 more of an inclination on a council member to get
2 involved in the day-to-day business of a smaller
3 community perhaps in part just because they need extra
4 hands.

5 Is there any circumstances that you can
6 see where it would be appropriate for a member of
7 council to get involved into the day-to-day business
8 of the town?

9 MR. JOHN FLEMING: Let me take a shot
10 at that first because I've thought about it. I knew
11 that was a question that is of concern to you. And
12 while my -- most of my CAO experience is in larger
13 municipalities, I've had some other involvement in
14 smaller municipalities.

15 And, yes, some of the -- call it the
16 culture of -- of smaller municipalities might be
17 somewhat different than large urban centres, like the
18 city of Toronto, but to me, the fundamental issues are
19 the same.

20 I think there's a perception that in
21 smaller communities where everybody knows everybody
22 and the style may be perhaps for better of a word --
23 better -- lack of a better word, a little more folksy
24 than in Toronto City Hall, as -- as Anna and I were
25 discussing earlier, even in the bigger centres the key

1 players know who's who and what's what.

2 So, the -- the risk of -- of heading
3 down that road of -- of looking for support, advice,
4 consultation, whatever, from folks in the community is
5 tricky.

6 And, again, for me, the -- the bright
7 line needs to be the driver, the decider. Anna,
8 anything to add, or to Greg, to that?

9 MR. GREG LEVINE: Well, I agree with
10 that. I don't -- I worry about this small town thing.
11 Collingwood isn't a small town. Paisley's a small
12 town. You know, there's -- and I'm not sure how
13 smallness plays into it. I -- I really agree with
14 there are fundamental things that have to be done and
15 fundamental roles that have to be respected.

16 And I think whether you're in -- I
17 spend most of my time these days in Southampton,
18 Ontario. Saugeen Shores is actually a fast growing
19 municipality, but you don't know everybody in town.
20 This notion that everybody knows everybody, it's not
21 true.

22 And it -- it's -- what is true is you
23 have a duty as a council member. You need to know
24 what it is and to fulfill it, and similarly for staff.
25 It isn't to say they aren't understaffed, but I have a

1 feeling that most of the departments in Toronto would
2 say they're understaffed.

3 MS. ANNA KINASTOWSKI: M-hm. Well, I
4 -- I would agree with that, that they are
5 understaffed. It's not -- it's something that's
6 everywhere. It's not unique to small towns or smaller
7 cities. Everybody's understaffed, but that doesn't
8 mean that councillors become involved in the day-to-
9 day business. It's as simple as that.

10 MR. JOHN FLEMING: The other comment I
11 was going to make is the very definition of community
12 is changing rapidly as we speak, and if for no other
13 reason than -- than the presence of social media,
14 which is a huge driver of what goes on in the -- in
15 the political milieu these days.

16 And I -- I know as an integrity
17 commissioner, I ended up investigating a complaint
18 that started out as a relatively innocuous comment
19 made in a public meeting, and it -- it became instant
20 overnight viral in that community in social media and
21 -- and led to a whole lot of consternation,
22 ultimately, over nothing.

23 And I'm thinking to myself, whether it
24 was a small community in the -- in the old definition
25 of community -- community now means whoever's got one

1 of those devices in their hands and is paying
2 attention to what's going on. So I -- to me, some of
3 those fundamental things are -- are in shift too. I
4 don't know how helpful that is to you, but it's real.

5 THE HONOURABLE FRANK MARROCCO: In --
6 in -- in your view, would -- because you talked about
7 the role of the mayor and the mayor being the CEO
8 within the way that's described in the Municipal Act -
9 - would -- in -- in your view, does -- would the mayor
10 have the authority to direct a major subsidiary asset
11 of the town to do something -- as the CEO, have the
12 kind of inherent or the internal authority to do that?

13 MR. JOHN FLEMING: In my mind, legally
14 and properly, categorically, no. But it's -- it's why
15 I referenced the reference in the statute to the mayor
16 being the CEO. I will hazard a guess that if you
17 asked every mayor in Ontario to give you their
18 business card now, it will say something like head of
19 Council and chief executive officer of 'X'
20 municipality.

21 But from a CAO's perspective -- a
22 former CAO's perspective, it's always been the case
23 that some mayors had influence beyond others simply
24 because of their position in the community, the regard
25 with which they were held, and the perceived authority

1 that they had or result of that. I don't think she
2 would mind my saying, my colleague Hazel McCallion
3 would be a really good example of that. Her -- her
4 statutory authority of mayor was no different than any
5 other, but when Hazel spoke, people listened.

6 And it's when I talk about the nature
7 of -- of the influence of those words 'CEO' in -- in
8 the -- in the public mind being -- ability to commit
9 the corporation. Whether it's the corporation of the
10 Town of Collingwood or one (1) of its subsidiary
11 assets, in my mind, the answer is no.

12 MS. ANNA KINASTOWSKI: I agree.

13 MR. GREG LEVINE: I do as well, and
14 it's been -- we don't tend to think of Canadian mayors
15 as city bosses, you know, and of the variety we knew
16 in Mayor Daley in Chicago who ran everything. And --
17 and -- and we shouldn't.

18 Mayors have roles as persuaders,
19 though, and they are the leaders of the community in
20 some sense, and they will use that role to persuade, I
21 have no doubt.

22 MR. JOHN FLEMING: I might just add,
23 the whole concept of city manager or CAO is a
24 phenomenon that, as I understand it, and I'm not
25 historian, really began in the United States and

1 migrated to Canada with the notion of having someone
2 who was a chief official. When I first started in
3 this business, the -- the clerk was kind of regarded
4 as the -- the -- the honcho in municipal government,
5 and over time, we have graduated to most
6 municipalities now having a CAO-like position.

7 I think it's regrettable that the
8 statute, while it provides for having one, doesn't
9 provide for that being required, nor does it
10 particularly be clear about what the authority of that
11 is. But to me, it's -- it's a part of the -- the glue
12 that makes good local government work, having somebody
13 who is, if you like, at the coal face in the
14 relationship between the political body and -- and the
15 administrative organization.

16 THE HONOURABLE FRANK MARROCCO: It
17 would seem -- you -- I -- I guess you'd say, and
18 correct me if I'm wrong, you couldn't call that person
19 the COO either, because that's sort of consistent with
20 the corporate world, and the CEO doesn't have the
21 equivalent authority. It just probably doesn't make
22 sense --

23 MR. JOHN FLEMING: Yeah.

24 THE HONOURABLE FRANK MARROCCO: -- to
25 -- to -- to use any terminology that -- like that to

1 -- just means something different --

2 MR. JOHN FLEMING: Most folks who
3 occupy those positions now would prefer the title city
4 manager, I think, to chief administrative officer. On
5 the other hand, with the -- with the change to -- this
6 is John's personal observation, so it's worth what you
7 paid for it -- personal observation that over time,
8 with the --

9 THE HONOURABLE FRANK MARROCCO: Well,
10 we know what we paid for.

11 MR. JOHN FLEMING: Yeah. With the
12 ascendancy of the notion of the mayor being the CEO,
13 and -- and clearly defined as the spokesperson and --
14 and the champion of the municipality and all that sort
15 of stuff, I would say that today's CAO is expected to
16 be less visible in leadership in municipal government
17 than it was -- I sound like an old guy because I am --
18 less visible in -- in the public eye than my time.

19 I -- when I was hired in the two (2)
20 places I've been CAO, I knew full well the Council
21 expected me to be a leader and to be seen to be a
22 leader, and I don't have quite that same perception of
23 -- of some of the folks who occupy those positions
24 now.

