



TOWN OF COLLINGWOOD

JUDICIAL INQUIRY

Before:

Associate Chief Justice Frank Marrocco

Held at:

Collingwood Town Hall

Council Chambers

97 Hurontario Street

Collingwood, Ontario

May 14th, 2019

1 APPEARANCES

2

3 Kate McGrann) Inquiry Counsel

4 John Mather) Associate Inquiry

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6

7 Michael Watson) Alectra Utilities

8 Belina Bain (np)) Corporation

9

10 (No Counsel)) For Paul Bonwick

11

12 George Marron) For Sandra Cooper

13

14 (No Counsel)) For Timothy Fryer

15

16 Frederick Chenoweth) For Edwin Houghton

17

18 William McDowell) For Town of Collingwood

19 Ryan Breedon)

20

21 Patrick Gajos (np)) For Collus PowerStream

22) Corporation

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1	TABLE OF CONTENTS	
2		PAGE NO.
3	List of Exhibits	4
4		
5	TIMOTHY EDGAR FRYER, Previously Sworn	
6	Continued Examination-in-Chief	
7	by Ms. Kate McGrann	5
8	Cross-examination by Mr. William McDowell	126
9	Cross-examination by Mr. Frederick Chenoweth	159
10	Cross-examination by Mr. Michael Watson	179
11	Cross-examination by Mr. George Marron	225
12	Cross-examination by Mr. Paul Bonwick	236
13		
14		
15		
16		
17		
18		
19		
20	Certificate of Transcript	273
21		
22		
23		
24		
25		

1	List of Exhibits		
2	Exhibit No.	Description	Page No.
3	118	CPS0007018_0001	
4	119	TOC0518041	
5	120	TOC0521817	
6	121	CPS0002668	
7	122	CPS0007026_0001	
8	123	CPS0011306	
9	124	ALE0005133.0002	
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 --- Upon commencing at 10:01 a.m.

2

3 THE HONOURABLE FRANK MARROCCO: Good
4 morning.

5 MS. KATE MCGRANN: Mr. Fryer, you
6 understand you're still under oath?

7 MR. TIM FRYER: Yes, I do.

8

9 TIMOTHY EDGAR FRYER, Previously Sworn

10

11 MS. KATE MCGRANN: Good morning, Mr.
12 Fryer.

13 MR. TIM FRYER: Good morning.

14 THE HONOURABLE FRANK MARROCCO:

15 Actually, before, let me just make a brief
16 announcement. They're -- one (1) of -- one (1) of you
17 has an appointment this morning of a medical nature,
18 nothing serious, so we'll -- we'll take 11:30 to 1:30
19 break, which will include lunch, and we'll sit a
20 little later to make up the time if we have to.

21

22 CONTINUED EXAMINATION-IN-CHIEF BY MS. KATE MCGRANN:

23 MS. KATE MCGRANN: When we left off
24 yesterday, we've been discussing the promissory note,
25 and the payments that Collus was making to the Town

1 under the promissory note. Was that a beneficial
2 arrangement to the Town, in your opinion?

3 MR. TIM FRYER: Yes.

4 MS. KATE MCGRANN: And can you explain
5 why, please?

6 MR. TIM FRYER: When restructuring
7 occurred in 2001, there was the opportunity, if -- if
8 LDCs wanted to, to formulate debt that was considered
9 shareholder debt, and that would be in the form of a
10 promissory note. So our first inclination from an
11 approach standpoint was the -- the distribution of
12 debt equity for our size utility.

13 This is something that Mr. Chaplin
14 spoke about yesterday. It was a 50/50 debt/equity
15 ratio. So we were considering taking out a promissory
16 note in the whole amount, the 50/50. But in
17 conversations with the CAO, we decided there was an
18 opportunity to purchase, and we ended up purchasing
19 Clearview assets and Thornbury assets.

20 So in order to do that, we needed to
21 take third party debt. So the reason it ended up
22 being \$1.7 million was that was the differential
23 between the amount that a 50/50 debt to equity ratio
24 would be, which would have been approximately \$5
25 million, and it was about 3.3 million to purchase the

1 other utilities.

2 We didn't want to take on any more
3 leverage than the 50/50. So that's why stayed at a
4 one point seven (1.7). And again, the interest
5 payment went directly to the municipality, and that
6 was the structure that we settled upon.

7 MS. KATE MCGRANN: And can you just
8 help me understand why that was beneficial to the
9 Town?

10 MR. TIM FRYER: Because they were
11 receiving the hundred and twenty-four thousand dollars
12 (\$124,000) per -- per year as a -- as a -- we called
13 it a cash dividend.

14 MS. KATE MCGRANN: Turning back to the
15 -- the shared services arrangements as they were in
16 practice.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: A little
21 recalibration at the beginning of every day. How's
22 that? Okay. I'm going to try not to move.

23 Turning back to the shared services
24 arrangements as they existed as at the beginning 2012,
25 were those beneficial to the Town?

1 MR. TIM FRYER: I believe so.

2 MS. KATE MCGRANN: And how were they
3 beneficial to the Town?

4 MR. TIM FRYER: I -- I think all I can
5 give -- give you is a general statement, but we -- we
6 felt that the costs that were being incurred for the
7 services were being done by power and -- and solutions
8 to complete the operational things they needed to were
9 most cost-effectively done in the arrangement that we
10 had. We felt very confident that with our -- our
11 external auditors' review, that the allocations were
12 being done appropriately.

13 And then with our comparative analysis
14 at the end of each year, contained within our -- our
15 business plan and -- and annual report, we were
16 confirming that we were in the low range of the admin
17 costs per customer, which would -- would -- we would
18 take to mean that we were doing things cost-
19 effectively.

20 MS. KATE MCGRANN: Okay. So I
21 understand you to be saying that the shared services
22 resulted into -- in efficient costs or lower costs for
23 the ratepayers? Is that right?

24 MR. TIM FRYER: We believed so, yes.

25 MS. KATE MCGRANN: I'd like to

1 understand how the shared services arrangements were
2 beneficial to the Town.

3 MR. TIM FRYER: So I was saying to
4 power and to water, and so the water side was the
5 Town, and -- and that's why I was equating it to be
6 beneficial to the Town.

7 What you'll be referring to possibly as
8 the Town services that were done outside of water, so
9 for instance, Mr. Houghton acted as -- as the CEO of -
10 - or, sorry, the director of public works, and that
11 cost was going into the water department. And the
12 work was being done for the other department, but
13 again, it was going in at a cost-effective level, as
14 far as we were concerned.

15 MS. KATE MCGRANN: Okay. So am I
16 accurately summarizing your answer when I say that
17 services were being provided in a cost efficient way
18 to the ratepayers, and also to the extent that the
19 Town was receiving services under the shared services,
20 they were being provided in a cost-effective, cost
21 efficient manner?

22 MR. TIM FRYER: We believed so, yes.

23 MS. KATE MCGRANN: When it came to the
24 work that you were going to be doing on amending the
25 shared service agreements, was it a goal of yours to

1 maintain those benefits, the cost-effective benefits
2 of the services to the ratepayers and the Town through
3 the amendments that you were making?

4 MR. TIM FRYER: Yes. That was one (1)
5 goal, yes.

6 MS. KATE MCGRANN: It's my
7 understanding that those agreements were not amended
8 before the share sale Transaction was finalized in
9 July 2012. Is that right?

10 MR. TIM FRYER: No. From what I can
11 see, there was an agreement to continue on with the
12 current ones which we had been doing prior the shared
13 purchase, and they were going to work on that.

14 MS. KATE MCGRANN: Did -- did the
15 agreement to agree that you described cause you any
16 concern that there may be a loss of the benefits that
17 you've described to me, the cost efficiencies enjoyed
18 by the ratepayers and the Town?

19 MR. TIM FRYER: At -- at that
20 particular point in time, I wasn't responsible for --
21 for that aspect of it. In and around March, there was
22 the situation where Cindy Shuttleworth was taking on
23 the -- the role of working through the transactions,
24 so to speak, in the Collus Power side, and I was
25 concentrating on the other work, and -- and

1 Collingwood public utilities, so I wasn't aware of the
2 July 31st agreement letter until I read the documents.

3 Actually, I -- I'll correct myself on
4 that; until I was a member of Council and it came to
5 light in the information that we were provided through
6 the other reviews that were done.

7 MS. KATE MCGRANN: Do you have any
8 concerns when you handed over responsibility for
9 amending the shared service agreements a couple of
10 months before the Transaction was going to be
11 finalized that the benefits may be lost if they
12 weren't finalized?

13 MR. TIM FRYER: No, because I knew the
14 work -- the real part of the work was going to involve
15 power. And since Ms. Shuttleworth was going to be
16 dealing with that, I was comfortable with -- with
17 returning the -- the duties over to her, and -- and
18 through her to Mr. Houghton.

19 I -- I wasn't surprised that they
20 couldn't be finalized, and they had -- like, they had
21 to do some sort of a letter, that when I saw the
22 letter and -- and read the contents, I wasn't
23 surprised that that had happened. I just didn't know
24 about it, even though I was there.

25 MS. KATE MCGRANN: Why weren't you

1 surprised that they couldn't be finalized before the
2 Transaction was finalized?

3 MR. TIM FRYER: I think just -- there
4 was so much work to be done in regards to firming up
5 possibly what services could come from PowerStream
6 directly, because that was one (1) of the goals of the
7 -- of the partnership was to utilize their -- their
8 back office expertise while we were going through our
9 -- our -- dealing with the various successions that we
10 had to do, and -- and those types of things.

11 So I felt, certainly at the time, that
12 the agreements were going to be in a state of flux,
13 and they probably would be prepared in -- in a form
14 that was pretty much acceptable in time for the cost
15 of service study going in, because the OEB would need
16 to approve them.

17 MS. KATE MCGRANN: The letter that you
18 mentioned, which letter were you talking about?

19 MR. TIM FRYER: The July 31st
20 agreement that there'd be a continuation of service, I
21 believe.

22 MS. KATE MCGRANN: If we can take a
23 look at paragraph 622 of the Foundation Document,
24 please.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: I'll ask you to
4 scroll down a little bit further so we can take a look
5 at the whole thing. So this paragraph describes a
6 supplementary agreement which -- way of the obligation
7 to finalize the shared service agreements.

8 Were you aware in March -- that in
9 March there was a letter that was signed as well that
10 sort of agreement to agree type letter?

11 MR. TIM FRYER: Not to my recall. I
12 can't -- I can't remember that one until seeing it as
13 a member of Council.

14 MS. KATE MCGRANN: Okay. So let's
15 focus on this -- this description of the July 31st
16 letter, then. We'll scroll down. The conditions in
17 this letter included the following:

18 "That Collus PowerStream would
19 provide services to the Town of
20 Collingwood on a fully allocated
21 cost basis, plus a return on
22 investment."

23 Was that consistent with the
24 arrangement before the Transaction?

25 MR. TIM FRYER: I believe so.

1 MS. KATE MCGRANN: Okay.

2 "That Collus PowerStream would not
3 pay more than fair market value for
4 any of the services supplied by the
5 Town of Collingwood."

6 Was that consistent with the
7 arrangement before the closing of the shared sale
8 Transaction?

9 MR. TIM FRYER: I don't recall
10 anything in the prev -- in the -- in the agreements
11 that specifically talked about provision of services
12 by the Town of Collingwood, so I can't say for certain
13 on that.

14 MS. KATE MCGRANN: Okay. Looking at
15 subparagraph (c):

16 "The shared service agreements would
17 be reviewed annually so that the
18 costs of the services under the
19 agreements could be revised. If the
20 parties could not agree on a revised
21 cost of services, the cost would
22 increase by 3.5 percent of the
23 year's -- previous year's costs."

24 Was that consistent with the
25 arrangement that existed before the shared sale

1 Transaction?

2 MR. TIM FRYER: My recall of the other
3 agreements was that it was based on inflationary
4 change if -- if necessary. So I -- I'm -- I don't
5 believe that that's exactly the way, but...

6 MS. KATE MCGRANN: Can you explain
7 what you mean when you say it was based on an
8 inflationary rate change, if necessary?

9 MR. TIM FRYER: My recall of the
10 agreements was that it recognized a base cost, and
11 then referred to the fact that there could be
12 inflationary increases to that amount over the course
13 of time.

14 MS. KATE MCGRANN: Do you remember
15 whether it set out a method for calculating the -- the
16 inflationary increase?

17 MR. TIM FRYER: No.

18 MS. KATE MCGRANN: Do you remember if
19 during the time that -- between 2001 and 2011 there
20 were inflationary increases applied?

21 MR. TIM FRYER: That was more to -- to
22 set a level that the services couldn't exceed. So as
23 we've explained through the course of evidence, the
24 methodology that was used was to take the exact cost
25 that was being incurred and split it over to the two

1 (2) departments, on -- on the approved percentage
2 basis.

3 And then in -- at the end, of the year
4 you'd look at the total costs that had been incurred
5 and make sure that it hadn't exceeded the level within
6 the agreement.

7 MS. KATE MCGRANN: You weren't
8 involved in the negotiation of this letter at all?

9 MR. TIM FRYER: No.

10 MS. KATE MCGRANN: Were you asked to
11 review it before it was signed?

12 MR. TIM FRYER: (NO AUDIBLE RESPONSE).

13 MS. KATE MCGRANN: Did anyone consult
14 you at all about how the shared services would be
15 addressed in -- as in the resulting entity from the
16 share sale transaction?

17 MR. TIM FRYER: No.

18 MS. KATE MCGRANN: Stepping back in
19 time from July 31st, 2012, to the beginning of 2011,
20 can you look at paragraph 140 of --

21 THE HONOURABLE FRANK MARROCCO: Are
22 you moving on to --

23 MS. KATE MCGRANN: -- the Foundation
24 document.

25 THE HONOURABLE FRANK MARROCCO: --

1 something different than the shared services? Let me
2 -- do I understand correctly that -- that the shared
3 services were known and identified?

4 MR. TIM FRYER: Yes, sir.

5 THE HONOURABLE FRANK MARROCCO: And
6 the costs of those services was known --

7 MR. TIM FRYER: Yes.

8 THE HONOURABLE FRANK MARROCCO: -- at
9 least to the previous fiscal year.

10 MR. TIM FRYER: If I may, one of the
11 major costs of course was the labour of the employees
12 that were involved, so we had each of the departments
13 involved -- that actually was in a table that was
14 contained in a document I reviewed with Ms. Chaplin
15 yesterday.

16 It showed the -- the department, so it
17 showed Finance, which included myself and -- and
18 others that were part of that group and our split was,
19 I'm going to say 55 percent Power and 40 percent
20 Water, and then the 5 percent that was remaining was
21 costs that stayed within Solutions in regards to the
22 employees for things like benefits and -- and that
23 that had to be recovered.

24 And so those charges went over to the -
25 - to the individual companies with a -- with a small

1 mark-up on them and the revenue that came back from
2 those charges going over was applied to Solutions,
3 meant to be eventually on a break-even basis, that
4 Solutions would be a break-even corporation.

5 THE HONOURABLE FRANK MARROCCO: And
6 the services supplied by the Town to Power were known.

7 MR. TIM FRYER: If I may, sir, so
8 Solutions was a Collus entity and it provided services
9 to Collus Power, the LDC, Collingwood Public
10 Utilities, the water utility, and some of the
11 employees who also did work for the Town of
12 Collingwood. The Town of Collingwood itself wasn't
13 providing services back to Collus. It was Collus
14 providing them outward to the LDC and to the Town.

15 THE HONOURABLE FRANK MARROCCO: So in
16 terms of trying to figure out the -- the value of
17 these shared services, all of the information required
18 to do that was known?

19 MR. TIM FRYER: Yes.

20 THE HONOURABLE FRANK MARROCCO: And
21 every year you must have gone through an exercise to
22 do that, correct?

23 MR. TIM FRYER: In order to have our
24 external office -- external auditors approve of the
25 methodology we're using to transfer costs, we had to

1 annually review, and then in regards to things -- Mr.
 2 Erling spoke about this a little bit. If we were
 3 purchasing a billing system, we would look at how much
 4 of the costs should be allocated to Water and how much
 5 should be allocated to -- to Power, and we would
 6 allocate it that way.

7 THE HONOURABLE FRANK MARROCCO: So to
 8 have done a -- a valuation of the shared services for
 9 -- so that it would be done prior to the closing of
 10 this sale, how -- how long would that take?

11 MR. TIM FRYER: So the -- the
 12 information that was available to the partners was the
 13 costs that had been incurred through the years through
 14 the financial statements, so they would have had a
 15 fairly decent idea on -- on what the kind of costs
 16 were.

17 It was more the fact that, in -- in my
 18 estimation, they were thinking that PowerStream might
 19 be providing some of the services to Power rather than
 20 -- than through the Solutions company, and we were in
 21 a state of flux as well because of our conversion from
 22 GAAP to IFRS, as to whether or not we would keep the
 23 corporate structure we had or would we move the shared
 24 employees over to the public utilities and then just
 25 simply charge charges over.

1 So it wasn't just a matter of figuring
2 out the services; it was a matter of figuring out the
3 structure. I think that was probably part of the --
4 the reason for delay.

5 THE HONOURABLE FRANK MARROCCO: Was
6 the sale premature in that sense, that it happened
7 before those considerations could be affected?

8 MR. TIM FRYER: I had made that
9 comment to -- to the Board and to Mr. Houghton, that I
10 felt that one thing that really needed to be worked
11 out before we went through an exercise of -- of a sale
12 would be to get our shared services in order, but I --
13 I could understand the reason it was decided not to.

14 Part of the argument, of course, was
15 again what Mr. Erling talked about. You really needed
16 to know exactly who your partner was in order to know
17 how the -- the agreements were going to carry forward
18 with the -- the shared partnership agreement.

19 THE HONOURABLE FRANK MARROCCO: There
20 were four people who were going to bid and -- and
21 until your partner is going to be one of the four
22 bidders.

23 MR. TIM FRYER: Yeah. And the
24 likelihood was that Hydro One wouldn't provide
25 services back to power because typically, in my view,

1 you wouldn't be looking to them to do your billing or
2 things like that, but there probably was a fairly good
3 chance that if it was one of the other three, because
4 they were in LDC and -- and had very similar billing
5 characteristics as us, that they possibly could be
6 involved in something like that.

7 Or, for instance, GIS services for
8 engineering, it -- it wouldn't be a case where you
9 probably have Ontario Hydro, Hydro One providing GIS
10 services to power, but it very well could be that you
11 would have that through somebody like a PowerStream.

12 So all I'm saying is that I can -- I
13 can understand the reasoning, I can understand my
14 reasoning for saying we should get these sorted out,
15 it was more about the arrangements between the Town
16 and ourselves, but I could recognize that there was
17 going to be changes probably brought about by whoever
18 the partner was that eventually settled upon.

19 THE HONOURABLE FRANK MARROCCO: If you
20 settle upon PowerStream as the partner, then you could
21 do the calculations that had to be done to figure out
22 how you're going to apportion shared services.

23 MR. TIM FRYER: Once they knew what
24 services PowerStream might provide and what would be
25 provided by internally, yes, then it could have been

1 worked out.

2 THE HONOURABLE FRANK MARROCCO: Was
3 there -- was there ever a reason provided that you
4 ever heard about why that wouldn't take place prior to
5 the closing of the transaction?

6 MR. TIM FRYER: No. As I mentioned, I
7 wasn't respons -- or I wasn't involved in that part of
8 it for those -- basically the six months leading up to
9 when the transaction was closed.

10 THE HONOURABLE FRANK MARROCCO: Thank
11 you.

12

13 CONTINUED BY MS. KATE MCGRANN:

14 MS. KATE MCGRANN: If you could turn
15 to paragraph 140 of the Foundation document. I'm
16 going to ask you some questions about the valuation
17 and options analysis that KPMG did for Collus Power in
18 early 2011.

19 This paragraph describes a letter from
20 Mayor Cooper to Collus chair Dean Muncaster and Ed and
21 it says:

22 "As you may know, our new Council
23 was partly elected to get our
24 spending and our municipal debt
25 under control."

1 And she goes on to say:

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

9 The letter goes on to say:

10 "I would like to ask that Collus
11 look for similar opportunities in
12 part to help reduce our debt and
13 create greater efficiencies for
14 Collingwood residents. I recognize
15 the input during the budget
16 presentations..."

17 And the letter goes on from there. Did
18 you ever see a copy of a letter along these lines from
19 Mayor Cooper?

20 MR. TIM FRYER: I don't believe so.

21 MS. KATE MCGRANN: When do you recall
22 learning that Collus Power was going to be getting a
23 valuation done?

24 MR. TIM FRYER: I believe it was early
25 in 2011.

1 MS. KATE MCGRANN: How did you learn
2 about it?

3 MR. TIM FRYER: I believe it was Mr.
4 Houghton informed me that there was going to be some
5 work done, and I believe the reasoning he gave was
6 similar to the wording in this document.

7 MS. KATE MCGRANN: And when you say
8 the reason he gave was similar to the wording, did you
9 understand that the purpose of getting the valuation
10 done was to look for opportunities to reduce the
11 Town's costs?

12 MR. TIM FRYER: My understanding was
13 that they wanted to look at their assets and know what
14 their options where. It would make sense that in
15 order to do that you'd want to have a valuation of the
16 -- of the utility assets.

17 MS. KATE MCGRANN: Okay. In the
18 letter that we just looked at, we're looking at
19 getting spending under control, getting municipal debt
20 under control, opportunities to explore cost
21 reductions, Collus looked for opportunities to reduce
22 the Town debt and create greater efficiencies.

23 Do you remember understanding at the
24 time that the valuation was being done that a focus of
25 the valuation was to help the Town try to reduce its

1 costs?

2 MR. TIM FRYER: No, I don't believe
3 that that was conveyed in -- in the conversation about
4 the reason for the valuation.

5 I just maybe would add, I think one of
6 the reasons Mr. Houghton would have been discussing it
7 with me is I could do a valuation, but I would've at
8 that point in time, for two (2) reasons, said I think
9 it's a good idea that somebody else is involved,
10 because I don't have -- I've got a lot of workload on
11 me, but also you -- it's good to have a third party
12 objective view of it. And -- and then it would just
13 be a case of where I would be reviewing to see if I
14 saw anything that stood out to me.

15 MS. KATE MCGRANN: What did you
16 understand about the nature of the valuation that was
17 going to be done in terms of levels of detail and
18 things like that?

19 MR. TIM FRYER: I don't recall
20 anything during those initial conversations other than
21 it would be a general review and -- and I would've
22 equated that to mean just a -- an overview.

23 MS. KATE MCGRANN: What did you
24 understand about who made the decision to have the
25 valuation done?

1 MR. TIM FRYER: All I can recall is
2 being informed that the -- the Town wanted to do this.

3 And so I'm not really sure from a
4 decision-making standpoint.

5 MS. KATE MCGRANN: Can we look at
6 paragraph 150 of the Foundation document, please?

7 So in terms of timing, this is after
8 KPMG is provided a scope of work that's been accepted,
9 there's a kickoff meeting planned for March 11th,
10 2011. We've heard from you, I think, that you don't
11 believe that you were in attendance at that meeting,
12 is that correct?

13 MR. TIM FRYER: I don't recall being
14 there.

15 MS. KATE MCGRANN: This paragraph goes
16 on to say that Mr. Houghton determined that only the
17 Board chair, Dean Muncaster and you would attend the
18 meeting and be in the loop.

19 I want to focus on the second part of
20 that sentence, the "in the loop" section. What did
21 you understand about who knew that a valuation was
22 being done at this time?

23 MR. TIM FRYER: I can't recall that Ed
24 explained to me that Mr. Muncaster was aware, but I
25 would have assumed that because I -- I do believe that

1 Mr. Houghton wouldn't have exercised it without at
2 least talking to the Chair.

3 MS. KATE MCGRANN: Okay. And beyond
4 yourself, Mr. Houghton, and Mr. Muncaster, who else
5 did you understand was aware that the valuation was
6 being done?

7 MR. TIM FRYER: At -- in my recall
8 from back then it would have just been -- I would've,
9 as I said, assumed Mr. Muncaster and -- and Mr.
10 Houghton and -- and that would've been all I would've
11 been thinking would know. Other than the fact that it
12 had been conveyed to me that it was something that
13 Council wanted, so Council would be aware that we were
14 undertaking it.

