



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

June 26th, 2019

1 APPEARANCES

2

3 Kate McGrann) Inquiry Counsel

4 John Mather) Associate Inquiry

5) Counsel

6

7 Michael Watson (np)) Alectra Utilities

8 Belinda Bain) Corporation

9 Heather Fisher (np))

10

11 (No Counsel)) For Paul Bonwick

12

13 George Marron) For Sandra Cooper

14

15 (No Counsel)) For Timothy Fryer

16

17 Frederick Chenoweth) For Edwin Houghton

18

19 William McDowell) For Town of Collingwood

20 Ryan Breedon (np))

21

22 Patrick Gajos (np)) For Collus PowerStream

23) Corporation

24

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1 --- Upon commencing at 10:03 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Good
4 morning.

5

6 JOHN BROWN, Sworn

7

8 EXAMINATION-IN-CHIEF BY MR. JOHN MATHER:

9 MR. JOHN MATHER: Good morning, Mr.
10 Brown.

11 MR. JOHN BROWN: Good morning.

12 MR. JOHN MATHER: You were the CAO of
13 the Town of Collingwood from July 2013 to September
14 2017.

15 Is that correct?

16 MR. JOHN BROWN: Correct.

17 MR. JOHN MATHER: And we understand
18 that you took on this role at the suggestion of John
19 Mascarin at Aird & Berlis.

20 Is that correct?

21 MR. JOHN BROWN: Correct.

22 MR. JOHN MATHER: Could you briefly
23 give us an overview of your municipal experience prior
24 to coming to Collingwood?

25 MR. JOHN BROWN: Okay. So I have

1 worked in two (2) different countries. I worked in
2 the UK before I came to Canada, and I worked in
3 Canada.

4 I've worked in three (3) provinces, New
5 Brunswick, Ontario, and Alberta. I've worked for
6 seven (7) municipalities. I've had about forty (40) -
7 - almost forty (40) years of experience, and thirty
8 (30) of those years has been at the level of either
9 assistant city manager or at a city manager level,
10 which equates to the CAO.

11 I have never been terminated from any
12 position. And I -- I think that's about it.

13 MR. JOHN MATHER: So it's our
14 understanding that when you were -- came to
15 Collingwood in July 2013, you were brought in an
16 acting capacity, and it was supposed to be a temporary
17 position.

18 Is that correct?

19 MR. JOHN BROWN: Correct.

20 MR. JOHN MATHER: Can you please
21 explain then how you ended up staying for what looks
22 to be four (4) years and a little bit more?

23 MR. JOHN BROWN: So when I came, I
24 just started working, and Council didn't take any
25 action to initiate the hiring process for the

1 permanent CAO. And then sometime -- I think it must
2 have been about two (2) months or something like that,
3 the mayor came to see me in my office. And she said,
4 So what are your intentions? I think that was the
5 exact words.

6 And I said, so in -- in what sense?

7 And she said, Well you seem to know
8 what you're doing, so we were wondering if you might
9 want to stay for a while. Something -- something to
10 that effect.

11 And I said, Yes, I could stay on,
12 because I'm retired -- I was retired. And I think
13 after that, there was kind of informal discussions
14 about the length of the contractor interim arrangement
15 that they wanted to set up for me.

16 And I think Rick Lloyd, the deputy
17 mayor, suggested five (5) years. And I said, I -- at
18 my age, I couldn't do five (5) years, but I could do
19 three (3), and that would be long.

20 And the matter went to Council, and
21 they approved a two (2) year contract. And that was
22 subsequently renewed by, I think, that Council, and
23 then the subsequent Councils renewed the contract
24 until I finally retired.

25 MR. JOHN MATHER: Could we pull up

1 paragraph 685 of the Foundation Document.

2

3 (BRIEF PAUSE)

4

5 MR. JOHN MATHER: So Mr. Brown, this
6 paragraph identifies a series of reports that were
7 prepared after the share sale Transaction involving
8 PowerStream.

9 And if we scroll down, we can see a
10 summary of those reports enumerated in subparagraph
11 (a), down through to the bottom, to subparagraph (f),
12 going down. Keep going down.

13 And it's my understanding that you were
14 involved in the commissioning of several of these
15 reports.

16 Is that correct?

17 MR. JOHN BROWN: Correct.

18 MR. JOHN MATHER: So we will have some
19 questions for you about these reports. And the first
20 one, if we scroll up again, that I believe you were
21 involved in commissioning was the 2013 report
22 referenced in subparagraph (d) involving BMA
23 Consulting to conduct a review of Collingwood's
24 financial health.

25 Is that correct?

1 MR. JOHN BROWN: Correct.

2 MR. JOHN MATHER: Okay. So if we
3 could go to paragraph 724 of the Foundation Document.

4

5 (BRIEF PAUSE)

6

7 MR. JOHN MATHER: So this paragraph
8 describes the BMA report which looked at the --
9 Collingwood's ability to finance the services on a
10 continuing basis. BMA concluded, amongst other
11 things, that Collingwood was in a negative financial
12 position with a net financial liability of \$16.4
13 million, and that its debt per capita was higher than
14 the average debt per capita of ninety-eight (98) other
15 Ontario municipalities that have been surveyed by BMA.

16 Could you explain to the Inquiry why
17 this report was commissioned at this point in time?

18 MR. JOHN BROWN: I commissioned the
19 report because I had worked with BMA before in Oshawa,
20 and I had -- BMA this survey to Brantford when I was
21 there. So I knew what the -- I knew what the company
22 did, and what it did was it received the FIRs from all
23 of the municipalities that participated, and then they
24 did kind of a summary comparison and gave each
25 municipality an analysis of, you know, what their

1 financial position was, and any recommendations that
2 they believed were necessary.

3 So when I arrived in Colling --
4 Collingwood. I had no sense that there was an
5 understanding in any detailed way of the Town's actual
6 financial position in terms of a lot of financial
7 criteria. So I asked BMA if they would come in and
8 give me a -- a kind of an overview analysis of where
9 the Town was positioned financially compared to the
10 ninety-eight (98) -- ninety-eight (98), I think, other
11 municipalities.

12 And they undertook that. They did
13 that. And that based on their conclusions, which I
14 took to Council and advised Council of, there was a
15 significant financial challenge, which was -- which
16 was the City had to address in the future -- the Town,
17 rather, pardon me.

18 MR. JOHN MATHER: And what steps
19 followed from you reporting on the BMA's findings to
20 Council?

21 MR. JOHN BROWN: So with -- with the
22 report presented to and understood by Council, I then
23 wrote further reports and recommended that the Town
24 undertake a strategic financial plan, and Council
25 approved that recommendation, and I proceeded to

1 develop with the treasurer certain elements of a
2 strategic financial plan, including recommendations to
3 do with debt, and reviewing reserve funds, and
4 generally reporting, and understanding, and making
5 public the -- the plan's goals to address the
6 financial challenges the Town had.

7 MR. JOHN MATHER: If we could now move
8 to paragraph 731 of the Foundation Document.

9

10 (BRIEF PAUSE)

11

12 MR. JOHN MATHER: So this paragraph
13 references the Beacon 2020 and True North report, and
14 our understanding is that this is -- this is the
15 second report that we understand was commissioned by
16 you, and this report was to carry out an operational
17 review of the shared services agreements under which
18 Collus-PowerStream Solutions provided services to
19 CPUSB, which is the water utility.

20 How did this report come about?

21 MR. JOHN BROWN: So as you're aware,
22 there were lots of -- there were lots of questions in
23 terms of the -- the billing of Collus Solutions and --
24 and discussions with Marc -- Marcus Firman. We
25 decided that a value for money audit might be a good

1 idea to address the situation with respect to those
2 billings and to answer the question, were we getting
3 value for money, that we paid for the various services
4 that were provided, and I worked -- this was a joint
5 project between the Town and the CPUSB, it wasn't just
6 initiated by the Town but was a joint project, and
7 Marcus Firman and I -- he was the COO of water waste -
8 - wastewater.

9 We worked on it together as kind of
10 joint project managers, so we went through the
11 procurement process. Actually, we -- we hired the
12 firm that Marcus had brought to our consideration of,
13 you know, candidate firms. We hired that company, and
14 it was True North, Beacon 2020, and they proceeded,
15 under a terms of reference that I wrote that was
16 prepared for Council and approved by Council, and
17 obviously was known to the CPUSB and presumably to
18 Collus Solutions and Collus-PowerStream staff, and
19 that -- that project proceeded.

20 And that project concluded that, based
21 on their review, that it was not possible to undertake
22 a value for money audit because the services were not
23 costed individually. They were apportioned across
24 broader costs at Collus Solutions Service, which was
25 the hydro company.

1 So that report had many recommendations
2 and it was contested significantly. One -- one point
3 is that -- that -- that report was worked on with the
4 steering committee. The steering committee was
5 myself, Marjory Leonard, the Treasurer, Sara Almas,
6 the Clerk, and Marcus Firman, and each of us -- when
7 the consultant was developing drafts, each of us had
8 the responsibility of reviewing the draft and advising
9 the consultant if there were any things that were
10 incorrect or needed to be changed, in -- in the report
11 from a correctness perspective, not a judgmental
12 perspective.

13 And when the report was finally
14 presented to Council, Mr. Firman surprisingly
15 criticized the consultant for -- for errors within the
16 report, and the consultant later, I think it was
17 later, advised me that he had not received any
18 comments back from Mr. Firman with respect to any
19 mistakes that might have been in the report.

20 Notwithstanding all of that, the
21 consultant took into account all of the feedback that
22 was received by everybody who had concerns about the
23 report and the consultant made very minor changes to
24 the report. So, the report generally stood as it was
25 written.

1 MR. JOHN MATHER: I have a few
2 questions arising from that.

3 At the outset, you said that there had
4 been lots of questions about the billing practices. I
5 take it that means the billing by Collus Solution
6 (sic) to the water utility for services provided by
7 Collus Solution (sic) employees?

8 MR. JOHN BROWN: Well, essentially the
9 question started with me calling Ms. Shuttleworth, the
10 CFO, and I said to her, like, can you please explain
11 to me the basis of your billings to the Town, like how
12 do you go about creating these bills, what's included?
13 And she said she did it, you know, she was
14 responsible, and that it was her responsibility.

15 And she went on to tell me that she had
16 governance authority over it and she said it was -- I
17 think she said it was nothing to do with me and that
18 she was very busy and she hadn't time to answer
19 further questions from me, or words to that effect,
20 and of course being Chief Administrative Officer of
21 the Town and water and wastewater being Town
22 responsibilities, and also IT, which is included,
23 which is an integral part of our operation, I was very
24 concerned and I guess I persisted with Ms.
25 Shuttleworth to please provide to be some sense of how

1 you develop these bills.

2 She then said -- I said there must be
3 some agreement somewhere, and she said she didn't know
4 but she would look for something. And then she called
5 me back and sent me a copy of a 2003 document and said
6 this was in a drawer, but clearly it was not something
7 that she was aware of before she went to look for it,
8 and she sent it to me.

9 So I reviewed that document and
10 initially I thought the document had trans -- had
11 expired but -- so then that document, the -- the
12 existence of that document led to further enquiries
13 with respect to what, you know, was what its status,
14 was it legal anymore, was it a rollover document, and
15 then that was the critical element which was used by
16 Beacon 2020 when they reviewed the value for money
17 audit, so they used that document and -- and they
18 found out that -- that the anticipated costing under
19 that agreement had been departed from by, I guess,
20 Collus Solutions.

21 That agreement was a public document
22 but it had never been released to the public. There
23 was no record of it in the Town. I checked with the
24 auditor. They had never seen or heard of it. And so
25 we had a difficult situation where we're -- we didn't

1 know anything about the billing and the only
2 information we had, we didn't even know if it was
3 correct or not, and then we had to take legal advice
4 with respect to that -- Leo Longo, I think.

5 MR. JOHN MATHER: Okay. So, what I
6 understand from your answer is, you had some questions
7 about how the -- how Collus arrived at the numbers
8 they billed the Town for with respect to water and
9 wastewater. Is that correct?

10 MR. JOHN BROWN: Yeah, I had, and the
11 Treasurer had, and the Treasurer had herself attempted
12 to get information from Collus Solutions staff, I
13 think Ms. Shuttleworth, and she -- she -- she was
14 frustrated. I don't think she got the information
15 that she thought she needed to have.

16 MR. JOHN MATHER: And so you spoke
17 with Ms. Shuttleworth who provided you with an
18 agreement.

19 So if we could pull up TOC515233.

20

21 (BRIEF PAUSE)

22

23 MR. JOHN MATHER: Scroll down. So it
24 is our understanding that this is a shared services
25 agreement from 2003 that was in place at the time the

1 sale transaction proceeded.

2 Is this the document that Ms.
3 Shuttleworth provided you?

4 MR. JOHN BROWN: Yes.

5 MR. JOHN MATHER: Other than providing
6 you with this document, what else did Ms. Shuttleworth
7 tell you prior to retaining Beacon about how the
8 shared services were charged?

9 MR. JOHN BROWN: I -- I don't have a
10 clear memory of that, but I know that in -- in talking
11 to the Treasurer, there was concern that the Treasurer
12 did not have the information, financial information
13 she needed for her fiduciary responsibilities, and she
14 had enquired and I guess that didn't change.

15 So, I'm not sure how further my
16 discussions with Ms. Shuttleworth went but I think
17 this agreement was something that we needed to -- we
18 needed to act on, and that ended up being the basis
19 for the value for money audit because we thought that
20 was current. We thought that was the way the bills
21 were developed and we wanted to know whether the costs
22 we were paying represented value for money.

23 MR. JOHN MATHER: Do you remember how
24 many conversations you had with Ms. Shuttleworth
25 before Beacon was retained?

1 MR. JOHN BROWN: So, I don't clear
2 memory of that. There were quite a few emails between
3 Ms. Shuttleworth and myself.

4 MR. JOHN MATHER: And did you also
5 have direct conversations with her, either in person
6 or on the phone?

7 MR. JOHN BROWN: I think I met with
8 her a couple of times, and generally emails and a
9 couple of phone call conversations.

10 MR. JOHN MATHER: Other than speaking
11 with Ms. Shuttleworth, did you speak with anyone else
12 about how the shared services had been charged and
13 were being charged?

14 MR. JOHN BROWN: No, I don't think so.
15 Maybe the Treasurer.

16 MR. JOHN MATHER: When you retained
17 Beacon and True North, what was the scope of their
18 review? What did you want them to look into and
19 report back on?

20 MR. JOHN BROWN: We just wanted to
21 examine this agreement to see what services we were
22 being provided with and to undertake some sense of
23 evaluation of those costs related to the price that
24 the Town was paying for the services provided, which -
25 - which included information technology.

1 MR. JOHN MATHER: And you indicated in
2 your earlier answer they weren't able to determine
3 what those costs were. Did I understand that
4 correctly?

5 MR. JOHN BROWN: That's my
6 understanding of what they said, yeah.

7 MR. JOHN MATHER: Did you get a sense
8 of why they weren't able to make that conclusion?

9 MR. JOHN BROWN: My understanding was
10 that instead of the costs being -- being allocated
11 according to I guess wages and time and various levels
12 of responsibility for service delivery, they were
13 apportioned. They were apportioned costs. So I guess
14 they were allocated by Ms. Shuttleworth and she was
15 quite adamant that she allocated them and she had the
16 authority to do so.

17 MR. JOHN MATHER: If we could pull up
18 paragraph 732 of the Foundation Document.

19 So this paragraph summarizes some of
20 the conclusions and issues that Beacon identified in
21 its report there in the subparagraphs beneath it.

22 They include that the shared services
23 agreement between Collus Solutions and the water
24 utility did not reflect the services actually
25 delivered and may, in fact, be expired.

1 It identified certain issues involving
2 conflict of interest about people within the Collus
3 Group of Companies both having positions with Collus
4 entities and with the CPUSB. And so those were --
5 that's a summary of those conclusions.

6 And if we go down to paragraph 733, it
7 then states that the Beacon report recommended that
8 the shared services agreement between Collus,
9 PowerStream, and CPUSB be terminated.

10 What was your reaction to Beacon's
11 recommendation that the agreement be terminated?

12 MR. JOHN BROWN: Well, any consultants
13 I've ever hired throughout my career, I've always
14 sought to understand what they're recommending and
15 why. I've never tried to persuade them to do anything
16 other than follow their judgment and provide their
17 recommendations.

18 So I thought that was a recommendation
19 which they had supported and was worthy of being
20 advanced to Council for its consideration.

21 MR. JOHN MATHER: One of the things
22 that's referenced in the Beacon report is they
23 indicated that they had difficulty locating certain
24 documents and accessing certain information.

25 Was that a concern that the authors

1 expressed to you at the time? What do you recall
2 about what they said to you?

3 MR. JOHN BROWN: The sense I got was
4 that the -- the records that were made available to --
5 to them for some reason weren't complete in terms of
6 what they expected to -- to be able to review or have
7 available -- have made available to them.

8 MR. JOHN MATHER: What happened after
9 the Beacon report was delivered?

10 MR. JOHN BROWN: So there was quite a
11 -- there was quite a concern expressed that the Beacon
12 report kind of missed the mark or was inaccurate or
13 wrong or, you know, didn't take into account
14 information that was available. And I explained that
15 before, because that was the responsibility of Mr.
16 Firman, we all had to report back to the consultant in
17 terms of a draft so that he didn't publish anything
18 that was inaccurate.

19 If we could point it, I can correct it,
20 and Mr. Firman, for some reason, didn't do that. And
21 he, at the public meeting of Council, criticized the -
22 - the report and the -- its authors for, you know,
23 these errors.

24 So then the CPUSB, who was a joint --
25 it was a joint project, because Marcus and I were both

1 the project managers, the report -- I think Council --
2 Council tabled the report and then they sent it out to
3 the CPUSB for a response. And there were lots of
4 responses came back to that, making the case that
5 there were omissions or inaccuracies or whatever.

6 And then what we did was we provided
7 those to the consultant and said this is the
8 information we've got back, can you please reflect in
9 your report to see if any way it changes your
10 recommendation.

11 And so he did that and then he
12 finalized his report and he submitted it. And as I
13 said before, there were minor changes in my -- in my
14 judgment.

15 MR. JOHN MATHER: So if we could go to
16 paragraph 739. So the Foundation Document reflects
17 that Beacon received feedback, including from the
18 CPUSB, Councillor Chadwick as well as the Collus
19 Companies, and then this indicates that they had
20 reviewed -- that Beacon reviewed the responses and the
21 recommendations and conclusions of the report remained
22 the same.

23 MR. JOHN BROWN: Right.

24 MR. JOHN MATHER: Is that what you
25 were referring to?

1 MR. JOHN BROWN: Yes.

2 MR. JOHN MATHER: So if we scroll down
3 to the next paragraph, it says that:

4 "On February 17th, 2015 Collingwood
5 Council resolved to receive and
6 approve the Beacon report and to
7 defer the recommendation to provide
8 notice of termination of the current
9 agreement until the Board and CAO
10 have an opportunity to review and
11 report back to Council by no later
12 than May 13th, 2015."

13 Who is the Board that's contemplated
14 when it says "the Board and the CAO will have an
15 opportunity to review"?

16 MR. JOHN BROWN: I'm not -- I'm not
17 clear on the Board. I might guess that that would be
18 the Board of the CPUSB. I would -- I think it's them.

19 MR. JOHN MATHER: So in any event,
20 this contemplates that Council wanted to give you at
21 least an opportunity to review and report back to
22 Council by no later than May 13th, 2015 of the
23 required services.

24 What did you understand that direction
25 to be?

1 MR. JOHN BROWN: To -- to find out
2 what, if any, part of the recommendations that they
3 might have concerned -- concerned about that were
4 inappropriate to proceed with. Generally feedback
5 with respect to the viability or the ability to
6 implement the recommendations.

7 MR. JOHN MATHER: Other than
8 terminating the services agreements, were there any
9 other recommendations that you were to investigate the
10 viability of?

11 MR. JOHN BROWN: Well, I think Beacon
12 2020 made a lot of -- made a lot of recommendations
13 and all of those would all have to be examined.

14 And of course, their implementation
15 could be different. The big thing -- the big thing
16 was terminating the agreement. That was the most
17 significant thing that concerned us and, I guess,
18 occupied our immediate attention because, you know, we
19 didn't know if that agreement was current. We didn't
20 know whether it was a roll on. It turned out to be a
21 roll on agreement, every year it rolled on even though
22 nobody knew of its existence.

23 And so we took legal advice on that and
24 -- so we just wanted to make sure whatever we were
25 doing, we were doing properly and we were fully

1 informed.

2 MR. JOHN MATHER: Other than taking
3 legal advice, what did you do to investigate further
4 the possibility of terminating the shared services
5 agreement or implementing other recommendations by
6 Beacon?

7 MR. JOHN BROWN: I'm not sure -- I'm
8 not quite sure the interim period between the
9 conclusions of Beacon being, I guess, investigated and
10 then the initiation of the BMA organizational review
11 report.

12 So there seemed to be some pause, but
13 I'm not quite -- I'm not quite sure why that -- why
14 that pause happened. I don't recall that clearly.

15 MR. JOHN MATHER: If we could pull up
16 ALE50230. So this is a letter dated March 24th, 2015,
17 so about a month after Council had adopted the Beacon
18 report and directed you to look into the matter
19 further, it's a letter to you from Brian Bentz at
20 PowerStream.

21 If we scroll down Mr. Bentz writes:

22 "I hope this letter find you well.

23 I am writing with respect to
24 discourse regarding the services
25 agreements and, in particular, your

1 recent discussion with David
2 McFadden regarding the service
3 agreements."

4 Do you remember having discussions with
5 Mr. McFadden sometime prior to March 24th, 2015?

6 MR. JOHN BROWN: Okay. Yes, I had a
7 lot of discussions with Mr. McFadden and I remember
8 this letter coming -- coming in. And I think this
9 letter led to discussions with PowerStream, Mr. Bentz,
10 the Deputy Mayor, myself, Dan Horchik, and we tried to
11 talk about where we would go and then what the next
12 steps might be.

13 And that eventually ended up as, I
14 think, as a memorandum of understanding being
15 developed between the Town and PowerStream to see if
16 we could explore some alternatives to the -- to the
17 existing agreement or update it or replace it.

18 Pardon me. Sorry.

19 MR. JOHN MATHER: What do you recall
20 about your discussions with Mr. McFadden before
21 receiving this letter from Mr. Bentz?

22 MR. JOHN BROWN: I -- I'm not clear on
23 that, sorry.

24 MR. JOHN MATHER: This letter is dated
25 March 24th, 2015. It contemplates that you've had a

1 discussion or discussions with Mr. McFadden. I just
2 wanted to understand what you recall about the
3 discussions prior to receiving this letter.

4 MR. JOHN BROWN: Sorry, I don't have a
5 recollection of that.

6 MR. JOHN MATHER: The letter encloses
7 another letter agreement dated July 31st, 2012. And
8 if we scroll down, we can see the enclosure which is a
9 letter dated July 31st, 2012.

10 We understand from the transaction
11 documents that this was included in the final closing
12 documents for the share sale transaction. Prior to
13 Mr. Bentz sending you this letter on March 24th, 2015,
14 were you aware of this side letter agreement?

15 MR. JOHN BROWN: No. Nobody was.

16 MR. JOHN MATHER: What do you mean
17 nobody was aware of it?

18 MR. JOHN BROWN: I wasn't aware of it.
19 I don't think -- I'm not sure Mr. McFadden was aware
20 of it. Clerk (sic) -- anyway, I -- I certainly wasn't
21 aware of it.

22 MR. JOHN MATHER: What did you do
23 after you received a copy of this letter from Mr.
24 Bentz?

25 MR. JOHN BROWN: Well, I took legal

1 advice and -- and was very concerned with information
2 that was provided to me by Ron Clark. I called Ron
3 Clark and I said there's a shared service agreement
4 here and what would happen if that letter was breached
5 because, as you know, we had a recommendation to
6 conclu -- end the agreement with Collus Solutions.

7 And Mr. Clark advised me that -- that
8 there could very well be a penalty in the order of, I
9 think it was \$1.7 million for breaching this
10 agreement. And so that concerned me greatly and I
11 reported back to Council.

12 And, at that point in time, I'm not a
13 corporate lawyer. You know, I -- you know, I used to
14 be an urban planner. And then I got into corporate
15 management.

16 But when we get into corporate law,
17 it's kind of something that I need a lot of advice on
18 because that is not something that I've got very much
19 experience in.

20 So, I went to our law -- to Mr. Clark
21 and I asked him. And he said this is point -- \$1.7
22 million penalty. And he said he thought, you know,
23 that was -- it was binding and that PowerStream would
24 win if -- if that was the case, so that concerned me a
25 lot.

1 I think I reported back to Council,
2 told them this was a major situation. I explained to
3 the extent that I understood the -- the share purpose
4 agreement and the clauses in that, that the
5 predicament we might be in if we kind of ended up with
6 a dispute with PowerStream.

7 And it was that point in time I -- I'm
8 not quite sure where the water and wastewater
9 sequences in, but I'll just continue on. So, we took
10 advice.

11 And I said, I need to -- I need to
12 refer this to our lawyers, Miller Thomson, and we need
13 to get the corporate lawyer there to look into this
14 whole situation, this situation, and a lot of other
15 questions which had arisen with respect to this deal
16 that I thought were issues that need -- needed to be
17 looked into by the lawyer.

18 And that resulted in Miller Thomson,
19 you know, responding to Council with a comprehensive
20 report dealing with a wide variety of issues that's
21 impacted the share sale.

22 MR. JOHN MATHER: And we'll get to
23 them.

24 THE HONOURABLE FRANK MARROCCO: Just -
25 - just before you --

1 MR. JOHN MATHER: Yeah.

2 THE HONOURABLE FRANK MARROCCO: Mr.
3 Brown, I'm just trying to understand the situation.
4 The Town was paying Collus PowerStream for shared
5 services. You couldn't determine the basis upon which
6 you were being charged for those services and Mr.
7 Clark tells you there's a \$1.7 million penalty for
8 attempting -- for discontinuing the arrangement.

9 Is -- is that the gist of it?

10 MR. JOHN BROWN: That's what I
11 understood, yeah.

12

13 CONTINUED BY MR. JOHN MATHER:

14 MR. JOHN MATHER: And in that
15 conversation with Mr. Clark, was it in reference to
16 this specific letter agreement that we're looking at
17 right now?

18 MR. JOHN BROWN: Yes, one (1) of the
19 conversations with Mr. Clark.

20 MR. JOHN MATHER: Did you speak with
21 anyone else about what this letter agreement was and
22 what its implications were?

23 MR. JOHN BROWN: Could you scroll down
24 to the bottom to I see who -- who signed it? Okay.
25 So, I talked to the mayor and I talked to Sara. And I

1 think -- I believe I talked to Mr. Houghton all about
2 this letter to try to figure out where it came from
3 because nobody seemed to be aware of it.

4 And going back to Beacon 2020, you'll
5 recall that they reviewed the 2003 agreement.
6 However, it would appear that the 2003 agreement was
7 no longer emp -- no longer there and was replaced by
8 this agreement.

9 So, I talked to Mr. Houghton and I
10 asked him about it. And I best recall him telling me
11 that -- that he had nothing to do with it. He only
12 signed it because everybody else signed it. He asked
13 me to ask the mayor if she negotiated or worked with
14 Mr. -- Mr. Nolan in developing it.

15 And I asked the mayor. And she said,
16 no, she did not work (sic) Mr. Nolan to develop it.
17 She relied on -- if anybody put something in front of
18 her, she relied on whoever put it in front of her,
19 having checked it out before she would sign it. So,
20 she said she had no part of that.

21 I asked Sara. My understanding was
22 Sara didn't quite understand what this was about. And
23 I don't think it appeared in the closing book. I
24 asked for the closing book which we hadn't got. So,
25 when I asked -- got the closing book, I don't think

1 letter was included.

2 So, it came as a real surprise to
3 everybody and kind of knocked us all back in terms of
4 where was the Town right now. And it looked like --
5 because there was a shotgun clause, it looked like, if
6 Colling -- if PowerStream, you know, were upset by the
7 whole situation, that, you know, we couldn't relate
8 the fact that a shotgun clause might be issued and we
9 had no idea with respect the value of our 50 percent
10 shares which took us to another chapter in this whole
11 situation.

12 MR. JOHN MATHER: And this letter
13 itself doesn't reference the shotgun clause that was
14 in the share sale --

15 MR. JOHN BROWN: No.

16 MR. JOHN MATHER: -- transaction. How
17 did you become aware of the shotgun clause?

18 MR. JOHN BROWN: Well, I read the
19 agreements, yeah.

20 MR. JOHN MATHER: Do you remember when
21 you first read the agreements?

22 MR. JOHN BROWN: Not offhand. It
23 would have been -- it would have been this whole thing
24 started to -- whe -- when I first arrived, I was
25 focussed on the financial situation, so I really

1 didn't get involved with Collus PowerStream or the
2 deal or whatever, but I have to tell you that there
3 was -- there were issues.

4 Like, one (1) of the first
5 conversations that I had with the department heads,
6 the whole issue of the 50 percent sale came up. I
7 think it was the dinner after Council appointed me.
8 We went for dinner.

9 And they said, you know, Did you hear
10 the Town sold 50 percent of it shares. I said, No, I
11 had no idea. And then people in the community -- it
12 started to come through and certain members of Council
13 started to talk to me.

14 So, there was an issue under there
15 somewhere, but I really didn't have time to get into
16 that. There was no reason to get into that. But,
17 eventually, when we got into the -- the whole
18 situation of paying for the services with Collus
19 Solutions for water and wastewater and IT, then I got
20 more and more into this whole situation of the share
21 sale and how it was carried out and who recommended
22 what.

23 So, I got into the whole thing as a
24 result of that.

25 MR. JOHN MATHER: When you reviewed

1 the -- the share sale agreement or the agreements
2 relating to the share sale was there anything other
3 than the shotgun clause that concerned you?

4 MR. JOHN BROWN: Well, I guess there
5 was the shotgun clause. I think that there was a
6 twenty (20) day period, which for a municipality would
7 be virtually impossible, I mean, for any municipality,
8 the issue with a shotgun clause with twenty (20) days
9 to respond.

10 Municipalities are required to be very
11 public, you know, to involve the public, to notify the
12 public, to have public hearings. So, whoever put the
13 twenty (20) days into that agreement really just did
14 not understand how municipalities work. I was alarmed
15 when I read that because there's no way we could have
16 even gotten the value in twenty (20) days and we
17 didn't have a current value for our shares.

18 So, we all star -- I started to rush.
19 We all started to rush to try to position the Town so
20 that it wasn't vulnerable. And -- and so, that -- so
21 there's a shotgun clause.

22 The right of first refusal, that
23 concerned me because, if there's a right of first
24 refusal, then, you know, really who's going to put a
25 lot of work into making an offer to purchase when for

1 ten dollars (\$10) more, you know, PowerStream could,
2 you know, exercise their right to purchase it.

3 So, I'm not quite sure, you know, who -
4 - I'm not quite sure where the advice came from from a
5 municipal perspective to judge that those were things
6 that the Town could be comfortable with in the future.

7 MR. JOHN MATHER: Before moving on to
8 the next section of the FDI, I have a question --
9 Foundation Documents, I have a question about it. You
10 mentioned that, when you spoke to the mayor about this
11 July 31st, 2012, letter, she indicated that, at least
12 as I understood it, she would have relied on whoever
13 presented the letter to her for a signature.

14 Did she give you an indication of who
15 did that?

16 MR. JOHN BROWN: No. I think her
17 comment was, I rely on people who put things in front
18 of me and, on that basis, I sign them. It was kind of
19 like a trust thing.

20 So, she was telling me that she trusted
21 whoever her advisers were to -- to make sure that
22 whatever she was signing was appropriate.

23 MR. JOHN MATHER: Can we pull up
24 paragraph 749 of the Foundation Document.

25

1 (BRIEF PAUSE)

2

3 MR. JOHN MATHER: So, Mr. Brown, this
4 section 8.13(a) summarizes and describes a series of
5 correspondence between yourself, Mr. Clark, and
6 Mr. Longo --

7 MR. JOHN BROWN: Yeah.

8 MR. JOHN MATHER: -- about who
9 represented the Town in respect of the share
10 transaction. Do you recall participating in these
11 inquiries?

12 MR. JOHN BROWN: Oh, yes. Absolutely.

13 MR. JOHN MATHER: What led you to
14 initiate them?

15 MR. JOHN BROWN: Because I've worked
16 in -- I've worked in many municipalities, and I've
17 never, ever been in a municipality where the staff or
18 anybody on staff couldn't sit down and take me through
19 a major transaction.

20 I mean, there's always -- there's
21 always somebody who was involved in the project that
22 knew it -- you know, the project leader or whatever --
23 that could take you through all of the events and show
24 you the documentation of who decided what and when and
25 how, and what information they used to arrive at

1 the -- like, they've always been comprehensive.

2 Everywhere I've ever been -- all
3 municipalities -- all operate on that basis, and all
4 the information is stored with the clerk, and all you
5 have to do is ask for the file.

6 So when I came here and I started to
7 get more and more involved with this, I went to the
8 clerk, and I said, can I get the files and the
9 transaction? And you know, she said, I don't have any
10 files. And I find that very hard to believe that
11 there were no files of an \$8 million share transaction
12 that were vested in the Town and the office of the
13 clerk and no back-up materials.

14 And then I had to get into a whole
15 series, you know, of emails and, you know, emails that
16 concern me and I think annoyed some other people that
17 I was asking for all this information because they
18 just didn't have it.

19 And I didn't -- you know, that -- that
20 concerned me a lot. I mean, it's very -- very, very,
21 very unusual that there would no information in the
22 Town with respect to a public sale of perhaps one of
23 the Town's greatest investments. I just couldn't
24 believe it.

25 Anyway, I started this whole search to

1 try to find out and understand this transaction. And
2 again, I say, there was nobody who could sit down with
3 me and take me through the steps of this transaction,
4 which I also find very hard to believe.

5 And I guess we'll come to it later on,
6 but the reality was, there was nobody in the Town who
7 could -- who would know and understand all of the
8 details of this agreement and be able to position the
9 Town for the future to make sure that it didn't fall
10 afoul of, you know, a shotgun clause and was prepared
11 that it knew the value of the shares.

12 I just couldn't believe that, you know,
13 there was no knowledge, never mind any files in the
14 corporation of who was responsible for this file and
15 who would manage it into the future. It just wasn't
16 there.

17 And then, of course, I -- I took legal
18 advice actually because I started to ask lots and lots
19 of questions, and it was concerning me that I was
20 doing that, and I think people didn't like me doing
21 that.

22 So, you know, I wondered -- I mean, is
23 this part of my job? I -- I mean, I started to
24 second guess what I was doing. So I -- I went to
25 John Mascarin, and I said, you know, I have a

1 predicament here. I mean, I'm getting in a situation;
 2 I'm having to ask questions; people with feathers are
 3 getting ruffled. And is this part of my job? Is --
 4 am I entitled to get this information? Should I be
 5 pursuing this? And he said yes, and he wrote me a
 6 legal opinion, and I'll talk about that later on when
 7 we talk about expunging emails.

8 So -- so he gave that legal opinion.
 9 And then -- you know, as this whole continued, you
 10 know, when we got new lawyers -- Miller Thomson -- I
 11 asked Steve O'Melia the same question. I just said,
 12 like, this is just -- this isn't -- I never expected
 13 to be involved in a situation anything like this, and
 14 is this appropriate for me to be doing this? Should I
 15 be doing this? And I got -- I got the advice that I
 16 should be doing it.