25 MR. JOHN MATHER: Mr. Fleming, you

1 spoke a bit about the -- the taking steps to have the
2 bylaw authorizing the C -- the CAO's bylaw including
3 sufficient authorizations.

4 When it comes to the issue of the CAO's
5 ability to manage the roles and the line between staff
6 and relation -- sorry, staff and Council, is there
7 anything in particular you had in mind in terms of the
8 sort of authority the bylaw could grant the CAO and
9 any -- any particulars along those lines?

10 MR. JOHN FLEMING: A couple, yes. One
11 (1) of them is -- is spend authority within budget,
12 and -- and -- and ability to commit funds even in
13 exigent circumstances. I think the more important one
14 is the hire-fire authority. At what level does the
15 CAO's hire-fire authority to begin?

16 I can recall having discussion with
17 colleagues years ago about what does your bylaw
18 provide in terms of your ability to hire and fire a
19 department head, for example? Do you have to have
20 Council involved, do you have to have Council
21 informed, or do you have the authority to -- to hire
22 or dismiss a department head?

23 And there's a fair amount of -- of
24 difference in there, obviously, because it goes to the
25 ability of the city manager or the CAO to really

1 effectively direct people. My notion, just
2 parenthetically, about the most important thing I
3 believe I did as a CAO was to make sure always that my
4 department heads were all rowing in the same
5 direction, particularly appropriate for development
6 matters, which generally involve legal and -- and en -
7 - and engineering and planning and finance, all four
8 (4). And if they were pulling in opposite directions,
9 that was a problem.

10 I never got into development agreements
11 myself, but I made darn sure that my department heads
12 were -- were working together and reaching a consensus
13 recommendation to Council about how those matters
14 should go forward. It's -- it's really a key role.

15 I know we've seen some other questions
16 you've had about how important is it for there to be a
17 -- an executive leadership group, whatever it --
18 membership that has, in the management of a
19 municipality, and -- and team is everything in this
20 business. And -- and if a CAO isn't effective at
21 leading a team, then probably not going to last too
22 long.

23 My phone is going crazy, Mr. Justice.

24

25

(BRIEF PAUSE)

1

2 MR. JOHN MATHER: We've all received
3 our emergency alerts at this point.

4 Ms. Kinastowski and Mr. Levine,
5 anything on --

6 MS. ANNA KINASTOWSKI: I would -- just
7 going to add -- and Greg, you can... John's comments
8 about the financial authority. So after the
9 recommendations of -- what did we call -- the Bellamy
10 Inquiry were released, we all got -- as division
11 heads, we all got letters very clearly indicating our
12 authorities, very clearly our financial authority,
13 what we were allowed to spend up to, hiring, firing,
14 all of that stuff was laid out for each division head
15 in a memo.

16 MR. GREG LEVINE: Thanks. Just a
17 quick thing in terms of the roles of senior staff,
18 because some are statutory officers, so they have a --
19 they have a different role, and they -- they have a
20 different responsibility, it seems to me, and a direct
21 responsibility to Council as treasurer or as clerk.
22 And so I don't know that there necessarily would be
23 friction, but they may have things that they have to
24 do independently --

25 MS. ANNA KINASTOWSKI: M-hm.

1 MR. GREG LEVINE: -- and they may have
2 to do whether or not the CAO wants it done.

3 MR. JOHN FLEMING: And a good example
4 of the interface between those two (2) could, again,
5 be a development file where the planner says, I want
6 it that way, and -- and that's what I'm going to
7 recommend, and the engineer says, I can't service that
8 that way because I can't. So okay, let's figure out
9 together how we're going to bring this forward to meet
10 the needs of the developer and accomplish the -- the
11 best interests of the community.

12 Anna, you were going to say something
13 else?

14 MS. ANNA KINASTOWSKI: Well, I was
15 just going to say in -- you know, for the city
16 solicitor and, certainly, the city clerk, it's a -- my
17 experience has been a direct-reporting relationship to
18 city Council. Now, it didn't -- when I became city
19 solicitor, it wasn't like that, and it's not
20 necessarily like that in every town or city, but there
21 were changes, and it is a direct-reporting
22 relationship to Council. I reported to the city
23 manager for administrative matters only.

24 MR. JOHN FLEMING: The same is true
25 when it comes to things like public health, and in my

1 past as CAO, I've had the medical officer of health
2 reporting to me. Obviously, I'm not a doctor.
3 Obviously, I'm not going to be directing that person
4 on how to -- how to deal with a pu -- public health
5 crisis in the community, but I sure as heck expect the
6 MLH to be at my executive table and working with his
7 or her colleagues around how our programs fit together
8 and serve the community.

9 MR. WILLIAM MCDOWELL: And can I ask,
10 given the importance of the CAO as the chief public
11 servant and as, in a sense, the lightning rod, if --
12 if some part of staff advice isn't popular, then it's
13 going to find itself on the CAO's desk.

14 What should the expectations of Council
15 be with respect to the job tenure of CAOs? I mean,
16 obviously, nobody has tenure per se, but on the other
17 hand, it seem to be terribly disruptive if, you know,
18 Council thinks the CAO's had a bad week and wants a
19 new CAO, because, you know, the chilling effect that
20 cascades down from that.

21 So how should Councils look at how long
22 they expect their CAO to be in office and whether you
23 have any thoughts about that?

24 MR. JOHN FLEMING: I've known of cases
25 where a CAO lasted in the -- you could count it in

1 weeks, and other where it's been, literally, in
2 decades, and for me, I -- I think the secret sauce to
3 all of that is about understanding of the roles and
4 relationships and clarity around that. It assumes
5 that not only the head of the Council, but the Council
6 itself buys into that kind of approach and has respect
7 for that and has respect for the leaders of -- of
8 those two (2) bodies. And in that case, you know, the
9 long-term continuity consistency of stable leadership
10 in the chief administrative officer may help with the
11 transition to a -- a new political head.

12 Now, it's well known in the CAO trade
13 that after a municipal election, there are generally a
14 bunch of new CAO vacancies who hit the job market
15 because new heads of Council think that they want
16 somebody who's their person to -- to lead the
17 organization. I -- I just like to comment -- it may
18 or may not be helpful to you -- but having served as a
19 -- as a deputy minister through the change of
20 government from one (1) party to another, there is
21 always an inherent suspicion by a new government
22 coming in that the senior administration -- they're
23 part of the old guys. I don't trust them.

24 And it's -- it's a job of -- of senior
25 public servants, in the Ontario public service at

1 least, particularly for deputy ministers, to as
2 quickly as they can, get ministers to understand the
3 impartiality and the professionalism of the public
4 service. Sometimes, that works better than others.

5 MR. JOHN MATHER: In a circumstance
6 where staff has been directed to do something by
7 Council, so there's been a vote, and all of Council
8 have directed staff, and a -- and a particular member
9 of staff has concerns about that direction that's been
10 given, can you speak to what the appropriate avenues
11 or approaches there are to that member staff in order
12 to raise their concerns, and -- and see that it gets
13 considered?

14 MS. ANNA KINASTOWSKI: Like -- could
15 you give maybe a little more detail, because there's a
16 number of, you know, from here to here, there's black,
17 white, and many, many shades of grey.

18 MR. JOHN MATHER: And we maybe touched
19 on it before, but for instance, if staff is directed
20 to provide a recommendation, or a report, or complete
21 a project in period of time that -- that staff member
22 does not believe there is sufficient time to fulfil
23 that task, and -- but they've already been given the
24 direction, and the direction has been provided, is
25 there anything they can do to -- or what should they

1 do to express their concerns and -- and have it
2 considered?