15 MS. KATE MCGRANN: Was it your
16 understanding that you should only be communicating
17 with KPMG, Mr. Houghton, and Mr. Muncaster about the
18 valuation?

19 MR. TIM FRYER: That would have been
20 the approach I took, yes.

21 MS. KATE MCGRANN: Did you have any
22 understanding as to why knowledge of the valuation was
23 limited to the individuals you've described?

24 MR. TIM FRYER: No, but I can
25 appreciate that it's not the type of information that

1 you want to have too much of a circulation with at the
2 -- at the beginning stages.

3 MS. KATE MCGRANN: Okay. Explain to
4 me why you understand that. What's your
5 understanding?

6 MR. TIM FRYER: Even though you're
7 just getting information, it's information about what
8 the value is of -- of the asset and it involves
9 employees and -- so as a -- as a person who is
10 responsible for about ten employees, I would prefer
11 that they weren't thinking along the lines that there
12 could be a possible sale, because I wasn't thinking
13 along the lines that there was a possible sale. To
14 me, I was just -- we were just getting a valuation and
15 confirming what I -- as I said, had a pretty good
16 handle on what it would be anyway.

17 MS. KATE MCGRANN: So that fact that a
18 valuation was being done, you didn't read into that,
19 that a potential sale of some or all of the LDC was
20 being considered?

21 MR. TIM FRYER: Every time a Council
22 changed, you knew there was a possibility that -- that
23 there would be some sort of exploration into what can
24 we do here. And we had various stages at different
25 times with other Council.

1 So to me, this was just the initial
2 stage, and with a brand-new Council it was totally
3 understandable, in my view.

4 MS. KATE MCGRANN: And a valuation had
5 been conducted of the LDC before?

6 MR. TIM FRYER: Just information from
7 me, not -- not on a formal basis.

8 MS. KATE MCGRANN: KPMG is retained to
9 conduct the valuation and options analysis. What was
10 your role with respect to the valuation and options
11 analysis?

12 MR. TIM FRYER: I expected that I'd be
13 a resource of information thinking along the lines
14 that a lot of the information was readily available
15 and -- and wouldn't produce an awful lot of workload.

16 MS. KATE MCGRANN: Okay. And did that
17 expectation turn out to be true?

18 MR. TIM FRYER: I believe so. I -- I
19 -- when I was responding to Mr. Erling's request for
20 information I recognized that, as a -- as a consultant
21 tasked with a job, he'd be asking for spec -- as much
22 specific information as he could.

23 And I'd try to -- to convey what I
24 could with the resources I had available, and then
25 suggest where I thought it was applicable that those

1 were specifics that would take a lot of time. And my
2 understanding was that there would be a general
3 overview.

4 MS. KATE MCGRANN: At any time during
5 the period in which KPMG was doing its work on the
6 valuation and options analysis did anyone speak to you
7 about the nature, content, or timing of your responses
8 to KPMG's request for information?

9 MR. TIM FRYER: No. I didn't become
10 aware of that until I read the document.

11 MS. KATE MCGRANN: When you say you
12 didn't become aware of that, what are you talking
13 about?

14 MR. TIM FRYER: I've seen where
15 there's been some -- about me taking some time. I
16 thought, in looking at some of the emails, that there
17 was a couple instances where there was a
18 misunderstanding be -- between myself and the other
19 party as to who was expecting the next response to
20 come from.

21 So, as I said, that -- that's -- I --
22 I've seen some of the comments. And -- and some of it
23 is internal chatter, so to speak, so -- but it didn't
24 convey that they felt that I -- I was being tardy.

25 MS. KATE MCGRANN: Okay. Were you

1 being tardy in your responses to the request for
2 information?

3 MR. TIM FRYER: I don't believe so,
4 no.

5 MS. KATE MCGRANN: Did you receive a
6 copy of the draft valuation when it was provided on
7 May 24th, 2011?

8 MR. TIM FRYER: I can't say for
9 certain. I'm expecting I did. But I'd be speculating
10 if I said to you that for certain I remember getting
11 it. But I -- I do recall an email from Mr. Rockx
12 where I was responding on specific finetuning, so I
13 have to think that comes from me receiving the draft.

14 MS. KATE MCGRANN: Okay. Can we look
15 at paragraph 163 of the Foundation Document?

16

17 (BRIEF PAUSE)

18

19 MS. KATE MCGRANN: Do you remember
20 learning at some point after May 24th, 2011, that the
21 valuation that KPMG assessed for Collus Power was 14.1
22 million to 16.3 million?

23 MR. TIM FRYER: Yes, I do.

24 MS. KATE MCGRANN: Was that consistent
25 with what your expectations were for the value of the

1 Company?

2 MR. TIM FRYER: Certainly not out of -
3 - out of the -- the area, no.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Can we turn up
8 KPM1032?

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: This is a slide
13 show that KPMG put together setting out their
14 assessment of the options available to the Town with
15 respect to Collus Power. Are you familiar with this
16 document?

17 MR. TIM FRYER: I can't say for
18 certain that I saw it when it was issued on the 24th
19 of May.

20 MS. KATE MCGRANN: Are you familiar
21 with it sitting here today?

22 MR. TIM FRYER: Sorry?

23 MS. KATE MCGRANN: Are you familiar
24 with it sitting here today? You've seen this document
25 before?

1 MR. TIM FRYER: Yes, I have, yeah.

2 MS. KATE MCGRANN: Do you recall if
3 you saw it before you began your work on the Strategic
4 Partnership Task Team?

5 MR. TIM FRYER: I can't recall for
6 sure on that, no.

7 MS. KATE MCGRANN: Can we turn to
8 CJI7986?

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: I bring you to this
13 document to -- to help place you in time. So, this is
14 minutes from the council meeting of May 30th, 2011.
15 This is the council meeting in which you, Mr.
16 Muncaster, and Mr. Houghton present the financial
17 statements along with the business plan for the Collus
18 entities.

19 We've talked about this already, but do
20 you recall this?

21 MR. TIM FRYER: Yes, I do.

22 MS. KATE MCGRANN: So, at this point
23 in time, KPMG has delivered its draft valuation. From
24 our review of the available materials about this
25 meeting, there's no mention of the fact of the

1 valuation.

2 Do you know why the valuation was not
3 mentioned at this meeting?

4 MR. TIM FRYER: Again, I -- I may be
5 speculating, but I think it's an educated opi --
6 opinion. This is May 30th. We're presenting the
7 annual report, just had received the valuation, so
8 council wouldn't even have been apprised of the
9 valuation information yet, and I would have thought
10 that would be a major reason for not including it.

11 Plus, as I said, this was a public
12 presentation. And, again, even information about the
13 possibility that a valuation's been done would
14 probably resinate to our employees that there was a
15 possibility of a sale and -- and cause some angst.

16 So, my reflexion on it is that we were
17 reporting on the usual aspects that we would because
18 nothing had been taken to a stage where something in
19 the works was -- was -- would -- would necessitate a
20 change.

21 MS. KATE MCGRANN: So, I have a couple
22 of questions about what you just said. First of all,
23 did you know at the time -- on Monday May 30th did you
24 understand that the valuation wasn't going to be
25 mentioned?

1 MR. TIM FRYER: I can't recall a
2 conversation about that, but I would have assumed that
3 it wouldn't be.

4 MS. KATE MCGRANN: Do you -- I just
5 want to understand what you understood at the time.
6 So, do you remember having any -- considering whether
7 or not the valuation would be mentioned at all at the
8 time?

9 MR. TIM FRYER: Yeah, and sorry about
10 that. I -- I would have thought back then that it
11 wouldn't have been an appropriate time to be putting
12 information to council in a public setting about the
13 valuation, so that's what I meant about assumed.

14 MS. KATE MCGRANN: I -- I may have
15 misunderstood you. I thought that you told us that
16 you believed that council knew that the valuation was
17 being done during the time that KPMG was doing its
18 work?

19 MR. TIM FRYER: They would have known
20 about the valuation work but not about the -- the
21 draft options that had been put together, I guess,
22 with the May 24th information and the -- and the total
23 value of the valuation. I don't believe they had been
24 updated on that yet.

25 MS. KATE MCGRANN: So, it was your

1 understanding as at May 30th, 2011, that council was
2 aware that the valuation and strategic options work
3 was being done?

4 MR. TIM FRYER: That -- that work was
5 being done. The reason I'm saying council was aware
6 was because my understanding from Mr. Houghton was
7 that council was the one who had directed him to -- to
8 take a look at the options.

9 MS. KATE MCGRANN: Okay. So, you
10 thought that they knew that the work was being done
11 but you didn't think they had been provided with the
12 work product, the conclusions, at this point?

13 MR. TIM FRYER: Certainly, not any of
14 the detail like -- like what we just talked about,
15 yes.

16 MS. KATE MCGRANN: Okay. And you've
17 explained to me why, in your view, it wouldn't be
18 appropriate to give that information in a public
19 meeting, concerns for Collus staff, for one (1),
20 you've explained that.

21 Are you aware of any reason why council
22 couldn't go in camera to receive that information on
23 May 30th?

24 MR. TIM FRYER: I'm not aware of any
25 reason, no.

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: And you've
4 explained to us that you didn't see the valuation and
5 options analysis work as an indication that a sale of
6 some or all of Collus Power was being seriously
7 considered. Is that fair?

8 MR. TIM FRYER: I guess it's a matter
9 of -- I knew it was being considered. I -- I wasn't
10 putting seriously into the -- into the mix of that.

11 MS. KATE MCGRANN: When did you first
12 become aware that a sale of some or all of Collus
13 Power was -- was being considered in a -- in a serious
14 way?

15 MR. TIM FRYER: I believe it would
16 have been the June 27th in camera session with council
17 when, in my opinion, we were instructed to go forward
18 with an option and -- and, basically, empowered by
19 council to start to look at that as a -- as a bonafide
20 possibility.

21 MS. KATE MCGRANN: Can we turn up
22 CPS4397, please?

23

24 (BRIEF PAUSE)

25

1 MS. KATE MCGRANN: This is a slide
2 deck that was presented to Council in-camera on the
3 June 27th Council meeting that you're mentioning.

4 Are you familiar with this slide deck?

5 MR. TIM FRYER: Yes, I am familiar
6 with it.

7 MS. KATE MCGRANN: Were you given the
8 opportunity to review it before it was presented to
9 Council on June 27th, 2011?

10 MR. TIM FRYER: I don't believe so.

11 MS. KATE MCGRANN: Were you involved
12 in any discussions about the options that are reviewed
13 in this slide deck before they were presented to
14 Council?

15 MR. TIM FRYER: Not to any degree, no.

16 MS. KATE MCGRANN: Had you been
17 involved in any discussions about a potential
18 strategic partnership that Collus Power would enter
19 into before this slide deck was presented to Council?

20 MR. TIM FRYER: My recall about
21 strategic partnership was the July 8th Board meeting,
22 but since reading the material and seeing this, I know
23 the strategic partnership is part of this slide
24 presentation. So I must've heard about it on
25 June the 27th.

1 MS. KATE MCGRANN: When you said that
2 you understood at the end of this meeting that you had
3 been instructed to proceed with an option, what option
4 did you think you been instructed to proceed with?

5 MR. TIM FRYER: The partnership idea.
6 I didn't equate that to mean majority or minority. I
7 just -- can we take a look at an idea of a
8 partnership.

9 MS. KATE MCGRANN: And what did a --
10 what does a partnership idea mean to you? What would
11 that look like on the ground?

12 MR. TIM FRYER: At that time, I
13 would've considered a partial sale of some sort to --
14 towards the area of upwards of 50 percent. I -- I
15 didn't think that they were thinking of majority. So
16 I hadn't probably put anything in my head at that time
17 as to what was anticipated. I was aware that in -- in
18 some -- some circumstances out in the industry, there
19 had been sale of 10 or 15 percent to -- for some LDCs.

20 So just as I said, I didn't have a
21 like -- like a percentage in mind, but I -- I
22 certainly felt that what the possibility was was that
23 we were looking for a partner who would maybe buy a
24 portion of the -- of the asset -- or shares of the
25 corporation.

1 MS. KATE MCGRANN: Okay. And when you
2 say "upwards of 50 percent," can you help me
3 understand what you mean by that?

4 MR. TIM FRYER: Well, I would consider
5 that 50 percent or more would be a majority sale,
6 and -- and my understanding at the time was that they
7 were not interested in becoming a minority partner.
8 So we would have been looking at only the potential
9 for something upwards to 50.

10 MS. KATE MCGRANN: Okay. I just --
11 because you say -- because you said "they" and upwards
12 to 50, what did you understand the Town was
13 considering selling?

14 MR. TIM FRYER: That they were
15 interested in finding out more about an option of a
16 share sale for up to 50 percent of the shares, that
17 they called or referred to as a partnership.

18 MS. KATE MCGRANN: Who is "they"?

19 MR. TIM FRYER: Council and -- and ...

20 MS. KATE MCGRANN: Okay. So the first
21 time you become aware of this potential sale of some
22 or all of Collus Powers on June 27th at this meeting
23 when you believe that you've been -- Collus Power has
24 been empowered to explore the potential sale of up to
25 50 percent. Is that right?

1 MR. TIM FRYER: Yes.

2 MS. KATE MCGRANN: And then you
3 mentioned -- it was a slightly different understanding
4 at the July 8th meeting, and that's the Collus Power
5 Board meeting. Is that right?

6 MR. TIM FRYER: Yes, it is.

7 MS. KATE MCGRANN: So we turn up
8 CPS7018_30001.

9 THE HONOURABLE FRANK MARROCCO: Before
10 you --

11 MS. KATE MCGRANN: Yeah.

12 THE HONOURABLE FRANK MARROCCO: -- or
13 while you're doing that, was it your understanding
14 that the Town did not want to sell -- did not want to
15 lose control?

16 MR. TIM FRYER: They -- they didn't
17 want to become a minority owner.

18 THE HONOURABLE FRANK MARROCCO: So
19 when you say up to 50 -- if you don't want to become a
20 minority owner, does that mean less than 50 percent
21 would be sold to you at that time?

22 MR. TIM FRYER: At that point in time,
23 that's the way I would have looked at it. I would've
24 said anything 50 percent or more is essentially losing
25 control.

1 THE HONOURABLE FRANK MARROCCO: Right.

2 Okay. Thank you

3

4 CONTINUED BY MS. KATE MCGRANN:

5 MS. KATE MCGRANN: So we're looking at
6 minutes of a meeting of the Board of Directors of
7 Collus Power from Friday, July 8th. If we could
8 scroll down to page 3, please.

9

10 (BRIEF PAUSE)

11

12 MS. KATE MCGRANN: We're looking at
13 the first full paragraph where it says:

14 "Upon motion duly made, seconded,
15 and carried, the meeting moved
16 in-camera to discuss a matter
17 pertaining to personnel and/or
18 property."

19 And we see that:

20 "The Board rose from the in-camera
21 session and reconvened the regular
22 meeting."

23 And it says that basically:

24 "The Board unanimously voted to
25 support the preferred option of

1 moving forward with the strategic
2 partner option and fully supports
3 management in the execution of the
4 direction."

5 Is it your recollection that during the
6 in-camera portion of this meeting, there was a
7 discussion about the options and ultimately a decision
8 to move forward with the strategic partner option?

9 MR. TIM FRYER: It was clear to me,
10 based on -- on this meeting, the concept of not just
11 having somebody purchase shares and -- and become a --
12 like a -- like a partial owner, but we were looking
13 for somebody who would be a partner, and it be
14 all encompassing, so to speak. It would be they would
15 become involved in possibly the provision of services
16 or back and forth and -- and take advantage of -- of
17 expertise and -- and those types of things.

18 So it became quite clear to me at this
19 meeting that it was what they were terming to be a
20 strategic partnership was the -- was the term that was
21 being used.

22 MS. KATE MCGRANN: Was there an
23 in-camera discussion about those kinds of things?

24 MR. TIM FRYER: I'm positive that
25 that's what was being talked about, yes.

1 MS. KATE MCGRANN: Do you have a
2 recollection of that discussion?

3 MR. TIM FRYER: No, other than that it
4 was clear to me about the concept.

5 MS. KATE MCGRANN: And other -- when
6 you say "all encompassing," what do you mean by that?

7 MR. TIM FRYER: You could have a
8 situation where somebody just purchase share sales,
9 and they're not even on your Board of Directors. It
10 was clear that that wasn't going to be the case here.
11 So that's just one example of that.

12 Another would be in this particular
13 case, the anticipation was that the partner would be
14 able to assist us with their expertise.

15 MS. KATE MCGRANN: And those are the
16 things that you -- were being discussed at this
17 meeting.

18 MR. TIM FRYER: It was clear to me
19 that that's what they were looking for, based on -- on
20 the information I received at that meeting.

21 MS. KATE MCGRANN: Anything else you
22 recall learning at that meeting?

23 MR. TIM FRYER: Not at this time, no.

24 MS. KATE MCGRANN: Did you have any
25 concerns that -- it sounds to me like you had one

1 understanding of what was being pursued when you left
2 the Council meeting on June 27th, and you had a
3 different or better understanding of what was being
4 pursued when you left the Collus Power Board meeting
5 on July 8th. Is that fair?

6 MR. TIM FRYER: Yes. I would say your
7 statement about a "better understanding" of what
8 was -- and -- and now I had the Board's empowerment to
9 proceed with that -- that objective, as well.

10 MS. KATE MCGRANN: To your knowledge,
11 did anyone take the additional information that you
12 learned at the July 8th meeting back to Town Council
13 so they, too, could have a better understanding of
14 what was being pursued?

15 MR. TIM FRYER: I can't say for
16 certain. I know the mayor was a liaison and would've
17 been at this -- in fact, was at this meeting. And --
18 but I -- I can't say for certain that she would've
19 conveyed that directly back.

20 MS. KATE MCGRANN: You were a -- you
21 were a member of the Strategic Partnership Task Team.
22 Is that correct?

23 MR. TIM FRYER: Yes, I was.

24 MS. KATE MCGRANN: Do you remember how
25 you were selected to be a member of that team?

1 MR. TIM FRYER: I'm -- not so much
2 how. I know it happened at an in-camera session of
3 Council. It was identified who would be on the task
4 team.

5 MS. KATE MCGRANN: Do you know who
6 picked you to be on the task team?

7 MR. TIM FRYER: I can't say for
8 certain, no.

9 MS. KATE MCGRANN: Do you know why you
10 were picked to be on the task team?

11 MR. TIM FRYER: I'm CFO of the utility
12 that was involved.

13 MS. KATE MCGRANN: Is that your
14 understanding of why you were picked, or was that
15 explained to you?

16 MR. TIM FRYER: That would be my
17 understanding.

18 MS. KATE MCGRANN: What did you
19 understand your role on the Strategic Task Team to be?

20 MR. TIM FRYER: Certainly as a
21 resource. I -- I did consider the situation that
22 there was five representatives on it, that three
23 were -- were Board members and two were -- or Council
24 members. And I considered them to be what I would
25 call the voting members of the -- in reading the

1 materials and that, I -- I don't think that's conveyed
2 in -- in any way that there was votes, and -- and it
3 was only the five (5) of them voting.

4 But I certainly, as a member of the
5 Task Team, looked more at my role as being a resource.
6 I did participate in the -- in the scoring, which
7 would make sense to me to do that, put it over the
8 whole group.

9 But, in the end, I think, if there was
10 any decisions to be made, I would be turning to the
11 people who were the voting members of the Board and --
12 and council, that they would be the ones making the fi
13 -- ultimate decisions.

14

15 (BRIEF PAUSE)

16

17 MS. KATE MCGRANN: Fair to say that
18 the Strategic Task Team did make a number of decisions
19 before it received and evaluated responses to the RFP?

20 MR. TIM FRYER: I guess we would have
21 made decisions about the criteria for it. So, yes,
22 there would have been some decisions made in -- in
23 advance of that.

24 MS. KATE MCGRANN: On how to conduct
25 better meetings?

1 MR. TIM FRYER: I -- I believe they
2 would have been at the Strategic Planning Task Team
3 sessions.

4 MS. KATE MCGRANN: Were there ever any
5 discussions at the Strategic Task Team meetings or
6 otherwise about the idea that there were decision-
7 making members of the team and resource members of the
8 team? Was that ever discussed?

9 MR. TIM FRYER: I don't believe it
10 would have been a discussion point.

11 MS. KATE MCGRANN: Was it ever
12 explained to anyone that -- that you would not be
13 participating in the decision-making function of the
14 Strategic Task Team up to the evaluation of the RFP
15 responses?

16 MR. TIM FRYER: No. My recall of it
17 is that I just assumed that that was the role.

18 MS. KATE MCGRANN: But what was the
19 Strategic Partnership Task Team there to do?

20 MR. TIM FRYER: It was there to
21 conduct an exercise to determine possible strategic
22 partner alternatives.

23 MS. KATE MCGRANN: And what did you
24 understand the goals of the strategic partnership to
25 be? What was the Tow -- what was the Town and Collus

1 Power looking to achieve by entering into a strategic
2 partnership?

3 MR. TIM FRYER: Finding a partner that
4 would allow the utility to at least continue to
5 function in the -- in the -- to the level -- the high
6 quality level that it had been on a go forward basis,
7 recognizing there was numerous influences within the
8 market as to required changes.

9 And there was issues about continuing
10 on and being able to do the -- the services that we
11 needed to do at the most cost-effective way. So, we'd
12 be looking to the partner to -- to achieve that, as
13 well, so, basically, grow the value of the
14 organization.

15 MS. KATE MCGRANN: Okay. When you say
16 provide services in the most co -- cost-effective way
17 possible, are we looking at most cost-effective from
18 the perspective of the ratepayer?

19 MR. TIM FRYER: Yes.

20 MS. KATE MCGRANN: And I think you
21 summarized your explanation of what the goals for the
22 strategic partner were, to grow the organization?

23 MR. TIM FRYER: Grow the value of.
24 And that's why I just says 'yes' to the ratepayer
25 question, because, in my view, the goal for the

1 shareholder was to grow the value of the organization.

2 MS. KATE MCGRANN: Was one (1) of the
3 purposes of the strategic partnership to put Collus
4 Power and its partner in a position to grow the size
5 of the organization, acquire other LDCs or engage in
6 further partnerships?

7 MR. TIM FRYER: I certainly was aware
8 that there was discussion during our meetings about
9 potentially bringing other LDCs within the model just
10 in a general sense. That was the discussions that I
11 recall, is just that it was a possibility.

12 MS. KATE MCGRANN: We had looked
13 earlier at the -- the mayor's letter from January 2011
14 that talked about the need to try to reduce costs for
15 the Town. Did you understand that to be a goal of the
16 strategic partnership?

17 MR. TIM FRYER: No, I -- I didn't know
18 the specifics. I just knew that they had talked about
19 it at -- I thought it was a strategic planning
20 session, but it may have been a budget session of
21 council.

22 MS. KATE MCGRANN: Okay. My question
23 is actually, did you understand one (1) of the goals
24 for any strategic partner would be to reduce the costs
25 to the Town?

1 MR. TIM FRYER: No.

2

3 (BRIEF PAUSE)

4

5 MS. KATE MCGRANN: Do you recall
6 participating in any discussions about the RFP
7 criteria with the Strategic Partnership Task Team?

8 MR. TIM FRYER: I have to say I don't
9 recall. I'm assuming it happened in a strategic
10 partnership meeting -- or task team meeting and I
11 would have been part of it, but I cannot say for
12 certain.

13 MS. KATE MCGRANN: Do you recall that
14 KPMG was retained to provide assistance with respect
15 to the RFP procedure?

16 MR. TIM FRYER: Yes.

17 MS. KATE MCGRANN: What did you
18 understand their role to be?

19 MR. TIM FRYER: A third-party resource
20 providing us with -- with their objectivity and -- and
21 using Mr. Herhalt to -- to lead the discussion so that
22 the other members of the task team could participate
23 in -- in things more fully.

24 MS. KATE MCGRANN: Was it your
25 understanding that KPMG had been asked to provide

1 advice about the nature of the strategic partnership,
2 the quantum of shares to be offered, things like that?

3 MR. TIM FRYER: I don't recall that
4 they were, no.

5 MS. KATE MCGRANN: Do you recall
6 attending bidder presentations that were made to
7 members of the Strategic Task Team in September of
8 2011?