17 And then I asked another lawyer who had
 18 experience of public inquiries, and I put the question
 19 to him, should -- you know, should I --

20 MR. WILLIAM MCDOWELL: Well, hang on.
 21 I think we got to be careful here, right? Because
 22 we -- the Town has waived privilege over things,
 23 including the shared services agreements. It has not
 24 waived privilege over the advice leading to the public
 25 Inquiry. And Mr. Brown may not be aware of that, but

1 there is a firewall there.

2 THE HONOURABLE FRANK MARROCCO: It --

3 I don't know if you understood --

4 MR. JOHN BROWN: Not really.

5 THE HONOURABLE FRANK MARROCCO: --

6 what Mr. McDowell was saying. But he's saying the

7 Town has waived privilege with respect to the matters

8 that the Inquiry is inquiring into --

9 MR. JOHN BROWN: Okay.

10 THE HONOURABLE FRANK MARROCCO: -- but

11 not a privilege insofar as you're talking about the

12 advice --

13 MR. JOHN BROWN: Okay.

14 THE HONOURABLE FRANK MARROCCO: --

15 which led to the decision to pass the resolution --

16 MR. JOHN BROWN: Okay.

17 THE HONOURABLE FRANK MARROCCO: --

18 causing the Inquiry.

19 MR. JOHN BROWN: Okay. Pardon me.

20 I'm sorry.

21 THE HONOURABLE FRANK MARROCCO: Yeah.

22 But just -- you understand what --

23 MR. JOHN BROWN: I do now. Or I do

24 now. Anyway, I guess, where I could, I took legal

25 advice to make sure that what I was doing was

1 appropriate and was part of my job.

2

3 CONTINUED BY MR. JOHN MATHER:

4 MR. JOHN MATHER: And my specific
5 question was with respect to the conversations we see
6 in this section of the Foundation Document, in which
7 you were asking --

8 MR. JOHN BROWN: Yes.

9 MR. JOHN MATHER: -- who at Aird &
10 Berlis was representing the Town. What led you to ask
11 those questions of Mr. Longo and Mr. Clark
12 specifically?

13 MR. JOHN BROWN: Because I was looking
14 for somebody who could tell me the story of the file.
15 I thought if they had a lawyer and the lawyer was
16 involved that I could -- all these other inquiries I
17 was making, it would be much simpler if I could just
18 go to the lawyer who was representing the Town and
19 say, listen, you know, can you please take me through
20 this file and tell me who did what when, so that I
21 understand it to see where I am? And I thought I
22 would ask for the lawyer.

23 So I asked Mr. Houghton -- I said, who
24 was the Town's lawyer? And he told me Leo Longo. So
25 I said, great. Now, I'll just call Leo, and I'll get

1 all this cleared out. You know, Leo will tell me what
2 happened.

3 So when I called him, you know, he told
4 me -- you know, he wasn't the Town's lawyer of record,
5 and that started another whole discovery of, like, who
6 was the Town's lawyer? Who represent who for what?
7 And I've never experienced anything like that ever
8 before.

9 So it would appear that Leo was invited
10 in for particular elements of this deal and he gave --
11 gave some advice. But there's no way he accepted
12 responsibility or no way he could take me through the
13 story that I was so anxious to find out. Like, what
14 happened here?

15 MR. JOHN MATHER: So if we could
16 scroll to paragraph 755.

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: We see that in
21 addition to the inquiries you made about who
22 represented the Town in respect of this transaction,
23 you also -- Mr. Longo also sent you an email answering
24 questions that you had raised about the shared
25 services agreements between the Town and Collus

1 PowerStream Solutions and -- between the Town and
2 Collus PowerStream.

3 What led you to make these inquiries of
4 Mr. Longo at this point in time?

5 MR. JOHN BROWN: Well, I -- I was just
6 seeking to better understand -- better understand
7 the -- the situation, how the Town -- how the Town
8 ended up in the position that it's in.

9 THE HONOURABLE FRANK MARROCCO: Just
10 before you go on, did you not have a reporting letter
11 from Mr. Clark on the closing of the transaction?

12 MR. JOHN BROWN: So we didn't have a
13 close -- a closing book?

14 THE HONOURABLE FRANK MARROCCO: Well,
15 very often a closing book would be accompanied by some
16 sort of reporting letter reporting on the transaction.

17 MR. JOHN BROWN: And so -- so I asked
18 for a -- where the closing book was, and the clerk
19 didn't have a closing book. I asked Mr. McFadden, is
20 there a closing book? He didn't know where the
21 closing book was? He undertook to look for it. I
22 don't think Mr. Houghton had the copy of the closing
23 book.

24 So I called Ron Clark, and I said,
25 where -- you know, like, why did we not getting a

1 closing book? And he said, oh -- he said he gave one
2 to Mr. Houghton, but he didn't give one to the Town.
3 And I said, well, can I please have a copy of that?
4 So -- no, I asked Mr. Longo to get me a copy of it.
5 And he provided a copy of it to me.

6 And so -- so no, we didn't have -- we
7 didn't have that either.

8

9 CONTINUED BY MR. JOHN MATHER:

10 MR. JOHN MATHER: Can we go to
11 paragraph 758 of the Foundation Document. So this is
12 in the same session that discusses the answers
13 Mr. Longo provided to you about the Shared Services
14 Agreement.

15 This paragraph describes an email that
16 Mr. Longo sent you on April 7th, 2015. And if we
17 could pull up the email itself, which is ARB513.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So we see -- this is
22 the email that was referred to in that paragraph. And
23 if we can scroll down, you can see that Mr. Longo is
24 describing a memorandum from Ron Clark.

25 What do you recall about the memorandum

1 that Mr. Clark provided to you?

2

3 (BRIEF PAUSE)

4

5 MR. JOHN BROWN: Sorry. Can we go
6 back to the top? Can you scroll up to the top?

7 MR. JOHN MATHER: Yes.

8 MR. JOHN BROWN: Scroll up, please.
9 Should I read more of it? I'm sorry.

10 MR. JOHN MATHER: Sorry you -- you can
11 direct our court operator which way you want to --

12 MR. JOHN BROWN: Sorry, I thought it
13 was you.

14 MR. JOHN MATHER: No, no, that's fine.

15 MR. JOHN BROWN: Pardon me.

16 MR. JOHN MATHER: And while you're
17 reviewing, Mr. Brown, I just -- this -- this email
18 contemplates a memorandum that Mr. Clark had prepared
19 and I just want to know if you recall Mr. Clark
20 preparing a memorandum for you in respect of the
21 issues discussed in this email.

22 MR. JOHN BROWN: No, this wasn't clear
23 in my memory, unfortunately.

24 MR. JOHN MATHER: And if we see on the
25 screen in the third sub-bullet point, it -- it says:

1 "Ron Clark is advised that if the
2 Town were to attempt to terminate
3 the SSA and PowerStream was
4 successful in persuading a court or
5 arbitrator that July 31st, 2012
6 letter constituted a binding and
7 enforceable legal agreement
8 extending the SSA's terms to
9 December 31st, 2017, the financial
10 exposure might be in the range of
11 \$1.7 million."

12 Is that what you were referring to
13 earlier?

14 MR. JOHN BROWN: It is, yes.

15 MR. JOHN MATHER: Okay. And then if
16 you look at the next paragraph it says:

17 "At this juncture and up until July
18 1st, 2015, the Town will be
19 considering whether it will serve a
20 notice on solutions respecting the
21 termination of the SSA on December
22 31st. During this period of time
23 you", and he's writing to you, Mr.
24 Brown, "will be meeting with Town
25 staff and reps with PowerStream and

1 Solutions. If an opportunity exists
2 to negotiate an exit strategy from
3 the SSA that might be agreeable to
4 all parties concerned."

5 Is that an accurate description of what
6 your plans were at this point in time, was to have
7 further meetings and see if there was some sort of
8 exit strategy to negotiate?

9 MR. JOHN BROWN: Yes. Yes, indeed, we
10 tried to -- we didn't want any confrontation with
11 PowerStream. We tried to -- we tried to see if there
12 was some way that we could revise the shared services
13 agreement, that we could -- one of the things we
14 talked about was whether IT, I considered IT very
15 important and for the Town not to have responsibility
16 and control of an IT function. I thought we were very
17 vulnerable.

18 So I suggested we would bring in IT
19 into the Town and then we would bill them for any
20 costs, but that was not accepted.

21 So we went through various scenarios
22 that -- that might see us. There was an MOU
23 developed, various scenarios that might see us kind of
24 resolve this in a very positive way and there was a
25 group of people who met with Mr. Bentz and I think Mr.

1 Horchik, and then I continued on meeting with Mr.
2 Bentz and those discussions continued.

3 And unfortunately those discussions
4 didn't arrive at anything and it seemed to take a long
5 time. I kept asking our lawyer what's the status,
6 have you heard anything, what's the status.

7 And -- and she -- she said to me there
8 is a delay on the part of PowerStream's lawyers. That
9 was the -- that was the feedback that I got from her.

10 I consider that very important and I
11 got her to write a note to Council so that Council
12 would understand that, because I didn't want to just
13 say that myself. I wanted the lawyer to provide that
14 comment back to Council.

15 MR. JOHN MATHER: So I understand from
16 that response the discussions you're referring to are
17 negotiations about entering a new shared services
18 agreement?

19 MR. JOHN BROWN: Yeah, yeah. Updating
20 it or creating a new one or whatever. Yes.

21 MR. JOHN MATHER: So the Inquiry has
22 heard from witnesses who have suggested that the
23 reason that a new shared services arrangement was not
24 entered into was because of the inquiries that you
25 were making as well as a suggestion that you weren't

1 prepared to negotiate a new agreement.

2 Are you familiar at all with that
3 testimony?

4 MR. JOHN BROWN: Yeah, and I don't
5 think that's correct because I met with Mr. Bentz -- I
6 met with Mr. Bentz on several occasions, at lunch in
7 his office, we get on very well and -- and we talked
8 about, you know, various things that might be
9 accommodated.

10 I work with our lawyer, Jean Leonard
11 and constantly she was trying to refine and develop
12 that agreement.

13 So no, that was ongoing. We tried to
14 do that and nobody stopped it and we were disappointed
15 that it really didn't conclude in an updated
16 agreement. There would be no reason not to develop
17 that.

18 MR. JOHN MATHER: If we could pull up
19 CPS7764_1.

20 So Mr. Brown, this is a -- meeting
21 notes that we understand were prepared by Ms. Almas in
22 respect of a meeting that you had with her and Mr.
23 Houghton on May 4th, 2015.

24 This is after the email we were just
25 looking at from Mr. Longo, who indicated that you were

1 planning on going out and meeting with Collus
2 PowerStream representatives as well as Town staff.

3 Was this one of the meetings you had
4 that was being contemplated in Leo Longo's email?

5 MR. JOHN BROWN: I'm not sure if it
6 was contemplated by Leo, but it's -- it's a meeting we
7 had to have. Again, it's one of those discovery-type
8 meetings. We were trying -- I was trying, we were
9 trying to put together the picture, so we just wanted
10 clarity from Mr. Houghton with respect to -- at least
11 I did -- various issues that we were experiencing.

12 MR. JOHN MATHER: And why did you have
13 Ms. Almas prepare meeting notes about the meeting?

14 MR. JOHN BROWN: Well, I -- I wanted
15 there to be an official record. I didn't want anybody
16 misinterpreting, you know, that I -- it was a lot of
17 stuff starting to -- to be -- people were starting to
18 be concerned with me and say that I was being overly-
19 aggressive or whatever.

20 So I wanted to make sure that in this
21 meeting with Mr. Houghton that there was -- that
22 whatever was recorded was recorded according to her
23 judgment, that it wasn't being influenced in any way
24 by me, and whatever we talked about was accurately
25 recorded.

1 So that's why I -- I thought it was
2 important that she take the minutes of the meeting.

3 MR. JOHN MATHER: Why did you feel
4 that step was necessary at this point in time?

5 MR. JOHN BROWN: I talked to Mr.
6 Houghton a few times and -- and -- like, for instance,
7 who was the Town's lawyer? It was Leo Longo. Well,
8 apparently not.

9 So I just wanted to -- I wanted to make
10 sure that we didn't get into any other
11 misunderstandings.

12 MR. JOHN MATHER: What was your
13 intention about what you would do with the information
14 you obtained at the meeting with Mr. Houghton?

15 MR. JOHN BROWN: Just see how we -- we
16 could be enlightened by his answers. Just to see if
17 he could help us understand the situation.

18 MR. JOHN MATHER: And in this case it
19 looks like the -- what you were discussing was the
20 shared services agreement. Is that your recollection?

21 Sorry, you have to say yes or no.

22 MR. JOHN BROWN: Sorry. Yes.

23 MR. JOHN MATHER: So it's our
24 understanding that Ms. Almas sent these meeting notes
25 to Mr. Houghton for his review. Do you recall that?

1 MR. JOHN BROWN: Yes.

2 MR. JOHN MATHER: Did you direct Ms.
3 Almas to send the notes to Mr. Houghton?

4 MR. JOHN BROWN: Yes, because I wanted
5 to make sure that he had his input before she
6 finalized them.

7 MR. JOHN MATHER: If we could pull up
8 CPS5431. And scroll down to the bottom.

9 So this is an email from you to Mr.
10 Houghton after the -- on May 6th, 2015, which is two
11 days after the meeting that was reflected in those
12 notes.

13 Your response suggests that Mr.
14 Houghton provided feedback to Ms. Almas on the notes
15 that she had provided.

16 Do you recall how Mr. Houghton provided
17 that feedback?

18 MR. JOHN BROWN: Probably in an email.
19 I don't know.

20 MR. JOHN MATHER: Do you have any
21 recollection of what changes he suggested be made to
22 the meeting notes?

23 MR. JOHN BROWN: If you could bring up
24 the meeting notes, perhaps I could refresh my memory.

25 MR. JOHN MATHER: It's CPS7764. And

1 when we bring them up, I would like to know your
2 recollection, if you have any recollection, with --
3 prior to looking at it.

4 MR. JOHN BROWN: He changed some
5 things that I thought were important and in my
6 opinion, he revised it so that it wasn't what he said
7 at the meeting that she recorded, but kind of like a
8 changed version. Like he said something different.

9 The specific is that I don't recall it,
10 you know, I don't have the detail of that in my head.

11 MR. JOHN MATHER: So perhaps to assist
12 you more, if we could go back to CPS5431, there is
13 further emails in that email chain that may assist in
14 refreshing your memory.

15 MR. JOHN BROWN: Yes, sure.

16 MR. JOHN MATHER: Scroll down. So
17 that was your email to Mr. Houghton. Mr. Houghton
18 replies that he disagrees and thinks his comments were
19 factual.

20 And if we scroll up, your further reply
21 to Mr. Houghton and you indicate that Mr. Houghton
22 specifically mentioned the Mayor during our meeting
23 and suggested that she may have negotiated directly
24 with Mr. Nolan from PowerStream, the amendment to the
25 purchase and sale agreement.

1 You declared yourself to have
2 absolutely no involvement with the creation of this
3 document and signed in ignorance and without legal or
4 business advice.

5 Does that refresh your memory about
6 what changes Mr. Houghton wanted to make?

7 MR. JOHN BROWN: Yes, absolutely.

8 MR. JOHN MATHER: What were the
9 changes?

10 MR. JOHN BROWN: Well, he -- I can
11 tell you what he said. He said that he was -- he's --
12 that's what he said, what I've written there.

13 He -- he -- what did he say? I'm not
14 sure what he said. All I know is that what I'm saying
15 there is what I recall he said at the meeting. He
16 particularly said that -- sorry -- he particularly
17 said that -- the Mayor was perhaps the most important
18 element of it, so he said that -- to ask her, perhaps
19 she negotiated it with Mr. Nolan and I did, I asked
20 her and she said she didn't and I explained why she
21 didn't.

22 And so that was -- that was the major
23 point of it. Sorry, I -- I don't recall more than
24 that.

25 MR. JOHN MATHER: Do you recall why

1 you had a concern about Mr. Houghton suggesting
2 changes to the me -- to the minutes, why that seemed
3 to bother you?

4 MR. JOHN BROWN: Well, I think the
5 whole purpose of having Sara at the meeting was to
6 void confusion and I had her take the notes because I
7 wanted them to be accurate.

8 So I guess I was surprised when -- when
9 Mr. Houghton made those changes. And that's -- that's
10 what I wanted to avoid.

11 MR. JOHN MATHER: Do you recall if the
12 -- the notes that Ms. Almas made, were they ever
13 presented to anyone?

14 MR. JOHN BROWN: Were they presented
15 to anybody?

16 MR. JOHN MATHER: Did you give them to
17 Council or any of the subsequent legal staff, legal --
18 lawyers who reviewed the transaction?

19 MR. JOHN BROWN: I don't think so. I
20 don't recall doing that.

21 MR. JOHN MATHER: Were they shared
22 with anyone else to your recollection?

23 MR. JOHN BROWN: I don't think so.

24 MR. JOHN MATHER: I'm about to move on
25 to another area, so.

1 THE HONOURABLE FRANK MARROCCO: We'll
2 take ten minutes and we'll come back.

3

4 --- Upon recessing at 11:02 a.m.

5 --- Upon resuming at 11:15 a.m.

6

7 MR. FREDERICK CHENOWETH: Your Honour,
8 before we proceed further, I have some comments I'd
9 like to make with respect to the nature of the
10 evidence that's being brought up from this witness.

11 I'm concerned, Your Honour, that we're
12 now going into evidence and raising issues that were
13 not raised at earlier times. And the Inquiry could
14 well have had the benefit of the evidence of Ms.
15 Almas, the mayor, Mr. Bentz, Mr. McFadden, Mr. Mc --
16 Mr. Houghton with respect to all of these issues that
17 are raised.

18 And there was no questions directed by
19 Inquiry counsel that raised any of these issues. And
20 we're now in a situation where -- I'm sure this
21 gentleman is quite a worthy gentleman.

22 But we are now required to -- I don't
23 know what the Inquiry will do with the evidence that
24 we're hearing with respect to things like the memo,
25 things like whether the mayor and Mr. Nolan discussed

1 the July 31st, 2012, letter because we only have the -
2 - the evidence of -- of one (1) individual with
3 respect to this.

4 So, I -- I'm concerned about the fact
5 that we're now raising new issues that haven't been
6 issues in this Inquiry to date and have not been
7 raised by Inquiry counsel to date and that the -- that
8 the commission does not have an opportunity to explore
9 these issues to their fullest and get to the bottom of
10 them.

11 And I think it's unfair to, a) the
12 participants and, b) the public.

13 MR. WILLIAM MCDOWELL: Can I -- can I
14 address that briefly?

15 THE HONOURABLE FRANK MARROCCO: Yes,
16 certainly.

17 MR. WILLIAM MCDOWELL: What I would
18 say to that is, the number of the witnesses, certainly
19 Mr. Houghton, to some extent, Mr. Bentz. Grosomoto
20 (phonetic) blamed the breakdown in the relationship
21 between the Town and Power -- Collus PowerStream on
22 Mr. Brown, and so that's the first point.

23 The second point is, I'm not sure who
24 wanted this witness to be called, but what we're now
25 learning is, in a sense, the other side of what's been

1 raised, what were the issues and what -- what were the
2 particulars of the concerns of Mr. Brown.

3 So, you know, frankly, I don't think My
4 Friend pulled his punches when asking questions to try
5 and lay the blame at the feet of Mr. Brown, so I don't
6 really see an issue.

7 THE HONOURABLE FRANK MARROCCO: Well,
8 for --

9 MR. FREDERICK CHENOWETH: May I
10 respond to that, Your Honour?

11 THE HONOURABLE FRANK MARROCCO: Sure.

12 MR. FREDERICK CHENOWETH: Yeah.

13 THE HONOURABLE FRANK MARROCCO: Then
14 we'll end the -- then we'll end the submissions.

15 MS. BELINDA BAIN: If you don't mind,
16 Your Honour, I also have some input after Mr.
17 Chenoweth.

18 MR. FREDERICK CHENOWETH: Right. Your
19 Honour --

20 THE HONOURABLE FRANK MARROCCO: Oh,
21 wait a second, Mr. Chenoweth. What's your question --

22 MR. FREDERICK CHENOWETH: Your Honour,
23 there's -- there's --

24 THE HONOURABLE FRANK MARROCCO: No,
25 no. Just hold on. I'll hear you last.

1 MR. FREDERICK CHENOWETH: Very good.

2 Thank you.

3 THE HONOURABLE FRANK MARROCCO: What -
4 - what's your input, Ms. Bain?

5 MS. BELINDA BAIN: Thank you, Your
6 Honour. We very much are in agreement with Mr.
7 Chenoweth in that the evidence being provided by Mr.
8 Brown certainly appears to go beyond merely an
9 uncomfortable relationship and get into specifics with
10 respect to meetings, conversations, what information
11 was or was not provided.

12 And the particulars of that were not
13 raised with Mr. Bentz or Mr. Nolan while they were
14 here giving evidence. We appear to be getting into a
15 Browne v. Dunn type of situation.

16 I don't know sort of how we address
17 that, whether further evidence may need to be put in
18 by way of affidavit otherwise to respond, but we very
19 much agree that this appears to be raising new issues
20 which were not put to our witnesses when they were on
21 the stand.

22 THE HONOURABLE FRANK MARROCCO: Mr.
23 Brown, Browne v. Dunn is a case.

24 MR. JOHN BROWN: Oh, I'm sorry.

25 THE HONOURABLE FRANK MARROCCO: It's

1 got nothing -- it's not you.

2 MR. JOHN BROWN: Okay. That's good to
3 know.

4 MR. TIM FRYER: Justice Marrocco, may
5 -- may I speak?

6 THE HONOURABLE FRANK MARROCCO:
7 Certainly, Mr. Fryer.

8 MR. TIM FRYER: Okay. I -- I do agree
9 there's some evidence that's been given. But I spent
10 the last three (3) months here trying with the various
11 witnesses to address matters of the evidence that's
12 been presented.

13 I think it's in the evidence, a number
14 of the -- of the situations. I -- I do -- I do agree
15 that there's been some mis -- information introduced
16 just recently that has put it into a situation where
17 we've got to look into it a little deeper.

18 But, as I said, I -- I spent --
19 painstakingly spent time trying to make sure I address
20 things that Mr. Brown has spoken about with the
21 various participants.

22 THE HONOURABLE FRANK MARROCCO: Mr.
23 Chenoweth?

24 MR. FREDERICK CHENOWETH: Your Honour
25 --

1 THE HONOURABLE FRANK MARROCCO: Oh,
2 sorry. Just a minute, Mr. Chenoweth. I keep
3 interrupting you. Mr. Bonwick...?

4 MR. PAUL BONWICK: Thank you, Your
5 Honour. I only raise two (2) issues. One (1) is I
6 was concerned once again with counsel for the Inquiry
7 providing the testimony -- or the preamble for the
8 testimony last night at six o'clock. We had --

9 THE HONOURABLE FRANK MARROCCO: That
10 was the amended statement.

11 MR. PAUL BONWICK: Amended, right.
12 So, we, as you can appreciate, or certainly from my
13 perspective, when the reference to the testimony came
14 out last Friday, you spend 'X' number of hours or days
15 trying to develop a position for questioning or cross-
16 examining based on that.

17 And to have something come out at six
18 o'clock last night sort of puts us -- puts us back a
19 notch in terms of what we're able to do regarding
20 relevant cross-examination.

21 My second point would be, based on some
22 of the information that Mr. Brown has provided to the
23 commission, had I have known that these statements
24 were going to be made, it would have had some impact
25 in terms of any of the cross-examination I had

1 provided to no less than eight (8) or nine (9)
2 witnesses.

3 THE HONOURABLE FRANK MARROCCO: Mr.
4 Chenoweth...?

5 MR. FREDERICK CHENOWETH: My concern --

6 THE HONOURABLE FRANK MARROCCO: Oh,
7 wait, sorry. Mr. Marron, do you have any submi -- I
8 just passed -- you didn't say anything, so I -- but I
9 -- I -- do you -- do you want to have -- do you have a
10 position on this?

11 MR. GEORGE MARRON: No. No.

12 THE HONOURABLE FRANK MARROCCO: Thank
13 you. Sorry -- sorry for that. Go ahead, Mr.
14 Chenoweth. I promise this time I won't stop you.

15 MR. FREDERICK CHENOWETH: I'm -- I'm
16 not offended. Your Honour, I -- My -- My friend, Mr.
17 McDowell, says that we're quite liberal about raising
18 issues about bad relations between Mr. Brown, and this
19 not a secret, Mr. Brown, obviously, and -- and others,
20 both at the Town and at -- and at Collus PowerStream.

21 We did that. There's an opportunity
22 for him to respond to that issue. That's not my
23 concern. My concern is that we're now dealing with a
24 number of issues that have significant import.

25 I am uncertain as to where the

1 Commission intends to go with respect to matters such
2 as the July 31st letter and who's responsible for it,
3 et cetera, et cetera. But we have to keep in mind
4 that the commission has the power to make findings of
5 misconduct through the course of its activities.

6 And we are now in a situation where
7 we're hearing significant evidence from this
8 individual on matters such as the July 31st letter, et
9 cetera, and -- and other matters, and evidence with
10 respect to who he spoke to and didn't speak to and who
11 had what, et cetera, et cetera.

12 I mean, all of this could have been
13 easily canvassed with -- with Mr. Clark when he was on
14 the stand. We've had a tonne of people who could
15 speak to all of these issues. And now the commission
16 has lost the opportunity to do that.

17 And I'm concerned that we are now going
18 to have the bald evidence of this particular witness
19 on a variety of different matters that -- that it
20 could be quite significant, including possible
21 findings of misconduct.

22 I -- I should tell the court that I
23 raised this specific issue with Inquiry counsel in
24 emails over the last few days and said to them that I
25 was concerned that new issues were going to be raised

1 that could now not properly be spoken to by those with
2 counter evidence and that we'll lose the benefit of
3 that.

4 So it's an issue I've raised on earlier
5 occasions and raise again now.

6 THE HONOURABLE FRANK MARROCCO: My
7 view of it is this: I'm going to permit counsel --
8 Commission counsel to continue the questioning.

9 The question of why the -- this
10 strategic partnership fell apart was raised in
11 cross-examination and the responsibility for that was
12 in the tenor of who was responsible from the
13 cross-examination was that things changed after
14 Mr. Brown became the chief administrative officer.

15 Mr. Brown's testifying, and he's
16 explaining to us what his situation was. If -- it's a
17 matter of argument whether -- and the weight to be
18 attached to evidence if something significant comes
19 out of his testimony which wasn't put to the other
20 witnesses. And I'll deal with that, and I assume
21 it'll be dealt with as a matter of argument.

22 But by and large, Mr. Brown's here
23 because the cross-examination of other witnesses
24 suggested that it was during his term that this very
25 happy relationship that emerged from the strategic

1 partnership and the merger became unhappy and
2 dysfunctional, and that is the fundamental reason why
3 he's here, and that's what he's addressing.

4 As far as the amended statement is
5 concerned, my understanding of that is that a
6 statement of Mr. Brown's evidence was provided. There
7 was requests for further information -- further
8 detail, and there was an amended -- there was an
9 amended statement provided of necessity late -- late
10 in the day.

11 So I see it fundamentally as a matter
12 of argument, and we're going to carry on. Continue
13 the questioning.

14

15 CONTINUED BY MR. JOHN MATHER:

16 MR. JOHN MATHER: If we could pull up
17 paragraph 765 of the Foundation Document.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So, Mr. Brown, this
22 paragraph references a further report. When we
23 started out looking at the list of reports, this one
24 is the Miller Thomson report, which was delivered to
25 yourself on May 15th, 2015, and it was entitled

1 'Issues surrounding the services agreements between
2 Collingwood Public Utilities Commission and Collus
3 Solutions Corp., the sale of shares in Collingwood
4 Utilities Services Corp., and related issues.'

5 Could you please explain the origins of
6 this report?

7 MR. JOHN BROWN: Certainly. So when
8 Mr. Clark advised me that the impact of the 2012
9 July 31st amended agreement could well -- very well be
10 \$1.7 million penalty and he thought that that argument
11 would hold in court, I became very concerned.

12 I did not want the Town subject to any
13 penalty, and I already had brought forward a report to
14 Council which said that the Shared Services Agreement,
15 as they understood it, existed. It should be
16 cancelled. So that looked to me like I better deal
17 with what looked like a -- a major threat.

18 So as I said before, I'm not a
19 corporate lawyer and all of this information -- and it
20 was all kind of broken up pieces of information
21 everywhere. It was very hard to understand this
22 picture of how we ever got to be where we are and who
23 was responsible.

24 So I told -- I had a meeting with
25 Council, and I told Council -- I said, this is just

1 becoming kind of beyond me. I'm going to need
2 corporate legal advice. I want your approval to get
3 that because I think we need somebody to come in and
4 have a look at these critical issues which have all
5 developed and mushroomed. And I certainly want to
6 avoid the taxpayers having to come up with some large
7 penalty as a result of us not knowing what we're
8 doing.

9 So I asked the -- I asked our corporate
10 lawyer to examine a number of issues. She looked at
11 many of them, and they're all outlined in her report,
12 and I'll be happy to comment on any of it if you want.

13 MR. JOHN MATHER: And the corporate
14 lawyer you're referring to is Ms. Leonard at Miller
15 Thomson?

16 MR. JOHN BROWN: It was, yeah. Jean
17 Leonard.

18 MR. JOHN MATHER: So if we scroll
19 down, the conclusions and issues that Miller Thomson
20 identified are summarized in 766 to 770. Among other
21 things, Miller Thomson raised concerns about how the
22 share-sale transaction proceeded and whether there was
23 sufficient Council oversight and legal oversight.

24 So I don't have specific questions
25 about those conclusions. But I do want to know what

1 you did after you received Miller Thomson's reporting
2 conclusions.

3 MR. JOHN BROWN: So Miller Thomson's
4 report, I received that. And I submitted it to
5 Council. We invited the lawyer to come up, and do a
6 presentation, and take Council through the situation
7 as she understood it.

8 And she provided advice to Council
9 about that. She said she did not think we were at
10 risk of the \$1.7 million, which eased a lot of our
11 concerns.

12 But to me -- to me, the conclusions of
13 her report suggested we find out some of the
14 information -- you know, how things happened the way
15 she had concerns about.

16 Like, one -- one of the major issues
17 she said was, how -- why would Council have delegated
18 sole authority to the mayor to undertake a transaction
19 of this magnitude? Why would that happen? Why would
20 that not be a matter for Council to decide?

21 And that was one of the -- one of the
22 questions I continued to ask. I asked Mr. Houghton; I
23 asked various people: How did this happen? I think
24 Mr. Houghton said he didn't know how it happened.

25 But anyway, it happened regardless. So

1 there were significant issues that required us to
2 better position ourselves for the future now that we
3 had some relief for the \$1.7 million penalty.

4 But clearly in my opinion looking at
5 the -- the deal that was done and the lack of anybody
6 who was in charge of this file who knew about it, I
7 thought the Town needed to consider where it is right
8 now -- the vulnerabilities which exist -- and what the
9 options might be in the future.

10 And I think that was prudent. I made
11 the recommendation to Council, and Council agreed.
12 And then that resulted in us hiring a lawyer called
13 Mark Rodger.

14 And of course, Mr. Rodger prepared a
15 report which summarized all the previous reports that
16 we've been talking about, and then positioned the Town
17 to start thinking about what it might do. Do you want
18 to keep your 50 percent shares? What other options
19 might you want to think about?

20 And that's what took us to that
21 sequences of events. So the Miller Thomson report
22 left unanswered questions, but it also pointed us --
23 the Council and the Town -- in the direction of where
24 do we go in the future, which I think was very
25 important.

1 MR. JOHN MATHER: You mentioned that
2 the -- you had a concern or it left you with concerns
3 about the vulnerabilities that might exist.

4 MR. JOHN BROWN: Yes.

5 MR. JOHN MATHER: What did you
6 understand at this point in time -- May 2015 -- what
7 those vulnerabilities were?

8 MR. JOHN BROWN: So again not being a
9 corporate lawyer myself but just looking at a deal is
10 sort of somebody with common sense and just the
11 ability to kind of think about what the impact would
12 be, I just wondered, you know, what was going to
13 happen after the five (5) years.

14 I mean, it seemed to me here we are in
15 this situation -- and it was a very difficult
16 situation. I think it was difficult in terms of
17 governance, and that's one of the things in the KPMG
18 report.

19 They said when they outlined the
20 initial options, which never included the Strategic
21 Partnership -- but the options they did outline, they
22 noted, you know, if -- where there was -- where there
23 was joint ownership, you might want to look at
24 governance.

25 Well, as it turned out, I think it was

1 very unfortunate that the governance was not fully
2 evaluated before this deal was done and Council
3 advised because governance turned out to be very
4 problematic.

5 The second Council had a major concern
6 because they saw the company as really almost like a
7 takeover. I mean, somehow or other, the Town had
8 50 percent of the shares. We had people who were
9 appointed to the Board. But they -- they were -- it
10 seemed precluded from telling us anything that
11 happened that was of any significance.

12 Now, I -- when I was in Oshawa and I
13 was in Brantford, I wasn't involved in the hydro, but I
14 used to sit at the meet -- I was the link in Oshawa
15 between the hydro company. And once a month, the
16 president of the company would come in and tell me
17 what was significant in his opinion, and I would
18 always update Council. Council needs to know, you
19 know, what's happening to the value of the assets that
20 it's looking after on behalf of the -- the citizens.

21 But -- so that's what we did in Oshawa.
22 There was always an opportunity to report back to
23 Council whenever it was appropriate so that they
24 stayed informed. In Brantford when I was there, I --
25 I attended the meetings and, you know, I was aware of

1 everything that happened.

2 In this arrangement, you know, just
3 like my experience trying to get answers to questions,
4 no answers came, and we were told that this is the
5 system.

6 I'm not sure that Council, you know,
7 the want -- the Council the day that approved the deal
8 understood that almost -- there was no role for the
9 Town, specifically, the Council. There may have been
10 for the people who were on the board as directors, but
11 we're talking about a Council, representing the people
12 who own these 50 percent of the shares and not being
13 able to, I guess, answer significant questions that --
14 that the owners might ask, i.e., the public. So that
15 was a very difficult situation.

16 The second thing is we did not know,
17 you know, if a shotgun clause would be issued or not,
18 you know, I mean, how -- and if -- if one was going to
19 be issued, we didn't know the value of the shares. So
20 that was a very vulnerable position.

21 Twenty (20) days doesn't give you time
22 to -- well, municipalities, you know, I mean, you
23 can't do very much in twenty (20) days that's a public
24 issue, especially a major issue like this. So I
25 thought the Town's position, just looking at it from a

1 commonsense perspective, I wondered how we ended up
2 agreeing to those sorts of conditions and that sort of
3 governance situation where the -- the second Council
4 that I served under, they were very frustrated.

5 I know one (1) of the members of
6 Council kept asking for a business plan constantly,
7 and the business plan didn't show up, and that was a
8 source of frustration not only to that member of
9 Council, but to the whole Council. Why can't we get a
10 business plan? What are the business criteria that
11 this joint company is going to try and pursue and
12 achieve or not achieve? How can we track, you know,
13 the positioning of these shares for us?

14 So it just did not look -- to me, it
15 did not look like a good deal for the Town. That's my
16 personal opinion, and so we're trying to wrestle with
17 all those things, but always trying to look after the
18 interests of the people that owned the shares.