3 MR. JOHN FLEMING: I would say, if I
4 were the senior staff person in a situation like that,
5 I would have been very clear with Council that I don't
6 think Council's direction is realistic, but if that is
7 your direction, we will respect it, and we will give
8 it our best shot, and prepare myself for the fact that
9 as soon as it seemed reasonable to do so, I'd be
10 reporting back not to say, I told you so, but to say,
11 this -- as -- as we had anticipated, it's going to
12 take longer than we thought, too bad, so sad, here it
13 is.

14 MS. ANNA KINASTOWSKI: In -- in other
15 circumstances, if you're talking about sometimes the
16 planners will, for example, recommend that a
17 development not be approved, and Council does approve
18 it, it's a political decision. It has always been my
19 view that as long as they've had the advice, they can
20 make that decision.

21 And I've had situations where the
22 planners didn't want to draft the necessary bylaws in
23 order to implement Council's direction, and my view
24 was always, you have to do it. You have to do it.

25 Now, that's not an illegal act, so I

1 don't know where exactly you are on this spectrum.
2 There are things that Council has made decisions that
3 I personally thought were just absolutely stupid, will
4 end up in court, and everybody would always say, well
5 you -- you know, there's no authority for Council to
6 do it.

7 Yes, Council can do it. We're just
8 going to end up in court, and the court will say,
9 well, you know, it's -- you did it the wrong way, or
10 it's outside of your authority, or, you know,
11 whatever. There's -- there's all kinds of different
12 shades of grey.

13 MR. GREG LEVINE: You -- you're asking
14 how someone would raise it?

15 MR. JOHN MATHER: Maybe perhaps I can
16 -- yes, that's what -- what we're asking, and -- and
17 perhaps there's an instance in which Council makes a
18 decision before they've received any dir -- advice
19 from staff.

20 So in -- rather than making a -- a
21 decision that is contrary to the recommendation they
22 received, they make a decision without having received
23 a recommendation from staff?

24 MS. ANNA KINASTOWSKI: I'm going to --
25 I'm going to share an example where we were dealing

1 with a matter at Council, and one (1) of the
2 Councillors stood up and said, You know, I was
3 thinking in the shower this morning, instead of doing
4 this, why don't we just do that?

5 Well, and it set off a whole flurry of
6 unintended consequences, because in fact, Council had
7 the ability to do that, but they went about it the
8 wrong way. So, I mean, we had to keep reporting back.
9 And yeah, I mean, you say you can't do it this way.
10 And you do reporting back.

11 But again -- Greg? Do you --

12 MR. GREG LEVINE: No. Well, I was
13 just -- I was partly thinking of the level of the
14 person who --

15 MS. ANNA KINASTOWSKI: Yeah.

16 MR. GREG LEVINE: -- might have the
17 issue, right? So if somebody sees something that
18 wasn't considered in a recommendation or a decision
19 that was made at Council sort of ad hoc-ly, how would
20 they raise it?

21 They would presumably raise it to their
22 department head, raise it with the CAO, who would then
23 discuss it, and then go back to Council. But they
24 wouldn't just say, we can't possibly do that. We're
25 not going to do that. It's nuts. Forget it. They're

1 going -- they're going to revisit it.

2 MR. JOHN FLEMING: We were just sort
3 of chuckling at a moment this morning, Anna and I
4 about the -- the whole notion of -- of the fact that
5 sometimes senior public servants have to be better at
6 the politics than the politicians are. You just don't
7 want to get caught doing that.

8 And they'd -- the lesson to be learned
9 from that, in reference to your question, Mr. Mather,
10 is -- is really all about, sometimes you have to have
11 the sense when Council is headed in a direction just
12 to lay back and wait for another day when they aren't
13 prepared, or are willing to listen to -- to advice.
14 It's a -- it's a judgment call. Lots of those in this
15 business.

16 MR. JOHN MATHER: And I think we
17 appreciate what was pointed out in terms of the
18 hierarchy. Depending on where you are within the
19 staff structure, you may report up to your department
20 head, and it may ultimately be something that needs to
21 be escalated to the CAO level.

22 A question related to that is: What can
23 staff -- and -- and if -- to the extent their level is
24 relevant to the answer, you can take into account --
25 but what can a staff members who's not a CAO do if

1 they have concerns that the CAO is not acting either
2 in accordance with a -- a City policy, a best
3 practice, or a bylaw. What happens when there is a
4 perceived problem at the -- at the top of the staff
5 structure? What can be done?

6 MR. JOHN FLEMING: I'll give you my
7 response first, and then turn to my colleagues.

8 I noticed that you have a -- an
9 employee relations policy that talks about what staff
10 do in the event that they have a disagreement. And it
11 tops out at the CAO.

12 So your question is: What if it's the
13 CAO that's the problem? I will tell you in the Town
14 of Caledon, where I am the integrity commissioner, I
15 forget whether it's in the code of conduct or in my
16 contract. It says I have only one (1) role insofar as
17 any employee conduct issues are concerned, and that is
18 if there is a complaint about the CAO, it comes to me.
19 That was Caledon's way of dealing with sometimes a --
20 a complaint process that ends with the CAO isn't quite
21 high enough up the chain.

22 I've never had to act on that, but it's
23 there. I don't know if you have any other thoughts on
24 that.

25 MR. GREG LEVINE: Well, I -- I was

1 thinking the question -- and it seems to me, you --
2 there has to be some sort of whistle blowing policy.
3 And there isn't in most places. There isn't. You're
4 just sort of stuck, or you become public, or you
5 resign, or you take a position that's somehow
6 difficult. And I think that's a huge problem.
7 There's not a lot of protection for whistle blowers,
8 either of Council or staff.

9 THE HONOURABLE FRANK MARROCCO: And do
10 -- do you think it would be reasonable to have the
11 City solicitor receive the whistle blowing complaint
12 with -- in circumstances where the lawyer has been
13 instructed to protect the identity of the whistle
14 blower at all -- you know, at -- at all costs, really,
15 and have the lawyer then go forward and say, there's a
16 problem.

17 This is what the -- and -- and do it in
18 such a way that you can't figure out -- or hopefully
19 can't figure out who the whistle blower was, because
20 if you can figure out who the whistle blower is, it --
21 it'll happen only once. There'll be some retaliation
22 against the whistle blower, and then nobody will --
23 will speak up again.

24 You can't get at the privilege -- you
25 can't --

1 MR. GREG LEVINE: Right, right, that's

2 --

3 THE HONOURABLE FRANK MARROCCO: you
4 can't get at the privilege if -- if you -- and as long
5 as you -- this -- the Town can't revoke it, then the
6 person's -- I'd just say maybe the person would be
7 protected, but I'm curious what you think.

8 MS. ANNA KINASTOWSKI: It's a
9 possibility. I know in my experience, it's gone to
10 the auditor general, so to the chief auditor.

11

12 (BRIEF PAUSE)

13

14 MS. ANNA KINASTOWSKI: And certainly -
15 - I mean, I had a lot of things brought to my
16 attention, but nothing quite to that level. I've been
17 blessed to work with very ethical, honest, hard-
18 working City managers in my career.

19 THE HONOURABLE FRANK MARROCCO: Well,
20 you know, it -- it might not even --

21 MS. ANNA KINASTOWSKI: That would be -
22 - that would be --

23 THE HONOURABLE FRANK MARROCCO: -- be
24 -- it might not even be unethical, in a way, but it --
25 somebody may have an idea that they should bring about

1 a certain goal, no matter what, and they are starting
2 to cut corners, or -- or however you want to describe
3 it, and somebody says, this isn't the way it should be
4 done, but they're afraid to come -- come forward.