9 MR. TIM FRYER: Yes, I did.

10 MS. KATE MCGRANN: What was your
11 understanding about the nature of the information that
12 was discussed at those meetings?

13 MR. TIM FRYER: That was looking at
14 expressions of interest from -- from the four (4)
15 selected pro -- proponents. And it was, again, all-
16 encompassing delivery of information from those four
17 (4) proponents as to the current organization they had
18 and the aspects of where they saw -- working with
19 Collingwood as a partner, where they could see it
20 going.

21 MS. KATE MCGRANN: Do you recall
22 whether the information that was discussed at those
23 meetings was intended to be treated as confidential?

24 MR. TIM FRYER: I would certainly have
25 thought so.

1 MS. KATE MCGRANN: Do you recall
2 whether the Strategic Task Team gave the bidders any
3 feedback on their presentations either during the
4 presentation or afterwards?

5 MR. TIM FRYER: I can't recall what --
6 I -- I expected there would have been at least a brief
7 expression back to them at the time of the meeting
8 thanking them, more or less, but I can't recall any
9 specifics about -- about that part of things after
10 that.

11 MS. KATE MCGRANN: Okay. And just to
12 understand your answer, you expect that the Strategic
13 Task Team would have expressed thanks for the work put
14 in but nothing more than that?

15 MR. TIM FRYER: Yeah. And if I recall
16 correctly, it was -- all of council was there, as
17 well.

18 MS. KATE MCGRANN: You think that all
19 fo the members of Town council were present at the
20 presentations that the bidders made to the Strategic
21 Task Team in September?

22 MR. TIM FRYER: That's my
23 recollection, yes.

24

25 (BRIEF PAUSE)

1 MS. KATE MCGRANN: Could we turn to
2 TOC518041, please?

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: Scroll to the
7 bottom to see the first email in this chain. This is
8 an email from you to Brian Bentz on September 15th,
9 2011. You say:

10 "Hey, Brian. I hope that you're
11 doing real well. We haven't seen
12 each other for a long time."

13 Are -- are you familiar with this
14 email?

15 MR. TIM FRYER: Yes, I am.

16 MS. KATE MCGRANN: I think you've
17 mentioned that you were aware of Brian Bentz before
18 your work on the Strategic Task Team. How did you
19 know Brian Bentz?

20 MR. TIM FRYER: I knew Brian from his
21 days when he was the treasurer at the Barrie Public
22 Utilities. And I'm going to put thirty (30) years ago
23 to that kind of an area of time.

24 MS. KATE MCGRANN: You met -- you
25 first met him approximately thirty (30) years prior to

1 this email?

2 MR. TIM FRYER: Yes.

3 MS. KATE MCGRANN: And at the time
4 that you first met him, thirty (30) years prior, did
5 you have a work or social relationship with him at
6 that time?

7 MR. TIM FRYER: We were -- we -- we
8 worked together on -- there was an exercise that
9 actually started out of Barrie PUC to look at a
10 Georgian Bay cooperative utility. Don Douds was the
11 CEO there, and it was kind of my first delving into
12 some possibilities that the province would be looking
13 for changes and -- and that.

14 So we had met and -- and gone
15 through -- through things, because the Georgian Bay
16 utilities, Collingwood was one of them, and -- and
17 Barrie was one of them. So we had done some work
18 together on that. And had a social relationship, but
19 nothing other than just as acquaintances.

20 MS. KATE MCGRANN: When did you work
21 on that particular initiative end?

22 MR. TIM FRYER: Oh, it's -- it's -- it
23 was in the -- I hate to talk about decades, but I'm --
24 late 80s or early 90s I would think. So...

25 MS. KATE MCGRANN: Did you maintain a

1 social relationship with Mr. Bentz after your work on
2 the Georgian Bay initiative ended?

3 MR. TIM FRYER: No.

4 MS. KATE MCGRANN: Did you have any
5 contact with him at all between that time and this
6 email on September 15th, 2011?

7 MR. TIM FRYER: No. I'm -- I'm sure I
8 would have bumped into him at some various
9 professional things that we would have been attending.
10 But my last recollection of meeting with Brian was I
11 was working on a -- on a working group that was
12 looking into a billing -- a customer billing solution,
13 and we met with Brian at his office down at -- at
14 PowerStream. And I'm going to say that was around
15 2006.

16 And I recall when we finished the forum
17 part of the meeting, I remember we were leaving, and
18 I -- I said to Brian, it's been a long time, and he
19 said yeah. And I said, next time you're going to be
20 in my area, let me know, and we'll get together. But
21 as I said, that was 2006.

22 MS. KATE MCGRANN: And you don't
23 remember any contact other than incidental contact at
24 industry events between 2006 and 2011?

25 MR. TIM FRYER: No. In fact, this

1 email is the only one of the 3,000 documents that
2 there was.

3 MS. KATE MCGRANN: Okay. So on this
4 date, you reach out to him and invite Mr. Bentz to
5 play golf. Why did you send this email?

6 MR. TIM FRYER: Just as I said,
7 this -- the last time I talked to him, I said you're
8 going to be in Collingwood, make sure I know, and
9 we'll do something.

10 MS. KATE MCGRANN: Did you consider at
11 the time that you sent this email that Mr. Bentz was
12 going to be -- it was potentially going to be a bidder
13 RFP process that you would be evaluating?

14 MR. TIM FRYER: I certainly understood
15 that they were one of the proponents we were speaking
16 with. At this particular date, it was the
17 strategic -- or the -- the partners coming -- the
18 proponents coming and presenting their expression of
19 interest. So it wasn't at the RFP stage yet.

20 MS. KATE MCGRANN: And how did the
21 fact that it wasn't at the RFP stage yet factor into
22 your consideration about sending this email?

23 MR. TIM FRYER: It didn't. I'm just
24 saying that it wasn't.

25 MS. KATE MCGRANN: Other than the fact

1 that you had previously years ago discussed getting
2 together with Mr. Bentz when he was in Collingwood,
3 what prompted you to send this email on this date?
4 Why did you want to go golfing with him?

5 MR. TIM FRYER: Well, just as it
6 reads:

7 "When you're here in Collingwood on
8 Monday, I wonder if you'd be
9 interested and plan to hang around
10 for a golf game in the afternoon. I
11 was hoping you would be able to join
12 me as my guest and play at Georgian
13 Bay Club or Lora Bay Club. I wasn't
14 sure if you already had an
15 opportunity to play Georgian Bay or
16 not. If not, then it would probably
17 be your best choice, and you would
18 really enjoy it. The weather isn't
19 supposed to be great as it's been in
20 the last week. I figure we'd play
21 around 2, 2:30...fast."

22 I -- it's just a -- to me, it's a
23 personal email just saying we're going to have a golf
24 game.

25 MS. KATE MCGRANN: Okay. So the last

1 sentence in the email says:

2 "I know it is short notice, so it
3 may not work, but it would be great
4 to get a chance to chat with you."

5 Was there anything in particular that
6 you wanted to chat with Mr. Bentz about?

7 MR. TIM FRYER: Well, just as I said,
8 it was a social personal chat, I guess.

9 MS. KATE MCGRANN: Was this email
10 related in any way to your work on the Strategic
11 Partnership Task Team, the considerations of looking
12 for a strategic partnership, or Collus Power in any
13 way?

14 MR. TIM FRYER: No.

15 MS. KATE MCGRANN: Did you ultimately
16 play golf with Mr. Bentz?

17 MR. TIM FRYER: I don't believe so. I
18 believe we were rained out.

19 MS. KATE MCGRANN: Did you have any
20 communications with him after this email exchange?

21 MR. TIM FRYER: No.

22 MS. KATE MCGRANN: Did you advise the
23 Strategic Partnership Task Team that you had reached
24 out to invite Mr. Bentz to play golf?

25 MR. TIM FRYER: No.

1 MS. KATE MCGRANN: Why not

2 MR. TIM FRYER: I didn't -- at the
3 time, I didn't think that that was an issue.

4 MS. KATE MCGRANN: Other than your
5 role on the Strategic Partnership Task Team, what
6 involvement did you have in the RFP process that
7 Collus Power ran?

8 MR. TIM FRYER: I recall that I would
9 have been in the discussions about the criteria and
10 the weighting of the criteria.

11 MS. KATE MCGRANN: What do you recall
12 about that?

13 MR. TIM FRYER: I would have been part
14 of the discussion on trying to determine what we
15 thought was the best percentage layout. And my
16 recollection is that I had -- had suggested a
17 50 percent financial. I can understand that they
18 wanted to put a fairly heavy weight onto the strategic
19 partner side of it.

20 So the result was, as we know,
21 30 percent financial, and -- and 30 percent strategic
22 partner, and then dividing the other components with
23 10 percent.

24 MS. KATE MCGRANN: Okay. I'm reacting
25 to your use of the phrase "would have" when you

1 started your answer. Do you have specific
2 recollections of the discussions you engaged in about
3 the RFP criteria?

4 MR. TIM FRYER: I can't say for
5 certain, other than that I know that I would have been
6 there, and we would've talked about them.

7 MS. KATE MCGRANN: Do you remember
8 what happened when you suggested that you thought that
9 the waiting for the financial offer should be
10 50 percent?

11 MR. TIM FRYER: I believe there would
12 have been discussion, and it was determined that it
13 wouldn't be.

14 MS. KATE MCGRANN: Do you have any
15 recollection of those discussions?

16 MR. TIM FRYER: Not formally, no.

17 MS. KATE MCGRANN: Do you specifically
18 recall telling the other members of the task team that
19 you thought it should be 50 percent waiting on the
20 financial component though?

21 MR. TIM FRYER: I'm going to say yes,
22 but I can't say for certain.

23 MS. KATE MCGRANN: Do you recall
24 whether that would have been done in writing or in
25 person?

1 MR. TIM FRYER: It would have been at
2 the meetings, and so it would have been verbal.

3 MS. KATE MCGRANN: Can we turn to
4 paragraph 293 of the Foundation Document, please.

5

6 (BRIEF PAUSE)

7

8 MS. KATE MCGRANN: So I'm going to
9 scroll down so that you can see table 4.1 in the
10 evaluation criteria.

11 MR. TIM FRYER: M-hm.

12 MS. KATE MCGRANN: Going -- so can you
13 explain to me your understanding of how the points are
14 apportioned to your -- you had said 30 financial,
15 30 non-financial, and then the other components 10.
16 Explain to me how you saw this working.

17 MR. TIM FRYER: Sorry? I'm not sure I
18 follow what your question is.

19 MS. KATE MCGRANN: We've had other --
20 we've heard evidence from other witnesses that their
21 view of the waiting was that it was 30 points for the
22 financial bid, 70 percent for the non-financial
23 criteria. It's my understanding from things that
24 you've said that you viewed this a little bit
25 differently, that you saw it as a 30:30:10:10:10

1 situation. I'd like to understand what you understood
2 the waiting to be.

3 MR. TIM FRYER: So if we can just
4 scroll a little bit up to see the full -- so -- so the
5 first 30 percent is what I would consider to be
6 financial to a degree because I do believe the -- the
7 rates are part of financial, but that's down a little
8 bit lower. So that's the 30, and -- and it has, as we
9 can see, I guess, nine bullet point items that
10 they're -- they're looking at.

11 So certainly, I would look at that as
12 one component from a statistical standpoint. If
13 you're looking at that as one component, then it would
14 make sense that you're looking at something that has
15 similar weighting as another component. And that's
16 the provision of strategic and specialized resources
17 and supporting growing the Collus business.

18 So in my view, you easily could have
19 put out three (3) packages: a financial package, a
20 strategic partner package, and the other qualitative
21 factors that are down here.

22 Does that answer your question?

23 MS. KATE MCGRANN: It does. Could we
24 scroll up for a second.

25 So you're -- when you look at proposed

1 representation on Collus Power Board of directors, you
2 viewed that as a financial criteria?

3 MR. TIM FRYER: In the -- in the
4 essence of what's there, yes, I would.

5 MS. KATE MCGRANN: Okay, and the
6 second last bullet point, proposed capital structure
7 shareholders agreement, buy sell arrangements, right
8 of first refusal, and shotgun provisions, you viewed
9 those as financial considerations.

10 MR. TIM FRYER: That's what I meant
11 about the essence with the bullet points that are
12 equated into there, yes.

13 MS. KATE MCGRANN: Would you agree
14 with me that those two bullet points that we looked
15 at, representation on the Collus Power board of
16 directors and capital structure shareholder's
17 agreement, right of first refusal, and shotgun
18 provisions, those would be important considerations
19 for an entity that doesn't want to lose control of
20 what it's selling?

21 MR. TIM FRYER: Can you run that by me
22 again? Sorry.

23 MS. KATE MCGRANN: Sure. I understood
24 you to be saying that you understood that the Town did
25 not want to lose control of the LDC when it entered

1 into a strategic partnership.

2 MR. TIM FRYER: Yes.

3 MS. KATE MCGRANN: The question of
4 representation on the board of directors would be an
5 important consideration for an owner that doesn't want
6 to lose control of the entity.

7 Would you agree with that?

8 MR. TIM FRYER: I would say they're
9 important considerations, yes.

10 MS. KATE MCGRANN: The contents of the
11 shareholders agreement would be an important
12 consideration for an entity that doesn't want to lose
13 control of what's being sold?

14 MR. TIM FRYER: Yes.

15 MS. KATE MCGRANN: Concepts like right
16 of first refusal and whether there are going to be
17 shotgun provisions included in the agreements, those
18 would be important considerations for an entity that
19 doesn't want to lose control of what it's selling?

20 MR. TIM FRYER: Yes.

21 MS. KATE MCGRANN: Do you recall any
22 specific discussions about whether those kinds of
23 considerations should be given more weight given the
24 goals for the strategic partnership?

25 MR. TIM FRYER: I can't recall, no.

1 MS. KATE MCGRANN: So I understand
2 that you were involved in discussions about how to put
3 the RFP together.

4 When you say that you thought that the
5 financial considerations should be given a 50 percent
6 weighting, are these bullet points here that are
7 currently assigned to 30 percent weighting, those are
8 the considerations you thought should be weighted 50
9 percent?

10 MR. TIM FRYER: I would say yes.

11 MS. KATE MCGRANN: Outside of your
12 role as a member of the strategic partnership task
13 team, stepping back into your role as CFO of the
14 Collus entities, what involvement, if any, did you
15 have in -- in the RFP process?

16 Did you participate in the population
17 of the data room, were you responding to requests,
18 were you involved in discussions about bidder
19 questions and things like that?

20 MR. TIM FRYER: Yes, to both of those.

21 MS. KATE MCGRANN: Okay. First of
22 all, would you tell me what your involvement in the
23 data room was?

24 MR. TIM FRYER: The requests for data
25 would have come through to me and I would've

1 percolated those out to the appropriate parties or
2 taking care of it myself.

3 As we mentioned yesterday, it
4 eventually became electronic and -- and housed at
5 Collus. So I would've been the one tasked with making
6 sure the person responsible for getting the data into
7 the data room was -- was taking care of that.

8 MS. KATE MCGRANN: How would those --
9 how would those requests come into you? Would they
10 come in through KPMG, would they come directly to you?

11 MR. TIM FRYER: It should have come
12 through KPMG because the proponents would've been
13 directed to put anything towards them first.

14 MS. KATE MCGRANN: Should have come
15 through KPMG, did they come through KPMG?

16 MR. TIM FRYER: I'm going to say yes.

17 MS. KATE MCGRANN: Do you recall
18 receiving requests from anyone other than KPMG?

19 MR. TIM FRYER: No.

20 MS. KATE MCGRANN: And then in terms
21 of passing that information on to the people who would
22 obtain the information, are you referring to staff at
23 Collus Power?

24 MR. TIM FRYER: Yes.

25 MS. KATE MCGRANN: And would the

1 process be similar for other requests from -- from
2 bidders? Did they -- did they ask -- did you respond
3 to requests other than data room related requests from
4 bidders?

5 MR. TIM FRYER: I did -- I don't
6 recall receiving anything directly from a bidder.

7 MS. KATE MCGRANN: What about through
8 KPMG?

9 MR. TIM FRYER: That's who it should
10 have come through, yes, and that's who I remember it
11 coming through.

12 MS. KATE MCGRANN: During the time
13 that you were working on the strategic task team, were
14 you aware that Mr. Bonwick was providing services to
15 PowerStream?

16 MR. TIM FRYER: I was aware that Mr.
17 Bonwick worked for -- was doing work for PowerStream,
18 I'm going to say around the same time. So during the
19 RFP process for certain I would've been aware.

20 MS. KATE MCGRANN: How did you become
21 aware of that?

22 MR. TIM FRYER: I believe I was just
23 informed and -- and my recollection is by -- by the
24 CEO and in a verbal form.

25 MS. KATE MCGRANN: Okay, when you say

1 the CEO, are you referring to Mr. Houghton?

2 MR. TIM FRYER: Yes.

3 MS. KATE MCGRANN: So your
4 recollection is that Mr. Houghton told you in a
5 conversation that Mr. Bonwick was working for
6 PowerStream?

7 MR. TIM FRYER: That's my recollection
8 of it, yes.

9 MS. KATE MCGRANN: Do you remember if
10 you were told what Mr. Bonwick was doing for
11 PowerStream?

12 MR. TIM FRYER: No.

13 MS. KATE MCGRANN: Did you learn at
14 any time before the selection of PowerStream as the
15 successful proponent what Mr. Bonwick was doing for
16 PowerStream?

17 MR. TIM FRYER: No.

18 MS. KATE MCGRANN: Did you learn what
19 he was doing for PowerStream at any time before the
20 transaction was finalized?

21 MR. TIM FRYER: Just the matter of the
22 solar vents. I knew that Mr. Bonwick's company was
23 involved and I knew PowerStream was involved along
24 with us.

25 So at that time I would've equated that

1 to be the kind of work that he was doing with
2 PowerStream.

3 MS. KATE MCGRANN: At any point after
4 you learned from Mr. Houghton that Mr. Bonwick was
5 working for PowerStream, did you ask any questions of
6 anyone to determine what kind of work Mr. Bonwick was
7 doing for them?

8 MR. TIM FRYER: No.

9 MS. KATE MCGRANN: Okay. Why not?

10 MR. TIM FRYER: I didn't see it as an
11 issue on my -- on my side.

12 MS. KATE MCGRANN: Were the other
13 members of the strategic task team aware that Mr.
14 Bonwick was working for PowerStream?

15 MR. TIM FRYER: I don't know.

16 MS. KATE MCGRANN: Do you recall any
17 discussions at strategic task team meetings or
18 otherwise with other members about the fact that Mr.
19 Bonwick was working for PowerStream?

20 MR. TIM FRYER: No.

21 MS. KATE MCGRANN: Did you have any
22 concerns at any point -- did you ever ask yourself,
23 let me restart that. Did you ever ask yourself
24 whether Mr. Bonwick was doing work on PowerStream's
25 response to the Collus Power RFP?

1 MR. TIM FRYER: No.

2 MS. KATE MCGRANN: You've explained to
3 us that you were involved in the evaluation of the
4 responses to the request for proposals. Do you have a
5 specific recollection of -- of reviewing the responses
6 and assigning scores?

7 MR. TIM FRYER: Yes.

8 MS. KATE MCGRANN: What do you recall
9 about evaluating --

10 THE HONOURABLE FRANK MARROCCO:
11 Actually, you're not getting into the evaluation.
12 We'll take ten (10) minutes now.

13 MS. KATE MCGRANN: Okay.

14 THE HONOURABLE FRANK MARROCCO: Just a
15 second. As my counsel points out to me, we're going
16 to have to break for lunch at 11:30, so we'll just
17 carry on for another fifteen (15) minutes.

18

19 CONTINUED BY MS. KATE MCGRANN:

20 MS. KATE MCGRANN: What do you recall
21 about evaluating the responses to the nonfinancial
22 portion of the RFP?

23 MR. TIM FRYER: I recall that we were
24 given the information to evaluate and then we met as a
25 -- as a team and we presented our findings at the

1 meeting.

2 MS. KATE MCGRANN: Did you score the
3 responses before the meeting or at the meeting?

4 MR. TIM FRYER: I would have had my
5 scores prepared for the meeting.

6 MS. KATE MCGRANN: Did you change any
7 scores that you assign as a result of the meeting?

8 MR. TIM FRYER: No.

9 MS. KATE MCGRANN: What do you recall
10 about evaluating the financial responses to the
11 requests for proposals?

12 MR. TIM FRYER: I didn't evaluate the
13 financial responses. The -- I think there's some e-
14 mail evidence of it being said that I wouldn't be
15 doing evaluation of the financials.

16 MS. KATE MCGRANN: I want to make sure
17 that I understand what you're talking about.

18 Did you review the financial responses
19 and assign a score to them?

20 MR. TIM FRYER: So reviewing them for
21 the scoring, yes.

22 MS. KATE MCGRANN: Okay. When you say
23 you weren't involved in evaluating them, do you mean
24 involved in -- what do you mean by that?

25 MR. TIM FRYER: They were taken away

1 and evaluated by KPMG to put it into a format that we
2 could utilize that hopefully would give us a decent
3 apples-to-apples comparative table format. That was
4 my understanding.

5 MS. KATE MCGRANN: And was the
6 comparative table format what you used to assign the
7 scores?

8 MR. TIM FRYER: Yes.

9 MS. KATE MCGRANN: And what do you
10 recall about -- was there -- sorry, was there a
11 similar process followed in which scores were assigned
12 and then there was a meeting to discuss the scores
13 that were assigned?

14 MR. TIM FRYER: I believe so but I
15 can't say for certain on that.

16 MS. KATE MCGRANN: Do you recall if
17 there was any discussion about the responses to the
18 various financial criteria amongst the members of the
19 strategic task team before the successful proponent
20 was selected?

21 MR. TIM FRYER: No, I'm not aware of
22 any.

23 MS. KATE MCGRANN: Did you share any
24 of the information that you learned through your role
25 on the strategic task team with anyone outside of that

1 team --

2 MR. TIM FRYER: No.

3 MS. KATE MCGRANN: -- at any point in
4 time?

5 MR. TIM FRYER: No.

6 MS. KATE MCGRANN: Can we turn to
7 paragraph 345 of the Foundation Document?

8

9 (BRIEF PAUSE)

10

11 MS. KATE MCGRANN: This paragraph
12 discusses some email correspondence in late October of
13 2011, and if you look at the bottom of the paragraph
14 it says, "In Tim Fryer's response the next day," so it
15 would be October 22nd, you indicated that:

16 "The transaction will most likely be
17 the Collingwood Utility Service Corp
18 shares being sold by the Town of
19 Collingwood."

20 MR. TIM FRYER: Could you bring up the
21 email, please?

22 MS. KATE MCGRANN: Yes.

23 MR. TIM FRYER: I'm sorry, Ms.
24 McGrann.

25

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: TOC521817, please.

4

5 (BRIEF PAUSE)

6

7 MS. KATE MCGRANN: Scroll to the
8 bottom and allow Mr. Fryer to -- to read it.

9 MR. TIM FRYER: And just -- so -- so,
10 yes, it -- it's the November 2nd, and -- and as you
11 read it, yes, I remember it.

12 MS. KATE MCGRANN: What do you recall
13 about conversations at this point in time about which
14 entity's shares would be sold?

15 MR. TIM FRYER: I -- I guess just if -
16 - if we can scroll up with the information that's in
17 the response. Sorry -- sorry, scroll down.

18 So as it reads there, that we were
19 considering the options and the structure of the
20 Utility such going forward. The last paragraph is --
21 is -- or that last sentence is an important one.

22 "In the event of the transaction
23 occurring at the holding company
24 level, i.e., by selling -- selling
25 shares in -- in CUS, the assets in

1 Operations (sic) Solution Corp,
2 which is now a subsidiary of CUS,
3 would likely be transferred out of
4 CUS in the advance of the
5 transaction."

6 So, I certainly was aware that the
7 Board understood we were looking at corporate
8 structure for a number of reasons, and in this
9 particular case this is explaining to Hydro One that
10 it looked like the sale at the holding company would
11 be achievable.

12 MS. KATE MCGRANN: Okay. And just to
13 put this response in context because you've only
14 looked at a portion of the email, what you're looking
15 at here is a draft response to Hydro One.