19 So then we moved on to Mark Rodger, and
20 he did -- he did a report. And what I wanted to
21 happen was for the new Council -- this was a new
22 Council, and all this stuff that happened before was
23 very complicated, very intertwined, very difficult for
24 people to understand. And I wanted him to do a report
25 which very -- very tightly and easily, in a very non-

1 complicated way, had a look at the company from its
2 very start and brought us right up to date, and then
3 continued on to the future.

4 And he came in. He wrote that report,
5 and Council then gave him instructions to pursue
6 options in terms of -- in terms of, you know, the --
7 the selling of the shares, and I worked with him on
8 that.

9 MR. JOHN MATHER: We will get to the
10 BLG report in a --

11 MR. JOHN BROWN: Sure.

12 MR. JOHN MATHER: -- in a moment.

13 MR. JOHN BROWN: Okay. Sorry.

14 MR. JOHN MATHER: At one point in your
15 answer, you referenced a new Council, 2004. I take it
16 you're referring to the new Council in 2014?

17 MR. JOHN BROWN: Sorry, '14. Pardon
18 me.

19 MR. JOHN MATHER: If we go to
20 paragraph 772.

21

22 (BRIEF PAUSE)

23

24 MR. JOHN MATHER: So this brings us to
25 Chapter 8.16 of the Foundation Document, and it

1 discusses the valuation that Henley International
2 completed of Collus PowerStream in June 2015.

3 At this point in time, why did the Town
4 retain Henley to complete a valuation?

5 MR. JOHN BROWN: Well, we retained Mr.
6 Rodger, and Mr. Rodger suggested -- just as we told
7 him, We don't have a current value for our shares.
8 And he -- he commissioned Henley on our behalf to
9 undertake a valuation of the shares.

10 MR. JOHN MATHER: And what was your
11 understanding of why Henley would undertake a
12 valuation?

13 MR. JOHN BROWN: Well -- well, we
14 wanted to know what they were worth, because if there
15 was a shotgun, and you've got twenty (20) days, you're
16 not going to -- I mean, you -- you should really know
17 on an ongoing -- I mean, if -- if we are a business
18 partner, we should be constantly monitoring the value
19 of our investment. It's just like you having money in
20 the bank, you know, in various assets, you know. I
21 mean, you should know what's happening to it.

22 And so I suggested we need to know the
23 value of our shares right now in terms of if we got a
24 great offer from -- from PowerStream, take it, but if
25 we don't, you know, decline it.

1 And so -- so we just didn't -- we
2 didn't know what we were doing, and we needed to find
3 out. That's the point.

4 MR. JOHN MATHER: And if we could
5 continue to paragraph 774. This paragraph sets out
6 some of the conclusions from the Henley valuation.

7 MR. JOHN BROWN: M-hm.

8 MR. JOHN MATHER: And subparagraph (b)
9 says that:

10 "Collingwood and PowerStream's joint
11 ownership of Collus PowerStream
12 restricted the Town's ability to
13 sell its interest in the company and
14 potentially made the company less
15 attractive to buyers."

16 What you recall about this issue or
17 consideration?

18 MR. JOHN BROWN: That's a huge issue,
19 and it's one (1) of the first that -- that -- I mean,
20 I think at the very first meeting with the department
21 heads, on my lunch, when I'd just been appointed,
22 started talking about selling 50 percent of the
23 shares.

24 I said, Well, why would they ever do
25 that, you know? Like, who would sell 50 percent of

1 the shares? You know, like, in Mississauga, there was
2 a Borealis bought some shares, and some shares had
3 been -- you know, Brampton sold all of the theirs, and
4 Oshawa didn't sell it.

5 So there was -- there was a different
6 experience, but I've never heard of an experience
7 where 50 percent was the ideal. And I guess that was
8 one (1) of my major questions, that, you know, I don't
9 know that it's ever still been answered. Like, who --
10 who recommended this 50 percent deal, and -- and what
11 basis, what research, what analysis, and what business
12 -- and what business case was made for 50 percent?

13 And I asked the question over and over
14 again. I asked the mayor. I asked Mr. Houghton. I -
15 - I asked everybody I could, and nobody has answered
16 that question.

17 So could you lose control? And as I
18 explained before, we lost control completely. I mean,
19 when -- when I -- in -- in addition to losing control,
20 when -- when the new -- when I was appointed to the
21 board with the clerk, and the treasurer, one (1) of
22 the first things we were asked to do was to sign a
23 non-disclosure agreement.

24 And that wasn't a board policy, and it
25 wasn't a requirement of any law, but the board

1 initially, when we went on, just asked us to agree
2 that we weren't going to say anything to anybody,
3 notwithstanding. And we refused to do that. We
4 called a vote, and we won the vote.

5 So there was all the stuff about never
6 saying anything to anybody, this secrecy. And I -- I
7 really had a hard -- having a whole municipal
8 background for forty (40) years, the whole secrecy
9 that I discovered when I came here about information,
10 and you can't have it, and, Well, we forgot to show it
11 to anybody, and, No, we don't have the files, and, you
12 know, I can't explain that; ask somebody -- this whole
13 situation just seemed to me like almost from another
14 world.

15 MR. JOHN MATHER: Go to paragraph 746
16 of the Foundation Document.

17

18 (BRIEF PAUSE)

19

20 MR. JOHN MATHER: So this is another
21 report that was commissioned in and around the time
22 period we're looking at, June, 2015. It's a BMA and
23 DFA water and -- water services report. And if you go
24 down to paragraph 747, we see that one (1) of the
25 conclusions was that the wastewater and water be

1 removed from the Public Utility Services board and
2 return -- and returned to the Town of Collingwood for
3 control.

4 And I -- my understandings is that's,
5 in fact, what happened, that the -- the wastewater and
6 water came under -- back under the Town's control.

7 I just want to understand at this point
8 what role this report played in the overall picture of
9 what was going on in terms of Collus and the
10 utilities.

11 MR. JOHN BROWN: Okay. So the context
12 for this report being done was when we did the BMA
13 financial analysis, and one (1) of the things that the
14 original Council asked KPMG to do, which I took over,
15 which was to do an organizational review.

16 And so -- so I took on that
17 responsibility with BMA and we left KPMG. And what we
18 did was we did a review of all of the programs across
19 the Corporation. And it's just -- I -- I've done it
20 in Oshawa. I did in Brantford.

21 It's -- it's a look at all of the
22 programs to define what they are, the service levels,
23 you know, to see whether you can save money wherever
24 you can save it. So that was the context.

25 So water and wastewater wasn't picked

1 out. Water and wastewater was just a part of a whole
2 organizational review. And -- and so what that meant
3 to the shared services agreement was Mr. -- Mr. Ali,
4 who was subcontracted by BMA, he came in and he spent
5 a lot of time with Ms. -- Ms. Shuttleworth, and a lot
6 of time with the treasurer. He interviewed whoever he
7 wanted. There was no limits. You know, and he -- it
8 was up to him to talk to whoever he wanted, and he
9 talked to a lot of people.

10 And he wrote a report which, in
11 essence, confirmed the conclusions originally of, I
12 guess, KPMG, because they had a look at Collus
13 Solutions. And I think there was concern there on
14 their part, about the complexity of the arrangement
15 and the way it worked. And that was their conclusion.

16 And then we saw in the report from --
17 the report from -- not Miller Thomson, the one before
18 that. The report from 2020 -- Beacon 2020. They said
19 that they had concerns with that system. And I guess
20 Mr. Ali again confirmed the conclusions of all of
21 those other reports which was that -- that the system
22 was -- fundamentally needed to be changed, and if you
23 did change it, you could save, I think he said in the
24 order of either 700,000 or 740 or -- a significant
25 amount of money could be saved.

1 And I note that the Treasurer confirmed
2 to Mr. Rodger that a significant savings could occur
3 if his recommendations were followed, and were saved
4 after they were followed. So it was a really
5 important report. And how did it tie into the -- to
6 the whole situation with Collus-PowerStream?

7 Well, in essence what it did was it --
8 it -- it brought water, wastewater back into the Town,
9 we saved money, it caused, I think, us to go further
10 with respect to the work with PowerStream to try and
11 conclude on, you know, whatever new arrangement we
12 could do to replace it, and as I said, one of the
13 suggestions I really wanted, IT to be consolidated
14 within the Town and sell back service to whoever
15 needed it, and that -- but that was refused.

16 So anyway, it was -- it was part of the
17 process of change that the Town really was causing and
18 the -- the shared services agreement and the whole
19 deal with Collus-PowerStream was adjusting, and I
20 think adjusting fine according to that. There were
21 new pressures being created.

22 Mr. Bentz is -- is a very understanding
23 gentleman. He saw the other side of the argument. He
24 said, well let's try to do it, and we all tried to do
25 it, and it just didn't happen. It just got so

1 protracted. I mean, we all -- I understood we were
2 going to conclude on an updated shared services
3 agreements and, in essence, we ran out of time and we
4 were told that was a problem, not on our side.

5 MR. JOHN MATHER: And you made a
6 reference to the amount of money that BMA estimated
7 might be saved by moving water and wastewater. If we
8 scroll down to the bottom of para -- paragraph 746,
9 and there's a reference to a 706 thousand --

10 MR. JOHN BROWN: Six (6), okay, I
11 thought it might be forty, yes.

12 MR. JOHN MATHER: Is that the amount
13 you were referring to?

14 MR. JOHN BROWN: Yeah, it is. Yes,
15 sorry.

16 MR. JOHN MATHER: If we could pull up
17 TOC516647.

18

19 (BRIEF PAUSE)

20

21 MR. JOHN MATHER: So the first page of
22 this is the notes, or a version of the notes we
23 previously looked at relating to May 4th, 2015. If we
24 scroll down, we see that there's also notes that
25 indicate there was a meeting that took place on August

1 11th, 2015, with yourself, Ms. Almas, and Mr.
2 Houghton.

3 It's my understanding that the
4 handwriting on these notes is your handwriting. Is
5 that correct?

6 MR. JOHN BROWN: Correct.

7 MR. JOHN MATHER: And just to place
8 this in time, Miller Thomson delivered their report in
9 June 2015?

10 MR. JOHN BROWN: Right.

11 MR. JOHN MATHER: And Mark Rodgers
12 (sic) retained at BLG in October 2015.

13 With those two (2) signposts, do you
14 recall what the purpose of this meeting was with Mr.
15 Houghton in August 2015?

16 MR. JOHN BROWN: Can I read it,
17 please?

18

19 (BRIEF PAUSE)

20

21 THE HONOURABLE FRANK MARROCCO: Could
22 we go back up to the top?

23 MR. JOHN MATHER: This is -- it's the
24 -- this is the top of the -- the document.

25 THE HONOURABLE FRANK MARROCCO: The

1 bar on the side is --

2 MR. JOHN MATHER: There was a -- a
3 version of the earlier memor -- meeting notes that we
4 already looked at from May 4th --

5 THE HONOURABLE FRANK MARROCCO: Oh, I
6 see --

7 MR. JOHN MATHER: -- so this is the
8 beginning of the August notes.

9 MR. JOHN BROWN: Scroll up. Sorry.
10 Yeah.

11

12 (BRIEF PAUSE)

13

14 MR. JOHN BROWN: Scroll up, please.

15

16 (BRIEF PAUSE)

17

18 MR. JOHN BROWN: Oh, okay. So --
19 yeah, there -- there were a number of issues here but
20 I guess one of the big -- big -- one -- one of -- the
21 large issue was this whole question about who wrote
22 the report that recommended the deal to Council.

23 And I had -- I had just one (1) brief
24 meeting with Kim Wingrove and she kind of give me a --
25 you know, what was going on type of meeting, but then

1 -- and another meeting -- she called me one time and
2 she was quite distressed and she said that -- she said
3 that her -- she had been told by somebody --

4 THE HONOURABLE FRANK MARROCCO: Well,
5 I -- you know, I'm not --

6 MR. JOHN BROWN: Oh, sorry.

7 THE HONOURABLE FRANK MARROCCO: I'm
8 not -- I'm not sure that --

9 MR. JOHN BROWN: Okay.

10 THE HONOURABLE FRANK MARROCCO: --
11 what Ms. Wingrove told you she was told by somebody
12 else --

13 MR. JOHN BROWN: Yeah.

14 THE HONOURABLE FRANK MARROCCO: -- I
15 don't find that helpful and it -- it could be -- it
16 could be -- it could be quite damaging and how do you
17 -- how do you respond to that? So let's -- let's be
18 careful on that sort of thing.

19

20 CONTINUED BY MR. JOHN MATHER:

21 MR. JOHN MATHER: Understood. I -- I
22 take it from this, is this was a -- you were again
23 just trying to find more information about the share
24 sale transaction broadly. Is that fair?

25 MR. JOHN BROWN: Generally, yes, but I

1 was interested in Ms. Wingrove's situation in
2 particular.

3 MR. JOHN MATHER: And I take it you
4 asked Ms. Almas to take minutes or notes of this
5 meeting for the same purposes of the May 2015 meeting?

6 MR. JOHN BROWN: Yeah. I wanted to
7 make sure that they were done properly and that nobody
8 could say that's not what I said or what I did say,
9 yeah.

10 MR. JOHN MATHER: Do you know if these
11 meeting notes were shared with anyone other than Ms.
12 Almas and Mr. Houghton?

13 MR. JOHN BROWN: These are kind of my
14 thinking notes, when I was reading it, but I certainly
15 would have been -- I was surprised to see them here
16 actually, but no, I wouldn't share those with anybody.

17 MR. JOHN MATHER: You're -- you're
18 speaking of the handwriting?

19 MR. JOHN BROWN: Yes, yes. I wouldn't
20 have expected those notes to be shared with anybody. I
21 was surprised that they're actually here.

22 MR. JOHN MATHER: And other than the
23 handwritten notes, was the text notes or a version of
24 them ever shared with anyone that you know of, other
25 than Ms. Almas or Mr. Houghton?

1 MR. JOHN BROWN: Not that I'm aware
2 of, no.

3 MR. JOHN MATHER: Could we go to
4 paragraph 775 of the Foundation Document?

5

6 (BRIEF PAUSE)

7

8 MR. JOHN MATHER: So, Mr. Brown,
9 you've already -- this section deals with the BLG
10 report and its commissioning. You've already
11 explained the sequence of events that led to Council
12 requesting that BLG be retained to -- to -- to --

13 MR. JOHN BROWN: Right.

14 MR. JOHN MATHER: -- to look into
15 these issues.

16 One specific question: why was a
17 different law firm retained for the purposes of this
18 report as opposed to Aird & Berlis or Miller Thomson,
19 who had already --

20 MR. JOHN BROWN: Oh --

21 MR. JOHN MATHER: -- looked into these
22 matters and reported on those matters?

23 MR. JOHN BROWN: Okay. So, when I was
24 in Oshawa when the deregulation came into effect, I
25 worked with -- I worked with BLG and Mr. Rodger had a

1 role in -- in -- in setting up the company in Oshawa,
2 and when I came here I -- we needed -- we needed a
3 lawyer experienced in energy matters and I couldn't
4 remember his name, so I called somebody in Ah --
5 Oshawa and I said, Do you remember the guy who -- who
6 gave us advice, and I was told it was Mark Rodger, and
7 then what I did was I sat down with a staff person
8 called Dennis Sloan and we called around, I don't
9 know, about eight (8) or nine (9) different companies
10 that offered services and -- and we tried to get a
11 lawyer.

12 We just didn't take Mr. Rodger. He was
13 just one of a number of people. And we called around
14 and we had huge difficulty getting a lawyer because I
15 guess in the energy business a lot of lawyers are
16 conflicted, and we went through and when everybody
17 said, well, who's involved, well, it's PowerStream,
18 there was a lot of people who were conflicted.

19 So we eventually ended up with Mr.
20 Rodger and he said, you know, which I told him the
21 situation, that we needed advice on where we're going
22 in the future and, you know, just Council needed to be
23 advised, and he said, well, you'll have to ask Brian
24 Bentz if it's okay that I -- that I undertake this
25 work for you. The work's okay but you just have to

1 check with Brian.

2 So I called Brian Bentz, who I got
3 along with very well, and I said, you know, this is
4 our predicament, can we go with Mark Rodger? Do you
5 have a concern? And he said sure. So then we hired
6 Mark Rodger and -- and that's how we proceeded.

7 MR. JOHN MATHER: So we see in
8 paragraph 776 that Mr. Rodger presented his initial
9 findings from the BLG report to Council on February
10 3rd, 2016. And then if we scroll down, we see that on
11 February 10th, 2016, so after the presentation to
12 Council, Mr. Rodger sent a subsequent draft of the
13 report to members of the Collus-PowerStream Board for
14 feedback and comment.

15 Then this paragraph reflects that Board
16 member John Worts responded, taking issue with,
17 amongst other things, the lack of opportunity provided
18 to Collus-PowerStream to comment on the report before
19 it was presented to Council.

20 MR. JOHN BROWN: Yeah.

21 MR. JOHN MATHER: Do you recall why
22 the draft report wasn't sent to Collus before it -- it
23 was initially presented to Council?

24 MR. JOHN BROWN: Yes, I do. The Clerk
25 and the Treasurer and myself talked about it. Mr.

1 Rodger wanted to release it, but I have a lot of
 2 experience in a lot of municipalities, and let me tell
 3 you, the last thing you want your Council to wake up
 4 to is questions from the press, asking them about
 5 conclusions of a report that they know nothing about.
 6 So the three (3) of us discussed it and we were very
 7 firm that Council had to see the report first and then
 8 the report could be referred out, any concerns dealt
 9 with.

10 But you know, I could not have the
 11 clerk -- we were all strongly of the opinion, and Mr.
 12 Rodger, he wanted to do it differently but we said no,
 13 we want Council to be the first people to hear this
 14 report and then we'll send it out and deal with
 15 whatever arises from that. That was the reason.

16 MR. JOHN MATHER: When you say Mr.
 17 Rodger wanted to do it differently, I take it he --
 18 his preference was to send it to Collus before going
 19 to Council?

20 MR. JOHN BROWN: Yeah, that's my
 21 recollection, yes.

22 MR. JOHN MATHER: So if we go ahead to
 23 paragraph 779, we see that after it's delivered to
 24 Collus PowerStream, David McFadden provided a response
 25 to Mr. Rodger to the draft report. The response

1 commented on clarified and criticized numerous
2 elements of the BLG report. Some of those are
3 highlighted in the subparagraphs beneath it.

4 And then if we go to paragraph 781, we
5 see that Mr. Rodger revised the report to include some
6 of Collus PowerStream comments, including the ones Mr.
7 McFadden provided and that -- that led to an email
8 chain between yourself and Mr. Rodger about how he
9 went about incorporating Collus PowerStream's
10 comments.

11 And I'd like to pull up the email chain
12 itself, BLG93_1. And if we could scroll to the
13 bottom.

14 So I don't intend to walk through this
15 entire email chain, but I do have a couple of
16 questions. So it begins with an email from Ms.
17 Leonard to yourself --

18 MR. JOHN BROWN: Yes, right.

19 MR. JOHN MATHER: -- where she says
20 that she's been through the report, which we
21 understand is the BLG report, twice, and she says that
22 she feels that the entire direction and tone of the
23 report have been weakened. And then she goes on and
24 provides some examples.

25 And if we scroll up, you then forward

1 Ms. Leonard's email on to Mr. Rodger and note that her
2 thoughts and your thoughts strongly align.

3 And then if we scroll up, there's a --
4 a lengthy response from Mr. Rodger and if we continue
5 scrolling up, we then see there's a further back and
6 forth in which you write him back and then he responds
7 in blue and all caps.

8 MR. JOHN BROWN: Yes.

9 MR. JOHN MATHER: I just want to first
10 get a sense of what you recall about this interaction
11 with Mr. Rodger and what your concerns were and what
12 your reaction to his response was.

13 MR. JOHN BROWN: Sure. So anyway, in
14 -- in -- when you hire consultants what you want is
15 independent recommendations. But most consultants
16 require you to -- you know, the staff and the
17 Municipality to participate with them and constantly
18 give feedback and raise issues or concerns which they
19 can think about.

20 None of that changes the -- I guess the
21 right of the consultant to write whatever they think
22 is right and make whatever recommendations they
23 believe are right, notwithstanding what anybody
24 thinks.

25 So this was just part of a normal

1 process, really, for many consulting arrangements I've
2 been part of, you give feedback and -- and they take
3 it into account just as they do people who think, you
4 know, there are corrections or errors, you know, they
5 take it all under advisement and then they issue the
6 final report having considered all those issues.

7 And these were the issues, Marjory came
8 to me and I think Sara was of the similar opinion,
9 that the way he positioned the responses in terms of
10 his conclusions almost looked like they were
11 corrections. And that was just our perception and
12 because we shared that perception, we thought others
13 might, so we brought it to his attention.

14 And he argued the case back and then he
15 wrote the report that he thought should be written.
16 We did not cause him to change anything, we just gave
17 him feedback.

18 MR. JOHN MATHER: Other than that --
19 so -- so I take it from your answer your concern was
20 the way in which he incorporated the responses from
21 Collus, made it appear to you, at least, that they
22 were corrections to the report.

23 Did you have any other concerns about
24 how Mr. Rodger -- that you can recall about how Mr.
25 Rodger dealt with PowerStream -- Collus PowerStream's

1 feedback?

2 MR. JOHN BROWN: Well he -- he took it
3 all under advisement and I don't think he made too
4 many changes to -- to his report. I don't remember
5 what they were specifically. But generally, the --
6 you know, the flow of his report stayed fundamentally
7 as he wrote it, as I best recall.

8 MR. JOHN MATHER: I take that. So
9 your recollection is he didn't change his report
10 significantly based on the feedback that you provided
11 in this email?

12 MR. JOHN BROWN: No, I don't think so,
13 no.

14 MR. JOHN MATHER: Can we go to
15 paragraph --

16 MR. JOHN BROWN: Nor was it my intent
17 to ask him to make those changes. They're suggestions
18 for his consideration.

19 MR. JOHN MATHER: But you made those
20 suggestions and at that point it would have been your
21 -- your view or your preference if he had made them,
22 appreciating that it was ultimately his final say?

23 MR. JOHN BROWN: Well, if I can
24 persuade him that my position was sound and if he
25 adopted it, great. But if he didn't, that was his

1 prerogative.

2 MR. JOHN MATHER: If we can go to
3 paragraph 787 of the Foundation Document.

4 So Mr. Brown, this paragraph sets out
5 or summarizes the conclusions that Mr. Rodger made in
6 the final version of -- of his report.

7 And if we can scroll down to
8 subparagraph (e). One of the conclusions or issues
9 that Mr. Rodger identified was a breakdown in
10 communication and at some levels a mutual erosion of
11 trust between Collus PowerStream and the Town with
12 respect to matters including the events occurring the
13 prior years and the process resulting in the 50
14 percent share -- share sale.

15 At this point in time, did you agree
16 with Mr. Rodger that there had been an erosion of
17 trust between Collus and the Town?

18 MR. JOHN BROWN: I don't know if it's
19 an erosion of trust. I think there was a -- there was
20 difficulty with respect to questions that I had to ask
21 and people responding. I don't think it was
22 appreciated at all, in particular Ms. Shuttleworth,
23 she told me really, this is nothing to do with you,
24 I'm very busy, so -- so don't be calling me again.
25 That's -- that's the approach that I got from her.

1 She certainly didn't like -- didn't like me asking
2 questions.

3 I don't think Mr. Houghton appreciated
4 my questions. I think I saw once "And here's another
5 ridiculous email from Mr. Brown".

6 And so I think there was a concern,
7 they didn't like it, but in my opinion, you know,
8 having worked in large complicated organizations,
9 people always ask you for information, people
10 challenge you. It's just something that comes with, I
11 guess, the maturity of professionalism. I don't think
12 these sorts of questions were well received by the
13 people, you know, that I posed them to.

14 I think the other thing that happened
15 was, you know, there was the Town's position, as it
16 was, and then there was the evolution of the strategic
17 financial plan. And the strategic financial plan, as
18 it moved through all of the defer -- departments, was
19 creating a new context for the Town's management. And
20 what happened was it really collided with the whole
21 concept of Collus Solutions.

22 And so -- and that collision, I don't
23 think, was well-received by Collus Solutions. To me,
24 Collus Solutions was a -- an internal organization, it
25 wasn't public, it didn't answer questions in public.

1 And all of sudden, you know, questions were being
2 asked. How do you do this, how do you do that, how do
3 you do the other, and I don't think they were used to
4 that.

5 The second thing -- and that was being
6 -- and the second thing was they were being kind of
7 almost put under a spotlight. We had consultant
8 professionals come in, two of them, and they asked
9 these questions and they published public reports and
10 we saw the feedback in the reports. They -- they were
11 not well-received.

12 So we had -- we had -- there was a lot
13 of stress going on. Not necessarily to do with
14 personalities, but as these forces, you know,
15 collided, we had got the argument well we got to
16 reduce costs. We didn't know what the costs were for
17 Collus Solutions. We tried to find out, but the
18 principal behind it was you find out what your costs
19 are and then you try to manage those costs down or
20 avoid them or whatever.

21 But if your costs are just a portion
22 over a much larger function, and you don't even know
23 how much people are getting paid or whether they're
24 necessary, you know, in that function, I didn't know
25 what the IT situation was. Do we have a strategic IT

1 plan? I asked -- one (1) of the first things I did
2 when I met with Larry Irwin was do we have a strategic
3 plan for IT? Well, no we don't. Well, can we have
4 one? Well, when I left we still didn't have one.

5 So there were all kinds of issues that
6 were colliding with the Collus Solutions construct,
7 which itself was a very unusual one, as you can read
8 from all of the materials.

9 So here was a very unusual kind of
10 something from the past, this structure from the past
11 that really was being pressured to move into the
12 current and the future, and I think that was very
13 stressful on everybody, including me. And they were
14 stressed and I know they were stressed.

15 So the other thing was, I think, that
16 the Council -- the Council that came after, you know,
17 the 2014 plus Council, right, so that Council started
18 to see how the governance structure was not working.
19 They resented the fact that we have -- here we have 10
20 percent of our shares, we've some people appointed as
21 directors and we can't find any information out. And
22 they felt isolated and they felt left behind that
23 somehow or other this company had been expropriated by
24 somebody else and they couldn't get any information,
25 and that stressed the Council.

1 And of course when the Council was
2 stressed, then all of the parties who were involved
3 got stressed.

4 So I think we had a huge change
5 happening in the whole organization and structure of
6 the way Collingwood was run and managed, and we were
7 moving in a future direction based on, I guess, a
8 methodology of examining and getting evidence and
9 empirical data to make decisions related to cost and
10 kind of looking at things that were done in the past
11 as not being it has to be there in the future. There
12 opportunities to think different.

13 So, this all collided, and I think that
14 caused a stressful situation, this whole change
15 process. So, I don't think it was based on
16 personalities. And I don't think it was a breakdown
17 necessarily in trust, although there was an element of
18 that.

19 I think the change factor was very
20 distressing for the people who were engaged and liked
21 and supported the old system, and they were being
22 pushed into a new system, and that was very difficult.

23 And -- and, you know, I've -- I've done
24 this in -- I've done this in other municip -- I did it
25 in Bradford and I did it in Oshawa, this whole change

1 process, and you push it through with a strategic
2 plan.

3 And then you do a financial plan. And
4 then you kind of set up the management system in a new
5 way. And the people who are affected generally don't
6 like it, but change is necessary.

7 MR. JOHN MATHER: Some of the
8 witnesses we have spoken to have described that the
9 relationship between the Town and the Col -- agreed
10 with BLG that there was a relationship of mistrust and
11 that the relationship had become dysfunctional, you
12 know, at this point in time, March 2016.

13 Did you think the relationship between
14 the Town and Collus was functional at that point in
15 time?

16 MR. JOHN BROWN: I think it was a
17 difficult relationship, particularly with me and the
18 tre -- well, and the treasurer, as well, because she
19 had the same frustrations that I had with the
20 information that we could not get from Collus
21 Solutions, okay.

22 And there's a -- there's an email that,
23 you know, the treasurer sent to Ms. Shuttleworth that
24 I think should be looked at just to see that this was
25 not just me asking questions, this was the treasurer

1 in the context of her fiduciary responsibility.

2 So, I think there was a -- there was a
3 frustration that went wi -- with that whole situation.
4 And sorry, could you just repeat your question?

5 MR. JOHN MATHER: I want to
6 understand. BLG identified a mutual erosion of trust.

7 MR. JOHN BROWN: Yeah.

8 MR. JOHN MATHER: We have heard from
9 witnesses who described that the relationship between
10 the Town and Collus became dysfunctional. I'm
11 wondering if you agree with the characterization that
12 it was a dysfunctional relationship at this point in
13 time, March 2016.

14 MR. JOHN BROWN: Yes. Thank you.
15 Thank you. So, the answer to that would be for part -
16 - with particular people. I think the people who had
17 difficulty would be the ones that Mr. Bentz outlined
18 when he was here.

19 Mr. Bentz said that, I think it was Ed
20 and Larry and Pam and Cindy. Mr. Bentz didn't say it
21 included him because my experience with was always
22 very cordial, always very polite, always very
23 respectful, totally professional.

24 We never had words. There was no issue
25 at all, so there was no dysfunctional relationship

1 with Brian Bentz.

2 With respect to Mr. McFadden, when --
 3 when I was frustrated trying to get answers to
 4 questions from the other people I just mentioned, I --
 5 I just said, you know, I can't do this anymore, I'm
 6 going to go to Mr. McFadden because I just can't do
 7 this.

8 I went to Mr. McFadden. We had a
 9 number of meetings. We had a couple of lunches. And
 10 at one (1) of the lunches he told me -- he said,
 11 There's some people there are having a difficulty
 12 dealing with you, they find you very aggressive.

13 And I'd spoken, I guess, in direct --
 14 and I'm a direct person, so. And so, we had the
 15 lunch. And we talked about all kinds of things,
 16 including, you know, one (1) of the issues that is
 17 really important here, which was, is -- could there
 18 possibly be a cross-subsidy of water on hy -- on -- on
 19 the hydro or hydro on water because there was
 20 apportioned costs, you don't know what the true costs
 21 are, so is it possible there's a cross-subsidy.

22 That was a concern Mr. McFadden shared
 23 with me and why he, you know, wanted -- I think he was
 24 supportive of the -- of the Beacon -- Beacon report,
 25 so. And then -- and then, after the lunch and after

1 all that discussion about it, I -- I said to Mr.
2 McFadden, So anyway, we've been talking here for over
3 an hour, have I pressured you, do you find me
4 aggressive, have I been very difficult to deal with.

5 And he said, No. So, to answer your
6 question, there was a problem with some people and --
7 but not -- it was not characteristic of my
8 relationships with everybody in the situation.

9 Viney Metha, the lawyer for
10 PowerStream, I get along very well with him, so, yeah,
11 but there were some people. And there was a reason
12 for that, I think, because I was asking questions and
13 I was persistent.

14 You know, I make no apologies for being
15 persistent when I'm looking after public money. You
16 know, I -- I was entitled to get the answers and it
17 just was not acceptable for somebody to tell me go
18 away because I'm busy, you know.

19 You know, can you imagine me telling
20 anybody, oh, I didn't find that out because, you know,
21 she told me she was busy? Well, I couldn't go there,
22 so, yeah, I probably annoyed them. And I think it
23 might have been, in their opinion, dysfunctional

24 In my opinion, it didn't give me the
25 answers that I thought I needed as a CAO, and so that

1 did -- you know, it wasn't working. So, then I moved
2 beyond that to Mr. Bentz and Mr. McFadden, and both of
3 those relationships worked out just fine.

4 Ms. -- Mr. Bentz didn't say he had a
5 problem with me. He said there's a problem with four
6 (4) other people. And Mr. McFadden said something
7 about -- I think it was females. I'm not quite -- you
8 know, there was a problem with, you know, female staff
9 and me.

10 Well, you know, he -- he -- you know,
11 he didn't tell me that at the lunch. He told me there
12 were staff who had a problem dealing with me, and I
13 guess I understood that. But was that my fault or was
14 -- were they -- could they take these sorts of
15 questions? Did they like being asked again? I don't
16 know.

17 MR. JOHN MATHER: There's been some
18 suggestion by some witnesses that, in the -- in the
19 process of your inquiries and the information you were
20 seeking, your -- the -- it rose to the level of -- you
21 know, bullying or harassment were some of the terms
22 that were used.

23 What's your reaction to that?

24 MR. JOHN BROWN: Well, so that's very
25 interesting actually because there was one (1) -- Ms.

1 Shuttleworth, in particular, my exchanges with her
2 were, I would say, very difficult. And -- and I read
3 back through some of the emails she sent me.

4 Anyway, at one point in time, I
5 wondered why I was getting these. They almost were,
6 like, personal emails, you know, threatening. And I
7 went to the HR manager and I said, Will you take a
8 look at these emails, you know, because I'm afraid
9 this woman's setting me up for harassment. I mean,
10 that's where I was coming from.

11 And I didn't want to do that and -- you
12 know, so I just needed a second opinion. So, I said,
13 Take a look at these emails. And -- and her opinion -
14 - her name is Marianne Nero. She told me that, in her
15 opinion, Ms. Shuttleworth was harassing me.

16 MR. JOHN MATHER: So, if we look at --
17 scrolling up to subparagraph (b)... So, again, we're
18 back at looking at some of the conclusions that Mr.
19 Rodger drew. Mr. Rodger, in his report or summary of
20 one (1) of the conclusions is:

21 "There did not be -- appear to be
22 any consensus as to why Collus
23 decided to sell 50 percent of its
24 shares."

25 Something you've touched on. And then

1 he says:

2 "Interviews provided conflicting
3 information on this point."

4 And described some of that. And then,
5 if we scroll down to paragraph F, or subparagraph (f):

6 "Another summary of a conclusion is
7 that neither the Town, nor Collus
8 PowerStream, were able to provide
9 BLG with any rationale as to why a
10 50 percent share of Collus's shares
11 was chosen in 2012 as opposed to a
12 hundred percent share."

13 One (1) of the things that we've heard
14 in the Inquiry is that one (1) of the reasons for a 50
15 percent share was that this was the first step in a
16 growth strategy whereby Collus and PowerStream
17 together as a partnership would look into acquiring
18 other LDCs, including within the CHEC group.

19 Was that something you recall being
20 advised of when you were conducting your inquiries?

21 MR. JOHN BROWN: No. I was never --
22 nobody ever advised me that there was any growth
23 strategy related to the transaction or the share sale
24 and it never was -- I learned that subsequent to that,
25 but I was not aware of any growth.

1 If -- if there had have been, I would
2 have looked up for the file whether, I guess, the
3 evaluation of that strategy would have been undertaken
4 and assessed and looked at, particularly in the
5 context of what might the financial impact on the Town
6 be of such a strategy.

7 You know, like, there's business and
8 there's municipal government. And I would have looked
9 to see where -- where Council had been advised that
10 that was an intended strategy of an organiza -- of a -
11 - of a company it owned and that it concurred with
12 that and it knew and understood any and all of the
13 risks that might relate to that.

14 So, I never heard of that. And -- and
15 if I had have heard of that, I would have gone and --
16 if the files had have been there, I would have read
17 the files and acquainted myself with that situation,
18 so that was all news to me. Nobody told me about
19 that.

20 MR. JOHN MATHER: The witness -- some
21 of the witnesses have also suggested that -- and this
22 has already been alluded to today, that prior to you
23 becoming CAO, the relationship worked well and there
24 was moves towards this growth strategy that has been
25 discussed.

1 And the suggestion has been that the
2 dysfunction that we've -- that I've already talked to
3 you about and the growth strategy that didn't
4 ultimately be implemented was as a result of you and
5 the steps you took when you became CAO.