5 MR. GREG LEVINE: It's just a thought.
6 I think the solicitor is in an awkward position to do
7 it. I can say I've had an experience, something like
8 this in working with a code of conduct years ago where
9 the City solicitor took the complaint. And that -- it
10 is difficult, because then they're investigating the
11 Council members of the Council that makes decisions
12 that they have to operate with.

13 So I -- I -- it is -- it's -- it's a
14 difficult relationship, because they are doing other
15 functions. If they weren't -- if it were their only
16 function, it would be different, but because they're
17 doing different functions, at least to a potential
18 compromise.

19 So having somebody like the auditor, or
20 the integrity commissioner, somebody who's a separate,
21 independent officer, makes -- I think is probably
22 easier in terms of the working relations of a
23 municipality.

24 MS. ANNA KINASTOWSKI: Well, and just
25 thinking further about it, I mean, if the City

1 solicitor's client is Council, it gets very awkward.
2 There could be a whole host of different conflicts
3 involved, and that's why having accountability
4 officials where that person could go to in the
5 appropriate circumstances I think is the best -- the
6 best way to handle it.

7 MR. JOHN FLEMING: In the Code of
8 Conduct that I work with there is a definite provision
9 around confidentiality of -- of the name of a
10 complainant and I protect that. I have had a
11 complaint from staff about a councillor where I
12 studiously protected the confidentiality of the
13 complainant.

14 So if I could extrapolate from that to
15 taking a complaint about the CAO, as I described a
16 moment ago, I would be protecting the identity of the
17 complainant in the same way that I would if the
18 complaint were about a member of council. And, in
19 fact, the Municipal Act -- I think it's the Municipal
20 Act now, Greg, lays down some fairly specific language
21 about protecting confi -- confidentiality. So there's
22 a -- there's a statutory recognition of the need for
23 that protection.

24 THE HONOURABLE JUSTICE MARROCCO: I
25 think what I'll do is --

1 MR. JOHN FLEMING: Whether that helps
2 us with what is going on south of the border, though.

3 THE HONOURABLE JUSTICE MARROCCO: I
4 think what I'll do is I'll take fifteen (15) minutes.

5

6 --- Upon recessing at 3:22 p.m.

7 --- Upon resuming at 3:37 p.m.

8

9 MR. JOHN MATHER: Before the break we
10 were discussing options that might be available if a
11 member of staff has a concern about something the CAO
12 is doing and talking about potential whistle blowing
13 regimes, for lack of a better word, but that notion.

14 Can you speak to what protections might
15 be available or -- or what might be done to protect a
16 member of staff from the fear of reprisal if they are
17 going to raise a concern about either the CAO or a
18 member of council?

19 MR. JOHN FLEMING: Seems to -- seems
20 to me the first protection is that confidentiality we
21 were referring to. Beyond that, I'm going to defer to
22 my legal colleagues.

23 MS. ANNA KINASTOWSKI: You know, the -
24 - the whistle blowing bylaw obviously should have
25 protections in it from reprisals, but as we know, it's

1 one (1) thing to draft policies, bylaws, codes, and
2 it's another thing to follow them and ensure that
3 they're enforced.

4 MR. GREG LEVINE: Well, yeah, for
5 sure, but codes should have them. Codes -- codes of
6 conduct should have anti-reprisal clauses in them. It
7 should be at least worthy of a reprimand when somebody
8 tries to reprise -- engage in reprisal.

9 There might be a statutory way to do
10 it. A model that I can think of is the Ombudsman Act
11 of BC, which is one (1) of the few ombudsman acts in
12 the country which has an anti-reprisal clause in it,
13 and that becomes a provincial offence so that -- you
14 could make it an offence, and have it prosecuted by
15 someone other than the Commission.

16 MR. JOHN MATHER: When it --

17 MS. ANNA KINASTOWSKI: You know, just
18 sort of -- we have investigated a number of instances
19 where staff have come forward and said they've been
20 reprimanded for whatever, and, you know -- and a lot
21 of times when you investigate it is a disgruntled
22 employee, so there is always a balancing act. When
23 you have twenty-six thousand (26,000) employees
24 working for your organization, there's bound to be
25 some disgruntled ones.

1 MR. JOHN MATHER: One (1) of the
2 things that we've already spoken about a bit is the
3 scope of the CAO's authority.

4 Are there circumstances in which it is
5 appropriate or you think it would be appropriate for
6 the CAO's authority to be delegated to other senior
7 members of staff or other members of staff?

8 MR. JOHN FLEMING: I would say yes,
9 just from a practical point of view. The CAO, for
10 whatever reason, might have a -- a project that falls
11 within his or her purview that they don't have free
12 time to deal with and -- and want to assign somebody
13 else to work on it under their supervision.

14 I guess I could also make something of
15 an argument, perhaps a little bit of thin -- a little
16 bit thin, but for a lot of people, a lot of positions
17 that work for the municipality already have delegated
18 authority just because of the -- the nature of council
19 giving authority to the CAO to run the organization.

20 Kind of analogous to -- and I
21 appreciate that's not your area of interest, to the
22 way that things work in the -- in the Government of
23 Ontario where there's a very sophisticated delegation
24 of authority regime in place that -- that -- as Anna
25 was saying earlier, cascades authority down for hiring

1 and spending and all those kinds of things. It's --
2 it's an efficiency measure for sure.

3 MR. GREG LEVINE: Sorry, you're --
4 when you talk about delegating, we need to
5 differentiate between delegating tasks and authority.
6 You were asking about authority.

7 MR. JOHN MATHER: Yes.

8 MR. GREG LEVINE: So council would
9 have to do that, right? It's different than assigning
10 -- you know, give me a report on something. And
11 that's important, and Council can't interfere with
12 some delegations. Like, the Clerk has the power to
13 delegate power. That's statutory, right?

14 MR. JOHN MATHER: In an instance where
15 it appears to be beneficial to have the CAO's
16 authority, a portion of it delegated to someone else,
17 do you have any guidance on how that should be
18 implemented or how that should be carried out in order
19 to make sure the best results are achieved?

20 MR. JOHN FLEMING: Clearly defined and
21 documented would be my opening comment.

22 MS. ANNA KINASTOWSKI: Right, right.
23 In staff reports, delegation bylaws, the whole -- the
24 whole kit and caboodle of documenting everything.

25 MR. JOHN MATHER: At times staff in

1 order to show their function to provide
2 recommendations to council or to investigate potential
3 steps council can take, they will -- it would be
4 potentially open to them to engage outside consultants
5 or experts to provide expertise on admittedly a broad
6 range of matters.

7 Can you give a sense of when a town
8 should be engaging consultants when -- to determine --
9 sorry, let me -- let me rephrase. When -- when a town
10 should be engaging consultants and when it is
11 appropriate to get out -- outside expertise, and when
12 they do so, what are some ways a town can ensure
13 they're getting value for the cost they're paying for
14 those consultants?

15 MS. ANNA KINASTOWSKI: Sure. Start
16 off with...

17 MR. JOHN FLEMING: It seems to me that
18 the rationale behind hiring outside consultants is
19 fundamentally -- fundamentally and obviously, if you
20 don't have the expertise in-house and you need that
21 expertise, then you need to go out-house to find it.

22 So fair enough. It may also be on
23 occasion where a matter is sensitive enough or
24 contentious or controversial enough that another
25 opinion is wanted beyond what the staff might be able

1 to offer, and then whether to do it and -- and how to
2 do it.