16 We haven't seen any evidence that this
17 response was actually provided, but stepping away from
18 that at this point in time, so end of October, early
19 November, were you involved in discussions about which
20 entity's shares would ultimately be sold?

21 MR. TIM FRYER: Definitely we were
22 looking at the tax implications. There's an earlier
23 email. I -- I can get you the number maybe at break
24 and I'll show you the one I mean, that was talking
25 about the tax issues for Hydro One, and I believe it

1 was dated October 28th, and this relates to what was
2 being conveyed in this response back to Hydro One.

3 So -- but I had explained in earlier
4 evidence through the proceedings that the conversion
5 from GAAP to IFRS was putting us into a situation
6 where we had to look at our corporate structure and
7 decide if we were going to continue to maintain it the
8 way it was, and so I felt all along there was a good
9 chance that we would be going down to a single
10 operating company with a holding company or just a
11 holding company going forward, but -- but again,
12 everything was in kind of a state of flux at that
13 particular time.

14 MS. KATE MCGRANN: So I understand
15 that you're referencing an earlier email. You and I
16 cannot discuss your evidence on break. The only way
17 we can discuss your evidence is in front of everyone
18 and Justice Marrocco in the way that we're doing it
19 now, but I don't think that we --

20 MR. WILLIAM MCDOWELL: If it assists,
21 that -- the email he's referring to is KPM1804.

22 MS. KATE MCGRANN: That's useful, but
23 I don't intend to go there right now because what I'd
24 like to understand is, why are we only looking at the
25 tax implications of which shares are going to be sold

1 at this point in time? Why didn't these discussions
2 happen before the RFP was put together?

3 MR. TIM FRYER: So instead of putting
4 an RFP out for Collus Power, put an RFP out for
5 Collingwood Utility Services for the holding company.

6 MS. KATE MCGRANN: Or even taking a
7 step back in time, stopping to ask the question, what
8 are the tax implications of selling shares in Collus
9 Power versus selling shares in the holding company and
10 which should be the subject of the RFP.

11 Do you know if that was considered
12 before the RFP was put together?

13 MR. TIM FRYER: I don't believe so,
14 because we felt there was tax exemption being
15 provided. This turned out to be a different tax
16 issue.

17 MS. KATE MCGRANN: Okay. What tax
18 exemption did you think was available when the RFP was
19 put together?

20 MR. TIM FRYER: The transfer tax.

21 MS. KATE MCGRANN: And what tax issue
22 is being discussed here?

23 MR. TIM FRYER: This is because -- and
24 the other email will show that, but my recollection,
25 the other email says that because Hydro One could not

1 own a percentage, they either had to buy something in
2 whole or not. If they didn't buy it in whole, then
3 there was this tax implication for them.

4 MS. KATE MCGRANN: So your
5 understanding of this discussion is that you're
6 looking at or it's that what's being discussed is tax
7 consequences specifically related to the sale to Hydro
8 One?

9 MR. TIM FRYER: That's what that was
10 referring to, yes.

11 MS. KATE MCGRANN: Ultimately, what
12 ends up being sold is shares in the holding company.
13 Do you know why that decision was made?

14 MR. TIM FRYER: I believe it was the
15 best from a tax planning standpoint. And to the
16 earlier question, reflecting on being concerned about
17 the RFP going out for Collus Power and not for the
18 holding company, as I said, I felt pretty strongly
19 that most likely Collus Solutions would be dissolved
20 and there would just be Collus Power, so I wasn't
21 overly concerned at that point in time that it was
22 going out as Collus Power and not as the holding
23 company itself.

24 MS. KATE MCGRANN: I'm going to try to
25 summarize what you and I have discussed over the last

1 few minutes. You understood that shares in the LDC
2 were put out for sale because there was an available
3 tax exemption -- there was an available tax exemption
4 for shares in the LDC and shares in the LDC were put
5 out to RFP.

6 MR. TIM FRYER: I believe the RFP was
7 put out for the LDC, Collus Power.

8 MS. KATE MCGRANN: It was. And was it
9 your understanding at the time that there was a tax
10 exemption available for sale of those shares?

11 MR. TIM FRYER: Yes.

12 MS. KATE MCGRANN: And then it's later
13 discovered that there is a potential tax consequence
14 if the shares are sold to Hydro One?

15 MR. TIM FRYER: Yes.

16 MS. KATE MCGRANN: And then
17 ultimately, shares in the holding company are sold
18 because that's most advantageous from a tax planning
19 standpoint?

20 MR. TIM FRYER: And I think from a
21 corporate standpoint it was decided that it should be
22 the whole entity.

23 MS. KATE MCGRANN: Were you involved
24 in those discussions?

25 MR. TIM FRYER: I don't believe so.

1 MS. KATE MCGRANN: So when you say
2 that you believe it was also most beneficial from a
3 corporate standpoint, are -- are you guessing?

4 MR. TIM FRYER: And I guess I
5 shouldn't say I don't believe so, because as I said I
6 was advising about Collus Solutions and -- and the
7 restructuring, so I certainly was involved about
8 corporate structure and -- and as we scroll up in this
9 email, I believe this is the one where I had advised
10 that it would likely be the holding company at -- Mr.
11 Stern. So I obviously was part of the conversations
12 and the decisions that were being made.

13 MS. KATE MCGRANN: This would be a
14 good time for me to take a break in my questions.

15 THE HONOURABLE FRANK MARROCCO: 1:30.

16

17 --- Upon recessing at 11:31 a.m.

18 --- Upon resuming at 1:34 p.m.

19

20 CONTINUED BY MS. KATE MCGRANN:

21 MS. KATE MCGRANN: Good afternoon, Mr.
22 Fryer.

23 MR. TIM FRYER: Good afternoon.

24 MS. KATE MCGRANN: I'd like to ask you
25 a couple more questions about the work you did scoring

1 the financial responses to the RFP. You had told us
2 that you weren't involved in the evaluation of the
3 bids, that KPMG did some work to -- to create a sort
4 of apples to apples comparison with those responses.

5 Have I got that right?

6 MR. TIM FRYER: That's my
7 recollection, yes.

8 MS. KATE MCGRANN: Were you shown the
9 results of KPMG's work to help you in your scoring of
10 those responses?

11 MR. TIM FRYER: That's what I recall.

12 MS. KATE MCGRANN: Can we pull up
13 CPS2668?

14

15 (BRIEF PAUSE)

16

17 THE HONOURABLE FRANK MARROCCO: Is
18 there a problem, Mr. Libman?

19 THE COURT OPERATOR: A little bit.
20 Internet delay.

21

22 (BRIEF PAUSE)

23

24 CONTINUED BY MS. KATE MCGRANN:

25 MS. KATE MCGRANN: Just while there's

1 some internet issues, why don't we turn to paragraph
2 239 of the Foundation Document?

3

4 (BRIEF PAUSE)

5

6 MS. KATE MCGRANN: Let's go with third
7 time's a charm, paragraph 293 of the Foundation
8 Document. We looked at these evaluation criteria
9 earlier today.

10 The first question I have for you, if
11 we could scroll down to the look at the -- the bullet
12 points that form that 30 percent of what has been
13 referred to as the financial considerations, do you
14 recall any discussion amongst the members of the
15 Strategic Task Team about how to apportion the thirty
16 (30) available points across the items that are listed
17 there I've counted the bullet points?

18 There's nine (9) of them, so there's
19 not an easy division.

20 MR. TIM FRYER: No, I don't recall
21 that.

22 MS. KATE MCGRANN: Do you recall how
23 you approached apportioning the thirty (30) points
24 across those nine (9) items when you scored the
25 financial responses?

1 MR. TIM FRYER: Nothing that I can
2 specifically bring to mind. I -- I just can't think
3 of specific things, that's what you're asking of, if I
4 can narrow down things about the partnership.

5

6 (BRIEF PAUSE)

7

8 THE HONOURABLE FRANK MARROCCO: Well,
9 while they're doing that, let me address the
10 scheduling issue. On the 21st, I have to attend a
11 swearing in of a judge in Toronto, which means that we
12 would sit from 9 to 12 or so, and then break, and then
13 come back the next day.

14 What makes more sense to me is that we
15 won't sit on the 21st, but we will sit later than
16 usual on the 22nd, 23rd, and 24th to make up the time.
17 And so, I'd ask you to think about that and let us
18 know in the -- in the next little while whether that
19 makes sense because I really -- I really can't see the
20 wisdom of dragging everybody here for three (3) hours,
21 and then -- and then adjourning again, when we can
22 make up that time by just sitting later when
23 everybody's here.

24 But let me know if that causes grave
25 problems. I might do it anyway, but I'd at least like

1 to know if it's going to cause you any problems.

2 MR. WILLIAM MCDOWELL: Just could I
3 ask because you probably know about these things, what
4 time is the swearing in that day, at 4:00?

5 THE HONOURABLE FRANK MARROCCO: 4:30.

6 MR. WILLIAM MCDOWELL: 4:30. Thanks.

7 THE HONOURABLE FRANK MARROCCO: You
8 know, so you want to make sure -- you got to leave
9 early enough to make sure you get there, otherwise,
10 it's a bit awkward.

11 MR. WILLIAM MCDOWELL: Well, they
12 can't start without you, so.

13 THE HONOURABLE FRANK MARROCCO: It
14 does look a bit awkward.

15

16 CONTINUED BY MS. KATE MCGRANN:

17 MS. KATE MCGRANN: I'm going to switch
18 to a different part of the questions that I have to
19 ask you that don't rely on documents. And then, once
20 we're able to pull documents upon relativity, I'll
21 come back.

22 What I'd like to ask you is this.
23 We've seen reference to different emails that are
24 referred to in the Foundation Document and otherwise
25 in which other people express views or suggest that

1 you were -- you had some opposition to the sale.

2 What was your view of -- of the
3 proposed sale that was outlined in the RFP of the
4 responses that were received and of the ultimate
5 selection of PowerStream?

6 MR. TIM FRYER: And -- and you're
7 correct. There was some -- I -- I didn't see any
8 evidence in -- in my emailing to people that indicated
9 that, but others had -- had surmised that either from
10 -- information from somebody else or -- or on their
11 own.

12 My belief was that council had chosen a
13 path that I, as CFO of the organization, needed to
14 make sure was done in an appropriate fashion, and I
15 was -- I was working towards that.

16 I continue to say, and I've said it
17 many times, I'm a proponent for municipally owned
18 local distribution corporations. My beliefs and my --
19 my discussions with them through the course of time
20 when they're making their decision, ultimately, they
21 decided that they were going to go with the approach
22 that they wanted.

23 And I was acceptant of that and -- and
24 moving forward, as far as I was concerned.

25 MS. KATE MCGRANN: Why did you -- why

1 are you a proponent of municipally owned utilities?
2 Why did you think that that was important? Or what
3 were --

4 MR. TIM FRYER: I --

5 MS. KATE MCGRANN: Why did you see the
6 municipality would be losing through the -- the sale?

7 MR. TIM FRYER: I -- I believe
8 strongly that municipal LDCs are a viable operation if
9 the pillars are in place to -- to work successfully
10 with the shareholder. And in Collingwood's case, the
11 shareholder decided something different.

12 MS. KATE MCGRANN: At any point during
13 the time that you were a member of the Strategic Task
14 Team or through to the time that the deal was
15 completed did anyone come and speak to you about
16 concerns they had about your views of the share sale?

17 MR. TIM FRYER: The time that it -- it
18 was brought to my attention that there was concerns
19 was in an in camera meeting of Collus Solutions. And
20 I believe the date was December the 7th. It was 7th
21 or 8th.

22 And, at that point in time, I was -- I
23 wasn't aware that it was going to happen, but I was --
24 in the in camera session I was asked to explain my
25 situation with the -- with regards to the share sale.

1 And I explained that, just as I said, I
2 recognized that the shareholders made a decision and I
3 certainly will put my efforts behind bringing that to
4 fruition.

5 But I did consider the fact that not
6 exploring all four (4) options fully to me wasn't the
7 appropriate way to proceed. But I did explain that I
8 wasn't prepared really to say any more at this point
9 in time because it was -- as I said, it was a surprise
10 to me to -- to be asked, but I was fully prepared to
11 meet at another appointed time and -- and discuss it
12 further if they would like.

13 MS. KATE MCGRANN: Who asked you to
14 explain your position on the share sale?

15 MR. TIM FRYER: That was a Collus
16 Solution Board meeting. When we went in camera, the
17 chair of the Board was Joan Pajunen, and so she was
18 the one who posed the question.

19 MS. KATE MCGRANN: When you say that
20 you advised them that you thought that all four (4)
21 options should have been considered more fully, what
22 four (4) options are you referring to?

23 MR. TIM FRYER: Well, by only seeking
24 out a strategic partner and, in fact, narrowing it
25 down to four (4) individual utilities to approach, I

1 guess there was five (5) at -- at one point in time, I
2 thought that really the approach would have been to
3 put an RFP out there and see what other proposals we
4 got from other interested parties.

5 So, I didn't have anything specifically
6 in mind other than making sure it was an open process
7 to any of the LDCs or interested parties in -- in the
8 -- in the marketplace in Ontario.

9 MS. KATE MCGRANN: I want to
10 understand what -- what is different between the RFP
11 process you're envisioning and the one that was
12 actually put in place, so -- so could you describe
13 more fully what you're talking about?

14 MR. TIM FRYER: The one that went
15 forward was only to the four (4) proponents.

16 MS. KATE MCGRANN: Okay.

17 MR. TIM FRYER: And I would have
18 envisioned an RFP that went out to everybody, any --
19 any interested parties, I guess, and it would just be
20 saying, give us your proposals.

21 MS. KATE MCGRANN: Without any
22 parameters around what the proposals might be?

23 MR. TIM FRYER: I'm assuming -- I -- I
24 never got into detail with people and this is the type
25 of thing that I would have been prepared to talk about

1 in more depth with them, but they never pursued that
2 with me, but that was my contention, was that could we
3 be leaving something off the table here that -- that
4 could be available if we didn't go out.

5 MS. KATE MCGRANN: Okay. In my notes
6 of your answer to one of my questions that I asked you
7 a few minutes ago, I've got you saying that you
8 thought that all four (4) options should have been
9 considered more fully.

10 Have I got that right?

11 MR. TIM FRYER: In a sense I felt that
12 that would happen, by -- by going out into the
13 marketplace, so the four (4) options being the full
14 sale, partial sale, I guess partial being minority or
15 majority, which would be three (3), and then the
16 partnership one would be the fourth.

17 MS. KATE MCGRANN: Okay. Why didn't
18 you raise those -- that view earlier in the process?

19 MR. TIM FRYER: Well, as I said,
20 during the process I made it known what I believe was
21 best way to move forward and the decisions were made
22 along the way to proceed with the way they were going.
23 It -- it wasn't the first time I'd made
24 recommendations and the decision had been to do
25 something different. That happens. You're an officer

1 of the Corporation and decisions are made and
2 sometimes they're what you recommended.

3 An example I'll give is the formation
4 of -- of the -- the new structure to meet the
5 Electricity Act. I felt that the shared employees
6 should stay in the public utilities rather than move
7 them into the service company within the -- the OBCA
8 structure, and I -- I wasn't successful with that, but
9 that didn't change my approach to dealing with it
10 after the fact, and it would be the same with the RFP
11 process.

12 MS. KATE MCGRANN: Okay. So I
13 understand you to be saying that even though you had
14 particular views and opinions on how things should
15 progress, those views and opinions didn't impact the
16 way you approached your job as CFO of the Utility.

17 Is that fair?

18 MR. TIM FRYER: They can't.

19 MS. KATE MCGRANN: And it didn't?

20 MR. TIM FRYER: No.

21 MS. KATE MCGRANN: I'd like to --
22 focusing specifically on the -- the RFP process --
23 understand the views that you say that you aired
24 earlier in the process. So we've heard you give
25 evidence that you thought that the -- waiting for the

1 financial components of the RFP should be 50 percent.

2 Were there any other positions that you
3 put forward to your discussions on the STT or
4 otherwise that weren't realized in the RFP process?

5 MR. TIM FRYER: Not that come to mind,
6 no.

7 MS. KATE MCGRANN: There's the 50
8 percent. And that's it?

9 MR. TIM FRYER: Yeah.

10 MS. KATE MCGRANN: Save and except for
11 your conversation at the Collus Solutions meeting in
12 December about the fact that you thought all four (4)
13 options should have been considered more fully and
14 perhaps taken to market in the form of an RFP?

15 MR. TIM FRYER: Yes.

16 MS. KATE MCGRANN: Okay. Why didn't
17 you raise that concern earlier or that view earlier,
18 that, well -- well, that maybe we should be taking
19 different options more -- considering them more or
20 putting them in the RFP as well?

21 MR. TIM FRYER: I -- I believe I did
22 voice it but it was decided not to.

23 MS. KATE MCGRANN: When did you do
24 that?

25 MR. TIM FRYER: I -- I -- it would

1 have been through the process.

2 MS. KATE MCGRANN: Can you recall
3 specifically voicing those views?

4 MR. TIM FRYER: No, I cannot.

5 MS. KATE MCGRANN: Do you have any
6 recollection of how you may have -- have done it or
7 who you might have -- have expressed it to?

8 MR. TIM FRYER: My expectation is that
9 it would have been at strategic partner meetings, but
10 as I said, I can't say specifically.

11 MS. KATE MCGRANN: Is there anything
12 else that you can tell us that you do remember about
13 views that you voiced about the RFP content or
14 process?

15 MR. TIM FRYER: No, and -- and one of
16 the reasons I do believe it would have been at the --
17 at a partners' meeting is because when we attended
18 other things like the in camera sessions with the
19 Council, I -- I didn't speak at those, so that's what
20 I'm saying, I would have verbally con -- conveyed my
21 feelings and I believe it would have been at the
22 strategic partner task team meetings.

23 MS. KATE MCGRANN: We've heard
24 evidence from former Deputy Mayor Rick Lloyd that you
25 attended at his flower shop and expressed your views

1 about the potential share sale to him with his staff
2 in the shop.

3 Did you -- do you have any recollection
4 of a discussion like that?

5 MR. TIM FRYER: No, I did not.

6 MS. KATE MCGRANN: Okay. What
7 discussions, if any, did you have with Rick Lloyd
8 about your views about the share sale?

9 MR. TIM FRYER: I had none.

10 MS. KATE MCGRANN: No conversations
11 with him at all about it?

12 MR. TIM FRYER: No.

13 THE HONOURABLE FRANK MARROCCO: Before
14 you move on -- Mr. Fryer, why did you think 50 percent
15 was a more appropriate percentage?

16 MR. TIM FRYER: I said to your staff,
17 because I'm an accountant, so that was part of it. At
18 the time --

19 THE HONOURABLE FRANK MARROCCO:
20 Probably not always -- you shouldn't assume I'm privy
21 to the interviews but just --

22 MR. TIM FRYER: Yeah. So -- so I felt
23 that financial should -- and it seemed to me like you
24 wouldn't go any less than half, and on that basis, as
25 I said, I could understand the other argument about

1 the partnership aspect having the same weighted value,
2 so you wouldn't have just 50 and 50 because you wanted
3 to equate those other four (4) criteria you're using.
4 So could it have been 40/40, and 5/5/5/5? I -- that
5 would have probably met my kind of criteria, but in
6 the end they decided to go with the 30/30 and the 10s
7 for the other four (4).

8

9 CONTINUED BY MS. KATE MCGRANN:

10 MS. KATE MCGRANN: Okay. I understand
11 that Relativity is up and running again, so could we
12 please turn up KPM2668? And to reposition you, I
13 wanted to ask you some more questions about the
14 scoring of the financial components.

15 MR. TIM FRYER: Yes.

16 MS. KATE MCGRANN: And in particular
17 we had talked earlier about whether or not cost
18 savings for the Town were a particular focus for or
19 goal for the partnership. I understood your evidence
20 to be no.

21 Is that accurate?

22 MR. TIM FRYER: Can you repeat that
23 again? I think I distracted --

24 MS. KATE MCGRANN: Yeah. We had
25 talked earlier -- I had asked you earlier about

1 whether achieving cost savings for the Town was an
2 objective for the strategic partnership that was being
3 examined here, and I think you said no, that wasn't
4 the main goal.

5 MR. TIM FRYER: That's not something I
6 had in mind. I would have had in mind ensuring that
7 we were at least maintaining the cost to the Town that
8 we had with -- with the current arrangement without
9 having a partner.

10 MS. KATE MCGRANN: Do you remember
11 discussions amongst the members of the strategic task
12 team about a goal for the strategic partnership being
13 to reduce costs for the Town?

14 MR. TIM FRYER: Not specifically, no,
15 I do not.

16 MS. KATE MCGRANN: Do -- I think that
17 you said that you did remember -- that you understood
18 that the Town didn't want to sell more than half of
19 the Utility.

20 MR. TIM FRYER: I believe we went in
21 with the approach of up to 50 percent.

22 MS. KATE MCGRANN: Did you understand
23 that the Town did not want to lose control of what was
24 being sold?

25 MR. TIM FRYER: That was my

1 understanding.

2 MS. KATE MCGRANN: I'm showing you a
3 chart that we understand was put together by KPMG. Is
4 this what you remember being shown in terms of the
5 results of their evaluation of the financial
6 components of the bid?

7 MR. TIM FRYER: Yes, I do.

8 MS. KATE MCGRANN: Do you remember
9 when you were provided with this chart?

10 MR. TIM FRYER: No, I don't.

11 MS. KATE MCGRANN: Could you tell us
12 whether it was before the meeting of the strategic
13 task team to review the financial considerations or
14 whether maybe it was presented to you at that meeting?

15 MR. TIM FRYER: I can't say for
16 certain.

17 MS. KATE MCGRANN: Okay. Do you
18 remember if you had access to this chart before you
19 scored the financial responses to the bids?

20 MR. TIM FRYER: I can't say for
21 certain on that either.

22 MS. KATE MCGRANN: If we could scroll
23 down a little bit, I'm looking at the business issues
24 in the -- in the column to the left. Stop there,
25 that's perfect.

1 You see the -- the heading "Governance"
2 on the left-hand side here --

3 MR. TIM FRYER: Yes, I do.

4 MS. KATE MCGRANN: -- second one from
5 the bottom? And then there's a summary of -- of the
6 responses in each of these columns.

7 Do you recall any discussion amongst
8 the members of the strategic task team about the
9 responses from the bidders on the question of
10 governance?

11 MR. TIM FRYER: Not specific
12 conversations. I know we had them, but I can't say
13 what was discussed.

14 MS. KATE MCGRANN: What -- what do you
15 recall about the discussions know you had?

16 MR. TIM FRYER: Well, there's a fair
17 difference in some of the approaches here, so I know
18 we would've been thinking what would we like to see.

19 MS. KATE MCGRANN: When you use the
20 word "would have", it suggests to me that you're going
21 back in time and trying to piece together what
22 probably happened, and what I would like to know is
23 what you remember about what did happen.

24 Do you have a specific recollection on
25 having any discussions about the government's

1 responses with the members of the strategic task team?

2 MR. TIM FRYER: I'd have to say no
3 then.

4 MS. KATE MCGRANN: And if we could
5 scroll down to the next page, keep going. Exit
6 strategy. Do you see that heading there on the left-
7 hand side, second up from the bottom?

8 MR. TIM FRYER: Yes, I do.

9 MS. KATE MCGRANN: Do you remember
10 having any discussions with any members of the
11 strategic task team about rights of first refusal,
12 liquidity rights or shotgun clauses, things like that?
13 The responses in the bids?

14 MR. TIM FRYER: I definitely recollect
15 the shotgun clause, because I was the one who, I
16 believe, first mentioned that you probably need to
17 look at a shotgun clause.

18 And that was when I would've become
19 aware of the fact that they were considering 50
20 percent.

21 MS. KATE MCGRANN: Sorry, can you
22 explain what you mean by that?

23 MR. TIM FRYER: At -- at the time they
24 decided that they were actually going to pursue 50
25 percent rather than -- I -- I know the RFP proposal

1 had gone out is up to, I said if that's the case, then
2 we'd need to consider whether or not we need to have a
3 shotgun clause, because it appeared to me that would
4 be a situation where you'd have no clear majority
5 owner and you'd have to have some sort of methodology
6 for -- for dealing with things like -- I didn't have
7 any -- I don't have any immediate recollection about
8 first -- or first right of refusal. That just seems
9 to me to be a standard thing that you put in, but.