6 What is your reaction to that
7 testimony?

8 MR. JOHN BROWN: Well, I -- I guess,
9 just logic would suggest, if the strategy was
10 important and it was known and intended, then I would
11 think that whenever I did anything that anybody
12 thought was interfering with that, they would have
13 told me about it and give me the opportunity of
14 knowing and understanding it, but I was ignorant of
15 that.

16 Nobody ever told me there was a growth
17 strategy; I was unaware of it. I just saw a
18 transaction. I didn't notice, in reading the
19 transaction, where there was ever a reference that
20 there was a growth strategy.

21 Maybe one (1) of the things in the RFP
22 might have been to look at a company that best could
23 effect the growth strategy if that was the case. I
24 don't know. I wasn't aware of it.

25 MR. JOHN MATHER: Other than the -- you

1 discussed having a lunch with Mr. McFadden in which
2 some of the issues with the Collus employees were
3 brought to your attention.

4 Other than that, do you recall at any
5 other point anyone raising with you that the way you
6 were proceeding with your inquiries was interfering
7 with the partnership or otherwise detrimental to
8 Collus PowerStream?

9 MR. JOHN BROWN: Well -- you know,
10 it's -- other than Mr. McFadden saying, you know,
11 like, this is a very difficult situation in response
12 to, I guess, Cindy complaining because I asked her if
13 she could provide comments for -- before Council made
14 a decision -- you know, it was a -- there was a -- I
15 read emails about that.

16 So other than that, Mr. McFadden just
17 said this -- you know, these questions are bad, and,
18 you know, they're getting out there, and, you know,
19 it's not a good situation. So we should try and
20 negotiate with -- with PowerStream to see if we can
21 kind of exit this situation, and we -- and we tried to
22 do that.

23 MR. JOHN MATHER: So after Mr. Rodger
24 delivers the BLG report, it's my understanding that
25 from there Council authorized him to explore options

1 into selling the Town's 50 percent interest, which
2 ultimately led to the sale to EPCOR. Is that correct?

3 MR. JOHN BROWN: Right.

4 MR. JOHN MATHER: Okay. So one more
5 area that I have questions for you -- so if we could
6 go to paragraph 729 of the Foundation Document.

7

8 (BRIEF PAUSE)

9

10 MR. JOHN MATHER: So this paragraph
11 describes an email that you've already touched in. So
12 I take it you're familiar with it, so I would like to
13 open up the email chain itself, which is ARB496.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN MATHER: If we could scroll
18 to the bottom of the email chain. Scrolling up so we
19 can see the beginning of the first email.

20 So this is an email from Mr. Mascarin
21 at Aird & Berlis to you. We will see, as we go up,
22 that he emailed you at your Gmail account. And he's
23 discussing with you a file or some -- a document he's
24 found in his office.

25 If we scroll up, you respond talking

1 about how -- when you would pick up the -- what he
2 found. And he also wants to up -- you know, so update
3 on a couple of matters. Scroll up, a few more
4 responses.

5 And then you reply further up that in
6 the same email chain -- this time on April 1st -- that
7 you received Aird & Berlis's most recent bill, and you
8 discuss it was Sara. I assume that's Ms. Almas?

9 MR. JOHN BROWN: Yes.

10 MR. JOHN MATHER: Is that correct?

11 MR. JOHN BROWN: Yes.

12 MR. JOHN MATHER: That you -- she was
13 going to be calling to clarify some matters and also
14 to see if you can split the bill so there was --
15 there's not a single bill for \$11,000.

16 And then you go on saying:

17 "I also do not recall getting advice
18 about the role of the CAO."

19 And entitlement to certain information.
20 You then respond later on the same day: "Please
21 expunge this email thread."

22 So I have a few questions about this
23 email chain, starting with: Do you know why
24 Mr. Mascarin emailed you at your Gmail account at the
25 outset of this chain?

1 MR. JOHN BROWN: Well, I -- I became
2 acquainted with Mr. Mascarin when I worked for a
3 different municipality, and I was involved in a very
4 sensitive legal situation with him in that
5 municipality. And that's how we got to know each
6 other.

7 So he actually -- he said to me -- he
8 said to me when I left -- I told him I was retiring
9 from Brantford -- and he said, listen, sometimes my
10 clients -- this is exactly the situation here --
11 sometime my clients need somebody to go in on an
12 interim basis, you know, as a retired person -- 'cause
13 I just retired from Brantford, my second time I
14 retired.

15 So -- so I said, well, it depends, you
16 know. So he said let me have your email address. So
17 it was he that sent me an email, asked was I
18 interested in coming here for a couple of months. So
19 he had my home email address.

20 So I thought about this, and my -- my
21 memory isn't a hundred percent clear. But all of it
22 suggest that it relates to a document, which was a
23 sealed document that I was giving -- given -- giving
24 to him so that he could have that, I guess, manage --
25 whatever you do with it -- at his law firm, and I had

1 given it to him before.

2 And -- 'cause it doesn't match the
3 circumstances that relate to this file. Mr. Mascarin
4 was really not involved, other than providing me legal
5 advice, and that legal advice I've already mentioned.

6 And I want -- this whole situation was
7 just -- it was very difficult for me to actually
8 understand what I was doing and why I was asking these
9 questions about the situation.

10 I couldn't understand it, and I just --
11 it just seems something that didn't seem right. It
12 never matched any of my experience anywhere else, and
13 I wanted to be very careful before I continued to dip
14 my toe in the pond, as they might say, that I wasn't
15 doing something that I shouldn't do.

16 So I asked him, could you please give
17 me your legal advice with respect to the right of the
18 sale information and the right to ask for information?
19 Before I send any of these emails or asked any
20 questions, I wanted to make sure that I had the
21 authority, and it was appropriate for me to do so.

22 So I asked him to send it to my home
23 address, and I asked that on purpose because the
24 mayor -- I notice she signs cheques, and she signed
25 all the cheques. And when the cheques were going in,

1 I guess, on legal bills, they were putting all the
2 backup statements, and I noticed she starting asking
3 me about backup -- backup statements from some of the
4 legal bills that came in.

5 So I really didn't want to, you know,
6 tell the mayor that I was asking for legal advice with
7 respect to my ability to obtain information.

8 And in relation to that during one of
9 my exchanges -- difficult exchanges with
10 Ms. Shuttleworth, I called her up and I asked her for
11 information, and she'd give me the story, oh, I'm
12 busy. You know, it's not your role. It's none of
13 your business. I've got governance. She gave me that
14 sound of response, and she sounded quite -- quite
15 irritated by me.

16 And I think the next day, the mayor
17 came into my office, and she said -- she said, so
18 you're asking Cindy for information, are you? And I
19 said, yes. And she said, Cindy is busy. I said,
20 pardon? She said, Cindy is very busy. And I just --
21 I think I took the meaning, and I didn't say anything.

22 So I did a bring forward in my diary
23 for two weeks ahead. And then I contacted Cindy again
24 saying, hopefully you've been able to catch up. Now,
25 can I get some answers to my questions?

1 So that's why I was concerned about
2 Mr. Mascarin rolling -- that \$11,000, I think, was him
3 rolling together various legal inquiries into one
4 figure. And so because of the sensitivity that the
5 mayor was showing to some of the questions I was
6 asking, who I was asking them to, and reading legal
7 backup, that's why I asked him to send it to me at
8 home.

9 In my 30-year career as, you know -- in
10 the -- that's -- I think that's the first email I've
11 ever asked any lawyer to -- I never mix my home email
12 up with my business email. Never ever. And that was
13 the first time I ever asked for that to be sent to my
14 home account.

15 MR. JOHN MATHER: Did you believe it
16 was appropriate to request Mr. Mascarin provide you
17 legal information to your personal account?

18 MR. JOHN BROWN: Under the
19 circumstances, yes.

20 MR. JOHN MATHER: And the
21 circumstances being what you described, which was the
22 mayor had been asking you for backup information, and
23 you were also concerned about the conversation you
24 recall having with her about asking Cindy
25 Shuttleworth --

1 MR. JOHN BROWN: Yeah.

2 MR. JOHN MATHER: -- further
3 questions. Is there any other reason you thought it
4 was appropriate --

5 MR. JOHN BROWN: Well --

6 MR. JOHN MATHER: -- in this instance?

7 MR. JOHN BROWN: -- yeah. She wasn't
8 asking me for backup information. She's asking me
9 questions about the backup information. She didn't
10 ask me for information. She obviously read it and was
11 asking me questions about.

12 MR. JOHN MATHER: Do you recall if
13 Mr. Mascarin sent you the information you sought to
14 your Gmail account?

15 MR. JOHN BROWN: Yeah.

16 MR. JOHN MATHER: All right.

17 MR. JOHN BROWN: Yes, sorry. Pardon
18 me.

19 MR. JOHN MATHER: Do you recall if you
20 advised the mayor that you received that information
21 from him?

22 MR. JOHN BROWN: No.

23 MR. JOHN MATHER: Do you recall if you
24 advised anyone else at the Town that you had received
25 information from him?

1 MR. JOHN BROWN: Yeah. The clerk -- I
2 advised the clerk. I should point out that in all of
3 my inquiries, the clerk was copied on all of the --
4 all of my emails. The clerk was fully informed of
5 everything I was doing, as was the treasurer and the
6 deputy mayor at the time, who is the current mayor.
7 He was -- he was brought up to date on a constant
8 basis with respect to this whole situation.

9 And it wasn't just me. It was -- it
10 was the senior staff -- the clerk, the treasurer,
11 myself -- and then we updated the deputy mayor with
12 respect to all of these events that I've explained to
13 you.

14 MR. JOHN MATHER: So you've -- we see
15 on this email chain the clerk is not copied. Do you
16 recall specifically whether you advised the clerk that
17 Mr. Mascarin had sent you legal information to your
18 personal Gmail account?

19 MR. JOHN BROWN: No. I would have
20 told her that it went to my account, and I -- I'm
21 pretty sure I left it with her when I left. But she
22 would -- I think this is -- I think this email relates
23 to a separate matter which doesn't relate to
24 Collingwood.

25 MR. JOHN MATHER: Right. And I

1 understand from -- if you look at -- near the end of
2 the page, you write:

3 "I also do not recall getting advice
4 about the role of the CAO and
5 entitlement information. Can you
6 please resend this to this email
7 address?"

8 MR. JOHN BROWN: Yeah. This --

9 MR. JOHN MATHER: And I understood
10 your earlier answer to be that you recall that
11 Mr. Mascarin did sent that information --

12 MR. JOHN BROWN: Yes.

13 MR. JOHN MATHER: -- to you to your
14 email address.

15 MR. JOHN BROWN: Yes.

16 MR. JOHN MATHER: Is that correct?

17 MR. JOHN BROWN: Yes.

18 MR. JOHN MATHER: Did you advise the
19 clerk that when you received this information that
20 Mr. Mascarin had sent it to your personal email
21 address?

22 MR. JOHN BROWN: I believe I did,
23 yeah.

24 MR. JOHN MATHER: Do you have a
25 specific recollection?

1 MR. JOHN BROWN: Sara was informed of
2 everything that I was doing. She was -- like on an
3 ongoing -- every day, we talked about these matters
4 every day. A hundred percent? No. Ninety percent,
5 yes.

6 MR. JOHN MATHER: Do you recall if you
7 told anyone else other than Ms. Almas that you had
8 received a legal opinion to your personal email
9 address?

10 MR. JOHN BROWN: (NO AUDIBLE
11 RESPONSE).

12 MR. JOHN MATHER: Sorry, you just have
13 to --

14 MR. JOHN BROWN: No. No, sorry.

15 MR. JOHN MATHER: You then write to
16 Mr. Mascarin with respect to this email we're looking
17 at now and you say, "Please expunge this email
18 thread"?

19 MR. JOHN BROWN: Yes. Yeah.

20 MR. JOHN MATHER: What did you mean by
21 that?

22 MR. JOHN BROWN: Well, this -- this
23 didn't really have anything to do with Collingwood, so
24 just, you know, don't -- don't relate it to
25 Collingwood, just get rid of it because, you know, the

1 -- the issue -- I -- I said there I had talked to Sara
2 about the bill and she will call him and discuss
3 whatever.

4 I'd forgotten the details about the
5 bill. She'll call him. And if he had any problem, to
6 call me back. He never called me back, so I assume
7 there was no issue there.

8 So, the only -- the only issue would
9 have been the legal opinion that was -- that was sent
10 to me. And I'm sure she has that legal opinion now
11 because I would have left it with her when I left.

12 But I didn't say come in on my home --
13 well, she would have known that.

14 MR. JOHN MATHER: Using the word
15 'expunge' suggests that you wanted to make sure there
16 was no record of this email tra -- trail. Is that
17 accurate?

18 MR. JOHN BROWN: Maybe it's deleted or
19 get rid -- I mean -- I mean, it could be deleted,
20 expunged. 'Expunged' is a strong word, but I don't
21 know why I used it. So, deleted would be the same
22 effect.

23 MR. JOHN MATHER: And I just want to
24 understand why you wanted this email trail deleted.

25 MR. JOHN BROWN: I don't know, just

1 being -- just ma -- wanted to make sure that I didn't
2 -- that I -- you know, I didn't start to get asking
3 questions about why you're getting legal advice about
4 asking information when I was asking the questions and
5 they were causing, obviously, some concern with people
6 answering them.

7 I didn't want -- I didn't want to have
8 to disclose a lot of information that was of concern
9 to me which -- which really proved nothing to me. I
10 didn't want to say I've got, I suspect, this, that, or
11 the other because I'm not an investigator. I'm -- I'm
12 a CAO and I was doing something that I was very
13 uncomfortable doing, but I believed I needed to do it.

14 And I didn't want to -- I didn't want
15 to say there's a problem here because I could have --
16 I could have said there's a problem and caused a whole
17 lot of trouble for people and there wouldn't have
18 been.

19 And that's why -- and I don't know if
20 I'm getting into privilege or not, and you can tell me
21 if I am, but that's why I did not conclude on this
22 issue myself. I did not conclude in this whole issue
23 myself.

24 I had a lot of information. And I
25 said, This is -- I do not have the ability to draw

1 this to a conclusion and present this to a Council. I
2 can't do that because it wouldn't be fair because I'm
3 not experienced enough.

4 MR. JOHN MATHER: Do you recall how --
5 other than this email thread and the subsequent you ju
6 -- you believe you received with the information you
7 set out, did you communicate otherwise with Mr.
8 Mascarin via Gmail in relation to Collingwood?

9 MR. JOHN BROWN: No, only when he told
10 me about this job here, I think, no.

11 MR. JOHN MATHER: Do you recall when
12 he sent you the information you requested about your
13 entitlement to information, whether or not you asked
14 him to delete or expunge that email thread?

15 MR. JOHN BROWN: No, I wouldn't, no,
16 because that would have been information I would have
17 had, which would have been Town information which I
18 wouldn't delete or expunge because it was the Town's.

19 It was technically to me, but it was to
20 the CAO position.

21 MR. JOHN MATHER: Did you consider --
22 what's in your email on April 1st, 2014, at 11:59
23 a.m., did you consider that to be Town information?

24 MR. JOHN BROWN: Well, he sent it to
25 me in my email address. I guess my mistake was

1 including stuff related to the Town and a response to
2 him, so I don't -- I -- I'm sorry. I mean, maybe it
3 is Town information.

4 MR. JOHN MATHER: Those are my
5 questions.

6 THE HONOURABLE FRANK MARROCCO: Just
7 you -- you mentioned that, at some point when you were
8 reviewing these documents, you wondered if there was a
9 cross-subsidy?

10 MR. JOHN BROWN: M-hm.

11 THE HONOURABLE FRANK MARROCCO: What
12 were -- what's the implication of that?

13 MR. JOHN BROWN: Well, you know --

14 THE HONOURABLE FRANK MARROCCO: Or why
15 were you concerned about whether there was a cross-
16 subsidy or not?

17 MR. JOHN BROWN: Well, that was Mc --
18 Mi -- that was Mr. McFadden's concern, that not
19 knowing what the actual costs were, if you apportion
20 the costs, water or wastewater IT, which our Town
21 costs with the hydro costs, then we don't know that
22 somebody was overpaying or underpaying.

23 So, if the Town was overpaying in
24 actual costs, then there could be a subsidy to the
25 operation of the hydro system.

1 THE HONOURABLE FRANK MARROCCO: And if
2 -- if the Town was underpaying --

3 MR. JOHN BROWN: Yeah.

4 THE HONOURABLE FRANK MARROCCO: --
5 then the hydro is subsidizing the Town?

6 MR. JOHN BROWN: Correct. So, the --
7 I think his position was that each cost should be
8 discrete, you know, and capable of being identified as
9 exclusive to that function, that one (1) wasn't cross-
10 subsidizing another.

11 THE HONOURABLE FRANK MARROCCO: And I
12 don't want to put words in your mouth. I really want
13 to know what was going on in your mind. I assume that
14 the hydro ratepayers cannot subsidize the Town if --
15 if in fact the -- the cross-subsidy is working to the
16 disadvantage of the hydro?

17 MR. JOHN BROWN: Yeah.

18 THE HONOURABLE FRANK MARROCCO: Ye --
19 yes or no or wha -- or is not -- that wasn't in your
20 thinking?

21 MR. JOHN BROWN: Yeah, that -- that
22 wasn't really my concern. My concern was that we were
23 getting value for the money we paid. It was Mr.
24 McFadden's concern --

25 THE HONOURABLE FRANK MARROCCO: I see --

1 MR. JOHN BROWN: -- that we not have -
2 - really shouldn't have a cross-subsidization between
3 things. That was his issue.

4 THE HONOURABLE FRANK MARROCCO: Okay.

5 MR. JOHN BROWN: Mine was are we
6 overpaying or whatever. That was mine.

7 THE HONOURABLE FRANK MARROCCO: Thank
8 you.

9 MR. JOHN MATHER: Your Honour, we've
10 received a request from Mr. Fryer, who indicates that
11 he believes that Mr. Brown was referring to notes
12 during his testimony and has made a request for those
13 notes.

14 THE HONOURABLE FRANK MARROCCO: All
15 right. Well, we'll deal with that the same way we
16 dealt with Mr. Houghton's notes. The -- in terms of
17 the order of cross-examination, Mr. Chenoweth, were
18 you gonna -- were you going last in -- in this?

19 MR. FREDERICK CHENOWETH: I -- I would
20 certainly like to in that, candidly, I'm going to need
21 some further time to prepare my cross-examination
22 given -- given the areas we've dealt with here.

23 THE HONOURABLE FRANK MARROCCO: All
24 right. Mr. Marron, I'm not going to start. I'm going
25 to -- I'm going to break for lunch in any event, so

1 it'll give you some time over the lunch hour.

2 MR. GEORGE MARRON: Okay.

3 THE HONOURABLE FRANK MARROCCO: But,
4 Mr. Marron, do -- do you have questions? I -- but I -
5 - I'll call upon you after lunch. I just want to
6 know.

7 MR. GEORGE MARRON: Yeah. I -- I'd
8 like to just reserve on that. If I do, I'll be very
9 brief, yeah, just --

10 THE HONOURABLE FRANK MARROCCO: All
11 right.

12 MR. GEORGE MARRON: -- just one (1)
13 area that I may want to review my notes. Thank you.

14 THE HONOURABLE FRANK MARROCCO: So,
15 we'll -- we'll break for lunch. And, Mr. Brown, the -
16 - generally, witnesses are cautioned not to discuss
17 their evidence because they're under cross-
18 examination.

19

20 --- Upon recessing at 12:32 p.m.

21 --- Upon resuming and 1:36 p.m.

22

23 MR. WILLIAM MCDOWELL: So,
24 Commissioner, just to enliven things, I wanted to go
25 back to the -- the witness order.

1 I had thought that Mr. Chenoweth had
2 called this witness and so I didn't say anything about
3 the witness order. I gather he didn't and Mr. Brown
4 is the --

5 THE HONOURABLE FRANK MARROCCO: Our
6 witness?

7 MR. WILLIAM MCDOWELL: Yeah, so I'm
8 told.

9 THE HONOURABLE FRANK MARROCCO: Okay.
10 I actually didn't -- I now -- yes, I understand now.

11 MR. WILLIAM MCDOWELL: Right. So --
12 so we'd like to follow the same process as with Ms.
13 Wingrove, that we would go last because he was the CAO
14 of the Town.

15 Now, I hear Mr. Chenoweth and whether
16 he's ready to go. Mr. Fryer has asked me to address
17 you just in the course of this to say that he's got
18 quite an extensive list of questions, which he would
19 whittle down, given time.

20 But I'd just alert you --

21 THE HONOURABLE FRANK MARROCCO: No,
22 we're proceeding.

23 MR. WILLIAM MCDOWELL: Right.

24 THE HONOURABLE FRANK MARROCCO: Let's
25 be clear about that. We're proceeding.

1 Now, I'm somewhat flexible about the
2 order, but we're proceeding.

3 MR. WILLIAM MCDOWELL: Yes, that's
4 fine.

5 THE HONOURABLE FRANK MARROCCO: So we
6 will follow the usual. I -- we should follow the
7 usual order.

8 Mr. Bonwick?

9 MR. PAUL BONWICK: If -- Your Honour,
10 if I could get some clarification on the usual order,
11 my understanding is the usual order has been me going
12 last. Recognizing this is not a witness the Town has
13 called, I would expect that that would continue to be
14 the case.

15 THE HONOURABLE FRANK MARROCCO: I
16 think if -- if this is our witness, and it is, it is,
17 then -- then we'll follow the order that we've
18 followed with all of our witnesses, which means that
19 you will -- I don't -- I don't see this Mr. Brown as
20 the Town's -- the Town's witness.

21 He's either our witness or -- well,
22 he's not Mr. Chenoweth's witness, that's clear.

23 MR. WILLIAM MCDOWELL: But he was the
24 Chief Executive of my client.

25 THE HONOURABLE FRANK MARROCCO: I

1 understand that.

2 MR. WILLIAM MCDOWELL: So consistent
3 with what we did with Ms. Wingrove, that puts me at
4 the bottom of the batting order, I would have thought.

5 MR. PAUL BONWICK: Well, respectfully
6 Ms. Wingrove -- sorry, Ms. Almas was still an
7 employee, but again I sit there and go she's no longer
8 an employee and was called by the --

9 THE HONOURABLE FRANK MARROCCO: What
10 I'm going to do is I'm going to follow the usual order
11 in the -- and Mr. Bonwick will go last.

12 You can go -- you can go next, second
13 last. Mr. Bonwick will be the last to question. And
14 I'm going to start -- Mr. Chenoweth, are you ready to
15 go?

16 MR. FREDERICK CHENOWETH: Well, as I
17 indicted, Your Honour, as I indicated earlier, I'd
18 like more time to prepare.

19 THE HONOURABLE FRANK MARROCCO: It
20 doesn't matter which reporter it is, you can't get the
21 microphone straight. You had a defence until we
22 changed reporters.

23 MR. FREDERICK CHENOWETH: The green
24 light is on, Your Honour. So I'm a go, apparently.

25 I -- I can do my cross now. I must say

1 that given the evidence that we've heard today, I
2 would need at -- at least two hours to prepare the
3 cross I want to make with respect to this individual.

4 But if necessary, I'll proceed right
5 now.

6 THE HONOURABLE FRANK MARROCCO: Well,
7 I'm not -- I'm -- I can -- what I can do is let me
8 just -- hang on a second.

9 I can give you a little bit of time by
10 changing the order around a bit. And I can -- I can
11 break for a bit and give you a chance to collect your
12 thoughts.

13 I mean, first of all, let's be clear,
14 all of the reports that Mr. Brown commissioned have
15 been available and referred to in the Foundation
16 Document and they cover virtually everything he
17 testified to with perhaps the exception of the memos
18 and the to-ing and fro-ing about what the memo said.

19 And I respectfully think you're
20 experienced enough, I have every -- you've got far
21 more experience than you and I want to admit and I
22 have no doubt that you can get your head wrapped
23 around that aspect of it in fairly short order.

24 So I --

25 MR. FREDERICK CHENOWETH: I'm prepared

1 to proceed now, if you wish me to.

2 THE HONOURABLE FRANK MARROCCO: I'll
3 tell you what. I think -- I think you should. And --
4 and so carry on.

5 MR. FREDERICK CHENOWETH: Very good.

6 MR. TIM FRYER: Justice Marrocco, not
7 -- begging your indulgence. I'd be prepared to go
8 first. I might be able to save some other questions.

9 THE HONOURABLE FRANK MARROCCO: Does
10 that -- does that assist, Mr. Chenoweth, if Mr. Fryer
11 goes first?

12 MR. FREDERICK CHENOWETH: Not
13 particularly.

14 THE HONOURABLE FRANK MARROCCO: Well
15 then, then we'll follow the same order. Go ahead.

16

17 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

18 MR. FREDERICK CHENOWETH: Mr. Brown,
19 you started again in 2013 as -- as CAO?

20 MR. JOHN BROWN: Yes.

21 MR. FREDERICK CHENOWETH: And what
22 month in 2013?

23 MR. JOHN BROWN: I think it was July.

24 MR. FREDERICK CHENOWETH: July. All
25 right.

1 And you at some juncture developed a
2 concern about the shared service agreement?

3 MR. JOHN BROWN: My first concern was
4 the financial position of the Town.

5 MR. FREDERICK CHENOWETH: Yes.

6 MR. JOHN BROWN: Yes. And in the
7 context of that, then the shared service agreement.
8 Not the shared service agreement, it was the billing.
9 I wanted to know how much it cost us.

10 MR. FREDERICK CHENOWETH: All right.

11 And you first of all went through the
12 financial report and I've forgotten which particular
13 organization prepared the --

14 MR. JOHN BROWN: BMA.

15 MR. FREDERICK CHENOWETH: All right,
16 the BM?

17 MR. JOHN BROWN: A.

18 MR. FREDERICK CHENOWETH: BMA report,
19 and it said there were issues and you went to Council
20 with the issues that BMA had identified?

21 MR. JOHN BROWN: Yes, serious issues.

22 MR. FREDERICK CHENOWETH: All right,
23 thank you.

24 And so I take it now at the very least
25 in the late fall of 2013?

1 MR. JOHN BROWN: I'm not so precise on
2 the timing of all of these events.

3 MR. FREDERICK CHENOWETH: Well,
4 neither am I. The late fall of 2013, is it fair to
5 say that you didn't turn your mind from the financials
6 to the shared service agreement until the late fall of
7 2013?

8 MR. JOHN BROWN: Sorry, I don't want
9 to be definitive on that. I mean, I turned my mind to
10 it, but I'm not sure which month it happened.

11 MR. FREDERICK CHENOWETH: Well, you
12 said you did the financials first?

13 MR. JOHN BROWN: Yes.

14 MR. FREDERICK CHENOWETH: So I take it
15 that might have taken you, by the time you got a
16 report, et cetera, you'd be into the fall of 2013?

17 MR. JOHN BROWN: Sounds reasonable.

18 MR. FREDERICK CHENOWETH: Thank you.

19 And then at some juncture in the fall
20 of 2013, you turned your mind to the shared service
21 agreement?

22 MR. JOHN BROWN: Yes.

23 MR. FREDERICK CHENOWETH: Thank you.

24 And one of your first inquiries, in
25 fact, I think you indicated your only inquiry in

1 essence, was to Cindy Shuttleworth, who you say, and
2 she wasn't asked this, but you say that she said she
3 was too busy to give the answers that you needed with
4 respect to the shared service agreement?

5 MR. JOHN BROWN: Yes, actually, I
6 think I talked to the treasurer before I -- to get a
7 first reading about her understanding of the billing
8 and, you know, interface with Collus Solutions, then I
9 would have talked to Cindy at some point after that.

10 MR. FREDERICK CHENOWETH: Did the --
11 did the treasurer indicate that she didn't understand
12 the shared service agreement?

13 MR. JOHN BROWN: I didn't say she
14 didn't understand the agreement. She said the
15 information that she's being provided with was not
16 satisfactory and inadequate.

17 MR. FREDERICK CHENOWETH: I see.
18 So did she make any inquiries that
19 you're aware of as to how it was billed or the pattern
20 of billing?

21 MR. JOHN BROWN: We were -- yeah. She
22 sent a memo -- sorry, I don't know the date, and
23 hopefully, we'll be able to turn it up -- but she sent
24 a long memo to Cindy Shuttleworth outlining all of her
25 requirements for clarification and information. Yes.

1 So she was well positioned on the request for
2 information on the Shared Services Agreement.

3 MR. FREDERICK CHENOWETH: All right.
4 And that would have been sometime in mid fall of 2013?

5 MR. JOHN BROWN: I'll say that's
6 reasonable.

7 MR. FREDERICK CHENOWETH: Is that
8 fair?

9 MR. JOHN BROWN: I -- I don't know for
10 sure.

11 MR. FREDERICK CHENOWETH: All right.
12 Thank you. In any event, did you -- you indicate that
13 Cindy Shuttleworth was sort of the person that you
14 approached, and I think you said it was the only
15 person you approached about learning of the billings
16 for the Shared Service Agreement.

17 MR. JOHN BROWN: Yeah. She was the
18 one who told me she was responsible, she had authority
19 to do it, and she did it. So that's -- I called her;
20 I talked to her.

21 MR. FREDERICK CHENOWETH: Did the --
22 did the Town treasurer tell you that there was an
23 annual report given every year by Collus PowerStream
24 to the Council?

25 MR. JOHN BROWN: I don't know if she

1 told me or not, but I -- I think I remember a report
2 coming annually. Yeah.

3 MR. FREDERICK CHENOWETH: Do you
4 remember a report coming annually?

5 MR. JOHN BROWN: Yeah. I believe I
6 do.

7 MR. FREDERICK CHENOWETH: And I'm told
8 that report contained, amongst other things, a summary
9 of the shared service billings.

10 MR. JOHN BROWN: It didn't detail the
11 costs for each particular service, but we understood
12 it was the requirement of the 2003 agreement. We did
13 not know what particular services costs. They were
14 spread over a much larger operation.

15 MR. FREDERICK CHENOWETH: Okay. But
16 in any event, you're aware that Council would have had
17 that kind of summary on an ongoing basis since prior
18 to the time of your involvement in July of 2013.

19 MR. JOHN BROWN: Probably. But that
20 didn't answer the information request we were looking
21 for.

22 MR. FREDERICK CHENOWETH: I see. I
23 understand that the financials of Collus PowerStream
24 were part of the report that was given to Council on
25 an annual basis.

1 MR. JOHN BROWN: They may have been,
2 but they didn't detail the information that the
3 treasurer wanted, and I thought was necessary, which
4 was a value for money, information about the cost of
5 services.

6 MR. FREDERICK CHENOWETH: I see. Was
7 there -- were you aware that there some problem with
8 the Shared Service Agreement, or this was just a --

9 MR. JOHN BROWN: Well --

10 MR. FREDERICK CHENOWETH: -- just a
11 general inquiry you wanted to get to the problem of?

12 MR. JOHN BROWN: Well --

13 MR. FREDERICK CHENOWETH: Or were you
14 trying to solve a particular problem?

15 MR. JOHN BROWN: No. I -- I guess the
16 initial inquiry was, can you please tell me on what
17 basis you submit these bills to the Town for the
18 services we get? That was the inquiry.

19 MR. FREDERICK CHENOWETH: And you were
20 having trouble getting the details of that basis.

21 MR. JOHN BROWN: Well, the answer was
22 really, what's it got to do with you? I am
23 responsible, I do the billing, and I'm very busy.

24 MR. FREDERICK CHENOWETH: I see.

25 MR. JOHN BROWN: And then I said, can

1 you please -- there must be some reference documents
2 somewhere. She said she wasn't aware of any reference
3 documents, but she -- she did undertake a look around.

4 And subsequent to that, we all found
5 the existence of this 2003 agreement, which apparently
6 had never been reported to Council since 2003.

7 MR. FREDERICK CHENOWETH: Well, I
8 can't give evidence. But in any event, I'll move on
9 from that. I'm trying -- I'm still -- am not going to
10 answer my question.

11 Was there a problem? I mean, did you
12 see -- was there evidence that somebody was
13 subsidizing someone? In other words, the Town was
14 subsidizing Collus or Collus PowerStream, or Collus
15 PowerStream was subsidizing the Town or Solutions. I
16 mean, was there a problem that these inquiries that
17 you appear to repeatedly make were designed to deal
18 with? Or were you just trying to figure out how the
19 billings were done?

20 MR. JOHN BROWN: Well, I wanted to
21 find out how the billings were done because we thought
22 we needed that information. How were all these bills
23 arrived at? And that was my understanding of what the
24 2000 (sic) agreement provided for, but it was not the
25 practice.

1 And so the -- it was Mr. McFadden's
2 issue, and he was the president of the corporation.
3 It was his issue that there may be some cross subsidy.
4 That wasn't my issue, but it was a credible issue.

5 MR. FREDERICK CHENOWETH: Well, that's
6 just common sense, isn't it? There may be cross
7 subsidy. He didn't suggest to you that there was a
8 cross subsidy, that the Town was subsidizing Collus
9 PowerStream. Obviously, he didn't do that, did he?

10 MR. JOHN BROWN: No, he didn't. But
11 he thought it'd be a good idea to find out.

12 MR. FREDERICK CHENOWETH: Well, there
13 you go. Well, that makes some sense. But I'm just
14 trying to understand the necessity of your
15 persistence, a persistence that seemed to have led to,
16 on your own description, ongoing consternation amongst
17 those that you are making these inquiries of.

18 What was the necessity for continuing
19 to make those inquiries? Because from all I can
20 gather and from what you've just told me now, there
21 was no evidence that there was a problem.

22 MR. JOHN BROWN: I didn't have any
23 evidence there was a problem. I didn't accuse anybody
24 that there was a problem.

25 All I wanted to do was to make sure

1 that the Town knew and understood the basis for the
2 billings that it was paying since 2003.

3 MR. FREDERICK CHENOWETH: So as a
4 result of that, you commissioned -- was it two (2) or
5 three (3) reports with respect to shared services
6 agreements?

7 MR. JOHN BROWN: Well, the first
8 report I commissioned was the -- and this was a joint
9 project with -- with --

10 MR. FREDERICK CHENOWETH: We know what
11 it was. We've got your evidence. It was Beacon.
12 Right?

13 MR. JOHN BROWN: Yeah. But it was
14 also with the CPUSB itself.

15 MR. FREDERICK CHENOWETH: We have your
16 evidence with respect to that.

17 MR. JOHN BROWN: Okay. Well --

18 THE HONOURABLE FRANK MARROCCO: But
19 the witness can answer your questions.

20

21 CONTINUED BY MR. FREDERICK CHENOWETH:

22 MR. FREDERICK CHENOWETH: I'm again --
23 did you -- you're aware that the OEB has financial
24 records that are produced to it annually by LDCs and
25 that the financial records of Collus PowerStream would

1 have been there. If you had any concerns with respect
2 to the performance of Collus PowerStream to its
3 business plans or anything of that nature, that would
4 have been available to you with the OEB?

5 MR. JOHN BROWN: So I looked at it
6 from the perspective -- we had a consulting company
7 just like all municipalities and consulting companies,
8 and we -- and they billed us for work done.

9 And the question was: Can you please
10 explain to us the basis for the bills that we are
11 receiving and paying and have been since 2003?

12 So to go to OEB to find that
13 information, you know, would seem to me to be
14 unnecessary when we have a consulting company
15 contracted to provide services directly to us.

16 MR. FREDERICK CHENOWETH: But you
17 don't have to pay anything to get the information from
18 the OEB. You've got to pay consultants, and you've
19 got to pay lawyers, and you got to pay Beacon, and you
20 got to pay Miller Thomson and all these people --

21 MR. JOHN BROWN: Yeah.

22 MR. FREDERICK CHENOWETH: -- to get
23 these reports. Why didn't you simply go to the OEB
24 and get the financials of Collus PowerStream on an
25 ongoing basis along with -- along with summaries of

1 the shared service arrangements, all of which are
2 reviewed by the OEB before you went off and spent,
3 frankly, a good deal of money and caused a good deal
4 of consternation in that relationship before you --
5 before you did that simple research? You could have
6 got it for free.