3 From the discussion we had this morning
4 about procurement, obviously proper procurement
5 process with -- with transparency would be important.

6 I guess the last consideration is what
7 are the town's financial resources and -- and can it
8 afford to hire outside opinion which would all lead to
9 the -- to a decision that says let's really think
10 about this before we do that, rather than willy-nilly
11 going out and -- and doing that.

12 MS. ANNA KINASTOWSKI: I don't know if
13 there's that much I can add. I mean, one generally
14 thinks of going outside because you don't have the
15 resources in-house. It could be a matter of -- there
16 could be a conflict. You need to go outside because
17 whoever is tasked with it in -- inside is conflicted.

18 It could be -- I've had situations
19 where members of council are convinced that my legal
20 advice is wrong, so you go outside and you try and get
21 a second opinion.

22 I mean, of course, my examples would be
23 more legally kind of, but, yeah, it -- it's like you
24 need to -- well, I go back to again the -- Madam
25 Justice Bellamy's Inquiry and the City got involved in

1 leasing computers and had no expertise in it, and they
2 should have gone outside. They should have gotten
3 expertise. It just wasn't something...

4 We've gone outside because we've been
5 dealing with companies that have gone bankrupt, and we
6 just -- we didn't have that kind of expertise in-house
7 to really know all the ins and outs of bankruptcy law,
8 for example. You do that for certain engineering
9 tasks.

10 MR. JOHN MATHER: Where does the
11 decision lie to identify the fact that there is a need
12 for outside expertise? Is that something council
13 should approve? Is that something that falls within
14 staff to recognize their own in-house expertise?

15 MS. ANNA KINASTOWSKI: I think it
16 depends on the municipality itself, and I think again
17 there's many -- you know, every situation is going to
18 be a bit different.

19 I have had situations where advice has
20 been provided to council and they don't like it, and
21 they instruct staff to get outside expertise, and
22 there's other times I think it's the division head or
23 in consultation with the CAO, says I don't have the
24 expertise to do this leasing bit that -- you know, I
25 don't know -- have no idea. Nobody on my staff knows

1 how to lease computers. It depends on the
2 circumstances, yeah.

3 MR. GREG LEVINE: For sure. Just to
4 clarify again, who decides to do that?

5 MR. JOHN MATHER: It seems that we
6 identified that it would be -- there may be decisions
7 or input that's needed that doesn't -- and the
8 expertise doesn't exist in-house within the town
9 staff, and an expenditure may need to be made to bring
10 an outside expert in, and generally where does that
11 decision lie that, okay, this is something where we
12 should go out?

13 MS. ANNA KINASTOWSKI: Does it --

14 MR. GREG LEVINE: But it might depend
15 on the level of the task and the -- and the budgetary
16 --

17 MS. ANNA KINASTOWSKI: Financial --

18 MR. GREG LEVINE: -- process --

19 MS. ANNA KINASTOWSKI: What financial
20 --

21 MR. GREG LEVINE: -- of the
22 departments, yeah, because --

23 MS. ANNA KINASTOWSKI: -- authorities.

24 MR. GREG LEVINE: -- all department
25 heads may be given a certain amount of leeway about

1 getting outside resources or -- of any sort, whether
2 that be consultants or machinery or whatever. They
3 may have a certain budget to do that, so they will
4 make that decision, but if it's beyond that, then it's
5 got to go through a different process.

6 MS. ANNA KINASTOWSKI: M-hm.

7 MR. JOHN FLEMING: It strikes me
8 there's one (1) other circumstance where council might
9 decide they need to have someone outside, and I think
10 one of the landmark -- mark issues I dealt with in my
11 tenure in Alton region, we were moving forward on a
12 very complex approval process for a new landfill site
13 and we ended up after an environmental assessment with
14 two (2) sites, one (1) in each of -- of two (2) of the
15 four (4) municipalities of the region. Nobody wanted
16 a dump.

17 So there was inherent conflict in
18 council because both were defending against this waste
19 management facility coming to their municipality. So,
20 it served us well to have outside resources not only
21 doing the legal work and the engineering and
22 environmental work and so on, but really the
23 management of the process.

24 MR. JOHN MATHER: In an instance where
25 an outside -- or staff has retained an outside expert

1 or consultant, can you speak to -- and again, I
2 appreciate it depends on circumstances, but a high
3 level, how best a member of staff in writing a staff
4 report can communicate those consultant's opinions or
5 findings to council in a way that they get the full
6 picture but, you know, weighing against not inundating
7 them with information, if you understand what I mean?

8 MR. JOHN FLEMING: I'd be reluctant to
9 have staff speaking for a consultant's findings. It
10 seems to me the consultant should be speaking for
11 their findings and it should free stand on its own,
12 cover report from staff person saying you asked, here
13 it is.

14 MS. ANNA KINASTOWSKI: Possibly with a
15 bit of an executive summary that's been vetted by the
16 consultant, and -- and in most cases we -- the
17 consultant was asked to come to city council to assist
18 with the questions. They could get very, very
19 technical.

20 MR. JOHN MATHER: Something that was
21 discussed by Ms. Bellamy and also raised by you, Ms.
22 Kinastowski, in your opening, was the fact that
23 training is provided to members of council, booklets
24 are provided in terms of setting out policies, laws,
25 regulations, and it appears to be sometimes an issue

1 of having that information digested.

2 Is there any suggestions you can
3 provide on ways to better ensure that members of
4 council, and -- if it's separate that makes sense, but
5 also members of staff can understand their roles and
6 responsibilities and where those are set out?

7 MS. ANNA KINASTOWSKI: Well, I think
8 for staff it's pretty easy. If there's a
9 determination made by the staff, or at the top levels,
10 that staff should receive training.

11 So, after the Inquiry report, the City
12 of Toronto very much focussed on integrity and ethics.
13 And you were required to attend training whether you
14 thought you should or not; everybody had to, and they
15 kept checklists of it.

16 So -- anyways, I lost my train of
17 thought --

18 MR. JOHN FLEMING: Let me --

19 MS. ANNA KINASTOWSKI: -- so I'm going
20 to let John answer while I get --

21 MR. JOHN FLEMING: Let me jump in
22 while you're --

23 MS. ANNA KINASTOWSKI: Well --

24 MR. JOHN FLEMING: -- you're finding
25 it. It -- it goes back in fairly significant measure

1 to motivation that I talked about in my opening
2 remarks today.

3 And if -- when it comes to training and
4 members of council, which I think it kind of at the
5 core of your question, there's an old adage about
6 horses and drinking, and that's certainly operational
7 here.

8 I think if -- if the culture of the --
9 of the council and of the staff is one that is -- is
10 sort of founded in -- in ethics and integrity, then it
11 shouldn't be a big challenge.

12 On the other hand, I've encountered
13 people who've said, I never bothered reading any of
14 that stuff, when confronted with the fact that they
15 had breached it.

16 So, if that's the attitude, then you
17 accept the consequence.

18 MS. ANNA KINASTOWSKI: M-hm.

19 MR. JOHN MATHER: Are there any tools
20 that can be used to -- oh, sorry.

21 MR. GREG LEVINE: Well, I was just --
22 I was just saying, you know, specific training for a
23 councillor, it's a set aside that the commissioner
24 does on code of conduct, for example, that -- that
25 council itself mandates that training if they're

1 willing to do that.

2 I mean, I've had several councils do
3 that, make very specific requests that I appear and
4 that I not only do training for them, but that I do a
5 public re -- reported statement on what the code was
6 about. I think that's a way to do it.