10 MS. KATE MCGRANN: I'd like to
11 understand some more about the specific memory you
12 have of mentioning the shotgun clause when it was
13 decided that it would be 50 percent.

14 MR. TIM FRYER: Yes.

15 MS. KATE MCGRANN: When was it decided
16 that it would be 50 percent?

17 MR. TIM FRYER: I can recall being in
18 -- and I'm -- I do have the memory very vivid, so I'm
19 -- believe it was strategic partner task team meeting
20 and I was sitting -- I was sitting at the far end of
21 the table, where I don't normally sit, I normally sit
22 at the other end.

23 And I remember Mr. Houghton saying that
24 we were going to be looking to approach this as a --
25 as an equal partner, true partner situation and that

1 it was Mr. Muncaster that had come -- had come forward
2 with that idea.

3 And I remember looking at him at the
4 time and him nodding his head. That's the memory I
5 have of when I became aware of -- of the fact that
6 they were going to go with 50 percent.

7 MS. KATE MCGRANN: Do you remember
8 whether that occurred before or after the RFP was
9 issued?

10 MR. TIM FRYER: I can't say for
11 certain, no, when it was. But I know that is the time
12 that I brought up that we would need to consider a
13 shotgun cause as -- as part of the agreement.

14 MS. KATE MCGRANN: Okay. When you
15 were looking at the responses to the RFP, do you
16 recall having discussions with the strategic task team
17 about the responses on a shotgun clause, what it would
18 look like, whether one would be included or not?

19 MR. TIM FRYER: No, I don't remember.

20 MS. KATE MCGRANN: Do you remember
21 whether you assigned a monetary score to the responses
22 to the financial components of the bid? I know we've
23 talked about how you would allocate those 30 point
24 shares, but do you specifically recall actually
25 assigning numerical scores to those financial

1 responses?

2 MR. TIM FRYER: I specifically recall
3 giving Hydro One the highest score. And -- and I know
4 I would've scored the others, but I -- and now we are
5 just talking about my memories back then. I can't
6 recall specifically what I gave the other three. And
7 I haven't -- and that includes I haven't come across
8 it in the -- in the evidence either.

9 MS. KATE MCGRANN: Okay. Could we
10 turn up CPS --

11 THE HONOURABLE FRANK MARROCCO: Just
12 before you do that.

13 MS. KATE MCGRANN: Sorry.

14 THE HONOURABLE FRANK MARROCCO: Can
15 you recall why you gave Hydro One the top score?

16 MR. TIM FRYER: Because they had the
17 best monetary offer and the other parameters that went
18 with the analysis, I felt that they were the top
19 offer.

20 THE HONOURABLE FRANK MARROCCO: The
21 exit strategy for them was a right of first refusal,
22 that's all it was?

23 MR. TIM FRYER: Yes.

24

25 CONTINUED BY MS. KATE MCGRANN:

1 MS. KATE MCGRANN: Just because of the
2 fact that you have such a specific memory of bringing
3 up the need for a shotgun clause and Hydro One did not
4 propose to include one, can you remember how that
5 affected your score at all?

6 MR. TIM FRYER: No.

7 MS. KATE MCGRANN: Could we turn up
8 CPS11306. And I understand that that's an open
9 question, because relativity may not be cooperating
10 with us right now.

11 MR. TIM FRYER: Sorry, I -- I didn't
12 catch that.

13 MS. KATE MCGRANN: It was a terrible
14 joke. I think the internet may be out, so it might
15 take us a second. No, here we are.

16 MR. TIM FRYER: Okay.

17 MS. KATE MCGRANN: If we could look at
18 the -- the totals sheet. My understanding that this
19 is the only information that we've got about the
20 scores that were assigned for the financial component
21 of the bid.

22 If you look at the first row across the
23 top, it's payment for up to 50 percent of shares and
24 other considerations and 3.1, and there are totals
25 here for each of the respondents.

1 Do you recall ever seeing a sheet that
2 set out the scores that each of the members of the
3 strategic task team assigned to the respondents for
4 the financial component of the bid?

5 MR. TIM FRYER: I don't remember
6 receiving -- you're talking about the individual
7 member scores, even though it wouldn't identify who
8 the member was, and I don't recall getting anything
9 like that.

10 MS. KATE MCGRANN: Can we turn up CPS
11 7026_0001.

12 These are the minutes of a joint
13 meeting of the Board of Directors of Collus Power
14 Corp. and Collus Solutions Corp. held on December 2nd,
15 2011. If you could scroll down a little bit. That's
16 -- that's perfect.

17 It looks from the minutes that -- if we
18 scroll up a little bit. That board meeting was in-
19 camera, comes out of the in-camera session, scroll
20 down, and votes to approve and accept the findings of
21 the strategic partnership task force team and make
22 recommendation to Council that Collus Power undertake
23 negotiations with PowerStream for the purpose of
24 entering into the strategic partnership arrangement.

25 Do you recall attending this meeting?

1 MR. TIM FRYER: I -- I would've been
2 there.

3 MS. KATE MCGRANN: Do you have any
4 recollection of what was discussed at the meeting
5 before this vote was taken?

6 MR. TIM FRYER: I don't.

7 MS. KATE MCGRANN: Turn up
8 ALE5133.0002.

9 This was a slide presentation made to
10 Council in-camera reporting on the results and
11 evaluations of the strategic partnership RFP
12 responses.

13 Were you at the Council meeting where
14 this presentation was given?

15 MR. TIM FRYER: I believe so.

16 MS. KATE MCGRANN: Go to slide 15,
17 please. Scroll a little bit down.

18 Here's some information that was
19 presented to Council about the responses to the
20 financial components of the bid, in particular I'd
21 like to draw your attention to the second last row,
22 the governance row.

23 Do you recall what discussion there was
24 at the Council meeting about the responses on the
25 point of governance?

1 MR. TIM FRYER: No, I don't.

2 MS. KATE MCGRANN: Do you recall if
3 there was any discussion about the implications of
4 each of the responses on the ability of the Town to
5 maintain some control over the utility after the sale
6 was completed?

7 MR. TIM FRYER: No, I don't.

8 MS. KATE MCGRANN: Can we go to slide
9 18, please.

10 THE HONOURABLE FRANK MARROCCO: I'm
11 sorry, just before you do that.

12 Can you just explain, if you look under
13 governance portion it says PowerStream -- about there
14 says 50 percent Town, 50 percent PowerStream, majority
15 independent.

16 What -- what -- how -- how did -- how
17 would that work?

18 MR. TIM FRYER: So the -- when they
19 form the unanimous shareholders agreement, the
20 structure was to be three (3) members appointed by
21 PowerStream, three (3) members appointed by
22 Collingwood, and two (2) of them had to be
23 independent, is -- is according to the shareholders
24 agreement.

25 THE HONOURABLE FRANK MARROCCO: This

1 says "majority independent."

2 MR. TIM FRYER: So -- so that's what
3 I'm saying. If four (4) were independent and two (2)
4 could be dependent, then -- then you'd have a
5 majority.

6 THE HONOURABLE FRANK MARROCCO: So two
7 (2) of the three (3) would be independent?

8 MR. TIM FRYER: The -- that's the way
9 they wrote it into the agreement -- the Unanimous
10 Shareholders Agreement -- is that they wanted
11 two independents and one could be a dependent. And --
12 and a dependent would be somebody who's affiliated
13 with the -- with the corporation in some fashion.

14 THE HONOURABLE FRANK MARROCCO: Thank
15 you.

16

17 CONTINUED BY MS. KATE MCGRANN:

18 MS. KATE MCGRANN: Could we turn to
19 slide 18, please.

20

21 (BRIEF PAUSE)

22

23 MS. KATE MCGRANN: Because of your
24 specific recollection about the shotgun clause, I
25 wanted to ask you about point number 4 on this slide

1 which sets out further clarifications. It says:

2 "In your response, the RFP noted a
3 shotgun clause. Can you expand on
4 your thoughts?"

5 The response is:

6 "PowerStream does not like this
7 approach and in fact does not like
8 the phrase. The reason it is
9 mentioned is because it is stated
10 this way in the RFP itself. Their
11 views on liquidity is exactly that
12 of ours and specifically David
13 McFadden's."

14 Do you recall what the views on
15 liquidity referenced here were?

16 MR. TIM FRYER: No, I don't.

17 MS. KATE MCGRANN: Do you recall what
18 David McFadden's view on liquidity was?

19 MR. TIM FRYER: No, I don't.

20 MS. KATE MCGRANN: Do you recall any
21 discussions about the shotgun clause or the other
22 information on this bullet point at all?

23 MR. TIM FRYER: No.

24 MS. KATE MCGRANN: Can we turn to
25 paragraph 617 of the Foundation Document, please?

1 (BRIEF PAUSE)

2

3 MS. KATE MCGRANN: Paragraph 617
4 describes the shotgun clause. This paragraph says
5 that:

6 "The Town or PowerStream could offer
7 to purchase all the other
8 shareholders shares at any time.
9 Such an offer would trigger a 20-day
10 period during which the other
11 shareholder had to either accept the
12 offer and sell all its shares or buy
13 the offering shareholder shares at
14 the offered price per share."

15 Is this what you were envisioning when
16 you suggested that a shotgun clause be included?

17 MR. TIM FRYER: No. And as I
18 mentioned, I wasn't involved in the negotiations in
19 the final Unanimous Shareholder Agreement structuring.
20 So I wasn't aware of actually this 20-day period until
21 I was a member of the Council.

22 MS. KATE MCGRANN: Okay. What about
23 the shotgun clause is not what you envisioned?

24 MR. TIM FRYER: Sorry?

25 MS. KATE MCGRANN: You said that you

1 suggested a shotgun clause be included as soon as you
2 understood that 50 percent was what was going to be
3 sold.

4 What about this shotgun clause is not
5 consistent with what you had envisioned would be put
6 in place?

7 MR. TIM FRYER: I would have thought
8 20 days was a very restrictive time period for a
9 municipal situation. And that's what we were going to
10 be in. And I just wouldn't think it be lengthy
11 enough. In fact, when I first saw it, I thought, is
12 there a one (1) missing in front of it?

13 MS. KATE MCGRANN: And what about --
14 can you help me understand why you thought it was too
15 restrictive? What were the implications of that for
16 the municipality?

17 MR. TIM FRYER: The implications of
18 the shotgun clause is that one partner can offer an
19 amount of money to the other partner for the -- for
20 their shares, and the other partner has the period of
21 time allowed to decide if they're going to pay that
22 amount to the partner who made the initial offer or
23 not.

24 And if they do decide to do that, the
25 other partner has to accept it. If you don't decide

1 to do that, then you have to accept what they've
2 offered to you.

3 So being a situation where the utility
4 was going to be fully leveraged so it was going to
5 have its 60 percent, that situation -- if there was
6 going to be a situation where Collus was having to
7 respond to an offer from PowerStream or Alectra,
8 eventually, then it would require -- if there was any
9 thought to -- to purchasing it back, it would
10 require -- definitely require Town Council approval.

11 And trying to get approval for
12 borrowing or getting money from Town Council, I would
13 have thought 20 days would be very, very restrictive.

14 MS. KATE MCGRANN: Okay. So the offer
15 Collus -- it wouldn't be Collus responding to the
16 offer. It'd be the Town responding to the offer.
17 Correct?

18 MR. TIM FRYER: Yes. The Unanimous
19 Shareholders Agreement, so it'd be Town of Collingwood
20 would be accepting the offer.

21 MS. KATE MCGRANN: And the concern was
22 that 20 days wouldn't be sufficient to get -- for Town
23 Council to be able to respond basically.

24 MR. TIM FRYER: It would -- I'm not
25 saying it can't be done because, as -- as Mr. Chadwick

1 explained when -- when I was speaking to him in -- in
2 this, Council has borrowing room.

3 But it would be making a decision most
4 likely without public input to any major degree
5 because you'd be rushing through to -- to get it done
6 'cause I believe that was 20 calendar days, too. It
7 wasn't 20 working days.

8 MS. KATE MCGRANN: So I understand
9 that you didn't have any input into how the shotgun
10 clause was finally drafted. Were there any
11 discussions on the Strategic Task Team about what
12 parameters would be required or acceptable to the Town
13 as far as a shotgun clause went?

14 MR. TIM FRYER: No. That's wasn't
15 part of the task team discussions.

16 MS. KATE MCGRANN: After PowerStream
17 was successfully selected as the successful proponent,
18 what involvement did you have in the negotiations or
19 the agreements that were put together for the deal?

20 MR. TIM FRYER: Basically none. The
21 conversations I had directly with PowerStream was in
22 regards to the upcoming cost of service filing and
23 deciding if we thought that it would be best to
24 proceed or may ask for an exemption for a year in
25 order to work on things, like service agreements and

1 that. So I met with Mr. Glicksman and Mr. Houghton
2 down at PowerStream. We had those discussions, and we
3 did emailings back and forth.

4 But those were really my only
5 discussions of any degree with PowerStream after they
6 had been selected. The negotiation part of the -- was
7 being handled by others.

8 MS. KATE MCGRANN: Have I got it right
9 that the discussions that you had directly with
10 PowerStream and with Mr. Houghton were related to the
11 position you'd take. These would be the regulator on
12 the shared services and other issues that would lead
13 to rate --

14 MR. TIM FRYER: On the -- on the 2013
15 cost of service filing, which is an extensive filing.

16 MS. KATE MCGRANN: No input into the
17 terms of the Shareholders Agreement or --

18 MR. TIM FRYER: No.

19 MS. KATE MCGRANN: -- the Share
20 Purchase Agreement?

21 MR. TIM FRYER: No, I did not.

22 MS. KATE MCGRANN: Were you involved
23 in any of the discussions around those documents?

24 MR. TIM FRYER: No. May I -- that was
25 being handled by Ms. Shuttleworth.

1 MS. KATE MCGRANN: Can we turn up
2 TOC --

3 THE HONOURABLE FRANK MARROCCO: Just
4 if I might -- sorry -- before you do that. You
5 indicated that the prevailing view was that
6 Collingwood should not lose control of the Utility.

7 MR. TIM FRYER: I believe that, yes.

8 THE HONOURABLE FRANK MARROCCO: This
9 shotgun clause would allow PowerStream at some point
10 to buy the entire utility, wouldn't it?

11 MR. TIM FRYER: Yes. And the
12 protection for Collingwood would -- would be that they
13 couldn't give you a low price without running the risk
14 of you turning around and -- and paying it.

15 THE HONOURABLE FRANK MARROCCO: I
16 appreciate that. But I thought that the Town didn't
17 want to lose control of the utility.

18 MR. TIM FRYER: And I believe that
19 that -- they didn't believe that they were losing
20 control.

21 THE HONOURABLE FRANK MARROCCO: If you
22 were giving somebody the right to buy your shares?

23 MR. TIM FRYER: I guess because you
24 have the same right to buy theirs.

25 THE HONOURABLE FRANK MARROCCO: Is --

1 was that the discussion at the Strategic Partnership
2 Task Team if there was one?

3 MR. TIM FRYER: I can't say for
4 certain, Justice Marrocco, that there was discussion.
5 I -- I mean, I'm providing you my view of it, I guess.

6 THE HONOURABLE FRANK MARROCCO: Thank
7 you.

8

9 CONTINUED BY MR. KATE MCGRANN:

10 MS. KATE MCGRANN: I have a couple
11 questions about Amaizeingly Green. Could we turn up
12 CPS7018_0001?

13

14 (BRIEF PAUSE)

15

16 MS. KATE MCGRANN: If we look at the
17 last paragraph at the bottom of the second page...
18 So, these are the minutes of the July 8th, 2011,
19 Collus Power Board meeting.

20 MR. TIM FRYER: M-hm.

21 MS. KATE MCGRANN: So, here it says:

22 "A discussion ensued as to the
23 status of Amaizeingly Green's
24 account. Mr. Houghton stated that a
25 payment should be received today and

1 that weekly payments would be
2 received until the account is
3 current.

4 Amaizeingly Green is suggesting that
5 the account will be cleared up by
6 November."

7 Is your recollection that that
8 statement turned out to be accurate? Did they get
9 their accounts cleared up by November of 2011?

10 MR. TIM FRYER: That was the promise
11 we were having from the customer, yes.

12 MS. KATE MCGRANN: Okay. And was that
13 what turned out to be the case? Did they actually pay
14 it off by then?

15 MR. TIM FRYER: I know it was paid
16 off. I can't say for certain that it was exactly on
17 that schedule, but it wouldn't have been too far off.

18 MS. KATE MCGRANN: Okay. This
19 paragraph goes on to say:

20 "Mr. Houghton stated that he has a
21 conference call at their head office
22 scheduled for July 13th. Once the
23 account is current, we will be
24 requesting a \$1 million line of
25 credit."

1 Can you explain to me what the \$1
2 million line of credit request is there?

3 MR. TIM FRYER: Utilities have the
4 right to ask the customer for a security deposit,
5 whether it's a residential customer, commercial, or
6 industrial customer. And in the case of our
7 industrial customers, we hadn't taken that approach
8 and didn't generally have lines of credit even on
9 them.

10 But what they had agreed to was a
11 fairly unique situation to other utilities out there.
12 We were actually the envy of them. They had agreed to
13 a weekly payment schedule, the major -- major
14 customers that we had.

15 So, we would provide them information
16 on a weekly basis as to what their consumption had
17 been the week before. They would make payment on
18 that. So, in a sense, it's a partial payment over the
19 four (4) weeks of the month.

20 And then we would do the normal billing
21 at the end of the month. And what the differential
22 was between the payments they made and -- and left
23 would be the amount outstanding.

24 So it reduced the risk quite a bit for
25 the utility because, unfortunately, the billing of

1 customers is somewhat like when customers are using
2 your credit card but you're not using your receipts
3 until you get that bill.

4 And you're talking about a customer
5 that was being billed in the order of probably between
6 a hundred and two hundred thousand dollars (\$200,000)
7 a month for electricity charges.

8 So, we had been using that approach.
9 In the case of Amaizeingly Green, they had encountered
10 difficulty. We were aware of it. We were talking to
11 them regularly, but it meant that they were falling
12 behind. And this was the culmination of when things
13 started to turn around and they were bringing it back
14 up to -- to current.

15 So, at the time -- and I don't recall
16 this particular sentence but, at the time the
17 statement was made, obviously, that we would request
18 the line of credit rather than ask for a million
19 dollar security deposit which would cost them money,
20 more money than it would be to have a line of credit,
21 we would take the line of credit, and if we had to
22 exercise on it, we would, whereas if we took a
23 security deposit, it would -- mo -- money would come
24 to us and we'd put it in our bank account and we would
25 pay them interest on it.

1 So, the -- the line of credit was the
2 one (1) that was talked about here.

3 MS. KATE MCGRANN: Okay. And do you
4 know whether this line of credit was ultimately put in
5 place in respect of Amaizeingly Green?

6 MR. TIM FRYER: I don't believe it
7 was.

8 MS. KATE MCGRANN: The last thing I
9 want to ask you about is the solar attic vent
10 initiative that Collus Power participated in. Do you
11 remember that Collus Power was involved in a project,
12 solar attic vents in homes?

13 MR. TIM FRYER: Yes, we were.

14 MS. KATE MCGRANN: What do you recall
15 about what that project was?

16 MR. TIM FRYER: I remember the project
17 being presented to the Board at a Board meeting and
18 the Board agreeing to undertake what I believe they
19 called a pilot project to initiate the process, I
20 guess, of -- of getting out there and selling
21 customers solar vent products.

22 And one (1) of the parts of the
23 proposal was that we would offer the ability for the
24 customer to put the charge onto their bill and pay it
25 over a period of time. I can't recall specifically

1 the period of time.

2 I'm thinking it was a year, but it
3 would just be speculation, but it was something like
4 that. It wasn't just two (2) or three (3) months. It
5 was definitely a little longer period. And it was
6 meant to be a way of promoting the sales of them
7 because people wouldn't have to necessarily put the
8 money upfront right away.

9 So, that's what I recall, is that we --
10 that was presented and the Board approved it. And
11 then we undertook operationally to -- to start to put
12 that process in place.

13 MS. KATE MCGRANN: So, who did the
14 work to take care of the billing for the -- the pilot
15 project then?

16 MR. TIM FRYER: That became my
17 responsibility.

18 MS. KATE MCGRANN: Did you -- or did
19 the Company receive any payment for doing that billing
20 work?

21 MR. TIM FRYER: I can't remember for
22 certain, so I can't say 'yes' or 'no'.

23 MS. KATE MCGRANN: Okay. Other than
24 overseeing the billing for the solar attic vent pilot
25 project, did you have any other involvement in that

1 project?

2 MR. TIM FRYER: No.

3 MS. KATE MCGRANN: At the time, you
4 told us that you were aware that Mr. Bonwick was
5 involved in the project. What did you know about his
6 involvement?

7 MR. TIM FRYER: I believed that it was
8 Paul's company that was involved in -- in the -- I
9 believe that that's what I remember as the -- as the
10 situation.

11 MS. KATE MCGRANN: Okay, and what
12 company was that?

13 MR. TIM FRYER: I believe it was Green
14 Leaf.

15 MS. KATE MCGRANN: Do you remember how
16 you came to -- to understand that that was Mr.
17 Bonwick's company?

18 MR. TIM FRYER: I can't recall why I
19 knew that, but that's what I thought was going...

20 MS. KATE MCGRANN: And I think you had
21 told us earlier that you also knew that PowerStream
22 was involved with that project.

23 Did you think there was any connection
24 between Green Leaf and PowerStream?

25 MR. TIM FRYER: I -- I did not. Or

1 I'm sorry, what I should say there is -- is when I
2 knew that Green Leaf was involved in -- in the -- in
3 the units, I equated that to the fact that, oh, and
4 PowerStream is, too.

5 So, I knew at the time that Paul was
6 doing work for PowerStream, so I assumed that there
7 was some relationship there from that. And that --
8 that was probably all I would assume at that point in
9 time.

10 MS. KATE MCGRANN: Okay. Do you
11 recall if you asked any questions to understand better
12 who was involved in the pilot project or what they
13 were doing?

14 MR. TIM FRYER: I felt that the
15 information that the Board had received when they made
16 the decision was everything we needed to know.

17 MS. KATE MCGRANN: And what -- what
18 information do you recall the Board receiving?

19 MR. TIM FRYER: Things like the cost
20 of the unit, how we were going to promote it, the fact
21 that we were looking to other partners, and -- and
22 PowerStream was one (1), I believe Wasaga Beach was
23 another, Orangeville, possibly, so along those lines,
24 and then the idea of -- of what they were going to
25 charge for the unit.

1 Now I think about that. What was going
2 to be charged for the unit would have been meant to
3 recover any costs that we were incurring to run the
4 program through the billing and -- and things like
5 that.

6 MS. KATE MCGRANN: Was it your
7 understanding that Collus Power would incur the cost
8 of running the pilot program and those costs would be
9 recovered through the payments that people made for
10 their solar attic vents?

11 MR. TIM FRYER: And I can't say if it
12 was fully recoverable or -- or not because I can't
13 recall on that.

14 MS. KATE MCGRANN: Okay. Okay. So,
15 leaving aside the recovery for a second, was it your
16 understanding that Collus Power would bear the costs
17 of running the pilot program, some or all of those
18 costs would be recovered through the purchase price of
19 the attic vents?

20 MR. TIM FRYER: I certainly felt that
21 it was something that we were doing, and the
22 incremental cost of it would have been definitely
23 covered.

24 MS. KATE MCGRANN: What was your
25 understanding of Mr. Houghton's involvement in the

1 pilot project?

2 MR. TIM FRYER: As I said, he
3 presented the proposal to -- to the Board and received
4 approval to go on with the process. And that, to my
5 knowledge, was the only involvement with the -- with
6 the units, was taking that particular product and
7 taking it forward as -- as the Board wanted.

8 MS. KATE MCGRANN: Do you know how he
9 identified that product as a product that should be
10 taken forward to the Board?

11 MR. TIM FRYER: No, I don't.

12 MS. KATE MCGRANN: Did he have any
13 discussions with you about his decision to take that
14 product to the Board before he did so?