7 MR. JOHN BROWN: Well, I think asking
8 the consultant who billed us would be the first step.
9 And I didn't contemplate any difficulty in being
10 provided with it -- that information. But as I've
11 given evidence earlier on, I had great difficulty.

12 MR. FREDERICK CHENOWETH: Well, did
13 the OEB or did your consultants tell you that you
14 could go to the OEB and get financials?

15 MR. JOHN BROWN: No. But Mr. Rodger,
16 when he did his work -- I understand he had to go to
17 the OEB to get information that wasn't available to
18 him. So I guess at one point in time, the OEB had to
19 be accessed.

20 But in my opinion, that should have
21 been unnecessary because if you've got a consulting
22 company, which is your technical employee, and they're
23 providing services to you and you're paying them to do
24 it, I don't think it'd be a big push for them to
25 answer you and tell you how their costs were

1 constructed and what they were based on.

2 So you're right. I probably could have
3 gone to the OEB, but it -- that looked to me like not
4 the direct approach.

5 MR. FREDERICK CHENOWETH: You chose to
6 incur the fees necessary with at least two (2), maybe
7 three (3) reports on shared services.

8 MR. JOHN BROWN: No. I made a phone
9 call to the consultant. And as I've already told you,
10 the response I got and following further discussions
11 and emails, it was agreed that a value for money audit
12 may very be a solution to this issue.

13 And the CPUSB joined with the Town and
14 the joint consulting project to have Beacon 2020 do a
15 value for money audit. We all expected that that
16 value for money audit would solve the problem because
17 nobody knew that the billing process had been changed
18 from a direct cost one to one of apportioned cost.

19 Nobody knew that. It had never been
20 reported to Council, the agreement was in place since
21 2003, and I think when I told Council that it existed,
22 it was the first time they heard of it.

23 MR. FREDERICK CHENOWETH: My
24 information is that the OEB has a shared services
25 analysis that they do on a five (5) year annual basis

1 that would have given you the -- the answers to those
2 questions as to whether or not there was an improper
3 subsidy because, indeed, that's one (1) of the matters
4 that the OEB checks. That want to make sure.

5 And we have a report that was from the
6 OEB people, it was before this commission, that says
7 that was their ongoing concern and that that's why
8 they required shared services reports.

9 Did you look into that analysis done by
10 the OEB to see if there's a problem that required the
11 persistence that you chose to undertake on these
12 inquiries?

13 MR. JOHN BROWN: So --

14 OBJ MR. WILLIAM MCDOWELL: Well, just a
15 second. My Friend is persisting and asking about
16 persistence. But, you know, there's -- there's -- if
17 he wants to put a particular piece of evidence to the
18 witness, that's one (1) thing, but to just posit that
19 somewhere there's this precise piece of information's
20 a bit unfair to the witness.

21 He should first ask the witness whether
22 he agrees with that proposition or not.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: Were you

1 aware that --

2 THE HONOURABLE FRANK MARROCCO: Well,
3 wait a second. There's been an objection. Let me
4 rule on the objection before you start asking any more
5 questions.

6 MR. FREDERICK CHENOWETH: I'm
7 obviously content, Your Honour.

8 THE HONOURABLE FRANK MARROCCO: But --
9 but in any event, you can go ahead and ask the
10 question because I wasn't going to give effect to the
11 objection. But I do think you've made the point, at
12 least as far as the availability of information that
13 the OEB is concerned.

14 And we did hear from Cynthia Chaplin,
15 and whatever she said, she said. I'm not going to try
16 to summarize it in two (2) minutes, but I think we've
17 -- you've covered that.

18 But nevertheless, I'm overruling the
19 objection. So, now you can ask your question.

20 MR. FREDERICK CHENOWETH: Very good.
21 Thank you, Your Honour. And I'll -- and I'll move
22 along to other matters --

23 MR. JOHN BROWN: Could I answer --

24 MR. FREDERICK CHENOWETH: -- quickly.

25 MR. JOHN BROWN: Could I answer that

1 question?

2 THE HONOURABLE FRANK MARROCCO: Not
3 really, unless -- unless Mr. Chenoweth chooses to
4 repeat it. And I've asked him not to repeat it, so I
5 think we'll just move on.

6 MR. FREDERICK CHENOWETH: Right.

7

8 CONTINUED BY MR. FREDERICK CHENOWETH:

9 MR. FREDERICK CHENOWETH: It's my
10 information -- and you can tell me whether this is
11 right or wrong, or maybe you don't know.

12 MR. JOHN BROWN: Yeah.

13 MR. FREDERICK CHENOWETH: But the
14 information I've been supplied with suggests that in
15 fact there was a five (5) year summary of the shared
16 services costs filed with the OEB in mid-September of
17 2013, around the time that you started your task as
18 CAO of the Town.

19 Again, did you -- did you look at that
20 document to see if there was a problem that required
21 your ongoing persistence?

22 MR. JOHN BROWN: No, I think -- I
23 think I've already answered. I called the person who
24 prepared the bills. I thought that was the most
25 direct, easiest, most cost-effective way of getting an

1 answer. I didn't anticipate not getting an answer.

2 MR. FREDERICK CHENOWETH: But you
3 didn't get an answer, so you say that's the only
4 person you inquired with. Usually, if you don't get
5 an answer from party A, you'll ask somebody else. You
6 tell us you didn't do that?

7 MR. JOHN BROWN: Yeah. But we did --
8 yeah. So, I think -- I think the inference is that,
9 because I got the answer I got from Ms. Shuttleworth,
10 that I con -- constructed value for money audit
11 methodology and recommended it at the Council.

12 That wasn't the case. We work with the
13 CP at the Town, and the CP USB, the water, wastewater
14 authority, work together. Mr. --

15 MR. FREDERICK CHENOWETH: Herman?

16 MR. JOHN BROWN: -- Herman and myself
17 were joint managers of the project. We did everything
18 together and we entered into the contract. And
19 everybody was hopeful that the value for money audit
20 would produce what we felt was necessary, which was an
21 evaluation -- a detailed evaluation of the cost, the
22 de -- well, what were the services being provided and
23 how are those costs created because we were paying the
24 bills.

25 So, just like anybody else, if you're

1 paying a bill and somebody says it's got five (5)
2 parts to it, you may be interesting in knowing each of
3 what those parts are, you know, so that you're
4 satisfied that you're getting value for money.

5 That was the purpose of it. It wasn't
6 to avoid going to the OEB. It was to get a basis to
7 solve what turned out to be a very significant
8 problem. It was hoped that we all could have that
9 agreement evaluated and know what the cost of the
10 services.

11 And then we could have gone forward in
12 a much more positive way to know and understand what
13 we're paying for and conclude that we were getting
14 value and maybe negotiate different terms to see if we
15 could get value.

16 MR. FREDERICK CHENOWETH: It's -- it's
17 pretty clear, sir, that it was obvious to you at the
18 time, from your evidence-in-chief, that your approach
19 to finding answers to that problem was having a
20 significant effect on the relationship between the
21 Town and Collus PowerStream. Isn't that fair?

22 I mean, you've told us of four (4)
23 people that were significant affected. You told us of
24 Cindy Shuttleworth. You told us of -- of Mr.
25 Houghton. You told us of others that -- that were

1 having real problems with the approach you were
2 taking, yet you persisted in spite of the fact that
3 you've told us you weren't aware that there was any
4 problem other than your wish to get to the bottom of
5 the billings which were obvious from the OEB?

6 MR. JOHN BROWN: So, as the chief
7 administrative officer, I don't think I have the
8 ability to negotiate my responsibilities or fiduciary
9 responsibilities in light of the fact that some people
10 may or may not want to answer questions.

11 I think my job is to try, to the best
12 of my ability, to make sure that the Town is getting
13 value for money, and that was the purpose of the
14 inquiry.

15 That was the purpose of the consultant
16 report that was a joint one (1) between the wastewater
17 and water who were incurring the charges and the Town
18 that was eventually paying the bills, including for --
19 for information technology.

20 MR. FREDERICK CHENOWETH: When you got
21 to the position of CAO in the Town in approximately, I
22 think you said April of 2013 --

23 MR. JOHN BROWN: July. I think I said
24 July.

25 MR. FREDERICK CHENOWETH: That's

1 right, July of 2013. You're correct. That was your
2 evidence. Were you aware that the Collus PowerStream
3 relationship at that juncture, and we've heard a good
4 deal of evidence of it, had been going for a year at
5 that time and was regarded by many as -- as a very
6 fruitful, successful arrangement?

7 MR. JOHN BROWN: So, when I came in
8 July I didn't know anything about Collingwood and I
9 didn't know anything about Collus Solutions or the 50
10 percent. I didn't know anything about anything. I
11 was fresh.

12 And so, when I came here and I started
13 to kind of get a sense of the issues, the financial
14 situation was the most important to deal with first in
15 my mind.

16 I didn't ask any questions about the 50
17 percent serv -- although a lot of people had mentioned
18 it may very well be an issue or they had concerns
19 about it.

20 I didn't seek to go there. I only got
21 there by following the Council approved approach which
22 they gave me, which was to develop a strategic
23 financial plan. And that took me to the whole issue
24 of where were we paying for services. And that kind
25 of, you know, was the first in the sequence that ended

1 up with, I guess, the shares being sold.

2 MR. FREDERICK CHENOWETH: Did you at
3 some juncture find that there was a problem with the -
4 - with Collus PowerStream and the way it was running
5 or its direction or -- or its financial success or was
6 there some problem with Collus PowerStream that you
7 became aware of in your -- in -- in your earlier time
8 at the -- or at any time in the -- in the centicure
9 (phonetic) as CAO?

10 MR. JOHN BROWN: So, I guess the first
11 thing that I guess somewhat surprised me was the
12 cancellation -- or the postponement of the KPMG
13 contract which included -- which included, you know, a
14 program or an organizational review.

15 And I was surprised that that happened.
16 and I went to meet with Mr. Peever who was there. And
17 he told me that, in his opinion looking at it, the
18 whole set up, the whole structure of Collus Solutions
19 and -- and in kind services and people working who
20 were not employees, but a lot of people thought they
21 might -- this whole situation was very confusing to
22 him.

23 And I shared with him my concern that
24 it was very confusing and hard to understand. I think
25 he was concerned in terms of the liability it might be

1 if anything happened.

2 My concern was it just didn't seem to
3 reflect municipal structures as I had experienced
4 them. I mean, there were consulting companies
5 provided services. There were people who worked for
6 Town companies who weren't Town employees. It was all
7 confusion.

8 So -- so, he and I came to a similar
9 conclusion. And I note that when we did an RFP, it's
10 one (1) of the things I did under the strategic
11 financial plan, was to say we've had some of these
12 contracts far too long -- excuse me -- too long. We
13 need to go to the market again for legal services, for
14 whatever.

15 And the company that we got for HR, we
16 explained to them the whole situation of Collus
17 Solutions, how it sat, and who was or wasn't
18 responsible to. And they expressed their surprise at
19 such a structure being in place.

20 So I think it was a general concern not
21 just in my part that this -- that this system, which
22 had been developed in the past, was a very complicated
23 one. And I note that Mr. Houghton was very concerned
24 with KPMG's work, and that was behind it being halted,
25 as I understand it. And I also understand that the

1 mayor was going to be the project manager of that
2 project, which --

3 MR. FREDERICK CHENOWETH: I'm --

4 MR. JOHN BROWN: -- I'm really
5 surprised.

6 MR. FREDERICK CHENOWETH: -- I wonder
7 if we could come back to the question I asked you,
8 which was, do you had -- did you have any evidence of
9 any concerns about the financial performance, the
10 business planning? Did you have any evidence of any
11 problems?

12 Just as I asked you with respect to
13 problems in the shared service agreement, was there a
14 problem that required your persistence of negative --
15 it -- to the point that it obviously, in your own
16 admission, negatively affected the -- the -- that --
17 that very relationship, was there a problem with the
18 financial progress or planning of Collus PowerStream
19 when you undertook your inquiries with respect to it?

20 MR. JOHN BROWN: No, because I
21 wouldn't have in -- in -- had the information to make
22 that judgment. It was information I was looking for,
23 not a judgment that something was wrong.

24 MR. FREDERICK CHENOWETH: Thank you.
25 Then I take it you would have known that for the first

1 time in history, at least as long as Collingwood had
2 been involved in the LDC business, there was a
3 dividend paid by Collus PowerStream to the Town in
4 2014. That's the evidence we received here --

5 MR. JOHN BROWN: Right.

6 MR. FREDERICK CHENOWETH: -- at this
7 Inquiry?

8 MR. JOHN BROWN: It's --

9 MR. FREDERICK CHENOWETH: So is it
10 fair to say that a minimum -- a modicum of inquiries
11 would have illustrated that the relationship was a
12 satisfactory one and was moving along quite well?

13 MR. JOHN BROWN: No, I wouldn't have
14 the information to be able to agree with that
15 conclusion.

16 MR. FREDERICK CHENOWETH: Very good.
17 So you weren't making these inquiries because there
18 was some obvious problem of some kind in the financial
19 planning of Collus PowerStream --

20 MR. JOHN BROWN: No, I did not --

21 MR. FREDERICK CHENOWETH: -- or its
22 results?

23 MR. JOHN BROWN: -- I did not start
24 off with the idea that there was a problem or
25 something was wrong. I was merely starting off with

1 the idea that we needed better to understand, you
2 know, where our costs were coming from to see if we
3 could manage those costs down. All municipalities do
4 that. I did before, and I was trying to do that here.

5 MR. FREDERICK CHENOWETH: Sir, my
6 point is, if there wasn't a problem, why did you feel
7 it necessary to push with your questioning, et cetera,
8 to the point that you were significantly affecting the
9 staff of Collus PowerStream and its relationship with
10 the Town, why would you do that if there wasn't a -- a
11 prevalent problem that -- that needed a solution,
12 especially when there was available information in
13 other sources?

14 MR. JOHN BROWN: I -- I don't -- I --
15 I mean, I -- I don't know that -- I think this is the
16 same question coming up all the time, and I guess I've
17 already answered it.

18 MR. FREDERICK CHENOWETH: Be --

19 MR. JOHN BROWN: And the answer is
20 that corporate -- contemporary corporate management is
21 based on good information. I did not have good
22 information, and I was merely attempting to get it
23 from a consultant that was a consultant to the Town.

24 Not too many consultants tell their
25 clients, Don't ask us for what our bills are. Don't

1 ask to explain our bills. Just pay them, please. Not
2 too many consultants can do that.

3 MR. FREDERICK CHENOWETH: You
4 mentioned a concern about a business plan for Collus
5 PowerStream, no sense of -- of where this -- this
6 growth idea was going.

7 That was a concern of yours?

8 MR. JOHN BROWN: I didn't know
9 anything about the growth idea. Nobody explained that
10 to me.

11 MR. FREDERICK CHENOWETH: No, but you
12 said you developed a concern about it. Nobody
13 explained it to you, and that was -- or were you
14 never, ever concerned about growth?

15 MR. JOHN BROWN: I didn't know about
16 it until --

17 MR. FREDERICK CHENOWETH: That wasn't
18 a problem for you?

19 MR. JOHN BROWN: -- I didn't know
20 about it until recently.

21 MR. FREDERICK CHENOWETH: You would
22 have been aware that a business plan for Collus
23 PowerStream was filed annually with the Town of
24 Collingwood Council? That would have been part of
25 their annual report that Collus PowerStream made to

1 the Town?

2 MR. JOHN BROWN: It all depends on the
3 definition of a business plan. I think the 2013
4 report was included in the background material. My --
5 in my view, that is not a business plan.

6 If you look at Mr. Rodger's evidence,
7 you will see that he details what a business plan -- a
8 -- a business plan might be anticipated to be, and the
9 one in 2013 doesn't match that.

10

11 (BRIEF PAUSE)

12

13 MR. FREDERICK CHENOWETH: Did you
14 review the business plan?

15 MR. JOHN BROWN: Did I read the 2013 -
16 - I don't think it was called a business plan, but I
17 think it was their report. But anyway, did I read
18 through it? Yes.

19 MR. FREDERICK CHENOWETH: Yeah. Thank
20 you. You expressed a concern about the concepts
21 contained in the shareholders agreement?

22 MR. JOHN BROWN: Yes.

23 MR. FREDERICK CHENOWETH: I.e., a
24 shotgun provision?

25 MR. JOHN BROWN: Right.

1 MR. FREDERICK CHENOWETH: And -- and a
2 right of first refusal? And you acknowledge that --
3 that you don't -- when it comes to corporate law on
4 things, that's not really your bailiwick, and you need
5 some assistance with respect to that?

6 MR. JOHN BROWN: Absolutely.

7 MR. FREDERICK CHENOWETH: All right.
8 Did you learn through the course of your inquiries
9 that the development of the shareholders agreement and
10 the share purchase agreement were done in consultation
11 with the Town's lawyers, Mr. Clark and Ms. Kennedy,
12 along with the input and review completed by Mr.
13 McFadden, a commercial lawyer himself?

14 Did you become aware of that?

15 MR. JEFF CROZIER: So my understanding
16 of Mr. Clark's comments was that he was hard to paper
17 the deal, and the deal was already constructed, so
18 that's my understanding of what he said. And I don't
19 know if that's correct or not, but that's my
20 understanding.

21 And far as Mr. McFadden goes, my
22 understanding of Mr. McFadden was, he was not a legal
23 advisor to anybody, and especially the Town. He --

24 MR. FREDERICK CHENOWETH: No one
25 suggested he was a legal advisor to Mr. Kennedy -- or

1 Mr. Clark and Ms. Kennedy.

2 MR. JOHN BROWN: Sorry, I -- sorry --

3 MR. FREDERICK CHENOWETH: Ms. Clark
4 and Ms. Kennedy --

5 MR. JOHN BROWN: Correct.

6 MR. FREDERICK CHENOWETH: -- and --
7 and Mr. McFadden, on his own admission, had the
8 opportunity to review the documents --

9 MR. JOHN BROWN: M-hm.

10 MR. FREDERICK CHENOWETH: -- to
11 appraise the documents --

12 MR. JOHN BROWN: M-hm.

13 MR. FREDERICK CHENOWETH: -- and to
14 give input and comment with respect to what was
15 contained in the documents. That was Mr. McFadden's
16 evidence.

17 Were you aware of the fact that Mr.
18 McFadden, a commercial lawyer, had had that input?

19 MR. JOHN BROWN: No, I was not aware
20 of any role Mr. McFadden had with respect to the
21 development of any of the share purchase agreement or
22 the details, no.

23 MR. FREDERICK CHENOWETH: But you're -
24 - to put it simply, you would have been aware that the
25 terms of the share purchase agreement -- or sorry, the

1 share -- yes, the share purchase agreement, and the
2 unanimous shareholders agreement were a function of
3 legal advice that the Town and Collus had received
4 from Aird Berlis, and in particular, from Mr. Clark
5 and Mr. Kennedy (sic), which surely would have
6 involved some discussions about -- about a shotgun
7 provision and a right of first refusal?

8 MR. JOHN BROWN: No, I don't know that
9 to be the case.

10 MR. FREDERICK CHENOWETH: Very good.
11 Thank you. Did you find that out on your inquiries?
12 You spoke to Mr. Clark, you tell us?

13 MR. JOHN BROWN: Yes -- so, sorry, did
14 I find what out from Mr. Clark?

15 MR. FREDERICK CHENOWETH: Did you find
16 out that the Town and Collus had received advice from
17 Mr. Clark on those particular concerns -- on those
18 particular terms of the unanimous shareholders
19 agreement --

20 MR. JOHN BROWN: No.

21 MR. FREDERICK CHENOWETH: -- to allay
22 your concerns that you had in this matter?

23 MR. JOHN BROWN: No. My concerns were
24 after the fact. When I read that consummated
25 agreement, I was very surprised that there would be a

1 right of first ref -- not surprised, but it's -- it
2 was of concern to me that there was a right of first
3 refusal. It was of concern to me that there was a 50
4 percent share sale, and it was a concern to me that
5 there was a shotgun clause with a twenty (20) day
6 period in it. They were my concerns.

7 MR. FREDERICK CHENOWETH: I see. In
8 any event, I take it in the final analysis, the
9 existence of the shotgun clause rightly or wrongly got
10 the Town out of this Transaction with Collus
11 PowerStream by -- by bidding using the shotgun clause
12 to -- to purchase the shares of -- of PowerStream?

13 MR. JOHN BROWN: I guess that was the
14 mechanism that Mr. Rodger recommended to implement
15 Council's decision to sell the 50 percent remaining
16 shares.

17 MR. FREDERICK CHENOWETH: Well, you
18 didn't need Mr. Rodger's recommendation. You could
19 have done it anyway, couldn't you?

20 MR. JOHN BROWN: Well, I --

21 MR. FREDERICK CHENOWETH: Why did you
22 you need Mr. Rodger's recommendation?

23 MR. JOHN BROWN: Because Mr. Rodgers
24 (sic) is a very experienced energy lawyer and the Town
25 needed quality advice and I got it for the Town.

1 MR. FREDERICK CHENOWETH: Why couldn't
2 you simply call up Mr. Clark who -- who consummated
3 the deal and -- and use those terms without paying Mr.
4 Rodgers (sic) a huge fee for his report? Why weren't
5 you simply able to call up Mr. Clark and Ms. Kennedy
6 and -- and get some comments on the Utility of the --
7 of the shotgun clause that you eventually used?

8 MR. JOHN MATHER: Your Honour --

9 THE HONOURABLE FRANK MARROCCO: Yes --

10 MR. JOHN MATHER: -- I just wanted to
11 indicate that this appears to be getting close to
12 legal advice with respect to the sale of EPCOR, which
13 was an issue raised earlier.

14 THE HONOURABLE FRANK MARROCCO: I
15 don't -- I don't think it does because you don't have
16 to disclose the advice. That's privileged.

17 The issue around paying a huge fee, I -
18 - I don't know if we have any evidence concerning the
19 fee, but I -- I think that type of question is -- is
20 permit -- permit -- permissible.

21 Mr. McDowell...?

22 MR. WILLIAM MCDOWELL: Well, just a
23 little confused because, of course, at the time that
24 we're getting into the EPCOR thing, Aird & Berlis is
25 not acting for the Town anymore.

1 THE HONOURABLE FRANK MARROCCO: No, I
2 know.

3 MR. WILLIAM MCDOWELL: All right.
4 Just so that's clear. So saying why didn't you phone
5 up your former law firm is a bit of an odd question.

6 THE HONOURABLE FRANK MARROCCO: Well,
7 --

8 MR. FREDERICK CHENOWETH: I don't know
9 that it's particularly odd --

10 THE HONOURABLE FRANK MARROCCO: - the
11 witness is not unsophisticated. He can answer.

12 Pardon me, Mr. Chenoweth?

13 MR. FREDERICK CHENOWETH: I was -- I
14 really have no comment. Proceed, Your Honour.

15 THE HONOURABLE FRANK MARROCCO: Right.
16 So go ahead -- go ahead and ask your question.

17

18 CONTINUED BY MR. FREDERICK CHENOWETH:

19 MR. FREDERICK CHENOWETH: Why didn't
20 you just call up the guys who put this thing together,
21 the lawyers who put it together, rather than pay
22 another party, and get some advice on the utility of
23 the shotgun clause contained in the already existing
24 agreements?

25 MR. JOHN BROWN: Because we're a

1 municipality, that's why.

2 MR. FREDERICK CHENOWETH: I'm not
3 following that, I'm sorry.

4 MR. JOHN BROWN: Some municipalities,
5 when they make decisions, they have to be very public.
6 They have to be -- they have to be understood by the
7 public. Often you'd have to have a public hearing.

8 So, you know, it wouldn't be -- it
9 would be very challenging for any CAO to say we want
10 to sell our shares and we'll just pull the -- you
11 know, do -- go via the shotgun clause. The whole --
12 the whole situation would have to be explained to the
13 public. And one of the things Mr. Rodger noted in his
14 report was, because the 50 percent share sale was 50
15 percent and there were obligations that went with the
16 -- the shareholders' agreement and the share purchase
17 agreement, that that limited the obligations of a
18 municipality, which are to make decisions as public
19 and transparent as possible, and that's something that
20 the Council struggled with, something that they were
21 seriously criticized for by Mr. Chadwick, and -- and
22 so -- so to simply say just pull the shotgun because
23 it's there, you know, doesn't appreciate the
24 complexity of a municipal government vis-a-vis a
25 corporation that operates under the Business

1 Corporations Act.

2 MR. FREDERICK CHENOWETH: Mr. Brown,
3 you appear to have had some ongoing meetings with Ms.
4 Almas and Mr. Houghton in which you were enquiring of
5 Mr. Houghton, what went on in the past.

6 MR. JOHN BROWN: M-hm.

7 MR. FREDERICK CHENOWETH: You weren't
8 enquiring of Ms. Almas what went on in the past; you
9 were enquiring of Mr. Houghton.

10 MR. JOHN BROWN: That's correct.

11 MR. FREDERICK CHENOWETH: All right.
12 And you'd asked Ms. Houghton -- I'm sorry, Ms. Almas,
13 to make a memo of the answers that Mr. Houghton gave
14 with respect to that.

15 MR. JOHN BROWN: Right.

16 MR. FREDERICK CHENOWETH: And it seems
17 clear that -- that even the development of these memos
18 -- did -- did this make Mr. Houghton, in your
19 observation, feel uncomfortable, the fact that he was
20 there, being questioned by you, and that the -- that
21 the answers and the questions were being taken down
22 into some sort of memo?

23 Did that -- did that cause you any
24 concerns as to the relational effect that might have
25 had with the President and CEO of Collus-PowerStream?

1 MR. JOHN BROWN: To the extent that I
2 could put this whole picture together over a very long
3 period, asking very many questions as opposed to
4 somebody just telling me what happened because nobody
5 seemed to know exactly what happened, I thought if I
6 went to Mr. Houghton -- he seemed to be the project
7 leader. He seemed to be the person who was
8 interacting with Council, with the Board, with the
9 lawyers.

10 So just examining it, if anybody said
11 to me, what role did Mr. Houghton play, I would say he
12 was the project lead, he was the leader of the
13 project. He was the one who was responsible for
14 setting it up and managing it, and bring it to a
15 positive conclusion. So my view would be to that is,
16 wouldn't he be the best person that I would ask?

17 MR. FREDERICK CHENOWETH: It sounds
18 like an interesting place to start, and I submit to
19 you that Mr. Houghton gave you good answers. You
20 asked him what was the impetus for the strategic
21 partnership and he gave you in a memo that we looked
22 at this morning, I thought a pretty good explanation
23 of -- of why the Town had chosen to go with that --
24 with that approach.

25 MR. JOHN BROWN: So -- so the -- so --

1 MR. FREDERICK CHENOWETH: Did you --
2 did you follow up any further on the explanation given
3 to you by Mr. Houghton?

4 THE HONOURABLE FRANK MARROCCO: I'm
5 trying not to interrupt, but you asked a question.
6 The witness started to answer, then you asked another
7 question.

8 MR. JOHN BROWN: I'm confused now
9 because I have two (2) questions. What do you want?
10 Could we get --

11 THE HONOURABLE FRANK MARROCCO: Well --

12 MR. JOHN BROWN: -- the first one back
13 again?

14 THE HONOURABLE FRANK MARROCCO: -- I
15 think maybe why don't we start with you trying to
16 answer the first question first.

17 Do you want him to repeat it?

18 MR. JOHN BROWN: Yeah, the first one,
19 please.

20 THE HONOURABLE FRANK MARROCCO: Are
21 you able to -- are you able to repeat it?

22 MR. FREDERICK CHENOWETH: I certainly
23 can, Your Honour.

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: In a memo
2 that we reviewed this morning, and I wish I could tell
3 you the document number --

4 MR. JOHN MATHER: TOC516647.

5

6 CONTINUED BY MR. FREDERICK CHENOWETH:

7 MR. FREDERICK CHENOWETH: It was an
8 explanation by, if we're talking about the same memo,
9 an explanation by Mr. Houghton as to why the strategic
10 partnership was chosen.

11 MR. JOHN MATHER: We'll pull it up.

12 MR. FREDERICK CHENOWETH: Pull up the
13 reference that Mr. Houghton -- the answer that Mr.
14 Houghton gave at that time.

15 MR. JOHN MATHER: I'll scroll down to
16 the August 2015 meeting. I'm not certain if this is
17 what you're referring to.

18 THE HONOURABLE FRANK MARROCCO: It --

19 MR. FREDERICK CHENOWETH: It is.

20 THE HONOURABLE FRANK MARROCCO: It
21 starts there:

22 "The changes to the electrical --
23 electricity industry."

24

25 CONTINUED BY MR. FREDERICK CHENOWETH:

1 MR. FREDERICK CHENOWETH: Did you --
2 did you regard that answer as -- you apparently went
3 right to what you regarded as the source for the
4 answer.

5 Did you not regard that as a -- a
6 reasonable start in your hunt for an answer to -- to
7 the question he talks about, the changes in the
8 electrical industry, future opportunities, et cetera,
9 et cetera, and talks about the use of -- of KPMG to
10 investigate options, et cetera?

11 Was that not a -- a reasonable, I'm
12 going to say start. Obviously we've gone into it in
13 greater detail in this Commission, but was that not a
14 reasonable start on an answer as to how the sale of
15 half of the Utility occurred by way of strategic
16 partnership?

17 MR. JOHN BROWN: So, I called KPMG,
18 one of the other people, I asked for information, and
19 --

20 MR. FREDERICK CHENOWETH: Can we deal
21 with -- can we deal with --

22 MR. JOHN BROWN: This is the answer.

23 MR. FREDERICK CHENOWETH: -- the Mr.
24 Houghton's answer.

25 MR. JOHN BROWN: This is the answer.

1 MR. FREDERICK CHENOWETH: Okay.

2 MR. JOHN BROWN: So I called KPMG and
3 I looked at the options that they had identified, and
4 I did not see an option called a strategic partnership
5 included within their first report. It wasn't there.

6 And so my question would be, it wasn't
7 there, so how did it get there, and the second
8 question would be, was it -- how was it included and
9 on what basis was it evaluated similar to the other
10 options that KPMG evaluated? That was the issue.

11 MR. FREDERICK CHENOWETH: Well, did
12 you check the minutes of Council meetings to establish
13 that in fact the strategic partnership approach was
14 authorized and encouraged by Council?

15 MR. JOHN BROWN: That wasn't -- my
16 question was, how did it get on the sheet, because it
17 wasn't added by KPMG, it was added by somebody else,
18 and on what basis was it evaluated such that it became
19 the approach adopted by Council.

20 MR. FREDERICK CHENOWETH: I -- I --
21 let's go back to my original question, which was, does
22 this not appear to be the start of a good answer to
23 your query, how do we get to a 50 percent sale? You
24 may have had follow-up questions or some other
25 questions you wanted to get to the bottom of, but

1 surely to goodness this is a -- a candid response from
2 Mr. Houghton as to why there was a shale -- share of
3 50 percent.

4 MR. JOHN BROWN: No. Mr. Houghton --
5 that explanation doesn't answer my question, which was
6 where did the strategic partnership option originate,
7 why was it not included in the KPMG report, and was it
8 ever evaluated by anybody before it became an option
9 which Council eventually adopted.

10 MR. FREDERICK CHENOWETH: Well,
11 interestingly enough, we spent a -- a good deal of
12 time through the course of this Commission enquiring
13 about that, and the counsellor (sic) will, I'm sure,
14 come to a conclusion with respect to that.

15 But did you -- would you not say that
16 this initial response was a helpful response?

17 MR. JOHN BROWN: It didn't answer my
18 question.

19 MR. FREDERICK CHENOWETH: Right.
20 Well, did you follow up with -- with other questions?

21 MR. JOHN BROWN: Did I ask him the
22 second time?

23 MR. FREDERICK CHENOWETH: No, no. Did
24 you -- did you ask him the specific question about
25 where did the strategic partnership come from?

1 MR. JOHN BROWN: I had a conversation
2 -- Sara took the notes and Mr. Houghton had to leave
3 at a prescribed time, and these are the questions that
4 I fitted in within the time.

5 MR. FREDERICK CHENOWETH: And I put it
6 to you that you got reasonable answers from Mr.
7 Houghton with respect to the questions you put to him
8 within what you've described as a restricted period of
9 time?

10 MR. JOHN BROWN: I couldn't agree with
11 that.

12 MR. FREDERICK CHENOWETH: Very good.
13 Did you -- did you take another meeting
14 to ask further questions? Did you follow-up on the
15 answers you got on the August 11th, 2015 meeting?

16 MR. JOHN BROWN: No. As I explained
17 earlier on, I asked a lot of questions and got a lot
18 of answers that I didn't understand or had to discover
19 further, so I moved on to Mr. Bentz and Mr. McFadden.
20 I obviously was irritating some people and I didn't
21 want to do that, so I moved on to -- to gentlemen I
22 dealt very well with and who didn't seem to be
23 bothered by the questions and -- and understood why I
24 was asking them.

25

1 (BRIEF PAUSE)

2

3 MR. FREDERICK CHENOWETH: Did you
4 become aware that the strategic partnership concept
5 was discussed at six Council meetings between June of
6 2011 and January of 2012, where on each occasion there
7 was an authorization by the Town to proceed with that
8 approach?

9 MR. JOHN BROWN: I -- I didn't know it
10 was six times, no.

11 MR. FREDERICK CHENOWETH: Did you
12 check the Council meetings in that respect?

13 MR. JOHN BROWN: I didn't know it was
14 six times.

15 MR. FREDERICK CHENOWETH: Thank you.

16 Did you -- did you understand that the
17 Town had -- had directed that a strategic task force
18 team be delegated with responsibilities to study the
19 strategic partnership and report back to the Town with
20 a recommendation?

21 MR. JOHN BROWN: On that one it's my
22 understanding that technically the Town didn't
23 establish such a task force, it's supposed to do that
24 by a decision of Council and by-law. It was my
25 understanding that that didn't happen. I could be

1 wrong, but that's my understanding.

2 And there weren't any terms of
3 reference and -- and you know, it was a -- it was a
4 group that they set up and they talked about it and --

5 MR. FREDERICK CHENOWETH: So it's
6 group they set up and they talked about it?

7 MR. JOHN BROWN: Yes, and --

8 MR. FREDERICK CHENOWETH: I see.

9 MR. JOHN BROWN: -- and the idea, I
10 guess the idea was suggested by somebody, but nobody
11 seems to know who it was, that a strategic partnership
12 or a 50 -- sorry, a 50 percent sale might be the way
13 to go.

14 I -- I don't recall anywhere, from the
15 information that I've had to date, of who that person
16 actually was who said I've got a great idea, let's
17 have a strategic partnership for the following
18 reasons.

19 I don't recall where that information
20 is.

21 MR. FREDERICK CHENOWETH: But we spent
22 nine weeks looking at that, so I suspect we'll soon
23 know the answer to that.

24

25 (BRIEF PAUSE)

1 MR. FREDERICK CHENOWETH: Now, again,
2 with respect to your memos, Mr. Houghton seemed to be
3 concerned about some of the things that were in the
4 memos of your meetings with Mr. Houghton and Ms. Almas
5 and -- and he responded to try and --

6 THE HONOURABLE FRANK MARROCCO: Excuse
7 me. Mr. Brown, you have to answer 'yes' or 'no,'
8 because the transcript won't capture you nodding your
9 head in agreement.