7 The -- the commissioner, too, can -- if
8 you have a commissioner, can do a -- and you have to
9 have something now -- can do reports that are
10 educational that essentially take an issue -- and not
11 a specific case necessarily, but take an issue and put
12 it to council and ask for time before council to talk
13 about it.

14 And councillors can request that, as
15 well. I've had numerous municipalities where councils
16 have worried about the behaviour of someone, you know,
17 a fellow member, but didn't want to raise it, didn't
18 want to complain, but wanted to talk about it somehow,
19 so they talked to me and I wro -- reported on the
20 issue, and it's a way of talking about it.

21 So, it seems to me there's education of
22 council as a whole and -- and report -- through
23 reports and formal training. But there's also the
24 potential, it seems to me, and it depends on how much
25 time the commissioner has and how much willingness the

1 council have, but to just meet with council members to
2 talk about the re -- the code.

3 And one (1) thing that's important
4 about that, it's harder for council -- councillors in
5 council, or even as a group, however one defines it a
6 committee of the whole, to raise particular examples,
7 particular to them or their colleagues.

8 There's just too much politics and too
9 much ego, and if you can meet with them separately,
10 that --

11 MR. JOHN FLEMING: And there is a
12 provision that -- that says that council can meet in
13 camera for educational purposes without violating the
14 closed meeting rules, so sometimes that would be a
15 means of assisting.

16 But the ugly bottom line is you can't
17 force councillors to read or to listen.

18 THE HONOURABLE FRANK MARROCCO: Have
19 you had the experience where there's a false sense of
20 confidence derived from the fact that an outside
21 consultant has been retained, a sense that the
22 consultant's doing more than they're actually retained
23 to do? Have you had that kind of experience?

24

25

(BRIEF PAUSE)

1 MR. JOHN FLEMING: I can't think of an
2 example.

3 MS. ANNA KINASTOWSKI: I can't think
4 of an example either.

5 THE HONOURABLE FRANK MARROCCO: All
6 right. Thank you.

7 MR. WILLIAM MCDOWELL: Just talking
8 about legal advice, and a slightly different question.
9 So, in this municipality there are entities that are
10 owned by the municipality that have their own boards
11 of directors and can get -- and those boards can get
12 their own legal advice on behalf of the entity.

13 So, in the -- the situation where
14 you've got the city owning a hundred percent of the
15 corporation, the utility, or whatever it is, and
16 you've got majority membership on the board from the
17 city, or at least good representation on the board
18 from the city, how do you try and ensure alignment
19 between what, a) the city knows and what the board
20 knows and, b) the interests of those two (2)?

21 Because I think a citizen looking at
22 this would say, well, if the city owns Tedcor, or
23 whatever the corporation is, then surely it should be
24 doing what the city wants, but then these corporate
25 governance questions get in the way.

1 MS. ANNA KINASTOWSKI: Yeah, corporate
2 governance is a different kettle of fish all together.
3 And it is very difficult to explain that directors on
4 a corporation have to act in the best interest of that
5 corporation, not necessarily follow city directions.

6 I mean, the city, as a shareholder, can
7 -- can mandate certain things, but it's up to the
8 directors to do what's in the best interest of that
9 corporation.

10 MR. WILLIAM MCDOWELL: But the city --

11 MS. ANNA KINASTOWSKI: And it is a
12 different -- it -- it's a very difficult concept to
13 get a grasp -- or to get your head around it.

14 MR. WILLIAM MCDOWELL: In your
15 experience, I mean, so just taking the first point,
16 the city provides some sort of overall direction to
17 its membership on the Board. But then, of course,
18 they have to decide how to implement that.

19 But then in terms of sharing the
20 knowledge, you know, you've got councillors who sit on
21 the boards of whatever the municipally owned
22 corporation is. How do you try and make sure that at
23 least the city, council, as the shareholder, knows
24 what's going on?

25 MS. ANNA KINASTOWSKI: Well, there are

1 annual reports. Part of a council meeting is -- is
2 the -- you know, the shareholder meeting has to be
3 done at least once a year.

4 I mean, the odd time when issues have
5 arisen they've gone into camera to share some of the -
6 - why the Board sort of is taking the direction that
7 it's taking; it's all done in camera.

8 MR. WILLIAM MCDOWELL: Were these, in
9 your experience, frequent points of collision on
10 issues like this or...?

11 MS. ANNA KINASTOWSKI: Surprisingly
12 enough, no, there haven't been too many.

13 MR. WILLIAM MCDOWELL: I do want to at
14 some point ask you what your top ten (10) list of bad
15 council decisions is, but that's not -- maybe not a
16 good use of our time here, but...

17 MR. JOHN FLEMING: I just wanted to
18 say there's -- there's another issue, flipping the
19 lense around, about this whole question, and it may
20 not be relevant here, I don't know, but I've
21 encountered it in -- in some of the work that I've
22 done in the last couple of years about, I'll call it
23 competing fiduciary responsibilities where members of
24 a municipal council are appointed to another body,
25 whether it -- or -- or elected to, for example, a

1 regional council, the board of a public health unit,
2 in the North, the board of a district social services
3 administration board, and go to those boards with what
4 could be seen to be an agenda of saying, I'm going to
5 vote at that other table in a way that absolutely
6 minimizes the financial impact by way of levy on my
7 municipality.

8 So, I make the argument there's a
9 fundamental problem with them exercising their
10 fiduciary duty at that second table when they're
11 paying attention to their first fiduciary duty to the
12 council to which they were elected.

13 And in a lot of cases in these
14 situations the statutes are silent, so there's no
15 provision that says you got to pay attention to that.
16 Frankly, I think that's something that the legislature
17 needs to pay some attention to.

18 It's -- it's a little different than
19 the question you're asking because it's, I think,
20 almost flipped around the other way, but it's -- it's
21 related.

22 And in those cases, by the way, the
23 expectation of the municipal councils that appoint
24 people to those is, we want a full accounting back to
25 the municipality so we know just exactly what it is

1 you're spending our money on and why.

2 So, it seems to me that the reverse
3 question in your scenario, Mr. McDowell, is -- is --
4 should be equally valid.

5 MR. JOHN MATHER: We've spoken a fair
6 bit today about the integrity -- an integrity
7 commissioner or the position of the integrity
8 commissioner, and it obviously intersects with many of
9 the issues we're discussing.

10 In your experience, are the terms for
11 integrity commissioners typically fixed or are they
12 renewable? I would just like to get a sense of that.

13 MR. JOHN FLEMING: All over the map.

14 MR. GREG LEVINE: So, I've had -- I
15 had one (1) appointment that was two (2) months and
16 I've had them for three (3) years.

17 MR. JOHN MATHER: Do you have any view
18 on in terms of best practice about whether or not to
19 have a fixed term or have a renewable term?

20 MR. JOHN FLEMING: It seems to me the
21 subject of term is less important than the
22 understanding of what constitutes good practice, and
23 Mr. Levine and I have both been involved in
24 significant efforts of the -- the gathering twice a
25 year of municipal integrity commissioners to work

1 towards some kind of -- of -- of best practice in --
2 in -- in doing this work, because it's now mandatory
3 in Ontario. There are a number of -- of folks coming
4 into the business who have not been executing this
5 role before and may or may not have a good
6 understanding of -- of how municipal government works
7 in -- in the political context.