15 MR. TIM FRYER: No. And -- and I
16 wouldn't expect that he would have.

17

18 (BRIEF PAUSE)

19

20 MS. KATE MCGRANN: Those are my
21 questions.

22 THE HONOURABLE FRANK MARROCCO: I -- I
23 just have one (1) other question. Amaizeingly Green,
24 it eventually did go bankrupt?

25 MR. TIM FRYER: Yes, it did.

1 THE HONOURABLE FRANK MARROCCO: And
2 was there a loss --

3 MR. TIM FRYER: I've --

4 THE HONOURABLE FRANK MARROCCO: -- as
5 a result of that?

6 MR. TIM FRYER: I've tried to remember
7 specifically, but I -- I'm going to say to you, no,
8 because I don't recall there being one (1).

9 THE HONOURABLE FRANK MARROCCO: Okay.

10 MR. TIM FRYER: It would have had to
11 be fairly significant for me to -- to know of one (1),
12 so I can't say for certain that there wouldn't have
13 been a small amount.

14 But as far as I can remember, when we
15 got the -- them back up to current, they continued to
16 be current.

17 THE HONOURABLE FRANK MARROCCO: So --
18 so if there had been a significant loss associated
19 with their ultimate bankruptcy, you -- you probably
20 would know about it?

21 MR. TIM FRYER: I -- I definitely
22 would remember that

23 THE HONOURABLE FRANK MARROCCO: Yes.
24 Thank you. Who's...

25 MR. WILLIAM MCDOWELL: I assume I am.

1 I -- I will be pretty brief --

2 THE HONOURABLE FRANK MARROCCO: All
3 right.

4 MR. WILLIAM MCDOWELL: -- twenty-five
5 (25) minutes, a half an hour.

6 THE HONOURABLE FRANK MARROCCO: Go
7 ahead.

8

9 CROSS-EXAMINATION BY MR. WILLIAM MCDOWELL:

10 MR. WILLIAM MCDOWELL: So, my friend
11 has done a very good job of going through the various
12 aream -- areas of your testimony, Mr. Fryer, so I'll
13 be jumping around a bit with a few questions.

14 MR. TIM FRYER: Okay.

15 MR. WILLIAM MCDOWELL: On the
16 financial criteria, you thought that they should be 50
17 percent rather than 30 percent. That's your evidence,
18 that's correct?

19 MR. TIM FRYER: That would be my
20 initial rememory -- memory is that I was thinking you
21 wouldn't go anything less than fifty (50).

22 MR. WILLIAM MCDOWELL: Right. And
23 when asked why that was, you said, Well, that's
24 because I'm an -- an accountant. And what you really
25 mean, I think, is that the financial criteria,

1 properly understood, are metrics. They are things you
2 can measure, correct?

3 MR. TIM FRYER: Most certainly, it's -
4 - it's something you can measure more easily than
5 qualitative, yes.

6 MR. WILLIAM MCDOWELL: Right. And --
7 and as I look at the list of non-financial criteria --
8 we don't need to go through them -- but a lot of them
9 are subject to a lot of interpretation, correct?
10 Like, the quality of customer service, and --

11 MR. TIM FRYER: I -- I would agree,
12 yes.

13 MR. WILLIAM MCDOWELL: Right. And the
14 -- and how they treat their employees, for example?

15 MR. TIM FRYER: Yes. Yes.

16 MR. WILLIAM MCDOWELL: So just dealing
17 with a customer service one, it's not as though in
18 evaluating that criterion the Strategic Task Team went
19 out and -- and did some kind of analysis of Hydro One
20 customers and their complaints and that sort of thing,
21 correct?

22 MR. TIM FRYER: They provided
23 information in their proposal that was -- I'm just
24 making sure I don't get told to -- they provide
25 information towards those criteria to -- to supplement

1 what we would probably because we're in the industry
2 know about the four (4) proponents already.

3 MR. WILLIAM MCDOWELL: Right but just
4 on customer service what you would know is, I gather,
5 I'm not being critical, it would be antidotal
6 information?

7 MR. TIM FRYER: It certainly would be
8 subjective, yes.

9 MR. WILLIAM MCDOWELL: Right. Going
10 now to the shotgun clause, I just had a few questions.
11 The shotgun clause required the Town -- if the Town
12 wanted to retain control, required the Town within
13 twenty (20) days to purchase the -- the other half of
14 the Utility, correct?

15 MR. TIM FRYER: Yes. Right.

16 MR. WILLIAM MCDOWELL: And PowerStream
17 as a company is much larger than one-half of the
18 former Collus?

19 MR. TIM FRYER: Much larger, yes.

20 MR. WILLIAM MCDOWELL: Right And so
21 the thing about the shotgun clause is that there's an
22 asymmetry in the ability to buy, I assume.

23 MR. TIM FRYER: Between the larger
24 entity and the smaller entity.

25 MR. WILLIAM MCDOWELL: Correct.

1 MR. TIM FRYER: Smaller entity being
2 the Town of Collingwood --

3 MR. WILLIAM MCDOWELL: Yes.

4 MR. TIM FRYER: -- which isn't probably
5 an awful lot smaller than PowerStream but it isn't an
6 LDC.

7 MR. WILLIAM MCDOWELL: Right, it isn't
8 an LDC and there's a couple of problems, one is, as
9 you said, you've got a -- you've a member of a
10 municipal council, you've got to persuade the council
11 within twenty (20) days of the wisdom of buying the
12 other half, correct?

13 MR. TIM FRYER: That would be what the
14 challenge would be.

15 MR. WILLIAM MCDOWELL: Right. And
16 then a -- another challenge, I suppose, is that in the
17 signing to sell half of it in the first place, you
18 commissioned a valuation, and that valuation process
19 took I think three (3) months, correct?

20 MR. TIM FRYER: Yes. And -- and that
21 was just a general.

22 MR. WILLIAM MCDOWELL: Right, and is -
23 - we may get into it a little bit, but it required an
24 awful lot of data collection by you, and responses to
25 complicated questions, and so on, and that was hard

1 enough to do in three (3) months?

2 MR. TIM FRYER: Yes.

3 MR. WILLIAM MCDOWELL: And so it's
4 pretty impractical within twenty (20) days?

5 MR. TIM FRYER: M-hm. I -- I thought
6 it was very restrictive, and -- and I wouldn't have
7 wanted to be the financial person accepting that
8 challenge on -- on getting information to a Council to
9 make a decision about whether they should or
10 shouldn't.

11 MR. WILLIAM MCDOWELL: Right. And so
12 when you were recommending that a shotgun clause be
13 inserted, you were thinking that there has to be some
14 way out of a -- a deadlock that could develop, right?

15 MR. TIM FRYER: Different views on how
16 the organization needed to grow, or that type of
17 thing.

18 MR. WILLIAM MCDOWELL: Sure. And so
19 you need a way to get divorced, if I can put it that
20 way?

21 MR. TIM FRYER: Amiably.

22 MR. WILLIAM MCDOWELL: Amiably, but
23 also you weren't thinking of twenty (20) days.

24 MR. TIM FRYER: As I said, I'm -- I am
25 -- I've said it numerous times. I thought there was a

1 one (1) that should have been in front of it.

2 MR. WILLIAM MCDOWELL: Right. So in
3 other words, do it in four (4) months or something
4 like that?

5 MR. TIM FRYER: It seemed to me like
6 that would be the time period that you want to work
7 with.

8 MR. WILLIAM MCDOWELL: Okay. And so
9 the terms of the shotgun clause were the subject of
10 negotiation, I assume?

11 MR. TIM FRYER: I -- I didn't
12 participate in that part of it, so I can't say for
13 certain.

14 MR. WILLIAM MCDOWELL: Was it the case
15 that Mr. Houghton was instructing the lawyers on
16 behalf of the Town on issues like this?

17 MR. TIM FRYER: And again, because I
18 wasn't participating, I didn't really know who was --
19 was taking on what role in that part of it.

20 MR. WILLIAM MCDOWELL: Right. But in
21 order for us to understand how we arrived at this
22 twenty (20) day period, we would have to see the back
23 and forth between the lawyers for the Town and the
24 lawyers for PowerStream, I take it?

25 MR. TIM FRYER: I -- I guess you --

1 you would, yes.

2 MR. WILLIAM MCDOWELL: And the lawyers
3 for Collus, I guess, potentially, too.

4 MR. TIM FRYER: And again, I didn't
5 know who was doing what roles in that regard.

6 MR. WILLIAM MCDOWELL: No, fair
7 enough. And I guess just on the valuation point, the
8 shotgun clause that was negotiated couldn't be
9 exercised within two (2) years. Is that --

10 MR. TIM FRYER: I --

11 MR. WILLIAM MCDOWELL: -- your
12 recollection?

13 MR. TIM FRYER: -- I believe that's
14 correct, that it was a -- a minimum of two (2) years
15 before it could -- could be exercised.

16 MR. WILLIAM MCDOWELL: So if you're
17 four (4) or five (5) years out, you know, Collingwood
18 seems to me to be growing. There might be a different
19 customer base. You really do need a valuation to
20 understand what it is you're selling or buying?

21 MR. TIM FRYER: It -- we've talked
22 about it in the valuation evidence we've heard over
23 the -- over the few weeks that it is possible to get a
24 pretty good rule of thumb together fairly quickly.

25 MR. WILLIAM MCDOWELL: Right.

1 MR. TIM FRYER: The problem with
2 selling a public asset is you need to be able to show
3 you've done your homework, and -- and --

4 MR. WILLIAM MCDOWELL: The value for
5 money.

6 MR. TIM FRYER: -- and you'd want to
7 make sure that you had objective views to -- to show
8 that you've done your homework. And -- and so you
9 would want to have a third party involved rather than
10 just necessarily internal resources, even though you
11 may have a good idea --

12 MR. WILLIAM MCDOWELL: M-hm.

13 MR. TIM FRYER: -- what the figure's
14 going to be, I think it's about being able to show
15 that you've done your homework.

16 MR. WILLIAM MCDOWELL: Fair enough.
17 So let me just ask you a couple of questions about
18 rates. So you were involved with the process of
19 setting the customer rates, I take it?

20 MR. TIM FRYER: Yes, I was.

21 MR. WILLIAM MCDOWELL: And we heard
22 from Ms. Chaplin the distribution rates were based on
23 a deemed capital structure of 60/40 debt to equity?

24 MR. TIM FRYER: Yes, it was.

25 MR. WILLIAM MCDOWELL: And that in

1 fact is how Collus's rates were -- were calculated,
2 based on that deemed capital structure --

3 MR. TIM FRYER: Every LDC in the
4 Province was, yes.

5 MR. WILLIAM MCDOWELL: Okay. Now let
6 me back to this big question that we've heard some
7 evidence around. As I've heard your evidence, this is
8 your attitude towards the sale. You've said a number
9 of things. One (1) is that you had a huge number of
10 competing responsibilities at the same time?

11 MR. TIM FRYER: Yes, I did.

12 MR. WILLIAM MCDOWELL: And you've
13 given us a list, and on behalf of the Town, we will
14 stipulate that that's a long list of things that you
15 had to do.

16 You also have said that you had
17 reservations about the process that was followed, that
18 the pro -- so in other words, the RFP you thought
19 should have had terms which said, We're considering
20 selling all or part of our utility; give us your
21 proposal?

22 MR. TIM FRYER: Yes. So I didn't have
23 concerns with the actual process that was undertaken.

24 MR. WILLIAM MCDOWELL: Right.

25 MR. TIM FRYER: I just felt that it

1 could have been more put towards looking at the other
2 options. But as I said, I recognize Council had
3 decided not to when they decided to go for the
4 partnership, and that process was undertaken properly.

5 MR. WILLIAM MCDOWELL: Okay. And
6 there -- there are a lot of emails in which people
7 within KPMG are saying, you know, Tim doesn't seem to
8 like what we're doing, and Tim seems to be going very
9 slowly. You -- you've seen those. I don't need to
10 pull them up?

11 MR. TIM FRYER: No, I've seen them.

12 MR. WILLIAM MCDOWELL: And is it your
13 evidence that that was their perception, but that was
14 not, in fact, true?

15 MR. TIM FRYER: Yes, through the
16 course of my years with the Utility, there was
17 instances where people would have an opinion about
18 what I was doing, or not doing, and --

19 MR. WILLIAM MCDOWELL: Right.

20 MR. TIM FRYER: -- and I had to weigh
21 those -- in those particular cases. I didn't know
22 that they were saying those things.

23 MR. WILLIAM MCDOWELL: Right.

24 MR. TIM FRYER: So I looked towards
25 whether there was anything within my emails that I

1 actually came out and said, and there wasn't. So I --
2 I looked at it as just internal chatter, and -- and if
3 I'd known about it at the time, I probably would have
4 looked at it the same way then, too. I just would
5 have said, I've got to keep doing what I'm doing, and
6 make sure the customers aren't affected.

7 MR. WILLIAM MCDOWELL: So is this
8 phrase that you heard on CNN a while back between the
9 -- the generals and President Trump that the generals
10 would say that the slow march -- certain orders, in
11 other words, they would carry out the instructions,
12 but just do it in a very slow way. That's not what
13 you were doing here, I take it?

14 MR. TIM FRYER: I don't believe there
15 was -- at any point in time that -- that I was tardy
16 in -- in doing what I could do to move any of the
17 initiatives forward in the best light possible.

18 MR. WILLIAM MCDOWELL: Okay. And can
19 we pull up -- it's TOC70115.

20

21 (BRIEF PAUSE)

22

23 MR. WILLIAM MCDOWELL: Still...

24

25

1 (BRIEF PAUSE)

2

3 MR. WILLIAM MCDOWELL: Let the record
4 reflect that Ms. McGrann has broken the Internet.

5 Okay. Well, let me --

6 THE HONOURABLE FRANK MARROCCO: Well,
7 you know, you know, why -- why don't I -- I would have
8 taken a break at some point anyway. I'll take it now
9 and see if we can get the Internet up and running.

10 MR. WILLIAM MCDOWELL: Sure. Okay.
11 Thanks, Commissioner.

12

13 --- Upon recessing at 2:36 p.m.

14 --- Upon resuming at 2:49 p.m.

15

16 THE HONOURABLE FRANK MARROCCO: We're
17 up and running apparently.

18

19 CONTINUED BY MR. WILLIAM MCDOWELL:

20 MR. WILLIAM MCDOWELL: So I think I
21 was looking for TOC70115.

22

23 (BRIEF PAUSE)

24

25 MR. WILLIAM MCDOWELL: Now, if you

1 scroll down -- there. So this is an email that I
2 assume you've seen.

3 MR. TIM FRYER: Yes, I have.

4 MR. WILLIAM MCDOWELL: Right. And --
5 and this is one from Rick Lloyd to Mr. Muncaster, who
6 was the Chair of Collus, and Mr. Lloyd seems terribly
7 cranked up about things in this email.

8 MR. TIM FRYER: Yes, he does.

9 MR. WILLIAM MCDOWELL: And in the
10 second paragraph he says:

11 "I remain concerned about Tim and
12 his obvious distaste for the idea
13 and his lack of professionalism."

14 At this point I take it that Mr. Lloyd
15 hadn't raised anything like this with you?

16 MR. TIM FRYER: No.

17 MR. WILLIAM MCDOWELL: And then he
18 carries on and he says:

19 "I believe that he still seems to be
20 opposed to the whole idea."

21 You've said that you had certain
22 reservations, which you've expressed, but you were
23 carrying out the instructions.

24 MR. TIM FRYER: That's what I
25 explained to the Board when I was asked about it, yes.

1 MR. WILLIAM MCDOWELL: Right. And
2 that's what I was coming to, that -- so he says we're
3 going to have a board meeting, we're going to
4 hopefully talk about this with -- with Tim. And that
5 happened?

6 MR. TIM FRYER: That's the boardroom
7 (sic) I believe when I -- I spoke of earlier, I was in
8 camera asked to explain my position about this.

9 MR. WILLIAM MCDOWELL: Right. And
10 that's where you set out the -- set out the points
11 about the four (4) options which might have been --

12 MR. TIM FRYER: I -- I would have said
13 that we should have explored our options.

14 MR. WILLIAM MCDOWELL: Right. I just
15 wanted to make sure that that was the same meeting
16 that we're talking about.

17 And did anybody in the Board meeting
18 suggest that you were acting with a lack of
19 professionalism?

20 MR. TIM FRYER: No. My recollection
21 is that the -- the Chair asked me to speak in regards
22 to my position about the sale and I said what I had
23 referred to and explained that it was a surprise to me
24 to -- to be asked and -- and I wasn't prepared to
25 speak any more in depth on it, but I would if they

1 wanted to -- at another point in time.

2 MR. WILLIAM MCDOWELL: Okay. Now, can
3 we pull up KPM2496?

4

5 (BRIEF PAUSE)

6

7 MR. WILLIAM MCDOWELL: So this is a
8 few months later, February the 4th, 2012; Mr. Houghton
9 to several of the people at KPMG in relation to MAAD,
10 M-A-A-D, application matters. And Mr. Houghton says:

11 "Can you please stop any more
12 contact with Tim until further
13 notice? I will explain what details
14 I can later."

15 I take it you weren't aware of this
16 email in -- at the time?

17 MR. TIM FRYER: No, I was not.

18 MR. WILLIAM MCDOWELL: Right. Now, I
19 don't want to go too far into this, but you took a
20 medical leave at some point?

21 MR. TIM FRYER: No, I did not.

22 MR. WILLIAM MCDOWELL: All right.

23 MR. TIM FRYER: If I may, I -- I was --

24 MR. WILLIAM MCDOWELL: Sure.

25 MR. TIM FRYER: I was put on to an

1 imposed leave of absence.

2 MR. WILLIAM MCDOWELL: By Collus?

3 MR. TIM FRYER: Yes.

4 MR. WILLIAM MCDOWELL: So it wasn't a
5 -- wasn't a medical issue at all?

6 MR. TIM FRYER: That'd be personnel
7 matter and that'd be confidential.

8 MR. WILLIAM MCDOWELL: Yeah. Well,
9 it's not confidential here unfortunately.

10 MR. TIM FRYER: No. No, that's -- but
11 I'm just saying it would be -- that's why I'm saying I
12 considered it to be an imposed leave of absence.

13 MR. WILLIAM MCDOWELL: Right. But
14 it's probably obvious why I'm asking this. We've
15 heard some evidence here about the way in which Mr.
16 Houghton and Mr. Lloyd dealt with employees at the
17 Town.

18 MR. TIM FRYER: Yes.

19 MR. WILLIAM MCDOWELL: There have been
20 allegations of harassment, and frankly, allegations of
21 bullying. You were here for that evidence.

22 MR. TIM FRYER: Yes.

23 MR. WILLIAM MCDOWELL: Right.

24 MR. FREDERICK CHENOWETH: Your Honour,
25 I -- I'm having a little trouble with that question.

1 I don't recall any evidence that ever suggested that
2 Mr. Houghton had in any way bullied anyone at the
3 Town. There was some suggestions by Ms. Wingrove that
4 she had some trouble obtaining meetings with him,
5 which we'll deal with, but I don't recall any
6 allegations of bullying at any point in this
7 commission with respect to Mr. Houghton.

8 MR. WILLIAM MCDOWELL: Well, Mr. --

9 MR. FREDERICK CHENOWETH: I wonder if
10 the question might be rephrased?

11

12 CONTINUED BY MR. WILLIAM MCDOWELL:

13 MR. WILLIAM MCDOWELL: No, I think My
14 Friend might want to look at the transcript, but let
15 me ask you a different question.

16 MR. FREDERICK CHENOWETH: That'd be
17 good.

18 THE HONOURABLE FRANK MARROCCO: No,
19 no, no, no. Let's not start that.

20

21 CONTINUED BY MR. WILLIAM MCDOWELL:

22 MR. WILLIAM MCDOWELL: So you were put
23 on a -- on an imposed leave.

24 Was your physician involved in any part
25 of this, because -- and the reason I ask that is that

1 I've seen in the documents reference to you coming
2 back from an -- from a medical leave.

3 MR. TIM FRYER: It may say medical
4 leave. I didn't consider it to be a medical leave.

5 MR. WILLIAM MCDOWELL: Okay. So what
6 were the circumstances in which you took the leave?

7 MR. TIM FRYER: I came into the office
8 one morning and immediately Ms. Hogg -- Mrs. Hogg and
9 Mr. Houghton attended my office, shut my door, and
10 informed me that I had ten (10) minutes to leave the
11 building, just do what I needed to do, and -- and that
12 I was being put on leave.

13 MR. WILLIAM MCDOWELL: Did they
14 explain why?

15 MR. TIM FRYER: They reviewed that
16 they had concerns for me and -- and such from a
17 medical standpoint. I told them that I was fine and I
18 told them that I felt that I had two (2) choices here.
19 I could say no, which would cause a problem
20 internally, and -- and I didn't see that being a -- a
21 -- a real positive position going forward for
22 everybody involved, so I said I accepted it.

23 MR. WILLIAM MCDOWELL: And you were
24 fine in fact medically?

25 MR. TIM FRYER: In my opinion I was.

1 MR. WILLIAM MCDOWELL: Did you seek
2 any medical person's opinion about that or --

3 MR. TIM FRYER: In order to come back
4 when I did, which was roughly six (6) weeks later, I
5 had to have doctor's authorization to do it.

6 MR. WILLIAM MCDOWELL: Okay. Which
7 you obtained, I assume?

8 MR. TIM FRYER: Yes, I did.

9 MR. WILLIAM MCDOWELL: And you
10 obtained it the first time you asked for it?

11 MR. TIM FRYER: Within the parameters
12 -- I believe, if I remember correctly, it was a
13 minimum of a month, so -- so I had to -- I knew I was
14 going to have to wait for the month.

15 MR. WILLIAM MCDOWELL: All right. And
16 when you returned to work, did you go headlong into
17 everything you had been doing or did you manage to get
18 a bit of a -- bit of relief from that massive
19 workload?

20 MR. TIM FRYER: No, because of work
21 it had fallen behind on some of the initiatives, so I
22 was back to a sixty (60) or sixty-five (65) hour work
23 week.

24 MR. WILLIAM MCDOWELL: And how long
25 did you stay with Collus PowerStream?

1 MR. TIM FRYER: Sorry, what do you
2 mean by "stay with"?

3 MR. WILLIAM MCDOWELL: When did your
4 employment with the company merge or otherwise ceases?

5 MR. TIM FRYER: So I -- I spoke to Mr.
6 Houghton about -- about looking at retirement the day
7 that we found out the OEB had approved the
8 transaction.

9 MR. WILLIAM MCDOWELL: Right.

10 MR. TIM FRYER: I am of the same view
11 as Mr. Erling. I was somewhat surprised that the OEB
12 approved it. I thought that there'd be the
13 possibility they might not because of the situation
14 with the review panel still to bring their -- their
15 findings down, but I recognize that the OEB works
16 within their -- their parameters and it was simply
17 that it met the no-harm test and -- and the OEB could
18 not -- could not (sic) approve it.

19 MR. WILLIAM MCDOWELL: Right. And
20 then the effective date of your retirement was?

21 MR. TIM FRYER: September 30th, 2012.
22 I believe the ruling from the OEB would have been in
23 early July, if I remember correctly, of 2012.

24 MR. WILLIAM MCDOWELL: Right. Now,
25 just while we're on the -- the subject of employment,

1 in the shotgun clause there was a two-year period
2 before either side could pull the trigger as it were.

3 MR. TIM FRYER: That's my
4 understanding of the clause, yes.

5 MR. WILLIAM MCDOWELL: Which suggests
6 to me that there'd be a -- sort of a two-year period
7 of stability within the Corporation?

8 MR. TIM FRYER: Certainly neither
9 partner could initiate that clause.

10 MR. WILLIAM MCDOWELL: Right. Were
11 there discussions about whether the executive team
12 would stay involved once the transaction took place?

13 MR. TIM FRYER: Not with me, no.

14 MR. WILLIAM MCDOWELL: Were you aware
15 of any other discussions?

16 MR. TIM FRYER: No. I -- I guess I
17 should just correct myself on that, Mr. McDowell.

18 Certainly I was aware of the fact that
19 in the RFP, it was about what are the plans for the
20 employees, and I believe PowerStream didn't indicate
21 anything, so my -- my belief was that things would
22 carry on as is.