10 MR. JOHN BROWN: Okay. Pardon me.
11 Sorry, yes.

12 MR. FREDERICK CHENOWETH: Thank you.

13

14 CONTINUED BY MR. FREDERICK CHENOWETH:

15 MR. FREDERICK CHENOWETH: Was there --
16 was there something wrong with receiving additional
17 evidence from Mr. Houghton? Was this some sort of an
18 inquisition where he had to sign a statement or
19 something?

20 MR. JOHN BROWN: No.

21 MR. FREDERICK CHENOWETH: Why -- what
22 was wrong with taking the further input of Mr.
23 Houghton with respect to more information relating to
24 the questions you were asking?

25 MR. JOHN BROWN: So I think I -- I

1 tried to answer that earlier on. But the purpose was
2 not to end up with I said, no you didn't, you said, we
3 didn't want to go there. And that's why I asked Sara
4 to come in and Sara was given the responsibility of
5 preparing the final minutes, notwithstanding what I
6 said or what Mr. Houghton said.

7 So we were relying on Sara, the clerk,
8 to accurately reflect what was discussed. And I had
9 my understanding and Mr. Houghton had his, and I was
10 satisfied with the final minutes which Sara issued.

11 MR. FREDERICK CHENOWETH: Why -- why
12 were these -- why were these final minutes, Mr. Brown?
13 What's wrong with taking more information on a subject
14 that you were interested in?

15 MR. JOHN BROWN: I -- I didn't see it
16 as more information. I saw it as amended information
17 and things that were not said that were now being
18 included in the -- in the written material.

19 So -- so we let -- I let Sara decide in
20 her opinion what she heard. And it didn't reflect my
21 recollection 100 percent, and I don't think it
22 reflected his 100 percent. But it was what she
23 concluded the meeting record was.

24 MR. FREDERICK CHENOWETH: Can we look
25 at the emails that we further looked at, that we

1 looked at earlier this morning, between Almas and
2 Houghton and yourself. And I believe it's CPS5431.

3 Could we go to the -- to the 5:13 email
4 of Ms. Almas, you'll see it's from Ms. Almas. Ms.
5 Almas needs -- appears to have an obligation or feels
6 -- feels an obligation to speak up.

7 "Sorry, I need to respond. It is
8 truly my only issue with Ed's
9 comments. I did not lie or
10 misrepresent the notes from our
11 meeting. Ed did indeed speculate
12 that he believed that the Mayor and
13 Dennis had discussions regarding the
14 July 31st, 2012 undertaking and
15 shared services letter. However, Ed
16 did recommend that John should ask
17 the Mayor to find out for sure, as
18 he was not aware."

19 I take it she felt that Mr. Houghton
20 had a good point with respect to that particular
21 comment?

22 MR. JOHN BROWN: He did and I accepted
23 it.

24 MR. FREDERICK CHENOWETH: I see. And
25 -- and so you moved on and made inquiries with other

1 people, you inquired, I take it, with the Mayor?

2 MR. JOHN BROWN: Correct.

3 MR. FREDERICK CHENOWETH: Did you
4 inquire with -- with Dennis Nolan with respect to his
5 recollection of how the matter proceeded?

6 MR. JOHN BROWN: Yes, I believe I did.

7 MR. FREDERICK CHENOWETH: Very good.
8 Thank you.

9 Now, the Beacon report. Beacon 2020
10 report, it was a matter that frankly admit ruffled
11 some feathers?

12 MR. JOHN BROWN: It certainly did.

13 MR. FREDERICK CHENOWETH: All right.

14 And it -- it went directly to Council
15 without going to others for comment first, and I think
16 you've explained why you --

17 MR. JOHN BROWN: I did.

18 MR. FREDERICK CHENOWETH: -- felt a
19 necessity to do that?

20 MR. JOHN BROWN: No, no, that was the
21 -- you're talking about the BLG report.

22 MR. FREDERICK CHENOWETH: Very good.

23 MR. JOHN BROWN: The Beacon 2020 on
24 was where Mr. Firman -- where Mr. Firman was -- he was
25 the joint chair or the joint project manager with me

1 and Sara and the treasurer were involved and we all
2 undertook to give feedback on the drafts that came in
3 to make sure that he did not have any errors or
4 omissions and that it made sense.

5 And as I explained earlier on, I gave
6 my feedback, Sara gave hers, and the treasurer gave
7 hers and it appears that Mr. Firman did not give his
8 and the corrections that resulted from that were made
9 by the consultant and -- and that was it.

10 But Mr. Firman didn't advise the
11 consultant of -- of errors in the report that I think
12 turned out to be there, some of them. But it didn't
13 change his recommendation or any of the substantive
14 analysis in his report.

15 MR. FREDERICK CHENOWETH: If I
16 understand it, Collus PowerStream was eventually given
17 an opportunity to make comments on the Beacon report?

18 MR. JOHN BROWN: Everybody was given
19 the oppor -- a Municipality, anybody can comment on
20 anything.

21 MR. FREDERICK CHENOWETH: I understand
22 it, and we can turn to it if you'd like, but I don't
23 want to go through each one of their concerns.

24 But as I understand it, Collus
25 PowerStream gave a 13-page rejoinder to that report,

1 talking about factual inaccuracies and errors.

2 Is that an accurate depiction?

3 MR. JOHN BROWN: That may very well be
4 accurate, yes.

5 MR. FREDERICK CHENOWETH: Thank you.

6 And I understand that Collingwood
7 Public Utilities provided a 6-page report with respect
8 to errors?

9 MR. JOHN BROWN: Yes. And all of
10 those -- all of those reports and the comments that
11 they included were all provided to the consultant.
12 The consultant was asked to review -- review every
13 comment made to see whether, in his professional
14 opinion, it required any changes to the report, and,
15 generally, it did not.

16 MR. FREDERICK CHENOWETH: And Mr. Ian
17 Chadwick gave a twenty-seven (27) page comment on the
18 Beacon report. That's -- that's almost fifty (50)
19 pages of -- of comments on what were regarded as
20 errors and factual problems in the Beacon report,
21 correct?

22 MR. JOHN BROWN: The understanding was
23 that there were errors or corrections needed to be
24 made in the Beacon report. And, as I've explained,
25 the opportunity was provided to everybody to point

1 those out.

2 And then the consultant was asked to
3 review and either agree with them and amend the report
4 or explain why he didn't agree with him, and that
5 happened.

6 So, Mr. Chadwick, you know, I mean,
7 he's good at writing lots of pages, but the consultant
8 reviewed all his pages and concluded what he concluded
9 independent of me or anybody else.

10 MR. FREDERICK CHENOWETH: And it
11 appears that others are good at writing pages, too,
12 including Collus PowerStream, and the public utilities
13 people, as well.

14 So, we got in excess of fifty (50)
15 pages of reports -- or comments on the report. And I
16 take it the -- the report eventually done by this --
17 by Beacon 2020 is found at document TOC516775. Can we
18 look that up for a moment?

19

20 (BRIEF PAUSE)

21

22 MR. FREDERICK CHENOWETH: Go down just
23 a little further, if you would, please, in the report.
24 Down a little further to, "Adjustments to the report."
25 Whoa, there.

1 Are these the adjustments that -- that
2 the consultant took out of the fifty (50) pages of
3 comments that he'd received from those three (3)
4 bodies?

5 MR. JOHN BROWN: This is what the
6 consultant reported back with respect to the comments
7 that he received, fifty (50), a hundred, two hundred
8 (200) pages, whatever, yeah. This is his conclusions.

9 MR. FREDERICK CHENOWETH: And he took
10 out of that what appears to be twenty-four (24) words
11 from that almost fifty (50) pages of comment on that
12 report. Is that accurate? I -- I've actually --

13 MR. JOHN BROWN: So --

14 MR. FREDERICK CHENOWETH: -- counted
15 the words.

16 MR. JOHN BROWN: So, I really can't
17 comment. I mean, we're talking about words, but you
18 really have to ask the consultant what -- on what
19 basis -- he obviously discounted quite a lot of the
20 page -- the content of quite a lot of the pages. I
21 can't answer that.

22 MR. FREDERICK CHENOWETH: I -- I just
23 suggest to you that the fact that the consultant was
24 pre -- prepared to reduce almost fifty (50) pages of
25 factual comments to twenty-four (24) words suggests

1 that there may be some concerns about the conclusions
2 reached by that report and whether or not the analysis
3 done by the consultant was fulsome.

4 Would you agree with that?

5 MR. JOHN BROWN: No, I don't think
6 that follows that logic.

7 MR. FREDERICK CHENOWETH: Very good.
8 Thank you. I note that the consultant's report has a
9 disclaimer in the report. And that is found at
10 CJI7337_001, page 2.

11

12 (BRIEF PAUSE)

13

14 MR. FREDERICK CHENOWETH: Disclaimer
15 right there. And could you read the second paragraph
16 of that disclaimer?

17 MR. JOHN BROWN:

18 "So, although we have tried to
19 provide accurate information, it is
20 based solely on information from the
21 documents provided and interviews
22 conducted. And there's no guarantee
23 the information is accurate and
24 complete as of the date it is
25 received or that it will continue to

1 be accurate in the future."

2 THE HONOURABLE FRANK MARROCCO: I
3 think you can read it to your -- generally speaking,
4 you can read it to yourself. When -- when counsel
5 says, "Please read it," I -- I thought -- think he
6 just means read it.

7 MR. JOHN BROWN: Oh, I thought he
8 asked me to read it.

9 THE HONOURABLE FRANK MARROCCO: No,
10 that's fine.

11 MR. JOHN BROWN: I'm sorry.

12

13 CONTINUED BY MR. FREDERICK CHENOWETH:

14 MR. FREDERICK CHENOWETH: That's --
15 that's helpful having done so. Is it fair to say that
16 the consultant had a concern with the extent of the
17 materials he had been provided with in order to
18 complete his report?

19 Did he ex -- did he ever express to you
20 that concern through the course of preparing the
21 report?

22 MR. JOHN BROWN: Well, he expressed to
23 me his surprise that the services were being allocated
24 as opposed to reviewed under the 2003 shared services
25 agreement that was the agreement between the Town and

1 Collus Solutions.

2 MR. FREDERICK CHENOWETH: Mr. Brown,
3 I'd appreciate it if you'd try and answer my question.
4 I'm looking -- we're looking at the disclaimer which
5 you've had an opportunity to read and in fact read out
6 loud.

7 Is it fair to -- did the -- did the
8 consultant, at any time, express to you a concern
9 about the extent of the information that he was
10 provided with an order to do this report?

11 MR. JOHN BROWN: No, I don't recall
12 him saying that the information was inadequate. But I
13 think he was probably covering himself in the event
14 that some information hadn't been provided to him
15 which -- which would have materially affected the
16 report. I think he was just covering himself.

17 MR. FREDERICK CHENOWETH: Did the
18 consultant have a copy of the January 31st -- I'm
19 sorry, July 31st, 2012, undertaking memo signed by
20 PowerStream, Collus, and the Town?

21 MR. JOHN BROWN: This is the side
22 letter?

23 MR. FREDERICK CHENOWETH: The side --
24 call it the side letter. Fine, the side letter.

25 MR. JOHN BROWN: Yeah. So -- so, no,

1 he didn't have that, notwithstanding the fact that I
2 think he talked to twenty-six (26) people. And he
3 talked to people who would have known that such a
4 letter existed, but nobody told him.

5 So, that included Mr. Houghton, Mr.
6 Bentz, Mr. Nolan, Mr. McFadden, all of the Collus
7 Solutions staff who met with the consultant. I was
8 not at the consultant meetings. The consultant was
9 given full reign to talk to anybody he wants and to
10 get whatever information.

11 He talked to all those people. And
12 nobody -- nobody pointed the fact out that he seemed
13 to reviewing an out-of-date agreement, an agreement
14 that was amended on the 31st of July.

15 And then, when we proceeded further
16 with these reports and we ended up with a
17 recommendation to cancel the agreement, then all of
18 the sudden this July 31st letter appears. And that
19 threw us into the whole concern about this \$1.7
20 million potential penalty.

21 It would have been good if the
22 consultant had have provi -- had -- had have been
23 provided with this July 31st, 2012, memo. I myself
24 did not know of its existence. It wasn't in the
25 closing book. It was nowhere.

1 MR. FREDERICK CHENOWETH: Oh, there
2 was no closing book. Are you --

3 MR. JOHN BROWN: Well, there was a
4 closing book.

5 MR. FREDERICK CHENOWETH: But you --

6 MR. JOHN BROWN: We didn't get it.

7 MR. FREDERICK CHENOWETH: You took
8 some time getting the closing book?

9 MR. JOHN BROWN: We didn't get it. I
10 had to ask for it.

11 THE HONOURABLE FRANK MARROCCO: Now --
12 now, there's -- I'm going to take a ten (10) minute
13 break. Is this a convenient time or did you --

14 MR. FREDERICK CHENOWETH: I'm content,
15 yes.

16 THE HONOURABLE FRANK MARROCCO: All
17 right.

18 MR. FREDERICK CHENOWETH: Thank you,
19 Your Honour.

20

21 --- Upon recessing at 2:42 p.m.

22 --- Upon recessing at 2:52 p.m.

23

24 CONTINUED BY MR. FREDERICK CHENOWETH:

25 MR. FREDERICK CHENOWETH: Mr. Brown,

1 we were dealing with the Beacon 2020 report. Do --
2 and again, it's designed to get to the root of the
3 shared services issue, I take it?

4 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

5 MR. FREDERICK CHENOWETH: All right.

6 Do you know how much time the consultant spent
7 interviewing staff of Collus PowerStream in order to
8 come to a conclusion about shared services?

9 MR. JOHN BROWN: No. No constraints
10 were imposed on the consultant. He could talk to
11 whoever he wanted for how long he needed to.

12 MR. FREDERICK CHENOWETH: I'm advised
13 that it was an hour that they -- something less than
14 an hour they spent with staff? Are you able to verify
15 that?

16 MR. JOHN BROWN: No. You have to
17 check with the consultant. I don't know.

18 MR. FREDERICK CHENOWETH: Suffice it
19 to say that the report -- the Beacon report -- I think
20 you acknowledge it -- caused significant ruffled
21 feathers and consternation amongst the -- amongst the
22 stakeholders who would be affected by this particular
23 report?

24 MR. JOHN BROWN: So -- so the report
25 had a terms of reference that was approved by Council.

1 The report was undertaken by the CPUSB and the Town
2 together. We had joint project leaders, and it may
3 very well have caused concern. But it was Council's
4 direction and the support of the CPUSB that the report
5 be undertaken.

6 MR. FREDERICK CHENOWETH: It caused a
7 lot of concern amongst the parties affected by the
8 report. Fair to say?

9 MR. JOHN BROWN: Yeah, yeah. I know
10 it caused concern, yeah.

11 MR. FREDERICK CHENOWETH: I'm looking
12 at the comments made by the -- along with public
13 utilities people. And if we could turn for a moment
14 to -- oh, I'm not sure I have reference for the
15 report, a document reference. I can read from it if
16 that's of any assistance.

17 THE HONOURABLE FRANK MARROCCO: We'll
18 try to find it.

19 MR. FREDERICK CHENOWETH: All right.
20 Thank you. Thank you. Collingwood Public Utility
21 Board comments to the service agreement review,
22 presented to Council on January 15th, 2015.

23 MR. JOHN MATHER: EHH118.1

24 MR. FREDERICK CHENOWETH: Thank you.
25 And I think I'm looking at page -- what appears to be

1 page 1 of that report in the second paragraph.

2

3 (BRIEF PAUSE)

4

5 THE HONOURABLE FRANK MARROCCO: How
6 does it begin, Mr. Chenoweth?

7 MR. FREDERICK CHENOWETH: I'm sorry,
8 Your Honour?

9 THE HONOURABLE FRANK MARROCCO: How
10 does it begin?

11 MR. FREDERICK CHENOWETH: It begins --

12 THE HONOURABLE FRANK MARROCCO:
13 "Firstly"?

14 MR. FREDERICK CHENOWETH: --
15 "firstly." Yes.

16 THE HONOURABLE FRANK MARROCCO: Yes.
17 Okay.

18

19 CONTINUED BY MR. FREDERICK CHENOWETH:

20 MR. FREDERICK CHENOWETH: And the
21 second sentence of that -- and this is from the Public
22 Utility Services Board who would have been clearly
23 affected by this report:

24 "The Board is of the opinion that
25 the consultant may have either

1 misunderstood the original purpose
2 of the study or may have been
3 misdirected. The consultant's
4 report appears to contain numerous
5 inaccuracies or unsupported
6 conclusions. Regrettably, the
7 report was made public before these
8 flaws were addressed."

9 Is that your understanding of the -- of
10 the thoughts of the CPUSB with respect to this matter?

11 MR. JOHN BROWN: Yeah. I think I've
12 already explained that to Mr. Firman.

13 MR. FREDERICK CHENOWETH: Thank you.
14 So Mr. Firman who was one of the people who assisted
15 in the preparation of the terms of reference in this
16 report --

17 MR. JOHN BROWN: Correct.

18 MR. FREDERICK CHENOWETH: --
19 Mr. Firman was pretty hot about the results of the
20 report. Fair to say?

21 MR. JOHN BROWN: Oh, yes. He -- he
22 criticized the consultant at the podium. Yeah,
23 indeed.

24 MR. FREDERICK CHENOWETH: He wasn't
25 alone -- Mr. Firman was what? He was the -- he ran

1 the --

2 MR. JOHN BROWN: Yeah.

3 MR. FREDERICK CHENOWETH: -- that
4 organization?

5 MR. JOHN BROWN: He -- he was the top
6 person. But -- but as I explained earlier, it was
7 Mr. Firman's responsibility to read the report and get
8 whatever information that was available in water and
9 wastewater and advise the consultant of anything that
10 was wrong before it was released. Mr. Firman did not
11 do that.

12 MR. FREDERICK CHENOWETH: Mr. Firman
13 was not alone in his view of this report. It was a
14 view -- we had 13 pages of a criticism of the report
15 from Collus PowerStream and 27 pages from
16 Mr. Chadwick. There was a number of others that were
17 unhappy with the factual inaccuracies of the report
18 and the conclusions reached. Is that fair?

19 MR. JOHN BROWN: Well, I think
20 Mr. Firman -- if he believed it was inaccurate should
21 have told the consultants before they presented the
22 report publicly at Council.

23 MR. FREDERICK CHENOWETH: Isn't it
24 fair to say, sir, that a number of the other reports,
25 which you commissioned on these matters, met a similar

1 fate -- that the case of the Borden Ladner Gervais
2 report of Mr. Rodger was heavily criticized by those
3 that might be affected by the report and the
4 participants?

5 MR. JOHN BROWN: Yeah. And I think I
6 explained earlier on when you affect the
7 organizational change, there's a very strong
8 resistance to anybody changing anything. And I guess
9 that's a process which is difficult in organization
10 renewal but necessary nonetheless.

11 So it does not surprise me that the
12 people who were impacted by it might be concerned
13 about it and criticize it. That is quite usual when
14 you've got significant and fundamental organizational
15 change happening.

16 MR. FREDERICK CHENOWETH: They're
17 complaining about factual inaccuracies and matters of
18 that nature -- 50 pages of those kind of concerns out
19 of which the consultant in the Beacon report took
20 24 words.

21 MR. JOHN BROWN: Right. And that's
22 the focus, I would suggest, on the direction -- the
23 recommendations -- the consultant was making for
24 change.

25 MR. FREDERICK CHENOWETH: Isn't it

1 true that a similar fate was met by the BNA report
2 with respect to the Town's water and wastewater
3 operations. It was highly criticized as well.

4 MR. JOHN BROWN: Yes indeed. By the
5 same people, the people who were affected by it.

6 MR. FREDERICK CHENOWETH: And they
7 were concerned about -- about factual inaccuracies,
8 misguided conclusions?

9 MR. JOHN BROWN: Well, I guess they
10 had concerns.

11 MR. FREDERICK CHENOWETH: Your Honour,
12 those are my questions of this witness. Thank you.

13 THE HONOURABLE FRANK MARROCCO: Thank
14 you, Mr. Chenoweth. Mr. Marron, have you decided
15 whether you've got any questions?

16 MR. GEORGE MARRON: I have, and I
17 appreciate Your Honour's indulgence, and I have no
18 questions.

19 THE HONOURABLE FRANK MARROCCO: Thank
20 you. Ms. Bain...?

21

22 CROSS-EXAMINATION BY MS. BELINDA BAIN:

23 MS. BELINDA BAIN: Good afternoon,
24 Mr. Brown. My name is Belinda Bain. I'm one of the
25 lawyers for PowerStream.

1 MR. JOHN BROWN: Perfect.

2 MS. BELINDA BAIN: We've been speaking
3 about the Beacon report, which was commissioned, as I
4 understand it, in 2014. And you've indicated to us
5 that at the time that the Beacon report was underway,
6 you had been provided with a copy of the 2003 Shared
7 Services Agreement, correct?

8 MR. JOHN BROWN: No. I think I got
9 the 2003 Shared Services Agreement before that. I --
10 I'm pretty sure it was before that.

11 MS. BELINDA BAIN: Okay. And you had
12 indicated that prior to Beacon completing its report,
13 you had actually sought legal advice as to the status
14 of the 2003 Shared Services Agreement.

15 Did I hear you right?

16 MR. JOHN BROWN: Yes. Because --
17 because we discover -- it was provided to us in, I
18 think, 2000 -- was it '13? I can't remember.

19 Anyways, it was provided to us. It was
20 dated 2003. I think the term was stated at 2006. So
21 the question is -- was, is this still current or not?

22 And I asked Leo Longo -- and you've
23 probably seen his advice -- that it was a roll-on
24 agreement, and it was current. And I think that
25 conclusion was reflected in Miller Thomson's judgment

1 on the currency of the agreement as well.

2 So -- so the agreement was current even
3 though Council had never seen it.

4 MS. BELINDA BAIN: And so you went to
5 Aird & Berlis in or around 2013/2014 to seek an
6 opinion on the currency of the 2003 Shared Services
7 Agreement. Is that right?

8 MR. JOHN BROWN: I went to Leo Longo,
9 yeah. He's in Aird & Berlis.

10 MS. BELINDA BAIN: Okay. And did you
11 ask specifically about what impact, if any, the share
12 transaction had on the Shared Services Agreement?

13 MR. JOHN BROWN: Ask Leo Longo that?

14 MS. BELINDA BAIN: Or anyone at Aird &
15 Berlis?

16 MR. JOHN BROWN: I asked Leo Longo
17 that?

18 MS. BELINDA BAIN: Correct.

19 MR. JOHN BROWN: No. 'Cause Leo Longo
20 said he wasn't the Town's lawyer. So all I asked him
21 was, can you advise as to whether this agreement is
22 current or not? And he provided that advice.

23 MS. BELINDA BAIN: In speaking with
24 Leo Longo, if you had wanted to know what the current
25 situation with respect to shared services was

1 post-transaction, would it not have been logical to
2 you to ask the question, how were the shared services
3 dealt with in the context of the transaction selling
4 50 percent of the utility?

5 MR. JOHN BROWN: Well, it -- I thought
6 the share -- I didn't see how the shared services were
7 dealt with, other than it said that we were going to
8 update it, and it has to be market-based. And so
9 there was a whole -- there's a whole requirement to
10 update the Shared Services Agreement, make it
11 market-based, and exactly what we thought the 2000
12 agreement was, but it wasn't.

13 MS. BELINDA BAIN: And so in the
14 context of working with Beacon to assess the shared
15 services, did it not occur to you to ask the question
16 how the Shared Services Agreement had been dealt with
17 in the context of the transaction in 2012?

18 MR. JOHN BROWN: It might have. It
19 didn't. It didn't.

20 MS. BELINDA BAIN: And you'd indicated
21 before that the July 31st, 2012 letter agreement was
22 not in the closing book. Was that your evidence?

23 MR. JOHN BROWN: Yeah. That's my
24 recollection that it wasn't included in the closing
25 book. I could be wrong, but that's my recollection.

1 MS. BELINDA BAIN: Okay. Can we pull
2 up, please, ALE4323.

3

4 (BRIEF PAUSE)

5

6 MS. BELINDA BAIN: So this is the
7 index to the closing book of the purchase of shares of
8 Collingwood Utility Services Corp. by PowerStream Inc.
9 from the corporation of the Town of Collingwood. So
10 this is the index to the closing book in connection
11 with the transaction. Do you see that?

12 MR. JOHN BROWN: Yeah.

13 MS. BELINDA BAIN: Okay. Can we
14 scroll down, please, to tab 29.

15

16 (BRIEF PAUSE)

17

18 MS. BELINDA BAIN: So you'll see there
19 that tab 29 is the side letter between the purchaser,
20 the vendor, the corporation, Collus Solutions and
21 Energy, re-amendment of or entry into service
22 agreements. Do you see that?

23 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

24 MS. BELINDA BAIN: So that is the
25 July 31st, 2012 side agreement, correct?

1 MR. JOHN BROWN: Yeah. That's what it
2 says.

3 MS. BELINDA BAIN: Okay. And it is in
4 the closing book, correct?

5 MR. JOHN BROWN: Yeah. Well, if it
6 says it's in the closing book, then that's fine. I
7 haven't got the closing book, and I can't look it up.
8 But it says it's in it, and I take your word for it.

9 MS. BELINDA BAIN: Okay. And so that
10 was a document that was considered and formed part of
11 the underlying transaction, correct?

12 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

13 MS. BELINDA BAIN: So, if you had
14 asked the question when you were speaking to Aird &
15 Berliss as Beacon is doing its analysis as to how the
16 shared services had been dealt with in the
17 transaction, you would then have been alerted to the
18 existence of the July 31st, 2012, letter agreement,
19 correct?

20 MR. JOHN BROWN: I -- I might have
21 been. But by the same token, I would imagine that
22 everybody who was aware of this letter would, when
23 they were being interviewed by Beacon 2020, correct
24 their misunderstanding that the 2000 agreement wasn't
25 measured by this document.

1 So, yeah, I guess you're right. But I
2 -- I would have thought that that oversight could have
3 easily been corrected by all of the people who knew of
4 its existence and the fact that it was in the closing
5 book.

6 MS. BELINDA BAIN: And that's another
7 thing I wanted to talk to you about, was who was
8 interviewed in connection with the Beacon report.
9 Maybe we can turn up the Beacon report. It's
10 CPS7337_1.

11

12 (BRIEF PAUSE)

13

14 MS. BELINDA BAIN: If we can scroll
15 down, please, to page 49. Oh, sorry, that's not
16 right. I'm looking for the appendix.

17 THE HONOURABLE FRANK MARROCCO:
18 There's appendix 3 on the screen now.

19 MS. BELINDA BAIN: Okay. If you could
20 scroll down a little farther, please, just stopping
21 there.

22

23 CONTINUED BY MS. BELINDA BAIN:

24 MS. BELINDA BAIN: So, on page 49 here
25 we have:

1 "Structured interviews were
2 conducted with a total of twenty-two
3 (22) individuals to capture the
4 views of both service providers and
5 service recipient groups.
6 Interviewees included Town
7 councillors current and former,
8 Collingwood Public Utility Service
9 Board members current and former,
10 managers and staff Collus
11 PowerStream Solutions Corp. service
12 providers, managers and staff
13 Collingwood Public Utilities service
14 clients, managers and staff Town of
15 Collingwood service clients."

16 You'll agree with me that the -- there
17 were no Board members of Collus PowerStream
18 interviewed by Beacon, were there?

19 MR. JOHN BROWN: I -- I can't confirm
20 that. I don't know who was interviewed. They had
21 free reign to interview any and everybody. And I
22 think Marcus developed a list of all of the people
23 they might want to contact and -- but they were given
24 free reign to contact whoever they wanted.

25 MS. BELINDA BAIN: That's interesting.

1 So, you don't know who they interviewed?

2 MR. JOHN BROWN: No, I don't.

3 MS. BELINDA BAIN: Okay. So, when you
4 said earlier that they interviewed Brian Bentz and
5 Dennis Nolan, you didn't know that, did you?

6 MR. JOHN BROWN: I think I learned
7 that after the fact, that they talked to Brian Bentz
8 and Dennis Nolan.

9 MS. BELINDA BAIN: Okay. Sorry,
10 you've just told me that you don't know who they
11 interviewed?

12 MR. JOHN BROWN: No, I don't know who
13 they interviewed.

14 MS. BELINDA BAIN: Okay.

15 MR. JOHN BROWN: I didn't know then.
16 But, yeah, perhaps -- perhaps you're correcting me.
17 Perhaps, yeah, they didn't interview Brian Bentz or
18 Dennis Nolan, but my understanding was that they did.

19 MS. BELINDA BAIN: So, you're saying
20 perhaps --

21 MR. JOHN BROWN: Yes, I -- I know what
22 I'm --

23 MS. BELINDA BAIN: -- perhaps that's
24 correct?

25 MR. JOHN BROWN: Yeah, perhaps it's

1 correct.

2 MS. BELINDA BAIN: Where -- where did
3 you generate the -- that understanding?

4 MR. JOHN BROWN: Well, I -- I -- in
5 talking to Rink (phonetic), I think his name was, the
6 gentleman who did the interviews. I think my
7 understanding was that he talked to all of the
8 significant, you know, players in the -- in the --
9 related to this study.

10 MS. BELINDA BAIN: Okay. You're not
11 sure about that?

12 MR. JOHN BROWN: No, I'm not sure.

13 MS. BELINDA BAIN: And certainly,
14 you'll agree with me that the report, when it sets out
15 who they interviewed, does not mention anyone at
16 PowerStream and does not mention any members of the
17 Board of Collus PowerStream, correct?

18 MR. JOHN BROWN: No, it doesn't. I
19 don't think it was made public. I don't think it was
20 made public who was interviewed.

21 MS. BELINDA BAIN: You don't think
22 what was made public?

23 MR. JOHN BROWN: The list of people
24 who were interviewed.

25 MS. BELINDA BAIN: Well, certainly,

1 it's set out here in the report, you'll agree with me?

2 MR. JOHN BROWN: The names of the
3 individuals.

4 MS. BELINDA BAIN: Okay. You'll agree
5 with me that Brian Bentz and Dennis Nolan are neither
6 Town councillors, Collingwood Public Utility Services
7 Board members, managers and staff of Collus
8 PowerStream Solutions, managers and staff of
9 Collingwood Public Utilities, or managers or staff of
10 the Town of Collingwood?

11 They don't fit in any of those buckets,
12 do they?

13 MR. JOHN BROWN: They don't. But I
14 can't tell you for sure that they weren't talked to.
15 You'd have to check that with the consultant.

16 MS. BELINDA BAIN: Well, that's what
17 I'm getting at. Thank you very much, sir.

18

19 (BRIEF PAUSE)

20

21 MS. BELINDA BAIN: Could we pull up,
22 please, ALE50230?

23

24 (BRIEF PAUSE)

25

1 MS. BELINDA BAIN: So, Mr. Mather took
2 you to this letter before. This is the correspondence
3 by which Mr. Bentz provided you with a copy of the
4 July 31st, 2012, letter agreement, correct?

5 MR. JOHN BROWN: Yeah.

6 MS. BELINDA BAIN: And it suggests
7 that Dan Horchik and Mr. Bentz meet with you and
8 Deputy Mayor Saunderson to move forward with the
9 shared services agreement, correct?

10 MR. JOHN BROWN: Correct.

11 MS. BELINDA BAIN: And you did meet
12 with Mr. Bentz and Mr. Horchik, correct?

13 MR. JOHN BROWN: Yeah, I met with Mr.
14 Bentz many times. I met with the group a couple of
15 times. It was just too unwieldy getting people
16 together. We couldn't move fast.

17 So, Mr. Bentz and I met and I reported
18 back to the -- the other people in the group --

19 MS. BELINDA BAIN: Okay. And you've
20 described that Mr. Bentz was -- was helpful and
21 cooperative in moving forward with that issue,
22 correct?

23 MR. JOHN BROWN: Yeah. He's extremely
24 professional, very good to deal with.

25

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: Could we go now,
4 please, to ALE50228?

5

6 (BRIEF PAUSE)

7

8 MS. BELINDA BAIN: This is an email
9 from Cindy Shuttleworth to yourself dated May 12th,
10 2015, in which she states:

11 "Mr. Brown, the following
12 information has been gathered in
13 regards to the sale of 50 percent of
14 Collus by the Town of Collingwood to
15 PowerStream. It is awaiting pickup
16 at our front desk or links have been
17 provided below."

18 Did you receive that email?

19 MR. JOHN BROWN: I have no reason to
20 doubt I didn't.

21 MS. BELINDA BAIN: And did you attend
22 to pick up the documents that had been prepared for
23 you?

24 MR. JOHN BROWN: I think they were
25 picked up by a bylaw officer.

1 MS. BELINDA BAIN: And provided to
2 you?

3 MR. JOHN BROWN: I'm not a hundred
4 percent sure.

5 MS. BELINDA BAIN: You have no reason
6 to doubt it?

7 MR. JOHN BROWN: No.

8 MS. BELINDA BAIN: Can we go now,
9 please, to ALE50224?

10

11 (BRIEF PAUSE)

12

13 MS. BELINDA BAIN: And if we could
14 scroll down to the bottom first, please. Oh, that's
15 all there is. Could we go instead to 50223, please?

16

17 (BRIEF PAUSE)

18

19 MS. BELINDA BAIN: And scroll down on
20 that to the bottom.

21

22 (BRIEF PAUSE)

23

24 MS. BELINDA BAIN: Up a little
25 further, please.

1 (BRIEF PAUSE)

2

3 MS. BELINDA BAIN: Okay, there we go.
4 Can we just look at the top of this email in terms of
5 date and time? Thank you. So, we're looking at an
6 email from Pam Hogg to yourself and Sara Almas dated
7 May 28th, 2015?

8 MR. JOHN BROWN: M-hm.

9 MS. BELINDA BAIN: The subject is:
10 "Town records related to the sale of
11 shares to PowerStream."

12 Do you recognize this email?

13 MR. JOHN BROWN: Yeah.

14

15 (BRIEF PAUSE)

16

17 MR. JOHN BROWN: Can I make a comment
18 on the email?

19 MS. BELINDA BAIN: You can make a
20 comment.

21 MR. JOHN BROWN: Okay. So, it says:
22 "We've once again gone through our
23 files and believe we have provided
24 all the information that you've
25 requested.

1 You've specifically asked about
2 advice and decisions made by the
3 steering committee relating to the
4 establishment of a specific number
5 of shares which was decided should
6 be sold... KPMG recommended a sale
7 of shares up to 50 percent."

8 I'm not sure that I have seen any
9 documentation that underscores the correctness of that
10 statement.

11 MS. BELINDA BAIN: And that's not what
12 I wanted to ask you about, but thank you for bringing
13 that to our attention. If we could -- do you recall
14 receiving this email?

15 MR. JOHN BROWN: I think I do, yeah.

16 MS. BELINDA BAIN: Okay. Can we
17 scroll down, please? So, in it, Ms. Hogg is providing
18 you with information that you have requested of her,
19 correct?

20 MR. JOHN BROWN: Correct.

21 MS. BELINDA BAIN: And she's -- in
22 doing so, she sets out key dates which I understand to
23 be key dates leading to the transaction, correct, and
24 then also setting out meetings which occurred and
25 providing notes with respect to the documentation in

1 connection with each of those events/meetings,
2 correct?

3 MR. JOHN BROWN: Right.

4 MS. BELINDA BAIN: Okay. And amongst
5 the meetings are the meetings of the Strategic
6 Partnership Task Team. Do you see that?