8 MR. GREG LEVINE: Yeah, I -- I'd just
9 say -- actually, there's another model, too, where
10 you're asked to do a file -- as the commissioner. You
11 get the -- an acting commissioner role, and you do
12 some -- I -- I've done those where another
13 commissioner's been in a conflict of interest, so
14 that's obviously very short term, unless you can drag
15 it out, I guess.

16 But I -- I think -- I think, actually,
17 a term, a fixed term, probably longer than the Council
18 term, makes sense, and I -- it's a classic thing in
19 administrative law to give some security in order to
20 ensure the independence of the investigator or
21 decision maker. And so I -- I would say, yeah, there
22 should be a fixed term of a reasonable length beyond
23 the term of council.

24 MR. JOHN FLEMING: And there's a
25 tricky little piece around overlap in there too when

1 the end of the term of Council comes and -- and before
2 the new Council has an opportunity, if it doesn't have
3 a -- an integrity commissioner whose term goes beyond
4 the -- the term of the council, then there's a period
5 during which the council is -- is without that
6 service, which could be problematic, particularly
7 given the nature of -- of sometimes quite dramatic
8 political change in municipal elections these days.

9 MR. JOHN MATHER: And -- and picking
10 up on the idea of safeguarding independence of the
11 integrity commissioner, in your experience, are there
12 -- are there steps that can be taken when it comes to
13 retaining an integrity commissioner, when it comes to
14 the circumstances in which an integrity commissioner
15 can be dismissed that protect against, you know, an
16 integrity commissioner getting dismissed because of a
17 bad -- a decision that is perceived as unfavourable by
18 certain members of Council? Is that something that's
19 addressed, and how is it?

20 MR. GREG LEVINE: Well, it depends on
21 where. In Toronto's framework, you have to have a
22 certain -- if I'm right about this, you have to have a
23 certain majority to not renew or dismiss a
24 commissioner. So I think that's important, that kind
25 of protection, so it isn't just a whim. It'll protect

1 the commissioner.

2 MR. JOHN FLEMING: I'm appointed for a
3 set period of time in -- in -- in my assignment in
4 Caledon, and I've been reappointed several times. But
5 in addition to the bylaw that appoints me, I have a
6 contract, which has -- has termination provisions
7 within it.

8 MR. GREG LEVINE: Right. There are
9 other protections, some of which have become
10 statutory, you know. Well, indemnifying the
11 commissioner is one (1), and I'm so grateful that's
12 finally happened.

13 MR. JOHN FLEMING: That's been a
14 really big issue in the past, as --

15 MR. GREG LEVINE: Yes.

16 MR. JOHN FLEMING: -- Greg and I both
17 know. I'm -- I have belt and suspenders in Caledon.
18 I'm both named in their -- in the town's insurance,
19 and I'm indemnified by Council, so its -- protection
20 is solid.

21 MR. JOHN MATHER: Just a -- probably a
22 couple more questions and maybe mostly directed at Ms.
23 Kinastowski. You sort of touched on it a bit, but can
24 you just maybe speak to what the town solicitor's role
25 is when it comes to dealing with conflict or -- or

1 issues as between members of Council and staff or the
2 CAO? What position do they typ -- typically take?

3 MS. ANNA KINASTOWSKI: They don't like
4 to be the meat in the sandwich, that's for sure.

5 MR. JOHN MATHER: Yeah.

6 MS. ANNA KINASTOWSKI: The client is
7 city Council, and at the end of the day, it's city
8 Council that you are representing, and there have been
9 times where I've told senior staff that they have to
10 get their own legal advice, that simply I cannot
11 provide that kind of advice. Even when they're
12 talking about something that may happen in the future,
13 I said, I -- I don't even want to know, because I may
14 have to defend city Council's actions towards what you
15 did or didn't do.

16 MR. JOHN MATHER: And final question,
17 again, for Ms. Kinastowski. You've had the experience
18 of being city solicitor during a judicial inquiry and
19 -- and receiving recommendations from the Inquiry.

20 To the extent you're able to -- or
21 willing to provide any insights or -- or -- or
22 comments on how best to est -- you know, is there --
23 is there things that can be done to assist in terms of
24 facilitating implementation, is basically what I'm
25 asking.

1 MS. ANNA KINASTOWSKI: The
2 implementation, frankly, was very difficult, but as
3 we've spoken both Ms. Bellamy this morning and I think
4 we've all mentioned it, you know, it flows from the
5 top. So at the time that the recommendations came
6 out, there was a mayor who was very, very committed to
7 the Inquiry. There was a city manager who was very
8 committed to the Inquiry. And steps were taken, and
9 senior staff worked together to implement as much as
10 possible.

11 Obviously, legal services was involved.
12 The whole procurement process was revamped, and this
13 was going on during the Inquiry. It didn't happen
14 afterwards. It happened, you know, as we saw things
15 coming out.

16 The implementation is not necessarily
17 easy, and we all have problems with resourcing it and
18 who's going to do it. And it's not something that
19 should be done on the corner of somebody's desk, and
20 there were -- you know, people were assigned as a
21 project to kind of develop certain things or develop
22 plans.

23 And yes, there was reporting back on
24 how much was implemented in -- in the first year, and
25 I believe that went on for another year or two (2),

1 and I mean, it doesn't happen now, but for example,
2 the auditor general in Toronto would report on
3 recommendations, what's been implemented, what hasn't,
4 what's in the works. And that's the -- the staff
5 modelled it on that kind of an approach, sort of what
6 has been done, what's in the works, and what, for
7 various reasons, simply it's just not going to happen,
8 or it's going to happen in the long term.

9 THE HONOURABLE FRANK MARROCCO: I
10 actually, just wanted to ask about the non-renewable
11 or renewable term. And I -- I wasn't sure I got your
12 assessment of whether it matters.

13 It -- what I guess struck me is if it's
14 renewable, then the integrity commissioner is -- got
15 an eye on renewal, let's say, and could it affect
16 their -- their -- their -- not -- not for everybody,
17 but -- but is this something that should be avoided,
18 or is this not a real risk?

19 MS. ANNA KINASTOWSKI: In -- in the
20 City of Toronto, it's non-renewable.

21 THE HONOURABLE FRANK MARROCCO: For
22 that reason?

23 MS. ANNA KINASTOWSKI: Yes, yes. That
24 it is, and -- and frankly, you know, I think it isn't
25 always the case, but the integrity commissioner, for

1 example, during Mayor Ford's term of office, I think,
2 had a very, very busy, busy time, and --

3 THE HONOURABLE FRANK MARROCCO: We're
4 -- we're -- we're kind of acquainted with that -- that
5 integrity commissioner. We had a fleeting --

6 MS. ANNA KINASTOWSKI: Yes --

7 THE HONOURABLE FRANK MARROCCO: -- we
8 had a fleeting acquaintance --

9 MS. ANNA KINASTOWSKI: Yes, you did.

10 THE HONOURABLE FRANK MARROCCO: --
11 with her.

12 MS. ANNA KINASTOWSKI: You did. And
13 she was -- you know, she did an absolutely amazing job
14 but, you know, then you hear story -- well, she's --
15 she's against me. She's -- you know, everything I do
16 is wrong. Well, no, it wasn't her. It was you were
17 doing everything wrong, so.

18 THE HONOURABLE FRANK MARROCCO: Please
19 -- we're just conducting an inquiry here. But -- but
20 -- all right. So Toronto's non --

21 MS. ANNA KINASTOWSKI: Non-renewable.

22 MR. WILLIAM MCDOWELL: Same with the
23 ombudsman too, right --

24 MS. ANNA KINASTOWSKI: Yes.

25 MR. WILLIAM MCDOWELL: -- in Toronto's

1 a non-renewable term.