23 MR. WILLIAM MCDOWELL: Right.

24 MR. TIM FRYER: I guess --

25 MR. WILLIAM MCDOWELL: Well, that's

1 really what I'm getting at, whether you had an
2 expectation one way or the other.

3 Could we pull up CBB39? I know I'm
4 moving around here but just to cover off a couple of
5 these questions.

6

7 (BRIEF PAUSE)

8

9

10 MR. WILLIAM MCDOWELL: Just before we
11 leave the past subject, did you think that placing you
12 on an involuntary leave was a reasonable or an
13 unreasonable thing to have -- for the CEO to have
14 done?

15 MR. TIM FRYER: Oh, I thought it was
16 unreasonable.

17

18 (BRIEF PAUSE)

19

20 MR. WILLIAM MCDOWELL: And the only
21 discussion that you had with them about that, I take
22 it, was when you were advised that you had ten (10)
23 minutes to -- to leave?

24 MR. TIM FRYER: And they explained
25 things and -- and gave me the ten (10) minutes, yes.

1 MR. WILLIAM MCDOWELL: Right. You
2 never put your position in writing back to Mr.
3 Houghton or Ms. Hogg or anybody else?

4 MR. TIM FRYER: You mean in --
5 immediately?

6 MR. WILLIAM MCDOWELL: Or at any time.

7 MR. TIM FRYER: I -- I can't recall if
8 there was written paperwork back and forth. I -- I --
9 I can't say anything for certain on that.

10 MR. WILLIAM MCDOWELL: So these are
11 the notes prepared by Mr. Neate and Mr. Neate was the
12 auditor?

13 MR. TIM FRYER: He was a member of
14 what was Gaviller and Company at the time, and he was
15 one of the partners and he was the partner responsible
16 for doing the audit work for the utility.

17 MR. WILLIAM MCDOWELL: He had done
18 that for a number of years?

19 MR. TIM FRYER: Yes, he had.

20 MR. WILLIAM MCDOWELL: He was a
21 trusted business advisor, I take it?

22 MR. TIM FRYER: I -- I certainly
23 considered him to be, yes.

24 MR. WILLIAM MCDOWELL: You had a lot
25 of faith in him, I assume.

1 MR. TIM FRYER: Yes, I did.

2 MR. WILLIAM MCDOWELL: All right, so
3 Mr. Neate joins a meeting of the strategic task team.
4 Was there just one meeting or was there more than one?

5 MR. TIM FRYER: I am sure that there
6 was more than one meeting. I can't say that there was
7 more than two.

8 And it -- Mr. Neate joined because I
9 had recommended to the -- to the team that Mr. Neate
10 be involved because I didn't have any tax experience
11 when we moved to the OBCA format. I was a municipal
12 accountant and -- and so the partner at the time was
13 Ken Miller at Gaviller, both him and Ralph served --
14 served our tax purposes. All of our tax work went
15 through them over the course of time.

16 MR. WILLIAM MCDOWELL: All right. So
17 Mr. Neate joins a meeting and he raises a number of
18 issues here. So one of them, just for example, 5.5
19 million and 1.7 million, the Town could extract out of
20 the utility without doing the deal, right? So he says
21 that?

22 MR. TIM FRYER: Yes.

23 MR. WILLIAM MCDOWELL: And what that
24 means is that the Town could take out 5.5 million by
25 way of dividend?

1 MR. TIM FRYER: They could because the
2 -- that was the difference between the borrowing room
3 that we were using and what was remaining to reach the
4 deem structure.

5 MR. WILLIAM MCDOWELL: All right. And
6 then the 1.7 million is a promissory note?

7 MR. TIM FRYER: So that was part of
8 what we already had, so that actually could at -- be
9 added to the -- to the difference as well.

10 MR. WILLIAM MCDOWELL: Then he raises
11 an issue about the shotgun clause and he had concerns
12 that were similar to yours, it looks like.

13 MR. TIM FRYER: He -- he does say that
14 in this note, yes.

15 MR. WILLIAM MCDOWELL: All right, and
16 then control, he raises the issue of the 50/50 split
17 on the board?

18 MR. TIM FRYER: Yes.

19 MR. WILLIAM MCDOWELL: So are these
20 the kinds of issues that you would expect him to raise
21 in his capacity, as a business advisor?

22 MR. TIM FRYER: Yes, and in the first
23 bullet talks about the -- the fact that there is a --
24 we knew it was a moving target, so to speak, until the
25 books actually closed on July 31st, 2012, and you're

1 able to put your financial statements together you
2 wouldn't be able to know for certain what your working
3 capital adjustment figure would be.

4 At the time that he wrote this, he
5 indicated that it was about a \$1.1 million adjustment.

6 MR. WILLIAM MCDOWELL: Right.

7 MR. TIM FRYER: But -- and -- and
8 everybody was aware of that because both -- or any of
9 the other proposals that were put forward looked at
10 confirming things with the -- the final statements,
11 they were using the current statements we had, they
12 were saying we would expect that these would be
13 adjusted according to what the final figures are.

14 So we -- we knew we were working with a
15 -- with a moving target that could go up or down
16 depending on the circumstances.

17 MR. WILLIAM MCDOWELL: That's fair.

18 Now, let me pull up KPM1804. And this
19 is the document than Ms. McGrann didn't want you to
20 look at, but I'm going to ask you to look at it.

21 MR. TIM FRYER: Okay.

22 MR. WILLIAM MCDOWELL: Just scrolling
23 down, I don't want to go too deeply into this, but
24 this was what you're talking about relative to Hydro
25 One, correct?

1 MR. TIM FRYER: And the reason I
2 mentioned it was because it's dated October 28th, and
3 to me that first paragraph underneath consequence of
4 sale, the rest of it is detail about why, but the --
5 the last sentence is the tax issue arises in the event
6 of Hydro One as the buyer of a partial interest in
7 Collus Power.

8 MR. WILLIAM MCDOWELL: Right.

9 MR. TIM FRYER: But the October 28th
10 date shows me that we were informed, this didn't come
11 to me, it had come to Mr. Houghton, that we were
12 informed about the possibility there's -- that's how I
13 believe the November 2nd response came to be.

14 MR. WILLIAM MCDOWELL: Yes.

15 MR. TIM FRYER: And then I was simply,
16 on November 3rd, contacting Mr. Stern and -- and
17 basically conveying the message that was previously
18 conveyed in -- in the -- in the documentation that had
19 come together.

20 MR. WILLIAM MCDOWELL: All right.
21 Now, there was a particular issue with Hydro One, as
22 it turned out, the transaction with PowerStream had to
23 be structured differently than originally contemplated
24 for tax reasons.

25 MR. TIM FRYER: I can't say for

1 certain if it went just Collus Power, because they had
2 the transfer tax exemption for certain, as would Hydro
3 One, and I don't know enough about the other part of
4 things. Again, my expertise wasn't in that field.

5 MR. WILLIAM MCDOWELL: That's all
6 right, we can -- we can dig it out with other
7 witnesses.

8 But -- but the point is that at the end
9 of the day it had been contemplated the Town would
10 sell the shares of Collus Power and instead the shares
11 of the Holdco were sold, correct?

12 MR. TIM FRYER: Yes.

13 MR. WILLIAM MCDOWELL: Now, -- but let
14 me ask you this, in your view, did this create a
15 perception that there was something disadvantageous
16 about doing it with Hydro One because of this
17 particular problem?

18 MR. TIM FRYER: No. I -- I don't
19 believe so. It was simply indicating that a partial
20 interest of Collus Power only could generate this
21 issue.

22 Mr. Stern had referred to the fact that
23 there would be possibly ways to minimize it and I
24 don't believe that ever got explored because it never
25 was going to go to that point.

1 So I don't know whether that would have
2 meant that there could have been an elimination of it
3 or not.

4 MR. WILLIAM MCDOWELL: All right,
5 that's fair.

6 So let me ask you, you were a member of
7 Council from 2014 to 2018?

8 MR. TIM FRYER: Yes, I was.

9 MR. WILLIAM MCDOWELL: And am I right
10 in my perception that the shared services agreement
11 then, the way that shared services were being carried
12 out and paid for became a real issue of friction
13 between the Town and Collus PowerStream?

14 MR. TIM FRYER: Yes, I -- I agree with
15 the term that Mr. Roger used, which was never there
16 was an erosion of trust amongst the -- the parties
17 that were involved. And in any partnership, if you
18 have an erosion of trust, it can -- it can put things
19 into a real concerned state.

20 MR. WILLIAM MCDOWELL: And is it fair
21 that because there was this uncertainty surrounding
22 the arrangement about shared services, that that
23 contributed to the erosion of trust?

24 MR. TIM FRYER: I'd be more inclined
25 to think it went the other way. I think there was the

1 erosion trust that led to do we really want to be
2 doing these shared services this way now?

3 MR. WILLIAM MCDOWELL: All right.

4 And just to pull up CPS2668 for a
5 second, then scrolling down. I think it's towards the
6 bottom, I think. Okay. There we go, shared services
7 relationship.

8 So none of the proponents has really
9 any specificity in the way they approached this item.

10 MR. TIM FRYER: I would agree, it was
11 just general, yeah.

12 MR. WILLIAM MCDOWELL: Right. And
13 when I talk about uncertainty, that's what I'm talking
14 about.

15 MR. TIM FRYER: Because -- you're
16 correct, it had to be worked out with whatever partner
17 you're going to proceed with.

18 MR. WILLIAM MCDOWELL: Just briefly on
19 the solar vents' issue, did -- did Collus Power have
20 an employee code of conduct when you were working
21 there?

22 MR. TIM FRYER: No.

23 MR. WILLIAM MCDOWELL: We have seen in
24 the documentation documents which suggest that Mr.
25 Houghton had a financial interest in the solar vent

1 company.

2 MR. TIM FRYER: I've seen information,
3 I'm not going to say it suggests it because to me
4 there's not proof, so.

5 MR. WILLIAM MCDOWELL: All right, but
6 if you accept from me that an inference could be drawn
7 that he had a financial interest, would that have been
8 improper given his position at Collus Power?

9 MR. TIM FRYER: I would expect so.

10 MR. WILLIAM MCDOWELL: But there was
11 no code of conduct that addressed that situation?

12 MR. TIM FRYER: No. But we have our
13 fiduciary responsibilities of -- of our professional
14 conduct.

15 MR. WILLIAM MCDOWELL: You've
16 anticipated my next question, so --

17 MR. TIM FRYER: Yeah.

18 MR. WILLIAM MCDOWELL: -- thank you.
19 And then I think this is my last question or two (2).
20 If we turn up TOC67989...

21

22 (BRIEF PAUSE)

23

24 MR. WILLIAM MCDOWELL: So, this is in
25 November. And I wanted to scroll up a little bit

1 here. What you say there:

2 "I would like to talk to you about
3 the damage of Ian Adams misquoting
4 Rick in the newspaper article. I
5 know he is the deputy mayor, but you
6 were supposed to be the
7 spokesperson. He really shouldn't
8 have said anything."

9 So, this has to do with Mr. Lloyd
10 talking about how the proceeds received from the sale
11 might be used?

12 MR. TIM FRYER: Not just the proceeds.
13 He ex -- he included information about the dividend.
14 If it was just about the proceeds, I probably wouldn't
15 have reacted to it.

16 MR. WILLIAM MCDOWELL: Right. But the
17 dividend, as well.

18 MR. TIM FRYER: So, he -- he made some
19 references about dividend and -- and such.

20 MR. WILLIAM MCDOWELL: Right. And
21 then this caused a bit of a fuss with other LDCs in
22 the area, I take it?

23 MR. TIM FRYER: Trying to understand
24 the statement, yes.

25 MR. WILLIAM MCDOWELL: Right. What

1 was problematic about the statement?

2 MR. TIM FRYER: It is eight (8) years
3 ago. And -- and I didn't recall this email until I --
4 I looked at it in the document. So, the way it seems
5 to me would have been is it was saying about the
6 dividend. And, as I explained here, I -- I told him
7 that I couldn't discuss the use of funds for
8 acquisitions because council hadn't decided that and
9 that I was unsure of the impact on a dividend because
10 we hadn't seen all the financial information that
11 would be applicable.

12 So, I gave them some general
13 information because I -- in my belief, I'm not
14 supposed to be speaking about it. I made reference to
15 one (1) spokesperson.

16 My recollection of things was that the
17 -- we were -- we were told, as members of the
18 Strategic Partnership Task Team, that there would be
19 one (1) spokesperson, and they chose that Ed would be
20 the spokesperson, Mr. Houghton would be the
21 spokesperson, and -- and that's what I'm referring to
22 there.

23

24 (BRIEF PAUSE)

25

1 MR. WILLIAM MCDOWELL: Those are the
2 questions on behalf of the Town. Thank you,
3 Committee.

4 THE HONOURABLE FRANK MARROCCO: Thank
5 you. Now who's next? Mr. Chenoweth, go ahead.

6

7 CROSS-EXAMINATION BY MR. FREDERICK CHENOWETH:

8 MR. FREDERICK CHENOWETH: Mr. McDowell
9 asked you about a series of matters. He asked you
10 about the shotgun clause. And as I understand it, the
11 concerns you expressed about the shotgun clause at the
12 time was the -- the length of time to respond to the
13 shotgun, i.e., twenty (20) days?

14 MR. TIM FRYER: I didn't express that
15 to them because I wasn't aware of the length of time.
16 My involvement with -- about the shotgun clause is
17 that I felt when they started to talk about a 50/50
18 situation, they probably needed to consider a shotgun
19 clause because it seemed to me like there would be an
20 appropriate term to come to an agreement with a
21 partner about.

22 MR. FREDERICK CHENOWETH: I
23 understand. That's more helpful yet. So, the reality
24 is that it was really, to some extent, on your
25 suggestion that consideration was given to a shotgun

1 clause in the first place?

2 MR. TIM FRYER: I believe that I was
3 the one who mentioned it first, yes, I do.

4 MR. FREDERICK CHENOWETH: Right. And
5 you think that a shotgun clause was a necessary
6 concept given the fact that it was 50/50 and, to use
7 Mr. McDowell's phrase, if you had to do a divorce, you
8 had some -- some way of doing it, maybe even in an
9 amicable way?

10 MR. TIM FRYER: I would call it
11 amicable because the party that was making the offer
12 would recognize that they could be given the same
13 amount for the shares and he chose to do that, yes.

14 MR. FREDERICK CHENOWETH: The point of
15 it all is you were in fa -- in favour of putting in a
16 shotgun clause?

17 MR. TIM FRYER: At the time, I didn't
18 know how it was negotiated, so I can't comment at the
19 time how I would have felt about seeing that.

20 MR. FREDERICK CHENOWETH: So, you
21 eventually, however, at later times when you saw the
22 provisions of the shotgun clause, you did have some
23 concern, and that concern was with respect to the
24 twenty (20) day period?

25 MR. TIM FRYER: And now I was a member

1 of the shareholder, and so I was looking at it from a
2 shareholder per -- perspective, yes.

3 MR. FREDERICK CHENOWETH: Right. Did
4 you express that -- that concern about the twenty (20)
5 day period at any time when you were at the
6 shareholder, as it were, when you were a councillor?

7 MR. TIM FRYER: Yes. When I -- when I
8 became aware of the twenty (20) days, I thought that
9 that was very restrictive and put us in -- in what I
10 felt was a risky -- more risky situation.

11 MR. FREDERICK CHENOWETH: So, you made
12 some comment to -- about -- to that effect at council?

13 MR. TIM FRYER: I would have, yes.

14 MR. FREDERICK CHENOWETH: All right.

15 Thank you. You would have. Do you specifically
16 remember making such a comment at council?

17 MR. TIM FRYER: I believe it would
18 have been in a public session, but I can't tell you
19 for certain when it was.

20 MR. FREDERICK CHENOWETH: Okay. All
21 right. That's the only concern you ever expressed
22 about the shotgun clause, i.e., the shortness of the
23 twenty (20) day period when you were a councillor or -
24 - or otherwise?

25 MR. TIM FRYER: Yes. The -- again,

1 the reason that I was concerned was because the
2 utility was fully leveraged. The money would have to
3 come from the municipality.

4 MR. FREDERICK CHENOWETH: All right.
5 So, you didn't at any time ever express a concern
6 about the concept that Mr. McDowell has introduced,
7 i.e., the concept of an asymmetry between the parties?
8 That was never something that you raised with anyone
9 as a councillor or otherwise?

10 MR. TIM FRYER: Again, I wasn't part
11 of the negotiation of the terms --

12 MR. FREDERICK CHENOWETH: I know that.

13 MR. TIM FRYER: -- of the shotgun so I
14 -- I didn't, no.

15 MR. FREDERICK CHENOWETH: All right.
16 So, we know that. But you didn't raise -- you raised
17 -- you -- you tell us you believe you might have
18 raised the 20 percent -- or the twenty (20) day issue,
19 at later times -- you didn't at later times raise an
20 inappropriate symmetry between -- or an asymmetry
21 between the two (2) parties to the shotgun provision.

22 That's not something you raised at a --
23 at a later time. You only raised the question of the
24 twenty (20) days?

25 MR. TIM FRYER: I wouldn't have had to

1 raise anything else. To me, the twenty (20) days was
2 the riskier situation of anything.

3 MR. FREDERICK CHENOWETH: Thank you.
4 Ralph Neate -- my friend, Mr. McDowell, took you to
5 Ralph Neate and his comments. I don't think I have to
6 bring you back to the document mostly because I don't
7 have the document number in front of me. But in any
8 event of that --

9 MR. TIM FRYER: That's quite all
10 right. I -- I'm fine with it.

11 MR. FREDERICK CHENOWETH: -- I think
12 we all remember it. Ralph Neate, in his comments,
13 didn't mention the twenty (20) days, correct?

14 MR. TIM FRYER: I don't recall seeing
15 it in it, no.

16 MR. FREDERICK CHENOWETH: Thank you.
17 His concern, as he expressed it and as I read it
18 moments ago, was an entirely different concern. And
19 that was, after two (2) years, PowerStream could buy -
20 - could buy Collus out?

21 MR. TIM FRYER: Yes.

22 MR. FREDERICK CHENOWETH: All right.
23 So that it appears that, if he had a concern with the
24 shotgun clause, and he appears to have had one (1), it
25 was a different concern than yours?

1 MR. TIM FRYER: I can't comment on
2 that. And I know he's coming --

3 MR. FREDERICK CHENOWETH: But sure --
4 sure you can. It was -- yours was twenty (20) days.
5 He was that after two (2) years you could be bought
6 out. They're two (2) different concerns, are they
7 not?

8 MR. TIM FRYER: And I'm trying to
9 think of the date of the email, or the notes, because
10 it could be that the twenty (20) days hadn't been
11 established yet.

12 THE HONOURABLE FRANK MARROCCO: Let's
13 just pull the note up. What is the number?

14

15 (BRIEF PAUSE)

16

17 THE HONOURABLE FRANK MARROCCO: Is it
18 39, CBB39? Yes.

19

20 CONTINUED BY MR. FREDERICK CHENOWETH:

21 MR. FREDERICK CHENOWETH: His concern
22 is expressed at -- at paragraph 3, shotgun --

23 MR. TIM FRYER: M-hm.

24 MR. FREDERICK CHENOWETH: -- clause,
25 PowerStream will effectively be -- and -- and is there

1 a -- is there a date with respect to this note, just
2 to assist the witness? Is that evident from the
3 document?

4 MR. TIM FRYER: No. But we do know
5 that it was from a Strategic Partner Task Team meeting
6 which would have been before the terms of the USA were
7 negotiated.

8 MR. FREDERICK CHENOWETH: All right.
9 I think that's -- I think that's adequate. And I do
10 have a note of the date at another location.

11 In any event, his expressed concern
12 with respect to the shotgun clause was that
13 PowerStream will effectively be able to purchase the
14 other half of the utility after two (2) years?

15 MR. TIM FRYER: As he understood it at
16 the time, yes.

17 MR. FREDERICK CHENOWETH: All right.
18 Thank you. I'm simply suggesting to you that contrary
19 to the suggestion of my friend Mr. McDowell, his
20 concern about the shotgun clause was not the same as
21 your concern. It was a different concern in that your
22 concern was about the twenty (20) days, and it arose
23 after the clause was drafted. Correct?

24 MR. TIM FRYER: The twenty (20) days
25 arose after this was drafted.

1 MR. FREDERICK CHENOWETH: I'm having a
2 little difficulty getting a direct answer to the
3 question. I'm simply suggesting to you that the
4 concern expressed by Mr. Neate with respect to the
5 shotgun clause is a different concern than the 20-day
6 concern that you expressed with respect to the shotgun
7 clause, forgetting about the timing.

8 Is that not the case?

9 MR. TIM FRYER: Forgetting about the
10 timing? Yes, that's the case.

11 MR. FREDERICK CHENOWETH: You're not
12 aware that Mr. Neate expressed any other concerns at
13 any other times other than the concerns he expressed
14 in this note.

15 MR. TIM FRYER: None come to mind.

16 MR. FREDERICK CHENOWETH: Thank you.
17 All right. We have heard -- and you, in fact, created
18 a document which is now part of the record in this
19 proceeding -- indicating that going into 2011, you had
20 a lot on your plate.

21 MR. TIM FRYER: The -- I guess the LDC
22 did, and -- and well, I guess all the entities did.
23 And finance department had quite a bit on its plate,
24 yes.

25 MR. FREDERICK CHENOWETH: It did. It

1 had changes of accounting rules and a whole variety of
2 extra tasks that were not part of your normal routine.

3 MR. TIM FRYER: Yes.

4 MR. FREDERICK CHENOWETH: All right.

5 So you had a lot of work to do, and it was
6 challenging.

7 MR. TIM FRYER: Yes.

8 MR. FREDERICK CHENOWETH: One
9 individual, Mr. Houghton, appears to have expressed to
10 one of the KPMG individuals -- he used the word
11 "scrambling." It may not be a word that you would
12 have chosen, but I take it, it in essence gets across
13 the idea that you were -- you had substantial work on
14 your plate and, in that respect, wasn't inappropriate.

15 MR. TIM FRYER: Yes.

16 MR. FREDERICK CHENOWETH: Thank you.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: If I could
21 just -- I'm not sure I understand your position on the
22 Shared Service Agreement, and I just wanted to attempt
23 to clarify that.

24 But as I understand it, it was
25 difficult to bring clarity to the Shared Services

1 Agreements as you approach the closing in that, to
2 some large extent, this was a matter to be negotiated
3 by the potential eventual -- or negotiated with the
4 potential eventual partner?

5 MR. TIM FRYER: I had explained that
6 around March, as far as I was concerned, the -- the
7 duties on taking forward the amendments to the service
8 agreements had been turned over to Ms. Shuttleworth
9 and -- and Mr. Houghton.

10 So I wasn't -- at the time of getting
11 close to closing, I wasn't really involved in the --
12 in the direct conversations about it. But I also have
13 said that it wouldn't -- I wouldn't -- I wasn't
14 surprised that it was tough to nail down at that point
15 in time.

16 So is that helpful with my response?

17 MR. FREDERICK CHENOWETH: It is -- it
18 is helpful. Yes. And I take it one of the reasons
19 that it would be difficult to nail down is because it
20 was likely a matter that would require some
21 negotiation with the eventual chosen partner.

22 MR. TIM FRYER: Well, in that point in
23 time, it was PowerStream, and -- and it would take
24 some ironing out as to what services were going to
25 continue, because as I've mentioned, one of the

1 premises behind the partnership was to draw upon the
2 expertise of the -- of the partner. And so there may
3 have been a role or two that needed to come from them
4 as part of the shared services.

5 MR. FREDERICK CHENOWETH: Thank you.
6 I was again a little confused by some of your answers
7 with respect to your position on the STT team. You
8 indicated that you regarded yourself as a resource,
9 which makes sense, but you regarded the others as --
10 or some of the others as voting individuals.

11 MR. TIM FRYER: And the individuals I
12 considered to be that were the voting members of the
13 Board and -- and Council that were part of the task
14 team.

15 MR. FREDERICK CHENOWETH: All right.

16 MR. TIM FRYER: So the five (5)
17 members.

18 MR. FREDERICK CHENOWETH: Did anyone
19 ever tell you that -- explained to you in some way
20 that you were allegedly a non-voting member of the STT
21 team, or is this something that -- a concept that came
22 to your mind --

23 MR. TIM FRYER: The concept --

24 MR. FREDERICK CHENOWETH: -- that you
25 thought was fair?

1 MR. TIM FRYER: -- the concept was in
2 my mind, and it would be similar to when I would
3 attend Board meetings or audit committee meetings.
4 There were voting members, and -- and I was the
5 resource for them. So that concept was in my mind in
6 regards to the task team, as well.