7 MR. JOHN BROWN: (NO AUDIBLE
8 RESPONSE).

9 MS. BELINDA BAIN: As an example,
10 August 3rd, 2011, was the first meeting of the task
11 team. Do you see that?

12 MR. JOHN BROWN: M-hm.

13 MS. BELINDA BAIN: And beside that,
14 she said:

15 "Meeting was held to review process.

16 Minutes have been provided to you."

17 MR. JOHN BROWN: M-hm.

18 MS. BELINDA BAIN: Do you see that?

19 MR. JOHN BROWN: So, she had provided
20 you with the minutes from the August 3rd, 2011, task
21 team meeting?

22 MR. JOHN BROWN: Obviously.

23 MS. BELINDA BAIN: Okay. And with
24 respect to August 29th, 2011, you'll see:

25 "Second meeting with Strategic

1 Partnership Task Team."

2 Then further note is:

3 "Meeting was held to review process.

4 Minutes have been provided to you."

5 So, similarly, you had those minutes,
6 correct?

7 MR. JOHN BROWN: Looks like it, yeah.

8 MS. BELINDA BAIN: Okay. Similarly,
9 September 28th, 2011, third meeting of strategic
10 partnership task team, and she advises you at the end
11 of the further note, "no minutes were taken", so you
12 had the information there were no minutes from that
13 meeting, correct? Okay.

14 Can we scroll down to just the rest of
15 the task team meetings? So November 23rd, fourth
16 meeting of task team, she advises in her notes "no
17 minutes were taken", so you were aware at that point
18 there were no minutes from the November 23rd meeting,
19 correct?

20 MR. JOHN BROWN: Yes.

21 MS. BELINDA BAIN: Okay, and then
22 finally November 28th, fifth meeting of strategic
23 partnership task team, again, "no minutes were taken",
24 do you see that? Okay.

25 Can we scroll up now, please? So the

1 email above it, it doesn't have a header on it, but
2 this appears to be a response from you back to Pam
3 that same day. And I say that same day, because if we
4 scroll up, you'll see that Pam has forwarded on to
5 Viney Metha on May 28th.

6 Do you see that? Yes?

7 MR. JOHN BROWN: Yes.

8 MS. BELINDA BAIN: And so do you agree
9 with me then, if we go back to the body of what
10 appears to -- that is your response back to Pam that
11 same day. Is that right?

12 MR. JOHN BROWN: Yes, but I -- I
13 haven't seen this in a long time, so.

14 MS. BELINDA BAIN: Okay, take your
15 time.

16 MR. JOHN BROWN: Okay.

17 MS. BELINDA BAIN: Okay. So that was
18 your response to Pam that same day?

19 MR. JOHN BROWN: Obviously.

20 MS. BELINDA BAIN: Okay, coming after
21 she had sent you that email with the chart setting out
22 all the information, correct? Yes?

23 MR. JOHN BROWN: Yes.

24 MS. BELINDA BAIN: Okay. And so you
25 see item number 2 down in your response:

1 "Were minutes taken of the steering
2 committee meetings, and if so, can I
3 have copies of all of these."

4 Do you see that?

5 MR. JOHN BROWN: I do.

6 MS. BELINDA BAIN: And you'll
7 remember, we just looked at the email from Pam that
8 day where she very carefully sets out each of the
9 meetings and the fact that she's either sent you the
10 minutes already or that there weren't any minutes,
11 correct?

12 MR. JOHN BROWN: Right. Correct.

13 MS. BELINDA BAIN: Yes?

14 MR. JOHN BROWN: Correct.

15 MS. BELINDA BAIN: So you'll agree
16 with me that you're asking her for information that
17 she's already provided you?

18 MR. JOHN BROWN: Right. And she
19 complained about that and I apologized about that.

20 She told me I've given you this
21 information more than once.

22 MS. BELINDA BAIN: And so -- but why
23 did you ask for it again on the very same day when
24 she'd set out in the chart that she'd already provided
25 it to you?

1 MR. JOHN BROWN: Obviously I hadn't --
2 I -- if it was the very same day, obviously I hadn't
3 analysed it and digested it all and I've obviously
4 gone ahead and -- and asked for information that had
5 already been provided. So you're right.

6 MS. BELINDA BAIN: So you hadn't
7 bothered to read her email?

8 MR. JOHN BROWN: Well, I hadn't read
9 it. I don't know if I hadn't bothered to read it, but
10 at that point in time I hadn't read it, and I
11 shouldn't have sent an email with this content.

12 So, I agree with you. I'm not arguing.

13 MS. BELINDA BAIN: Okay. The last
14 line -- so items 3 and 6 of your email, item 3 is:

15 "If no minutes were taken, how were
16 decisions made."

17 And then number 6 is:

18 "How were decisions made."

19 That's repetitive, correct?

20 MR. JOHN BROWN: Yes. But I think
21 just to comment on that, I think I was -- I was
22 searching blind for information because, as I've
23 explained earlier on, I had very little information to
24 go on, I couldn't get the story from anybody in
25 particular and I had to piece together lots of

1 requests for information to find the story out.

2 So -- so the point is I was looking for
3 information and piecing it together. But the core
4 question which she did not answer was who was it that
5 recommended that the 50 percent sale was the option
6 that they are going to recommend to Council and on
7 what basis was that recommendation made, that is
8 really what I was looking for and that is not included
9 in the information that she provided.

10 MS. BELINDA BAIN: To say that she
11 hadn't provided you information --

12 MR. JOHN BROWN: No, it's --

13 MS. BELINDA BAIN: I mean, we've
14 looked at the fact that -- sorry.

15 MR. JOHN BROWN: I'm sorry.

16 MS. BELINDA BAIN: I mean, we've
17 looked at the fact that she had provided you
18 information which you hadn't bothered to look at
19 before responding to her.

20 MR. JOHN BROWN: Yes, that's true.
21 And for that, I apologize, but she did not -- she did
22 not enlighten me how the decision was made to decide
23 on 50 percent, who made it, and on what basis.

24 MS. BELINDA BAIN: At the time Ms.
25 Hogg is an executive assistant at Collus PowerStream,

1 correct?

2 MR. JOHN BROWN: Yes.

3 MS. BELINDA BAIN: Okay, and if we
4 looked -- let's just look at the last line of your
5 email, which states:

6 "If not, how was Council enabled to
7 prepare not the presentations?"

8 I take it there's a typo in there.

9 "Remembering that this was an \$8
10 million transaction."

11 Do you see that?

12 MR. JOHN BROWN: Yes, I do.

13 MS. BELINDA BAIN: How do you expect
14 Ms. Hogg, the executive assistant at Collus
15 PowerStream, to be able to answer whether Council was
16 adequately informed at the time of the transaction?
17 That's not in her bailiwick, that's not in her --

18 MR. JOHN BROWN: Well, that being the
19 case, did she refer it to Mr. Houghton or anybody else
20 who was in a position to answer if that had of been,
21 you know, over her head or beyond her pay grade then,
22 you know, I would have imagined she would've referred
23 it to Mr. Houghton or somebody else who could answer.

24 MS. BELINDA BAIN: But certainly it
25 wouldn't have been appropriate for someone in your

1 senior position to be continually asking someone in
2 Ms. Hogg's position for that type of information, if
3 you knew it was over her head?

4 MR. JOHN BROWN: I didn't say I knew
5 it was over her head, I said I asked her the question
6 and I -- and I'm asking the question if it was over
7 her head, which is may very well have been, would she
8 not, having had the responsibility she had for all the
9 years she had them, working so closely with Mr.
10 Houghton and participating in all of the task force
11 meetings, not been able to refer it to whoever it was
12 who could answer it and let me know that?

13 MS. BELINDA BAIN: Well, I have your
14 answer, sir.

15 Can we pull up ALE8096? And if we
16 could scroll down, please. Down further. I'm looking
17 for a July 12th email from Mr. Brown. Sorry, June.
18 Here we go.

19 MR. JOHN MATHER: Open the document in
20 native format.

21 MS. BELINDA BAIN: So we have on the
22 screen what I want, we're fine, thank you.

23 MR. JOHN MATHER: It's just the text
24 is cut off, so I'm trying to open it another way so
25 you can see the full text.

1 MS. BELINDA BAIN: Oh, thanks John.

2 THE HONOURABLE FRANK MARROCCO: It's
3 now a blank screen.

4

5 CONTINUED BY MS. BELINDA BAIN:

6 MS. BELINDA BAIN: So just up a tiny
7 bit so we can see that it's from Mr. Brown. Thank
8 you.

9 So this is a June 12th, 2015 email from
10 yourself to Pam Hogg. Do you see that?

11 MR. JOHN BROWN: I do.

12 MS. BELINDA BAIN: Okay. And it says:

13 "Hi Pam, can you please provide me
14 with a list of the members of the
15 committee which advised Council with
16 regard to its share sale of
17 PowerStream and the Council report
18 recommendation approved motion of
19 Council which authorized them to
20 undertake this responsibility."

21 Do you see that?

22 MR. JOHN BROWN: I do.

23 MS. BELINDA BAIN: So on June 12th,
24 2015, you're asking Ms. Hogg to tell you who the
25 members of the task team were and to provide you with

1 the staff report and the bylaw authorizing the
2 transaction, is that right?

3 MR. JOHN BROWN: Yeah, any information
4 I could get to help me try and understand the -- the
5 transaction, how it happened.

6 MS. BELINDA BAIN: Okay. And -- and
7 we've seen before that you had already received and
8 you agreed that in May you had already received the
9 minutes from the -- all of the task team meetings for
10 which minutes were available, correct?

11 MR. JOHN BROWN: Yes.

12 MS. BELINDA BAIN: Can we pull up,
13 please, CPS2342?

14 You'll see that these are -- no, these
15 aren't the minutes, actually. Can we pull up the --
16 the minutes from the August 3rd, 2011 task team
17 meeting? Or are these? These are. Okay.

18 So these are the minutes that you would
19 have received, sir, from the task team meeting?

20 MR. JOHN BROWN: If she sent them,
21 yes.

22 MS. BELINDA BAIN: Well, you told me
23 earlier that you did receive them in May, you agreed
24 with me?

25 MR. JOHN BROWN: Yes.

1 MS. BELINDA BAIN: Yes. Okay.

2 And you'll see there at the top of the
3 minutes a listing of the task team, correct?

4 MR. JOHN BROWN: Correct.

5 MS. BELINDA BAIN: So when you
6 received the minutes of the task team in May, I take
7 it you would have reviewed them?

8 MR. JOHN BROWN: Yes.

9 MS. BELINDA BAIN: And so you knew who
10 the members of the task team were, because you'd seen
11 the minutes?

12 MR. JOHN BROWN: Correct.

13 MS. BELINDA BAIN: And so why were you
14 asking Pam who the members of the task team were in
15 June?

16 MR. JOHN BROWN: So -- so the whole
17 issue of me asking for information more than once has
18 already been -- was raised with Pam. She pointed it
19 out a number of times and I conceded to the fact that
20 I may have -- I did ask for information more than
21 once, and I apologized for that, but, you know, that's
22 acknowledged. I mean, the point you're making was
23 acknowledged and that's been acknowledged for a long
24 time.

25 MS. BELINDA BAIN: And so you --

1 you're acknowledging you didn't need to continually
2 ask Ms. Hogg for this information that you already
3 had, correct?

4 MR. JOHN BROWN: Acknowledging the
5 fact that I asked a number of times for information
6 that she had already sent me and I apologized.

7 MS. BELINDA BAIN: Another thing that
8 you asked Ms. Hogg for in June that we just saw was a
9 copy of the staff report relating to the transaction,
10 correct?

11 MR. JOHN BROWN: Is this the report
12 from the CAO to --

13 MS. BELINDA BAIN: Correct.

14 MR. JOHN BROWN: -- recommend the
15 report to Council? Yes.

16 MS. BELINDA BAIN: You were asking Ms.
17 Hogg for that in June. We just saw that in the email,
18 correct?

19 MR. JOHN BROWN: Yeah, yeah.

20 MS. BELINDA BAIN: Okay. And the
21 staff report is something that's on the Town website,
22 correct?

23 MR. JOHN BROWN: I wasn't aware of
24 that.

25 MS. BELINDA BAIN: Okay.

1 MR. JOHN BROWN: I was learning --

2 MS. BELINDA BAIN: At the time --

3 MR. JOHN BROWN: I was learning at the
4 time.

5 MS. BELINDA BAIN: At the time that
6 you're the CAO of the Town, correct?

7 MR. JOHN BROWN: Right.

8 MS. BELINDA BAIN: You have access to
9 staff reports as CAO of the Town, don't you?

10 MR. JOHN BROWN: All of the
11 information of the Town I was entitled to.

12 MS. BELINDA BAIN: And in fact you
13 could probably get it more easily than Ms. Hogg who
14 doesn't work at the Town. She works at Collus-
15 PowerStream, correct?

16 MR. JOHN BROWN: She did work at
17 Collus -- she does work at Collus-PowerStream.

18 MS. BELINDA BAIN: And so why would
19 you be asking Ms. Hogg to send you the staff report
20 when you as CAO of the Town could easily get it
21 yourself?

22 MR. JOHN BROWN: I guess I asked her
23 for it.

24 MS. BELINDA BAIN: And similarly, you
25 in June asked Ms. Hogg for a copy of the bylaw

1 authorizing the Transaction. I take it that as well
2 as CAO of the Town, you easily could have gained
3 access to.

4 MR. JOHN BROWN: I guess I could have
5 but -- you will recall, I did mention that I -- I went
6 to the Clerk as soon as this whole issue started to
7 bubble up and I asked for the file and there was no
8 file. There was no file relating at all to this
9 transaction.

10 So while you're saying all this
11 information may have been available, the fact that
12 there was no information at all with the Town,
13 according to the Clerk, then I started searching for
14 information that I would otherwise have expected to be
15 able to be provided by the Clerk in a bundle,
16 including all of the minutes of the task force.

17 You know, why were those minutes of the
18 task force not -- not in the Clerk's office? Why
19 could I not go to the Clerk and get a complete file?
20 Why were we not provided with a closing book? Why did
21 we not have any of the information one would normally
22 expect for an \$8 million transaction? I guess that's
23 the fundamental concern.

24 Had I had all that information where
25 virtually all municipalities would store it, as

1 accepted practice, then I wouldn't have needed to ask
2 anybody anything. So all of this all results from the
3 fact that the information about that share sale was
4 not stored with the Clerk, was not available to
5 anybody, like myself who's entitled to see it. I had
6 to go searching, I had to go seeking for explanations,
7 write unnecessary memos to a lot of people and
8 annoying them.

9 The fundamental problem here was, the
10 responsibility of a municipality is to keep records.
11 Why were those records not deposited in the Town? Why
12 were they kept in a company -- in a company that was
13 now just a joint company that we had only 50 percent
14 ownership in? Why were none of those documents
15 disclosed? Why did I have to ask at all? And I admit
16 I asked for them repeated times and I apologize for
17 that, but why was that necessary?

18 It was necessary because of the total
19 void of the history of this transaction and all of the
20 matters related to it, including the minutes of the
21 task force and its members. Why were none of those in
22 the Town's archives?

23 MS. BELINDA BAIN: It seems to me,
24 based on that answer, that you were just a little
25 irritated that this information wasn't all in one

1 place and easy for you to look at.

2 MR. JOHN BROWN: No. I -- I -- well,
3 if I give the impression I was irritated, I guess I
4 was shocked. Not irritated, I was shocked that an \$8
5 million transaction in a municipality could have no
6 records whatsoever, and I had to go and look for them.
7 That was shocking.

8 MS. BELINDA BAIN: You said in your
9 evidence earlier today, you actually said it more than
10 once, that you were unaware of the regional growth
11 strategy underlying the Transaction.

12 Is that right?

13 MR. JOHN BROWN: Yes.

14 MS. BELINDA BAIN: Could we pull up,
15 please, ALE50224? Oh, sorry, .2.

16

17 (BRIEF PAUSE)

18

19 MS. BELINDA BAIN: And I think you
20 also said in your evidence that you weren't -- you
21 didn't believe that Council had been made aware of the
22 regional growth strategy.

23 Was that your evidence?

24 MR. JOHN BROWN: No. I think my
25 evidence was that I would expect, if there was a

1 regional growth strategy, that that wouldn't be an
2 independent decision of the hydro company, but rather
3 it would be a decision of the owner of the hydro
4 company, which is the municipality, governance of
5 which is vested in the Council.

6 MS. BELINDA BAIN: So if we can scroll
7 down, please, to -- so -- sorry, this document is a
8 copy of a presentation provided by Mr. Houghton to
9 Council.

10 Do you see that?

11 MR. JOHN BROWN: In 2011, yeah.

12 MS. BELINDA BAIN: In 2011. So pre-
13 closing, correct?

14 MR. JOHN BROWN: yes.

15 MS. BELINDA BAIN: Okay. If we can
16 scroll down to page 2, the first bullet point there.

17 "A strategic partner would value the
18 expertise and reputation of Collus
19 as well as its strategic geographic
20 location as the foundation for the
21 development of a regional electrical
22 utility based in Collingwood to
23 serve the Georgian Bay area and
24 beyond."

25 Do you see that?

1 MR. JOHN BROWN: I do.

2 MS. BELINDA BAIN: So there clearly
3 was a discussion with respect to regional growth on
4 October 3rd, 2011, correct?

5 MR. JOHN BROWN: But was there a
6 Council decision in favour of that?

7 MS. BELINDA BAIN: My point to you,
8 sir, is the fact that that was discussed. This
9 PowerPoint was provided to you.

10 If we can go back to the email from Pam
11 Hogg dated May 28th.

12

13 (BRIEF PAUSE)

14

15 MS. BELINDA BAIN: And it's -- I think
16 it's 50224.

17 You'll see there, sir, that on May
18 28th, 2015, in her email to you, this slide
19 presentation was one of the -- the strategic
20 partnership update to Council, you'll see it was
21 attached, correct?

22 MR. JOHN BROWN: Right.

23 MS. BELINDA BAIN: Okay. And so you
24 have received a copy of this presentation, showing
25 that Council had been advised of the regional growth

1 strategy. You knew that back in May 2015, correct?

2 MR. JOHN BROWN: Is it a regional
3 growth strategy approved by Council?

4 MS. BELINDA BAIN: That's not my
5 question to you, sir.

6 So your -- your evidence earlier was
7 that you didn't know anything about a regional growth
8 strategy. You said that this morning, sir.

9 MR. JOHN BROWN: Yeah, and I didn't.

10 MS. BELINDA BAIN: Okay. But we see
11 here that you had received a copy of this presentation
12 in May 2015.

13 MR. JOHN BROWN: Yeah. Of a document
14 presented to Council in 2011, and I -- I obviously
15 missed that in the document, you know, so -- but --

16 MS. BELINDA BAIN: Did you bother to
17 read it, sir?

18 MR. JOHN BROWN: I'm not sure that I
19 read it -- that I read it all. There was material --
20 a lot of material on this matter and I was the CAO of
21 the Town. I wasn't just dedicated to this one (1)
22 project.

23 So I read as much as I could and
24 clearly I overstepped myself by asking for stuff more
25 than once. That's not an issue. But the fact -- if

1 there was a regional and growth strategy, in all of
2 the organizations I've worked for, it would be a
3 significant issue which would be subject to a public
4 presentation of Council, which would explain a
5 recommendation by the hydro company to embark on a
6 regional and growth strategy, and that would be backed
7 up by a consultant's report which outlined the
8 opportunities to do that.

9 I mean, would the Town have financially
10 been able to participate in a regional growth
11 strategy? What were the financial implications of the
12 regional growth strategy?

13 A municipality is not a business, and
14 so I could not conceive a comment in a report from Mr.
15 Houghton, in the absence of any consulting advice
16 which documented and argued and made the case to
17 persuade Council to embark on such a strategy, and
18 particularly a fiscal impact analysis of any risks
19 that might be involved as a municipality without that.

20 So if I missed it, then I missed it
21 because it would not be consistent with any policy
22 development that I've been exposed to in my career in
23 such a significant -- such a position. So in the
24 absence of a Council decision, then I would suggest
25 was no regional growth strategy. Maybe an aspiration

1 that there might be one, but there definitely wasn't
2 one endorsed by the Town.

3 MS. BELINDA BAIN: Just before I
4 conclude, Mr. Brown, I wanted to ask you a few
5 questions about the shotgun provision in the
6 underlying agreements.

7 As I understand it, in order for the
8 EPCOR transaction to take place, it was actually the
9 Town that made use of the shotgun provision in order
10 to gain back 100 percent of the shares to sell to
11 EPCOR, correct?

12 MR. JOHN BROWN: I guess that's the
13 way Mr. Rodger advised.

14 MR. WILLIAM MCDOWELL: Well, we're
15 going to --

16 MR. JOHN BROWN: Oh, sorry.

17 MR. WILLIAM MCDOWELL: -- very quickly
18 stray into --

19 THE HONOURABLE FRANK MARROCCO: Well,
20 the witness has answered this question but we'll
21 refrain --

22 MR. WILLIAM MCDOWELL: Really
23 cautioning My Friend more than the witness.

24 THE HONOURABLE FRANK MARROCCO: Yeah.
25 But the answer's been given.

1 CONTINUED BY MS. BELINDA BAIN:

2 MS. BELINDA BAIN: You expressed some
3 concern in your evidence earlier with respect to the
4 issue of a 20-day notice period in the underlying
5 agreement concerning shotgun clause, correct?

6 MR. JOHN BROWN: Yeah.

7 MS. BELINDA BAIN: Are you aware of
8 the fact that it was in fact Aird & Berlis that first
9 insert the 20-day notice period into the agreement?

10 MR. JOHN BROWN: I have no idea how it
11 got there. That was one of the many questions that I
12 had. How did that get in there? How do we get a
13 right of first refusal to PowerStream? How do we sell
14 50 percent? Who actually was the person that
15 recommended, as opposed to it's kind of bubbling up
16 out of a meeting that notes weren't taken?

17 There -- that was part of my question -
18 - my questions. And if I had had a comprehensive file
19 in the Town's possession with all of the documents the
20 Town was invited to, I wouldn't have had to ask Ms.
21 Hogg or Mr. Houghton anything. It all would have been
22 there and I would have read it, but that was not the
23 case.

24 MS. BELINDA BAIN: You -- you
25 expressed earlier a frustration at not having someone

1 at the Town who could explain to you how the
2 Transaction had unfolded.

3 Why did you not simply call Ron Clark
4 at Aird & Berlis to ask him?

5 MR. JOHN BROWN: Because I didn't know
6 Ron Clark was acting for the Town until I asked Ed who
7 was acting for the Town and he told me it was Leo
8 Longo, not Ron Clark.

9 MS. BELINDA BAIN: You had access to
10 Aird & Berlis. You knew Aird & Berlis acted on the
11 Transaction. If you wanted an explanation as to the
12 details of the Transaction, you could have contacted
13 Aird & Berlis, correct?

14 MR. JOHN BROWN: And I could have
15 contacted Mr. Houghton, or anybody else who was
16 involved.

17 MS. BELINDA BAIN: Thank you. I have
18 no more questions.

19 THE HONOURABLE FRANK MARROCCO: Well,
20 we'll take a short break. Mr. Fryer, how long do you
21 anticipate?

22 MR. TIM FRYER: I'm not really sure.
23 It depends on the answers, I guess, but --

24 THE HONOURABLE FRANK MARROCCO: All
25 right.

1 MR. TIM FRYER: -- certainly --
2 certainly an hour and a half, I would expect.

3 THE HONOURABLE FRANK MARROCCO: Well,
4 we'll give -- give it a good go till -- for a while,
5 till around 4:30, and then we'll stop for today but
6 we'll take -- we'll take ten (10) now.

7

8 --- Upon recessing at 3:37 p.m.

9 --- Upon resuming at 3:48 p.m.

10

11 MR. TIM FRYER: Justice Marrocco, at
12 the risk of taxing your patience one more time, I was
13 speaking with Mr. Bonwick and he feels he'd be more in
14 the forty-five (45) minute range and he's willing to
15 go now.

16 Would that be okay with you, or do you
17 want me to start?

18 THE HONOURABLE FRANK MARROCCO: Sure,
19 that's fine. Go ahead, Mr. Bonwick.

20 MR. TIM FRYER: Thank you.

21

22 CROSS-EXAMINATION BY MR. PAUL BONWICK:

23 MR. PAUL BONWICK: Thank you, Your
24 Honour.

25 Mr. Brown, Paul Bonwick, I'm a

1 participant at the Inquiry.

2 MR. JOHN BROWN: Yes.

3 MR. PAUL BONWICK: In your earlier
4 testimony, Mr. Brown, you indicated that you had a --
5 a long-standing relationship with Mr. Mascarin prior
6 to coming on board with the Town of Collingwood. Did
7 I understand you correctly?

8 MR. JOHN BROWN: No. I said I worked
9 on a project with him in another municipality. So
10 that was a particular project.

11 But other than that, I haven't had any
12 relationship or business dealings with him at all.

13 MR. PAUL BONWICK: Thank you for
14 clarifying that.

15 Could you tell the Inquiry what the
16 project was?

17 MR. JOHN BROWN: No. No, I can't.

18 MR. PAUL BONWICK: Okay.

19 THE HONOURABLE FRANK MARROCCO: Excuse
20 me. Without telling me what it -- why can't you
21 answer the question?

22 MR. JOHN BROWN: I can't answer the
23 question because it relates to a potentially
24 identifiable individual and it was a -- it just was a
25 very sensitive matter that we handled and the records

1 of that were sealed.

2 THE HONOURABLE FRANK MARROCCO: Right,
3 thank you. That's fine. Go ahead, Mr. Bonwick.

4

5 CONTINUED BY MR. PAUL BONWICK:

6 MR. PAUL BONWICK: Thank you, Your
7 Honour.

8 If I could pull up or if you could pull
9 up document AB496, please?

10 Now, Mr. Brown in your earlier
11 testimony you suggested that you considered this email
12 of a personal nature, mostly, if I understood you
13 correctly?

14 MR. JOHN BROWN: Yeah, it was sent to
15 me from Mr. Mascarin to my home address.

16 MR. PAUL BONWICK: Right. And your
17 response was to -- asking him to expunge the email
18 thread. But I'd like to go down through the content
19 of it so you can better help me and the Inquiry
20 understand what parts of it were of a personal nature.

21 Firstly, you've indicated to Mr.
22 Mascarin directions with regards to splitting his
23 bill, and you've given an explanation to the hearing
24 as to why that bill was to be split.

25 If I understood you correctly, using

1 your personal email address to give directions to the
2 Municipal lawyer, you were effectively trying to lower
3 the bill or the invoice amount so that the Mayor would
4 not raise questions with you about it.

5 MR. JOHN BROWN: Not quite.

6 So, my recollection was that Mr.
7 Mascarin had rolled together to separate, I guess,
8 areas of inquiry and we ended up with \$11,000, that's
9 -- that's my recollection, and that I talked to Sara
10 about it and so I told him or -- you know, Sara is
11 going to be calling you, she's going to explain the
12 situation, if there's a problem, let me know,
13 otherwise we don't want the \$11,000 bill, we'd rather
14 have its component parts.

15 MR. PAUL BONWICK: Right, so all we
16 can do is go off the email that you sent Mr. Mascarin.

17 MR. JOHN BROWN: Sure.

18 MR. PAUL BONWICK: And you state quite
19 clearly to him:

20 "Sara will be calling you to clarify
21 matters and to see if you can split
22 the bill up so that we do not have a
23 single bill for \$11,000, which will
24 make it notable and require
25 explanation."

1 MR. JOHN BROWN: Right.

2 MR. PAUL BONWICK: You also indicated
3 that the Mayor was vetting invoices, especially ones
4 related to legal in your earlier testimony.

5 MR. JOHN BROWN: I didn't say
6 "vetting", she was showing interest in the backup that
7 came with legal bills and -- and on occasion asked me
8 questions about it.

9 And -- and so she was obviously not
10 just signing the cheques, but she was reading the
11 backup.

12 MR. PAUL BONWICK: Would you agree
13 though that this matter is directly related to
14 municipal business?

15 MR. JOHN BROWN: Oh, absolutely, yes.

16 MR. PAUL BONWICK: If I go down the
17 email chain, and the one where Mr. Mascarin is sending
18 Mr. Brown an email, moving aside that I haven't thrown
19 anything out, it appears he has found a package that
20 you two had been discussing earlier.

21 Would you agree with that?

22 MR. JOHN BROWN: Yeah, I believe it's
23 the one I just explained to His Honour.

24 MR. PAUL BONWICK: You also state in
25 here that you do not recall getting any advice about

1 the role of the CAO and the entitlement to
2 information, can you please resend this to the -- to
3 this email address.

4 MR. JOHN BROWN: Right.

5 MR. PAUL BONWICK: Now, in your
6 testimony this morning, you said in your 40 years or
7 30 year career that you only recall using your
8 personal email this one time. But yet, when I read
9 the email, you're giving direction again to the Town's
10 solicitor for future emails to use this email address.

11 MR. JOHN BROWN: That wasn't the
12 intent.

13 MR. PAUL BONWICK: It's what it says,
14 sir.

15 MR. JOHN BROWN: That wasn't the
16 intent. And he didn't

17 MR. PAUL BONWICK: Did -- during your
18 interviews with counsel for the Inquiry, did they ask
19 if you would surrender your hard drive or your laptop
20 during this period of time so that they could access
21 emails, any personal emails that might be related to
22 Town business?

23 MR. JOHN MATHER: Your Honour, to the
24 extent that Mr. Brown has had any dealings with the
25 Inquiry, those are confidential.

1 THE HONOURABLE FRANK MARROCCO: I -- I
2 think that's true, they are confidential, but I think
3 you can ask this question.

4

5 CONTINUED BY MR. PAUL BONWICK:

6 MR. PAUL BONWICK: So were you asked
7 to provide your laptop, your computer, your hard drive
8 to allow Inquiry counsel to determine if there was any
9 other emails from your personal email account on
10 matters related to Town business?

11 MR. JOHN BROWN: So the answer to that
12 is I wasn't asked. And I spoke the truth when I said
13 that I have never used my email account for any Town
14 business, other than this particular situation.

15 MR. PAUL BONWICK: I'm not sure if I'm
16 allowed to ask this, but is that something you would
17 be prepared to provide the Inquiry, access to your
18 computer to confirm the truth you're telling us?

19 MR. JOHN BROWN: I would ask you to
20 accept the fact that I'm telling the truth, unless you
21 can suggest some reason why you should doubt me.

22 MR. PAUL BONWICK: You stated in your
23 earlier testimony that it was -- that at no time when
24 you were engaging a third party consultant did you --
25 and I'll just capture the wording simply because the

1 transcript won't have got it just yet, never tried to
2 persuade the consultants to take a particular
3 direction.

4 MR. JOHN BROWN: Correct.

5 MR. PAUL BONWICK: That was your
6 statement?

7 MR. JOHN BROWN: Correct.

8 MR. PAUL BONWICK: But 11:56, ten
9 minutes after the fact, you said:

10 "I tried to persuade him of my
11 position and hopefully he would
12 agree it was sound."

13 Something to that effect.

14 MR. JOHN BROWN: Okay, so I can
15 explain that.

16 So most consultants that I've dealt
17 with, they require like a steering -- a person to work
18 with in the Town, and sometimes depending on the
19 project it could be a steering group, a number of
20 people.

21 In this particular situation, it was
22 generally the treasurer or the clerk and myself. And
23 so what we do is when you hire a -- when you hire a
24 consultant, the consultants always want to have a
25 reference point in the Municipality, respecting the

1 areas under inquiry.

2 So if it was an engineering study,
3 they'd probably have the engineering director sit in.
4 And what they do is, you know, they would seek
5 clarification of issues and they would want to bounce
6 ideas off you. They would want to have you review the
7 report for errors and omissions or whatever. And they
8 would also want your feedback with respect to any
9 other matters that they might have missed or they
10 might want to take into consideration.

11 And that is the process, the normal
12 process, of doing it.

13 Critical in that whole process is that
14 the consultant can only recommend their own
15 professional opinion, you never ever want to try to
16 persuade a consultant to make -- to arrive at a
17 conclusion that they don't agree with or that's been
18 forced on them by anybody else, otherwise the whole
19 consulting process would break down and it would not
20 have credibility.

21 So I've participated in many of such
22 situations and there's always comment, you know, well,
23 just as in the case of Mark Rodger, you know, by
24 changing the format you've kind of made it look
25 different and then that was passed on to him and then

1 he would say that's a great idea, I really agree with
2 you and change it, or he would say you know what, I
3 like the way it is, thank you very much.

4 So the point is whatever the consultant
5 recommends is only the recommendation of the
6 consultant. No -- nobody can put their ideas or
7 should attempt to put their ideas into a consulting
8 report.

9 MR. PAUL BONWICK: I -- I would agree
10 with you, Mr. Brown. But that wasn't my question.

11 My question was: at about 11:56 you
12 stated that "I tried to persuade him on your
13 position", that wasn't about errors or omissions or
14 clarifications. It was persuading him of your
15 opinion, that's what the record --

16 MR. JOHN BROWN: Well, that's right,
17 because -- because in -- in -- when -- when you become
18 a senior bureaucrat you try to persuade people, you
19 try to persuade Council, you try to persuade the
20 senior management team, but you provide the
21 opportunity for people to contradict you, to argue
22 against you.

23 And through that process, through the
24 synergy of thinking and sharing ideas, then you can
25 test that, you know what, I thought that was a good

1 idea until I heard from him and her, and you know
2 what, now I'm going to reflect on that.

3 So persuading people to do things is
4 part of the -- part of the whole methodology of doing
5 reports, this is what I think and I -- these are the
6 reasons I think it, I'm persuading you in a position
7 different than yours and so long as you don't mistake
8 anybody's input or persuasion or update as being
9 anything the consultant has to do, but rather just
10 take under advisement.

11 MR. PAUL BONWICK: Thank you very much
12 for that answer.

13 If I could bring up CJ10011182, I want
14 to go to the time when you were recommended or asked
15 to fill in as the acting CAO for the Town of
16 Collingwood.

17 I'm wondering, sir, do you know if at
18 the time Mr. Mascarin recommended you to Municipal
19 Council to fill the position of acting CAO --

20 MR. JOHN MATHER: We're trying to find
21 --

22 MR. PAUL BONWICK: Sorry?

23 THE HONOURABLE FRANK MARROCCO: Just
24 hang on. Just -- just wait one second.

25 MR. PAUL BONWICK: CJI0011182.

1

2

(BRIEF PAUSE)

3

4 CONTINUED BY MR. PAUL BONWICK:

5

MR. PAUL BONWICK: Would you give Mr.

6

Brown a moment to review this, please?

7

MR. JOHN BROWN: Well, I --

8

MR. PAUL BONWICK: You can just

9

instruct the --

10

MR. JOHN BROWN: I know all about it.

11

MR. PAUL BONWICK: -- the court

12

reporter. So, my question, sir, is: Are you aware of

13

whether or not Mr. Mascarin disclosed that -- with one

14

(1) of your previous employers, that there had been a

15

lawsuit filed, multimillion dollar, by the report?

16

Is the report accurate, first of all?

17

MR. JOHN BROWN: Well, I haven't read

18

it, but --

19

MR. PAUL BONWICK: Oh, please feel

20

free.

21

MR. JOHN BROWN: I -- I think it's

22

generally accurate.

23

MR. PAUL BONWICK: Generally accurate.

24

Do you know if Mr. Man -- Mascarin disclosed this to

25

municipal Council when recommending you for the

1 position?

2 MR. JOHN BROWN: I don't know if Mr.
3 Mascarin did, but I did.

4 MR. PAUL BONWICK: You informed
5 members of Council that, in fact, you had been
6 involved in this situation and the allegations
7 contained therein?