2 MS. ANNA KINASTOWSKI: And the -- and
3 the auditor general.

4 MR. JOHN FLEMING: I guess I'd just
5 like to respond, Mr. Justice, by saying I -- I --
6 maybe this sounds trite. I -- I serve at the pleasure
7 of the council for whom I act in this capacity, and
8 whether or not to renew me is totally in their hands.
9 This is not how I make my living and how I support my
10 family. It's what I do because I'm interested in it.
11 And so it's -- it's -- it's -- it's a matter of
12 discretion.

13 I think, though, that there is some
14 value -- this is obviously a subjective option --
15 there's some value, given that these are still early
16 days, for having this kind of creature in Ontario --
17 there's some value in having a sense of continuity and
18 -- and the process of developing this particular
19 function.

20 MR. WILLIAM MCDOWELL: Ms.
21 Kinastowski, from memory, is the -- is the term of the
22 integrity commissioner six (6) years?

23 MS. ANNA KINASTOWSKI: Well, you know,
24 I've been retired now for three (3) years, so I'm --
25 and I didn't look that -- I thought it was seven (7)

1 years --

2 MR. WILLIAM MCDOWELL: Right.

3 MS. ANNA KINASTOWSKI: -- but I could
4 be wrong.

5 MR. WILLIAM MCDOWELL: The ombudsman
6 is seven (7), and so it's the same.

7 MS. ANNA KINASTOWSKI: Yeah, I think
8 they're all -- they're all consistent.

9 MR. WILLIAM MCDOWELL: So they're
10 fairly healthy terms --

11 MS. ANNA KINASTOWSKI: Yeah, yes.

12 MR. WILLIAM MCDOWELL: -- even though
13 they're non-renewable, right?

14 MS. ANNA KINASTOWSKI: Yes.

15 MR. GREG LEVINE: Yes, but that --
16 that's the case in Toronto, so if you're on a three
17 (3) monther (sic), it's probably not going to affect
18 you too much, you know. If that's how --

19 MR. WILLIAM MCDOWELL: Right.

20 MR. GREG LEVINE: -- they're playing
21 it, because -- and whe -- it is important to note that
22 they're not many people making their living on this.
23 I sure didn't.

24 THE HONOURABLE FRANK MARROCCO: Well,
25 and -- and -- and also -- also if there's a tendency

1 to hire senior, experienced people, then they're in --
2 at a stage in life where -- you know, they're not
3 entirely dependent -- apart from the length of time,
4 they're not entirely dependent on the ta -- the job.

5 MR. GREG LEVINE: Yeah, yeah. The
6 other thing I'd say about this too is to look at the
7 provincial models. All of them are renewable. All of
8 the integrity commissioners and conflict of interest
9 commissioners across the country are all renewable at
10 the provincial level, and I don't think -- I can't
11 think of an example of a commissioner who has seen to
12 be pandering or -- I just can't.

13 THE HONOURABLE FRANK MARROCCO: Thank
14 you.

15 MR. JOHN MATHER: So subject to any
16 further questions from Your Honour --

17 THE HONOURABLE FRANK MARROCCO: Oh,
18 thank you.

19 MR. JOHN MATHER: -- or the members of
20 the -- or from the Town, or any further reflections
21 you may have, those are the question that Commission
22 counsel had.

23 THE HONOURABLE FRANK MARROCCO: Did
24 you have any -- anything at the end that was unsaid?

25 MR. JOHN FLEMING: I'd just say from

1 my perspective, as I was sharing with my colleagues, I
2 -- I -- I found this enriching today because it's
3 useful to res -- to respond to questions from others
4 about the work that we do, so thank you for the
5 opportunity.

6 THE HONOURABLE FRANK MARROCCO: Well,
7 thank you very much for the input. It'll -- it'll be
8 extremely helpful to me. Thank you.

9 So we're adjourned for today, back
10 tomorrow at...?

11 MR. JOHN MATHER: 11:30.

12 THE HONOURABLE FRANK MARROCCO: -- at
13 elev -- Mr. McDowell, 11:30. You've obviously had an
14 impact on --

15 MR. WILLIAM MCDOWELL: Well, you know.

16 THE HONOURABLE FRANK MARROCCO: -- in
17 my absence.

18 MR. WILLIAM MCDOWELL: We're all
19 working very hard, Commissioner.

20

21 --- Upon adjourning at 4:12 p.m.

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Certified Correct,

Wendy Woodworth, Ms.

<p> <u> </u> \$ \$80 71:16 \$85 71:25 <hr/> 1 <hr/> 1 7:16,17 9:24,25 10:1,3,5 11:8 21:20 26:21,25 27:23 28:4,7 29:1 30:10 31:5,17 32:18 34:14,15 37:18,22 38:22 45:12 47:25 49:4,19 51:20 55:15,16 57:15 59:9 62:12,24 64:4 65:5,20 66:25 68:5,11 72:20 80:2,22 81:4,25 82:14 84:13 89:20 90:7 92:14 100:2 102:24 103:25 104:7 106:1 109:8,9,1 0 110:8 113:6 118:10 121:11 </p>	<p> 126:20 130:1 132:16 138:1,11 139:1 145:8,14 150:3 155:15 158:11 1.1 88:25 10 7:12 61:18,19 153:14 10,000-foot 85:5 10:06 5:1 100 64:1 11 79:16 11:15 60:13 11:30 166:11,13 11:33 60:14 11:50 76:10 112 60:20 119(h) 61:3 130 94:6 14 8:12 13:12 56:20 73:14,19 77:23 94:24 146 64:19 15 60:11 137:4 167 3:16 17 20:7 49:17 1st 80:23 <hr/> 2 <hr/> 2 5:6 6:16 9:17 19:8 </p>	<p> 30:10 42:2 44:16,21 47:18 50:9 59:9 77:18 79:17 80:16 81:16 86:15 90:5 97:15 104:24 110:8 120:19 124:4 126:8 145:14 151:20 155:15 160:25 2:02 76:11 2:15 82:7 20 92:21 2002 7:5 8:24 92:7 2005 7:5,11 92:23 2010 91:4 2016 77:24 2018 88:14 2019 1:23 80:23 227 89:4 241 13:10 244 6:18 13:8 15:15 61:14 25 77:16 26,000 138:23 27th 1:23 2977 4:3 </p>	<p> 2978 4:4 2979 4:5 <hr/> 3 <hr/> 3 7:15 12:15 13:2 49:18 77:1 78:18 84:12 91:7 110:8,17 155:16 163:24 164:17 3:22 137:6 3:37 137:7 30 51:12 3-1-1 106:2 35 51:13 <hr/> 4 <hr/> 4 3:3 9:7,24 10:5 13:14 122:8 145:15 4:12 166:21 41 12:17 <hr/> 5 <hr/> 5 9:8 500 7:10 50-storey 107:14 56 68:25 69:4 <hr/> 6 <hr/> 6 3:6 163:22 <hr/> 7 <hr/> </p>	<p> 7 163:25 164:6 7:12 91:22 70 15:15 76 3:14 <hr/> 8 <hr/> 87 23:13,17, 18 <hr/> 9 <hr/> 97 1:19 <hr/> A <hr/> a.m 5:1 60:13,14 76:10 aback 48:7 ability 100:6 118:8 121:5,12, 18,25 130:7 able 27:9 70:16 71:23 72:1 141:25 159:20 absence 166:17 absolute 25:15 109:6 absolutely 13:4 29:12 33:24 62:18 97:22 100:24 109:2 129:3 154:5 </p>
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