8 MR. JOHN BROWN: So, when I went --
9 just a little bit of history here. So, when I went to
10 -- when -- when I was asked was I interested in the
11 position in Brantford, which I, you know, took four
12 (4) -- about six (6) years, I explained to the Council
13 there the situation, that there was a lawsuit pending
14 with the city of Oshawa. And they said that it was
15 none of their business, it was what I did when I
16 worked for them that was important and it was none of
17 their business any history I had.

18 When I came here, Marianne Nero, which
19 was the HR person, she checked my references and she
20 talked to the -- the mayor of Oshawa during this whole
21 process. And the mayor of Oshawa advised her of the
22 situation.

23 My understanding is she advised the
24 Council because when I was at the interview it came up
25 and I acknowledged it. I explained it to this new

1 Council in an in camera meeting. And I'm very happy
2 for the fourth time to explain it to you.

3 So, if you have any further questions,
4 I'd be more than happy to answer them.

5 MR. PAUL BONWICK: It was more about
6 disclosure, sir. Could I call up CJI0011189?

7

8 (BRIEF PAUSE)

9

10 MR. PAUL BONWICK: No. I must have
11 got the wrong number there, sorry.

12

13 (BRIEF PAUSE)

14

15 MR. PAUL BONWICK: I couldn't read
16 that. It was the article from the Simcoe.com dated
17 April 27th, 2017. The heading was, "Legal standoff,
18 Collingwood mayor and CAO."

19 MR. JOHN MATHER: The dock ID is
20 CJI11188.

21 MR. PAUL BONWICK: I must have misread
22 it.

23

24 CONTINUED BY MR. PAUL BONWICK:

25 MR. PAUL BONWICK: Would you like to

1 take a moment and review this article, Mr. Brown?

2 MR. JOHN BROWN: Yeah. But before I
3 do that, could I -- could I just comment on the other
4 one (1) in Oshawa, just explain to you what the
5 situation was? You don't care?

6 MR. PAUL BONWICK: Not --

7 THE HONOURABLE FRANK MARROCCO: Well,
8 I -- I don't think -- I don't think you were asked --
9 the question was whether you disclosed it, the -- the
10 fact of the -- and you -- you've answered that.

11 MR. JOHN BROWN: Yeah. Okay.

12 THE HONOURABLE FRANK MARROCCO: I
13 don't think you were asked about the details of it,
14 so.

15 MR. JOHN BROWN: Okay.

16 THE HONOURABLE FRANK MARROCCO: That -
17 - there -- there's no question to answer.

18 MR. JOHN BROWN: Okay.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: Sorry. Please feel
22 free to take your time and... Sorry, stop there for
23 the...

24

25 (BRIEF PAUSE)

1 MR. PAUL BONWICK: And what was this
2 situation in relationship to?

3 MR. JOHN BROWN: This one (1) here?

4 MR. PAUL BONWICK: Yes.

5 MR. JOHN BROWN: It was in relation to
6 the hospital. So, what happened was that there was a
7 whole controversy to do with the hospital. And there
8 was a meeting with the mayor, myself, Sara Almas, and
9 our -- our PR per -- our communications person.

10 And it was agreed by everybody,
11 including the mayor, that the comments made by the
12 hospital were wrong and that -- inappropriate and that
13 they should be -- we should ask for them to be
14 withdrawn, and it was on their website.

15 The details I don't recall, but it was
16 a post on their website that everybody, including the
17 mayor said was wrong. And so, the mayor agreed. We
18 asked her did she agree. She said, yes, she did.

19 And the communications person was
20 instructed to go and prepare, I guess, a letter or an
21 email or a press release, whatever it was, on behalf
22 of the mayor. And that press release went out.

23 And what it said was that it was unfair
24 and should be removed or whatever, just as we had
25 discussed, and the mayor agreed. And the mayor signed

1 it. She didn't ask for any changes. She signed it.

2 And then there was a Council meeting on
3 the following Monday. And, you know, the mayor didn't
4 say anything at the Council meeting on the Monday, but
5 I think she gave interviews to the press -- or the
6 radio station Wednesdays. I can't recall.

7 So, on the Wednesday I went into work.
8 And the clerk came to me with the communications
9 person and said that the communications person was
10 distraught because the mayor had said that -- on the
11 radio that she disagreed with it and more or less that
12 she had been kind of pressured into signing it.

13 And then what happened then was that
14 the -- there was a discussion as to what response, if
15 any, that might be taken. And, I guess, as recall, a
16 draft was sent to the mayor under the -- under the --
17 I've forgotten what the legislation is.

18 Anyway, a draft was sent to the mayor
19 expressing concern and asking her to -- to change the
20 position because she agreed to it. She said she
21 didn't agree to it. And the staff person who wrote it
22 felt that she had been isolated and kind of thrown
23 under the bus.

24 So, as a result of further discussions
25 with the mayor, she said she, I guess, wasn't going to

1 do anything about it. And that is the genesis of this
2 disagreement. And the -- the newspaper person set it
3 up and this is how it turned out.

4 MR. PAUL BONWICK: So, out of that,
5 I'd like to touch on two (2) points. One (1) is, in
6 answer to my question, this was in relationship to the
7 hospital?

8 MR. JOHN BROWN: Yes.

9 MR. PAUL BONWICK: And so, clearly, by
10 way of your explanation, the relationship between the
11 Town of Collingwood and the hospital had got into a
12 very -- how would I say -- the word gets bounced
13 around in here a bit -- dysfunctional by virtue of the
14 fact that these kinds of tactics were being used?

15 MR. JOHN BROWN: I don't think it was
16 dysfunctional, I would call it. There were competing
17 interests with respect to the Town's interest and
18 certain people, you know, who were affiliated in some
19 way with the hospital decision.

20 MR. PAUL BONWICK: Okay.

21 MR. JOHN BROWN: Municipal government.
22 And we deal with conflicts and differences of opinion
23 constant. It's almost our food, you know, that's what
24 we live on.

25 MR. PAUL BONWICK: Right.

1 MR. JOHN BROWN: People -- all kinds
2 of things that were posed and all kinds of people are
3 entitled to comment and all kinds of comments are
4 made, just like all these reports we talked about
5 earlier on. That is part of what municipalities do,
6 and that was the case for the hospital. That was the
7 case for the airport which you were also involved in.

8 MR. PAUL BONWICK: You will -- you
9 will understand, of course, that the -- and you may
10 not understand, of course, that the Council and the
11 municipality had enjoyed a mini decade positive
12 constructive relationship with the hospital.

13 And my point is, at this point in time,
14 it had evolved to the point where accusations were
15 being made on both sides?

16 MR. JOHN BROWN: I guess there were
17 significant differences of opinion. I -- I don't like
18 to colour it up in terms of, you know --

19 MR. PAUL BONWICK: I'm reading this
20 here. Are --

21 MR. JOHN BROWN: -- opposing -- well,
22 didn't write it. Opposing people, parties, you know.
23 So, there was a significant difference of opinion.
24 And who was right are wrong is arguable, and it's
25 judgmental.

1 But, in my opinion, the hospital took
2 the position that was appro -- the Town took the
3 position -- and don't forget it was Council. It
4 wasn't any individual in Council. It was Council took
5 the position, and it maintained that position.

6 And now there's election. There is no
7 issue related to the hospital. The ho -- the issue
8 has gone away.

9 MR. PAUL BONWICK: Right. I believe
10 the municipality changed its position. But
11 irrespective of -- irrespective of that, the second
12 point I wanted to touch on was -- and I'm sensitive to
13 the fact that the mayor's already testifies, and so
14 I'll be very cautious with my words.

15 But Mr. Brown has alluded to the fact
16 that this is municipal politics or government, and so
17 you -- you see these shifts within the community. It
18 appears by virtue of this -- this article that, for
19 whatever reasons, the mayor changed her position and
20 retracted the letter.

21 That's what it appears to be?

22 MR. JOHN BROWN: I -- I'm not sure
23 about that.

24 MR. PAUL BONWICK: I'm not going to
25 judge why.

1 MR. JOHN BROWN: No, I'm -- I'm not
2 sure the mayor did change her position. I think she
3 kept the pos -- she did not -- she changed her
4 position from what she instructed the communicators
5 person -- person to issue.

6 And she didn't tell anybody. She
7 didn't say anything at the Council meeting on Monday.
8 But on Wednesday when she went to her radio interview,
9 she said she didn't agree with it, or she changed her
10 mind, or it was --

11 MR. PAUL BONWICK: Thank you.

12 MR. JOHN BROWN: -- it was kind of put
13 in front of her, and she didn't understand -- that
14 sort of a response. So it -- it was left that way.

15 And the staff were extremely upset, and
16 they came to see me. I was unaware of it. The staff
17 person who wrote -- and it was an interim staff person
18 as well, and she was very upset. And they -- and they
19 looked for me to guidance, and I said, well, we have
20 to address this situation.

21 Otherwise, you know, you have to be
22 credible with your staff --

23 MR. PAUL BONWICK: Right.

24 MR. JOHN BROWN: -- and support them.

25 MR. PAUL BONWICK: I would agree. You

1 have to be -- you have to be credible with staff and
2 with the elected officials.

3 My point on this is, as you've just
4 confirmed, for whatever reasons, there seemed to be a
5 change in position from --

6 MR. JOHN BROWN: The mayor's position.

7 MR. PAUL BONWICK: That's what I just
8 said, sir. But in -- if you scroll up the article --

9 MR. GEORGE MARRON: Well, Your Honour,
10 just --

11 MR. PAUL BONWICK: Sorry.

12 MR. GEORGE MARRON: -- just may I
13 interject? I don't know where this is going, and I've
14 got some problem with the relevance of it.

15 THE HONOURABLE FRANK MARROCCO: I'm
16 not -- the point I took from it, and I'm not sure if
17 there's any need to go on any further -- was that
18 there had been a happy relationship between the two,
19 and at this particular moment, there was controversy.
20 And I suppose implicit in the assumption is that
21 something changed, and that's what caused the
22 controversy.

23 As far as the mayor and the mayor
24 changing her position and so on, I fail to follow that
25 as being helpful to me at all, and I agree with you.

1 MR. GEORGE MARRON: Well, as I say,
2 I've let the questions go and interject at this point.
3 I just don't see where --

4 MR. PAUL BONWICK: Perhaps I could
5 explain.

6 MR. GEORGE MARRON: -- what's being
7 achieved by a continued examination in this area.

8 THE HONOURABLE FRANK MARROCCO: Well,
9 you get some sensitivity, Mr. Bonwick, because
10 Mr. Marron's representing the mayor, and your
11 questions are involving the mayor.

12 But in any event, what's the --

13 MR. PAUL BONWICK: The --

14 THE HONOURABLE FRANK MARROCCO: -- is
15 there some further relevance to this?

16 MR. PAUL BONWICK: I think, Sir, what
17 I'm trying to demonstrate is a pattern of history
18 here. When I read the first article -- and Mr. Brown
19 has confirmed its accuracy -- the chief administrative
20 officer along with the mayor have retained lawyers,
21 based on accusations of bullying and violations of the
22 Town code, and simply to set yet another example
23 that's separate and aside from this particular matter.

24 But again, it demonstrated that, I
25 believed, there's a pattern of behaviour in terms of

1 lawyering up, so to speak, on any matter that's not
2 satisfactory.

3 THE HONOURABLE FRANK MARROCCO: Well,
4 I think that point's been -- that submission, if you
5 like, or suggestion has been -- is clear. I think
6 where the sensitivity is coming from is that you're
7 involving --

8 MR. PAUL BONWICK: No.

9 THE HONOURABLE FRANK MARROCCO: --
10 Mr. Marron's client and the details of this dispute.
11 And his position is -- and I agree with him -- the
12 details of this dispute are not pertinent.

13 The fact that there was one -- and as
14 you outlined -- is a little different point, and that
15 point I think's been made.

16 MR. PAUL BONWICK: Thank you. I'll
17 move on.

18 MR. GEORGE MARRON: Thank you.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: Now, as I mentioned
22 in my opening comments this morning, I was a little
23 caught off guard with the updated testimony, so I
24 tried to incorporate this in mine. But --

25 THE HONOURABLE FRANK MARROCCO: Well,

1 you appreciate that there was --

2 MR. PAUL BONWICK: I --

3 THE HONOURABLE FRANK MARROCCO: --

4 Mr. Chenoweth and others -- I don't want to drag
5 Mr. Chenoweth in this -- but there was a request for
6 an amplification of the statements that was originally
7 provided and --

8 MR. PAUL BONWICK: Right.

9 THE HONOURABLE FRANK MARROCCO: --
10 that's what happened.

11 MR. PAUL BONWICK: I understand that.

12 THE HONOURABLE FRANK MARROCCO: Was
13 there -- okay.

14

15 CONTINUED BY MR. PAUL BONWICK:

16 MR. PAUL BONWICK: What the court book
17 has demonstrated to date, as well as your testimony,
18 is there has been a significant number of lawyers,
19 accountants, and consultants hired -- third-party
20 lawyers, accountants, and consultants hired during
21 your --

22 MR. JOHN BROWN: Yeah.

23 MR. PAUL BONWICK: -- during your
24 period as acting interim CAO -- interim.

25 So my understanding -- if I understood

1 this correctly this morning -- you hired -- is it
2 Beacon 2020 and True North Consultants?

3 MR. JOHN BROWN: Yeah. They were a --
4 they were two (2) different people together doing this
5 assignment.

6 MR. PAUL BONWICK: Right. Did you
7 conduct an RFP or go through a public process to hire
8 these folks?

9 MR. JOHN BROWN: Yeah, I believe we
10 did. I believe we did. We -- I think we checked with
11 the purchasing agent or the purchasing policy. And we
12 had to identify three (3) people.

13 So I'm not -- I'm not crystal clear,
14 and I don't like to be definitive. But I believe we
15 followed the Town's process to hire those people.

16 MR. PAUL BONWICK: Right. My question
17 was more specific to a request for proposal. Was
18 there a request for proposal sent out to other
19 consultants?

20 MR. JOHN BROWN: They were sent out to
21 a number of consultants that complied with the policy.
22 I don't have the details.

23 MR. PAUL BONWICK: Could you, for the
24 benefit of the Commission, identify which other
25 consultants were included in the RFP process?

1 MR. JOHN BROWN: Off the top of my
2 head, no. But if you go to the clerk or you go to --
3 yeah, you go to the clerk. I'm sure she'll have the
4 records there of the companies that we interviewed,
5 and -- and yeah. And one of them was brought by
6 Marcus, and so that was the one we ended up hiring
7 actually.

8 MR. PAUL BONWICK: Sorry. I was
9 taking notes. You also hired Miller Thomson lawyers
10 to produce a report in 2015. Is that correct?

11 MR. JOHN BROWN: No, no, we didn't.
12 One of the things that I wanted to happen when I came
13 here -- I saw that, you know, we had the same
14 accountants, the same lawyers, the same whatever, the
15 same consultants for, you know, very long periods of
16 time.

17 And I said, well, you know, it's time
18 we went out to the market, and we should do RFPs just
19 to see that -- you know, the -- the prices we're
20 getting for the services going back to the Shared
21 Services Agreement principle that prices we're getting
22 are -- are current market prices and the best we can
23 get.

24 And then we went -- RFPs, we did it
25 for -- we did it for our auditors; we did it for our

1 lawyers; we did -- I forget who else we did it for.

2 But we generally went out to the market
3 to get the price. And as a result of that, we changed
4 lawyers. We moved -- we hired Miller Thomson as the
5 Town's municipal lawyers --

6 MR. PAUL BONWICK: But --

7 MR. JOHN BROWN: -- but we still had a
8 relationship -- a consult -- a consulting relationship
9 with Aird & Berlis. That was standard. But we did
10 hire new lawyers, Miller Thomson. They weren't hired
11 for this project. They were our ongoing municipal
12 lawyers.

13 MR. PAUL BONWICK: Sir, my question
14 was simply: Did you hire Miller Thomson? Not the
15 process leading up to it.

16 MR. JOHN BROWN: We hired
17 Miller Thomson but not for that report. We hired
18 Miller Thomson to provide our services as opposed
19 to -- our -- our core services as opposed to Aird &
20 Berlis.

21 MR. PAUL BONWICK: Did you also hire
22 BMA Management Consulting Inc. in 2015?

23 MR. JOHN BROWN: I did, yes.

24 MR. PAUL BONWICK: Thank you. Was
25 there an RFP conducted for that engagement?

1 MR. JOHN BROWN: So the first one --
2 the first one came within my spending authority, and
3 we did -- I didn't go out to do that.

4 I called -- Jim Bruzzese was his name,
5 and I said, this is the situation. I need a quick
6 overview. If we get the -- if I get the treasurer to
7 send our FIR, can you do some reference point and give
8 me some comparables? And he said yes.

9 It was -- it was -- I can't remember
10 what it was, but it was certainly quite inexpensive
11 and within my spending authority. So I didn't -- I
12 pulled out the purchasing policy for what I was
13 allowed to do and did it.

14 MR. PAUL BONWICK: And what is your
15 spending authority, sir?

16 MR. JOHN BROWN: I think it was
17 \$25,000 at the time.

18 MR. PAUL BONWICK: So they were
19 sole-sourced, based on your spending authority.

20 MR. JOHN BROWN: Absolutely. Because
21 they could do the job I needed done.

22 MR. PAUL BONWICK: Is it also true
23 that you hired Henley International during the 2015
24 year?

25 MR. JOHN BROWN: I didn't hire them.

1 When -- as I explained, Mr. -- yeah-- Mr. Rodger, he
2 hired them for Council because Mr. Rodger came to
3 Council, and we -- Council agreed that we should get a
4 valuation done of the -- of the company, and he did
5 it.

6 MR. PAUL BONWICK: Okay. So --

7 MR. JOHN BROWN: Or I mean Council
8 hired them, but it was through Mr. Rodger that
9 Henley's name came up, and they went with it.

10 MR. PAUL BONWICK: Another -- another
11 consulting firm was hired and paid for by the Town of
12 Collingwood. Not hired by you but recommended by a
13 third party in a --

14 MR. JOHN BROWN: Absolutely. And, as
15 I explained, to protect the Town's vulnerable position
16 as a result of the conditions in the Shareholders
17 Agreement.

18 MR. PAUL BONWICK: Was there an RFP
19 issued for hiring Henley International?

20 MR. JOHN BROWN: No. That would have
21 been through Mr. -- Mr. Rodger, and it was approved by
22 Council.

23 MR. PAUL BONWICK: Borden Ladner
24 Gervais in 2016, did you hire them?

25 MR. JOHN BROWN: Yeah. That's

1 Mr. Rodger's company.

2 MR. PAUL BONWICK: Okay. There's a
3 bit of conflict here. So my understanding was you
4 brought them in 2016. You had brought them on before
5 then?

6 MR. JOHN BROWN: I was gone in 2016.

7 MR. PAUL BONWICK: Thank you.

8 MR. JOHN BROWN: I think. Was I gone?

9 MR. PAUL BONWICK: I'm --

10 MR. JOHN BROWN: I can't rem --

11 MR. WILLIAM MCDOWELL: Based on the
12 last clipping, you were -- you were sparring with the
13 mayor in 2017, so.

14 MR. JOHN BROWN: Okay. Very good.

15 MR. PAUL BONWICK: Yes.

16 MR. JOHN BROWN: There you go. I was
17 definitely here then.

18

19 CONTINUED BY MR. PAUL BONWICK:

20 MR. PAUL BONWICK: So let me bring
21 that question back to you.

22 MR. JOHN BROWN: Sorry.

23 MR. PAUL BONWICK: Did you hire Borden
24 Ladner Gervais in 2016?

25 MR. JOHN BROWN: Yes, yes.

1 MR. PAUL BONWICK: Thank you. Did you
2 conduct an RFP process for them in the public forum?

3 MR. JOHN BROWN: I think I -- I think
4 I explained that. I -- we took advice and followed
5 the process of contacting all of the energy lawyers
6 and people capable of -- of advising the Town with
7 respect to that.

8 And after we checked out all of the
9 conflicts, the only person that we could get was
10 Mr. Rodger. He didn't have -- wasn't conflicted.

11 MR. PAUL BONWICK: Sir, do you
12 understand what a request for proposal is?

13 MR. JOHN BROWN: (NO AUDIBLE RESPONSE)

14 MR. PAUL BONWICK: And so my question
15 was: Did you send out a request for proposals?

16 MR. JOHN BROWN: No, no.

17 MR. PAUL BONWICK: I'd like to pull up
18 the -- the Beacon report, CPS7337_0001.

19 Could I go to page 2, please? I'm
20 going to save us all a lot of time and not go through
21 a 92-page report. There's been some time spent on it
22 earlier today.

23 But I do -- having been involved and
24 witnessed many hundreds of -- of consulting reports in
25 various stages, I was interested to read this

1 disclaimer.

2 On page 2 it states:

3 "Although we tried to provide
4 accurate information, it is based
5 solely on the information from
6 documents provided."

7 And it goes on to say that:

8 "Before using this information for a
9 specific purpose, appropriate
10 professional advice should be
11 sought."

12 Did you emphasize that to Council when
13 you were presenting the report to them?

14 MR. JOHN BROWN: Did I emphasize the
15 disclaimer?

16 MR. PAUL BONWICK: The disclaimer.

17 MR. JOHN BROWN: No. We had -- we had
18 the consultant come in and he presented his own report
19 to Council.

20 MR. PAUL BONWICK: Right. But as the
21 senior bureaucrat within the Municipality, do you not
22 feel you have a responsibility to Council to make sure
23 that they're well aware of the disclaimer that a
24 consultant that they're hiring is providing you?

25 MR. JOHN BROWN: Well, I think -- I

1 think my responsibility is to make sure they've got a
2 credible consultant who complies with the terms of
3 reference and provides all of the information to
4 Council and that Council is given the opportunity to
5 ask whatever questions they want and be fully informed
6 before they make a decision.

7 So did I specifically point this out?
8 The answer to that is no, because I didn't do the
9 presentation. And I cannot recall whether the
10 consultant pointed it out, but I would think that it
11 was included in the report and assuming Council
12 members read their report, that they would have been
13 aware of it.

14 MR. PAUL BONWICK: Sir, did you make
15 Council aware of the fact that PowerStream, CPU's --
16 Collingwood Public Utility Corporation, if I'm saying
17 that properly, along with Mr. Chadwick provided you
18 somewhere in the neighbourhood of 50 pages of
19 information whereby they were identifying the report
20 to be inaccurate or misrepresenting the situation?

21 Did you inform Council that there was
22 that level of concern with regards to the contents of
23 the report?

24 MR. JOHN BROWN: Mr. Chadwick posts
25 extensively and his opinions on many things are a -- I

1 mean you know, I mean, they're -- they're constant, or
2 they used to be, when I was aware of what his blog
3 said.

4 So I don't think I have to tell --
5 point out anything Mr. Chadwick has to say because
6 he's very capable of doing that himself.

7 So did I --

8 MR. PAUL BONWICK: Thank you, sir.

9 MR. JOHN BROWN: -- go beyond that?

10 No, I didn't.

11 MR. PAUL BONWICK: You did -- so -- so
12 my question was about the three of them not specific
13 to Mr. Chadwick. My question was, and let's move him
14 out of the question, did you inform members of Council
15 that Collus, as well as the water utility, had
16 presented significant opposition with regards to
17 concern over inaccurate statements within the report?

18 MR. JOHN BROWN: My understanding is
19 all of those reports that we received were presented
20 to Council and I think we had presentations from some
21 of those agencies who came in and presented to Council
22 verbally.

23 So -- so I guess the question is were
24 Council informed that there was opposition, including
25 Mr. Chadwick? The answer is I would -- I would say

1 yes.

2 MR. PAUL BONWICK: Sir, you keep
3 throwing his name in and I asked you to set that aside
4 and speak more to the water utility and the hydro
5 utility, and I think you've answered the question.

6 MR. JOHN BROWN: Perfect.

7 MR. PAUL BONWICK: You've referenced
8 the fact that you had at least one meeting with Mr.
9 McFadden, correct?

10 MR. JOHN BROWN: I know I had many
11 meetings with Mr. McFadden.

12 MR. PAUL BONWICK: You had many
13 meetings with --

14 MR. JOHN BROWN: Quite a few.

15 MR. PAUL BONWICK: -- with Mr.
16 McFadden.

17 MR. JOHN BROWN: And they were good
18 meetings, they were very productive, he's a very
19 professional, informed, intelligent gentleman. It was
20 a pleasure.

21 MR. PAUL BONWICK: You would suggest
22 then, based on your meetings and your level of
23 engagement, that he was very knowledgeable in terms of
24 industry?

25 MR. JOHN BROWN: Absolutely.

1 MR. PAUL BONWICK: Good judge of
2 character?

3 MR. JOHN BROWN: I couldn't really
4 comment on that.

5 MR. PAUL BONWICK: Seemed to present
6 significant integrity as it related to the utility?

7 MR. JOHN BROWN: I considered him to
8 be a man of high integrity.

9 MR. PAUL BONWICK: Always had the best
10 interests of the Municipality at heart?

11 MR. JOHN BROWN: You're going beyond
12 where I'm comfortable. He was -- he was a --

13 MR. PAUL BONWICK: Okay.

14 MR. JOHN BROWN: -- great,
15 professional guy to work with and we had good meetings
16 and we shared differences of opinion. It was all
17 professional and it worked.

18 MR. PAUL BONWICK: Thank you.

19 Could I pull up the transcript 19-05-
20 16, please? Page 131, starts on line 23. Sorry, page
21 123, starts on line 6.

22 Rather than read this back into the
23 transcript again, I'll -- I'll ask you to take a
24 moment, please, and read down.

25 MR. JOHN BROWN: Under Bonwick or

1 McFadden? Which do you want me to read?

2 MR. PAUL BONWICK: Sorry, where was I
3 here? On 6. If you could start on line 6, you can --
4 you'll have to maybe go up -- well, actually, start on
5 line 10, that'll give you the same flavour.

6 MR. JOHN BROWN: Do you want me to
7 read it out or just read it myself?

8 MR. PAUL BONWICK: You can just read
9 it to yourself, just so you're comfortable with it.
10 Sorry.

11 MR. JOHN BROWN: Don't want to make
12 that mistake twice.

13 Yes, okay.

14 MR. PAUL BONWICK: And then go down --
15 please scroll down to Mr. McFadden's response.

16 MR. JOHN BROWN: Yes.

17 MR. PAUL BONWICK: So by reviewing Mr.
18 -- Mr. McFadden's testimony, you can see clearly that
19 in his mind when he was on that Board, that in fact
20 the idea of consolidation or the ability to expand the
21 utility was a significant consideration, as was in his
22 mind the 50 percent ownership structure.

23 MR. JOHN BROWN: So I talked to Mr.
24 McFadden about the 50 percent in my pursuit of answers
25 that I've already explained would not have been

1 necessary had all the information been in the Town.

2 I asked him about the 50 percent issue
3 and he said that as he recalled, there was no other
4 option other than the 50 percent. Mr. McFadden was
5 unaware that there were any other opportunities other
6 than 50 percent. That's what he told me.

7 MR. PAUL BONWICK: Sir, you should
8 know that your testimony is contrary to some degree to
9 what Mr. McFadden provided earlier during his --

10 MR. JOHN BROWN: If that's the case, I
11 don't know, I haven't read his transcript. I saw -- I
12 watched a little bit of it, but I can only tell you
13 what he told me.

14 So he told me that in his recollection
15 he never heard of anything other than 50 percent, it
16 was always the position going forward. That's what he
17 said.

18 And so the issue here of this -- of
19 this regional opportunity, I think I explained that to
20 --

21 MR. PAUL BONWICK: You did.

22 MR. JOHN BROWN: -- the other lawyer
23 and you know, I have aspirations and so have you and
24 so have Mr. Houghton and so has everybody.

25 But the point of the matter is under

1 municipal governance system, Council has authority to
2 --

3 MR. PAUL BONWICK: Sir, I understood
4 your answer the first time.

5 MR. JOHN BROWN: -- so that's the
6 answer to your question.

7 It doesn't matter if Mr. McFadden
8 thought it was a good or bad idea, it's irrelevant.

9 The point is that if Council was
10 persuaded to adopt that policy, it should have been
11 advised and I'm not aware of any decision of Council
12 which took or supported that aspirational view of Mr.
13 McFadden or Mr. Houghton or you or whoever else might
14 hold it.

15 MR. PAUL BONWICK: But sir, you've
16 recognized that there was a presentation provided to
17 Council, you've been provided copies of it back in
18 2015, my call -- or my friend brought up on the screen
19 earlier the presentation.

20 MR. JOHN BROWN: Right.

21 MR. PAUL BONWICK: And the first
22 bullet point was about regional growth strategy and
23 clearly Council supported that unanimously as part of
24 the overwhelming -- overall package because the
25 eventual 50 percent sale took place.

1 And so to suggest that they did not do
2 so knowingly, I -- I'm confused how you can justify
3 that when it was in a report that was presented to
4 them.

5 MR. JOHN BROWN: Yes, but it wasn't --
6 it wasn't -- it might have been referenced or referred
7 to in a report. But there are many things referenced
8 and referred to in reports that don't end up being
9 Council endorsed policy.

10 If that was the policy of Council, I
11 would think Council would be holding public hearings
12 would be -- and they would be presenting information
13 to the public and people would have the opportunity to
14 come in and agree or disagree or whatever.

15 That is the municipal process. I'm not
16 aware of that. Did that happen? I don't know. Did
17 that happen, about the -- about the growth
18 partnership?

19 THE HONOURABLE FRANK MARROCCO: Well,
20 we've -- we've got to keep the -- the questions come
21 from Mr. Bonwick to you.

22 MR. JOHN BROWN: Okay.

23 THE HONOURABLE FRANK MARROCCO: We
24 don't do the other.

25 MR. JOHN BROWN: I apologize.

1 CONTINUED BY MR. PAUL BONWICK:

2 MR. JOHN BROWN: Mr. Brown, you -- my
3 understanding of your statement related to the
4 challenges that took place between your office and
5 Collus or specific people within Collus was largely --
6 largely due, if I understood you properly, and I'd
7 like you to confirm this for me, to -- I put sort of
8 modernization. You put a movement towards a more
9 contemporary management structure that I captures in
10 one (1) quotation, change --

11 MR. JOHN BROWN: Yes.

12 MR. PAUL BONWICK: -- that there's an
13 aversion to change and that --

14 MR. JOHN BROWN: Often.

15 MR. PAUL BONWICK: If I might finish,
16 sir. That your belief was this aversion to change
17 caused people to not engage in a manner that they
18 should have. Is that a fair statement?

19 MR. JOHN BROWN: I'm not sure. I
20 can't remember the exact words. But I guess my point
21 is that I have -- I -- in -- in Oshawa, I was their
22 first city manager they ever had. They didn't -- had
23 no city management before.

24 It was a very -- they had no policy
25 basis. They had no strategic plan, no -- so that is a

1 situation where a lot of people work in that system
2 and they get used to it and they're comfortable.

3 So, when somebody comes in and they're
4 going to say we need a -- we need a direction, we need
5 -- we need goals, we need to think about how we do
6 business, how we can do business better, that's the
7 whole change process.

8 And anybody who gets disturbed in that
9 process who's very comfortable as it is right now
10 often are stressed by that. They often try to object
11 to it and they often try to prevent it. That's my
12 experience, and I've done it -- this is the third time
13 I've done it.

14 MR. PAUL BONWICK: And I understand
15 you've shared that being your experience.

16 MR. JOHN BROWN: Right.

17 MR. PAUL BONWICK: But could you
18 reflect on the fact that these same people that you're
19 suggesting had significant aversion to change had just
20 finished two (2) years ago or thereabouts one (1) of
21 the most dramatic cultural and structural changes by
22 way of selling a 50 percent share in their utility
23 and, from what we've heard from testimony, seemed to
24 embrace this change in a very, very positive and
25 constructive manner for some time after the closing of

1 that?

2 And so, do you see the shift between
3 aversion to your change versus embracing their change?
4 And that's what I was struggling with.

5 MR. JOHN BROWN: No, I absolutely see
6 that. And I understand that. And I empathize with
7 people who have to undergo change. You -- everybody's
8 vulnerable. You're at risk. You don't know what's
9 going to happen and everybody's got obligations and
10 everybody's concerned.

11 But the fact of the matter is, you
12 know, when a Council's elected, it's got to decide
13 where the municipality wants to go. And before I
14 arrived, you will see that the Council that was here -
15 - I guess -- I don't know if Mr. Houghton was the
16 acting or interim or whatever at the time, but they
17 engaged -- they engaged KPMG.

18 And what they asked KPMG to do was look
19 at an organizational change to look at the way the
20 CAO, to look at the way the management team was set
21 up. They asked for all of these -- all of -- sorry,
22 if I could finish this time.

23 They asked for all of these -- they
24 asked for all of these reports to be done by KPMG all
25 creating path towards change.

1 MR. PAUL BONWICK: But --

2 MR. JOHN BROWN: And what happened
3 was, when Mr. Peever started getting into the changes
4 somebody got very upset. And Mr. Peever eventually
5 was stopped doing the change process. That's exactly
6 what I'm saying and what happened here.

7 And I continued that under the
8 direction of the Council.

9 MR. PAUL BONWICK: But --

10 MR. JOHN BROWN: So, what I did was
11 directed by Council. Everything I did was approved by
12 Council.

13 MR. PAUL BONWICK: And we'll get to
14 that, but, sir, that wasn't my question. And I
15 appreciate the explanation that you're providing. I
16 wasn't asking for the detailed explanation on what
17 changes you were proposing.

18 What I was simply bringing to your
19 attention is this same group of people that seemed to
20 have a great aversion to the change, you, at the
21 authorization of Council, were proposing to them --

22 MR. JOHN BROWN: Right.

23 MR. PAUL BONWICK: -- were the same
24 people -- do you understand, the same people --

25 MR. JOHN BROWN: I under --

1 MR. PAUL BONWICK: -- that embraced a
2 massive cultural change just a couple of years before
3 and seemed to embrace it?

4 MR. JOHN BROWN: I under -- I
5 understand that. And -- and some of the emails that I
6 got from Ms. Shuttleworth kind of reflected -- I could
7 -- I could feel the -- I could feel the sensitivity
8 that was coming through, but, like, what's -- what's
9 going on here, you know, like --

10 MR. PAUL BONWICK: And -- and...
11 Your Honour, when were you planning on
12 -- I mean, these answers are taking a little longer
13 than I thought, no disrespect to Mr. Brown. But are
14 you --

15 THE HONOURABLE FRANK MARROCCO: How
16 much longer do you think you'll be?

17 MR. PAUL BONWICK: I still have some -
18 - some time to go.

19 THE HONOURABLE FRANK MARROCCO: Okay.
20 Well, I think what I'll do is I'll break for today and
21 you can have a look at -- or if this is not a
22 convenient --

23 MR. PAUL BONWICK: No, it's -- it's
24 fine. I'm --

25 THE HONOURABLE FRANK MARROCCO: --

1 point --

2 MR. PAUL BONWICK: I'm -- I'm good to
3 go right now. I can stop now if you'd like. You just
4 said 4:30, so I'm --

5 THE HONOURABLE FRANK MARROCCO: Well,
6 I -- I think -- I think I will today stop at 4:30.
7 Tomorrow we will complete Mr. Brown's evidence and see
8 where we are.

9 MR. PAUL BONWICK: Thank you.

10

11 --- Upon adjourning at 4:35 p.m.

12

13

14 Certified Correct,

15

16

17

18 _____

19 Wendy Woodworth, Ms.

20

21

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