7 MR. FREDERICK CHENOWETH: All right.
8 But no one ever told you that you had a restricted
9 position with respect to your activities on the STT
10 task force team. Correct?

11 MR. TIM FRYER: No. And -- and I was
12 able to provide input.

13 MR. FREDERICK CHENOWETH: All right.
14 No one told you that you had a restricted position.
15 Correct?

16 MR. TIM FRYER: As I said, it was my
17 concept in my mind, yes.

18 MR. FREDERICK CHENOWETH: All right.
19 Fine. Did you ever tell anyone else on the STT team
20 that you were a non-voting member of the team?

21 MR. TIM FRYER: I don't believe so.

22 MR. FREDERICK CHENOWETH: All right.
23 So this was something you -- this concept that you
24 had, you kept that to yourself.

25 MR. TIM FRYER: And I would have

1 considered Mr. Houghton and Ms. Wingrove and -- and
2 Mr. Herhalt to be of the same situation.

3 MR. FREDERICK CHENOWETH: All right.
4 Well, we'll get to them in due course.

5 The information I've been provided with
6 is that the STT team worked on the basis of consensus.
7 The team came to an agreement with respect to an issue
8 and then proceeded forward with respect to that issue.
9 Is that in keeping with your observation during the
10 time that you were a member of the team?

11 MR. TIM FRYER: I believe that there
12 was consensus. I just believe that the consensus
13 would have come from -- what I considered to be
14 essentially the voting members.

15 MR. FREDERICK CHENOWETH: All right.

16 MR. TIM FRYER: But definitely, I was
17 providing input as required.

18 MR. FREDERICK CHENOWETH: Did people
19 put up their hands to vote, or did it just -- it was
20 just a consensus developed in the room, or do you
21 recall?

22 MR. TIM FRYER: I don't believe it was
23 a show of hands at any point in time.

24 MR. FREDERICK CHENOWETH: But in any
25 event, it's -- it is your sense that the STT team

1 decided ideas or concepts as a result of reaching a
2 consensus.

3 MR. TIM FRYER: You know, whether it
4 was the nine or whether the five, it would have been
5 by consensus, yes.

6 MR. FREDERICK CHENOWETH: All right.
7 I'm sorry. Is there --

8 MR. TIM FRYER: I -- I guess -- I
9 guess the only instance that that wouldn't be the case
10 is when we did our scoring because we did our scoring
11 individually. Every person's scoring was considered
12 equally. So in that particular case, all nine were
13 considered as -- as equals.

14 MR. FREDERICK CHENOWETH: Very good.
15 And when I -- when we talk about a consensus, you mean
16 that you -- that you would all agree on an issue. Is
17 that correct?

18 MR. TIM FRYER: My recollection would
19 be that those five members would indicate that, but
20 it's just -- I can't say instance, so it's
21 speculative.

22 MR. FREDERICK CHENOWETH: I'm sorry.
23 It's what?

24 MR. TIM FRYER: It's speculative.

25 MR. FREDERICK CHENOWETH: It's

1 speculative.

2 MR. TIM FRYER: Yes.

3 MR. FREDERICK CHENOWETH: All right.

4 Very good. Do you recall any issues other than the
5 issues you described in which everyone voted their
6 particular way with respect to the scoring? Do you
7 recall any other issues in which things were proceeded
8 other than by way of a consensus?

9 MR. TIM FRYER: No. I felt the
10 process was completely as it should be.

11 MR. FREDERICK CHENOWETH: Very good.

12 And -- and with respect to -- to process, as I
13 understand it, were you have the view that Collus
14 Power had the -- the benefit of good, solid board
15 members, including Mr. Muncaster and Mr. McFadden?

16 MR. TIM FRYER: Yes.

17 MR. FREDERICK CHENOWETH: And did you
18 see that as being one (1) of the -- the strengths of
19 the Collus situation, the involvement of those two (2)
20 individuals?

21 MR. TIM FRYER: For the Task Team?

22 MR. FREDERICK CHENOWETH: No, just in
23 general at Collus in the running of the organization.

24 MR. TIM FRYER: The -- the Board
25 structure was very, very good for qualifications.

1 MR. FREDERICK CHENOWETH: Very good.

2 Thank you. And did you -- were you of the view that
3 they made a useful and substantial contribution?

4 MR. TIM FRYER: Most definitely.

5 MR. FREDERICK CHENOWETH: Did the
6 process that the Town entered into to -- to eventually
7 reach the strategic partnership that it eventually
8 entered into?

9 MR. TIM FRYER: Yes.

10 MR. FREDERICK CHENOWETH: And that was
11 a great benefit to the Town?

12 MR. TIM FRYER: Their service was,
13 yes.

14 MR. FREDERICK CHENOWETH: Thank you.
15 And did you believe that the STT team concept was a
16 useful part of the process that the Town undertook to
17 -- to reach its eventual result?

18 MR. TIM FRYER: I certainly understood
19 the premise behind why it was formed, and -- and the
20 members that were -- were part of it, and -- and so as
21 I've said, I felt the process was -- was a process
22 that was solid, yes.

23 MR. FREDERICK CHENOWETH: Very good.
24 And did you think the same about the fact that Council
25 appears to have been consulted with respect to these

1 matters on as many as six (6) occasions through the
2 course of the process?

3 MR. TIM FRYER: I knew because I had
4 attended some of the meetings that they were being
5 apprised regularly, yes.

6 MR. FREDERICK CHENOWETH: All right.
7 And you thought that was an appropriate way to
8 proceed?

9 MR. TIM FRYER: I -- in the later part
10 of it, because I wasn't attending those meetings, I
11 can't really speak to whether or not it was adequate.

12 MR. FREDERICK CHENOWETH: But
13 certainly with respect to the meetings you attended,
14 you thought it was an appropriate thing to do and an
15 appropriate part of the process?

16 MR. TIM FRYER: Yes, I thought that
17 the information was being provided.

18 MR. FREDERICK CHENOWETH: And the two
19 (2) public meetings were a useful part of the process?

20 MR. TIM FRYER: They were an essential
21 part of the process, yes.

22 MR. FREDERICK CHENOWETH: Thank you.
23 And the -- the assistance of KPMG was useful
24 throughout the process, including its involvement with
25 the STT?

1 MR. TIM FRYER: I think it's important
2 to have an objective view as well, yes.

3 MR. FREDERICK CHENOWETH: And the
4 legal advice -- and you may -- may not have known much
5 of this in that you weren't part of the negotiations,
6 but you were aware that Aird & Berlis was involved
7 acting allegedly for both the Town and Collus?

8 MR. TIM FRYER: No, I wasn't aware of
9 that.

10 MR. FREDERICK CHENOWETH: But you
11 aware that they had legal advice with respect to the
12 formation of the -- the partnership agreement between
13 Collus and PowerStream --

14 MR. TIM FRYER: Yes.

15 MR. FREDERICK CHENOWETH: -- and with
16 respect to the creation of the unanimous shareholders
17 agreement?

18 MR. TIM FRYER: I certainly expected
19 that they have, and -- and had no reason to not think
20 that they had legal.

21 MR. FREDERICK CHENOWETH: Knowing all
22 that and making the comments that you -- that you
23 have, did you form a view as to the appropriateness of
24 -- of the process that was used to eventually achieve
25 the strategic partnership with PowerStream?

1 MR. TIM FRYER: I --

2 MR. FREDERICK CHENOWETH: Did you have
3 a view of that process?

4 MR. TIM FRYER: What --

5 MR. FREDERICK CHENOWETH: Did you
6 regard it as a fulsome, rigorous, useful process?

7 MR. TIM FRYER: The process to pick
8 partners -- pick the partner --

9 MR. FREDERICK CHENOWETH: And I've
10 just under -- outlined it to you and had your comment
11 on it, all the way from the satisfactory board members
12 that you had to the use of KPMG and other
13 professionals.

14 MR. TIM FRYER: Yeah. Again, the
15 knowledge I had of what happened during the time I was
16 there, I felt that the process was solid. In
17 reviewing the information after the fact as a member
18 of Council, I was concerned about that part of things,
19 but I was not aware of it at the time. So as far as I
20 was concerned, the process had proceeded properly.

21 MR. FREDERICK CHENOWETH: Very good.
22 So when you say you were concerned about that kind of
23 things, I take it you're referring to some of the
24 items that are brought out in the Foundation Document.

25 Is that correct?

1 MR. TIM FRYER: Yes --

2 MR. FREDERICK CHENOWETH: Thank you.

3 MR. TIM FRYER: -- which is after the
4 fact for me.

5 MR. FREDERICK CHENOWETH: Right. Did
6 you regard the result that was achieved, i.e., the
7 partnership with PowerStream, to have been a good
8 result?

9 MR. TIM FRYER: I never formed
10 opinion, whether it was a good result, or not a good
11 result, because I always said to the people who ask me
12 that, I can't tell you if the first 50 percent was --
13 was handled properly until I know what happens with
14 the second half.

15 MR. FREDERICK CHENOWETH: All right.
16 One moment.

17

18 (BRIEF PAUSE)

19

20 MR. FREDERICK CHENOWETH: I believe
21 those are all the questions I have of this witness.
22 Thank you.

23 THE HONOURABLE FRANK MARROCCO: Thank
24 you, Mr. Chenoweth. Mr. Watson, are you next?

25 MR. MICHAEL WATSON: Yes --

1 THE HONOURABLE FRANK MARROCCO: Mr.
2 Watson, are you next?

3 MR. MICHAEL WATSON: -- thank you,
4 Your Honour.

5

6 CROSS-EXAMINATION BY MR. MICHAEL WATSON:

7 MR. MICHAEL WATSON: Mr. Fryer, I
8 think you know that my name is Michael Watson, and I'm
9 one (1) of the lawyers for Alectra, which of course is
10 the current name of PowerStream.

11 You understand that?

12 MR. TIM FRYER: Yes, I do.

13 MR. MICHAEL WATSON: I have about half
14 a dozen areas to try to get through fairly quickly.
15 And as Mr. McDowell did, I'll try to -- I'll -- I'll
16 be bouncing around a little bit.

17 This morning you gave some evidence
18 about knowing about and meeting Brian Bentz of
19 PowerStream many years earlier?

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: All right. And -
22 - and you said that you knew him when he was treasurer
23 of Barrie?

24 MR. TIM FRYER: And that may not have
25 been his title, but --

1 MR. MICHAEL WATSON: I --

2 MR. TIM FRYER: -- that's what he was
3 doing.

4 MR. MICHAEL WATSON: -- and -- sorry,
5 treasurer of Barrie Public Utilities is how you
6 described it?

7 MR. TIM FRYER: Yes.

8 MR. MICHAEL WATSON: And that was
9 about thirty (30) years earlier, before 2011, I think
10 you said?

11 MR. TIM FRYER: Yes.

12 MR. MICHAEL WATSON: I wanted to ask
13 you, you said that you worked together with Mr. Bentz
14 with respect to Georgian Bay, a cooperative utility,
15 and you said that at that time, the Province would be
16 looking for changes. Do you remember that?

17 MR. TIM FRYER: And I didn't --

18 MR. MICHAEL WATSON: First of all, do
19 you remember saying that?

20 MR. TIM FRYER: Yes, I do.

21 MR. MICHAEL WATSON: All right. I
22 want to ask you --

23 MR. TIM FRYER: Okay.

24 MR. MICHAEL WATSON: -- I take it what
25 you were saying is that you were aware at the time

1 when you were working with Mr. Bentz that the Province
2 would be looking for changes?

3 MR. TIM FRYER: I believe that was the
4 premise behind Mr. Douds wanting to pursue the idea of
5 looking at a regional kind of utility situation.

6 MR. MICHAEL WATSON: And when you say
7 "a regional kind of utility situation," do you mean
8 some kind of getting together of a number of regional
9 small LDCs into a larger entity?

10 MR. TIM FRYER: Yes.

11 MR. MICHAEL WATSON: I take it that
12 you were aware of the fact that it was government
13 policy to reduce the large number of LDCs in Ontario?

14 MR. TIM FRYER: It wasn't a -- it
15 wasn't a firm policy. Certainly, we felt that the
16 premise was there. And I -- and -- and continue now
17 to believe strongly in the ability for a municipal LDC
18 to function by itself.

19 MR. MICHAEL WATSON: I -- I understand
20 that. I'm not asking you about that. You've made
21 that point before. I'm asking you about the
22 government policy, and I want to try to keep your
23 answers --

24 MR. TIM FRYER: Okay.

25 MR. MICHAEL WATSON: -- to my

1 question.

2 MR. TIM FRYER: Yes. Sorry.

3 MR. MICHAEL WATSON: We have your
4 evidence from before.

5 MR. TIM FRYER: Sorry.

6 MR. MICHAEL WATSON: I think you are
7 prob -- were probably aware of the fact, given your
8 long service with -- with Collus, that in the 1990s,
9 there were upwards of three hundred (300) LDCs in
10 Ontario?

11 MR. TIM FRYER: Three hundred (300)
12 plus, yeah.

13 MR. MICHAEL WATSON: Right. And that
14 by the, say, early -- well, mid to late 2000s, that is
15 just before this Transaction took place, that had been
16 reduced to a number that we've seen of between eighty
17 (80) and eighty-two (82), something like that?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: And that was the
20 clear direction that the Province was going, and I
21 take it from your observation?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: All right. And
24 indeed, there had been discussions that the Collus
25 Power Board meetings, at various times, that the

1 direction of the Provincial government seemed to be in
2 the direction of trying to have more consolidation as
3 time went on, right?

4 MR. TIM FRYER: That was being
5 conveyed, yes.

6 MR. MICHAEL WATSON: Right. And one
7 (1) of the reasons for that, whatever you yourself
8 felt, you understood that one (1) of the reasons for
9 that was the Provincial push to -- to try to get
10 better efficiencies among the larger LDCs?

11 MR. TIM FRYER: That was one (1) of
12 the goals of that, yes.

13 MR. MICHAEL WATSON: All right. And I
14 take it that -- that this was one (1) of the things
15 that you were working with Mr. Bentz on with respect
16 to Georgian Bay and a larger cooperative utility back
17 thirty (30) years earlier?

18 MR. TIM FRYER: Yes, that would have
19 been part of the work.

20 MR. MICHAEL WATSON: Right. And then
21 you also were asked -- well, you were asked a lot of
22 questions about shared services and so on. But -- and
23 with respect to -- remember the promissory note? This
24 morning, you were asked questions about that?

25 MR. TIM FRYER: Yes, I do.

1 MR. MICHAEL WATSON: Right. And in
2 the course of that you talked -- you were asked about
3 the use of the funds, do you remember?

4 MR. TIM FRYER: (NO AUDIBLE RESPONSE).

5 MR. MICHAEL WATSON: And -- and what I
6 want to get to is that you talked about -- you said
7 that the funds went to purchase assets of Clearview
8 and Thornbury. Do you remember that?

9 MR. TIM FRYER: You're talking about
10 the -- the initial purchase of those assets.

11 MR. MICHAEL WATSON: Indeed.

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: Indeed. And --
14 and of course you were with Collus at that time when
15 the assets of Clearview and Thornbury were purchased?

16 MR. TIM FRYER: Yes, I was.

17 MR. MICHAEL WATSON: And what year was
18 that?

19 MR. TIM FRYER: It would have been
20 2001, I guess.

21 MR. MICHAEL WATSON: And I take it
22 that this was just within about two (2) years after
23 so-called deregulation and -- of the electricity
24 market in -- in Ontario?

25 MR. TIM FRYER: Yes.

1 MR. MICHAEL WATSON: All right. Were
2 you involved in the discussions, any discussions at
3 all that all that led to the acquisition by the Town
4 of those assets?

5 MR. TIM FRYER: Yes, I was.

6 MR. MICHAEL WATSON: What was your
7 role?

8 MR. TIM FRYER: It would have been
9 financial resource and it certainly -- my recollection
10 of it was that we felt that the Utility side, that it
11 was the right thing to approach the Town about,
12 because we felt those two smaller utilities were doing
13 exactly what the government kind of was initiating and
14 -- and pushing for, is if you're going to be a
15 standalone utility, you can expect this, so they
16 wanted to look at what's -- what possibilities they
17 had for -- for solutions.

18 MR. MICHAEL WATSON: All right. I --
19 I'm a big fan of figuring out what pronouns mean, so
20 when you say "they" and "them" and they wanted to find
21 out, who do you mean?

22 MR. TIM FRYER: So Clearview Council
23 as the decision-maker about whether or not to form an
24 LDC and Thornbury, the same. We were dealing with
25 them looking into their options and we were taking to

1 our shareholder the idea that we could maybe consider
2 purchasing those assets.

3 MR. MICHAEL WATSON: All right. At
4 the time, did either Clearview or Thornbury have a
5 public utility?

6 MR. TIM FRYER: No.

7 MR. MICHAEL WATSON: But I take it
8 what you're saying is that Clearview and Thornbury
9 provided electricity distribution services to the
10 ratepayers?

11 MR. TIM FRYER: As an LD -- as an MEA,
12 (sic) I guess would be a better description instead of
13 LDC because they hadn't formed the LDC yet.

14 MR. MICHAEL WATSON: Okay. Well, I
15 guess we'd better make that clear. What's an MEA?

16 MR. TIM FRYER: Municipal electric ut
17 -- sorry, MEU, municipal electric utility, which was
18 basically the description that we use to describe
19 ourselves unless we were a public utilities prior to
20 the changes to the new structure.

21 MR. MICHAEL WATSON: All right. And
22 at that time was Collus an -- an MEU?

23 MR. TIM FRYER: We were a public
24 utilities and we had both the Hydro and Water
25 Department within the public utility.

1 MR. MICHAEL WATSON: All right. And
2 so Clearview and Thornbury had municipal utilities,
3 yes?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: And those
6 utilities owned assets?

7 MR. TIM FRYER: Yes, they did.

8 MR. MICHAEL WATSON: And did both of
9 those utilities constitute LDCs, local distribution
10 companies, for electricity?

11 MR. TIM FRYER: I don't believe they
12 ever formed their LDC. I believe we dealt with the
13 transaction prior to that, in conjunction with the
14 time restrictions being put in place.

15 MR. MICHAEL WATSON: And -- and so
16 when you're talking about now forming an LDC, are you
17 talking about the requirement to form a business
18 corporation under Ontario Business Corporations Act
19 with respect to the distribution of electricity in
20 municipalities?

21 MR. TIM FRYER: Yes, I am.

22 MR. MICHAEL WATSON: All right. And
23 so I take it that then -- when that took place within
24 municipalities, those new business corporations then
25 became called LDCs?

1 MR. TIM FRYER: Yes, they did.

2 MR. MICHAEL WATSON: All right. And
3 so who initiated the process by which, or who
4 initiated the first discussions by which Clearview and
5 Thornbury ended up selling assets to Collingwood?

6 MR. TIM FRYER: I can't say
7 personally that it was me, but I would have been a
8 part of the management and board at the Utility
9 deciding to approach the Town about it.

10 MR. MICHAEL WATSON: My question was a
11 bad one. What I really meant was, was it Clearview
12 and Thornbury on the one hand or was it Collingwood on
13 the other that initiated the discussions with the
14 other?

15 MR. TIM FRYER: I believe it would
16 have been them initiating it with us because they
17 would have been looking at what options they had.

18 MR. MICHAEL WATSON: And again when
19 you say "would have," I take it what you're saying is
20 that's your best recollection?

21 MR. TIM FRYER: Unfortunately, yes, it
22 is.

23 MR. MICHAEL WATSON: That's fine. It
24 was many years ago, even more than this one.

25 And I take it, therefore, that what

1 happened is that they contacted Collingwood and asked
2 are you interested.

3 MR. TIM FRYER: And we saw an
4 opportunity.

5 MR. MICHAEL WATSON: They contacted
6 Collingwood and asked are you interested?

7 MR. TIM FRYER: I believe so.

8 MR. MICHAEL WATSON: Right. And on
9 your side, you saw an opportunity --

10 MR. TIM FRYER: Yes.

11 MR. MICHAEL WATSON: -- to increase
12 the number of -- of customers --

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: -- and to grow
15 Collus?

16 MR. TIM FRYER: Yes.

17 MR. MICHAEL WATSON: And you thought
18 that was a good idea?

19 MR. TIM FRYER: We did.

20 MR. MICHAEL WATSON: Right. And I
21 take it that Clearview did not put out an RFP.

22 MR. TIM FRYER: My recollection, two
23 (2) transactions were different. Clearview turned out
24 to be a purchase of the Utility, and I don't believe
25 many -- any employees were involved, but I -- I can't

1 say that for certain, so I shouldn't speculate, but I
2 think there were two (2) types of different
3 transactions, but the thing I did -- that does stand
4 out in my mind about the Clearview one is, I can
5 remember Mayor Geddes and Town Council at the time,
6 when we approached them about Clearview and got the
7 authorization to approach Clearview with -- with an
8 intent to express interest, that the -- we explained
9 to Town Council that Clearview knew one (1) of its
10 options was to -- to sell to Hydro One, and they were
11 not eager to do that.

12 So the premise that they were putting
13 forward, that our understanding was and we put to
14 Council about, was that they didn't want us to turn
15 around and sell to Hydro One afterwards. I think it
16 was meant to mean somewhat short term, but -- but it
17 is something that -- that was conveyed.

18 MR. MICHAEL WATSON: And I'll -- I'll
19 take that as an answer to a different question that I
20 haven't yet asked.

21 MR. TIM FRYER: All right.

22 MR. MICHAEL WATSON: The question
23 was: Did Clearview put out an RFP? I take it the
24 answer is "no."

25 MR. TIM FRYER: I can't recall, so I

1 can't say for certain.

2 MR. MICHAEL WATSON: So I -- I think
3 what you said is that Clearview approached
4 Collingwood. Isn't that right?

5 MR. TIM FRYER: And -- and I don't
6 know if they did an RFP though.

7 MR. MICHAEL WATSON: And you don't
8 have any information that -- that they did?

9 MR. TIM FRYER: No.

10 MR. MICHAEL WATSON: Nor Thornbury?

11 MR. TIM FRYER: No.

12 MR. MICHAEL WATSON: And was it
13 explained to you by anybody, including Clearview, why
14 Clearview was not interested in selling to Hydro One?

15 MR. TIM FRYER: They were looking at
16 long-term rate implications.

17 MR. MICHAEL WATSON: Such as?

18 MR. TIM FRYER: They felt that the
19 Hydro One rates were higher and they didn't want their
20 customers paying those rates if they -- if that could
21 be avoided. I guess that's all I can say for certain.

22 MR. MICHAEL WATSON: That's fine, all
23 right.

24 Now, I want to go onto the next thing.
25 You were asked a number of questions about shared

1 services, and -- do you remember that this morning?

2 MR. TIM FRYER: Yes.

3 MR. MICHAEL WATSON: Right. And you
4 said that shared services were a low or low cost and
5 beneficial to both the ratepayers and the Town.

6 MR. TIM FRYER: I believe they were,
7 yes.

8 MR. MICHAEL WATSON: I'm just
9 reviewing what you said this morning. I just want to
10 refresh your memory. That's what you said?

11 MR. TIM FRYER: Yes, I did.

12 MR. MICHAEL WATSON: And the Collus --
13 Collus and the Town wanted a strategic partnership to
14 enhance the provision of -- of shared services?

15 MR. TIM FRYER: Certainly not to lose
16 any of the advantages we had, yes.

17 MR. MICHAEL WATSON: And that would
18 entail a strategic partner providing such services to
19 Collus?

20 MR. TIM FRYER: That was an
21 expectation of the partnership, yes.

22 MR. MICHAEL WATSON: Right. And --
23 and could I please have Foundation Document paragraph
24 293 brought up -- 293?

25

1 (BRIEF PAUSE)

2

3 MR. MICHAEL WATSON: And 293 of course
4 has, and we've seen this many times, the evaluation
5 criteria. And if we can go -- scroll down, please a
6 little bit. Under the second 30 percent one we see
7 one (1) of the two (2) bullet items is "Provision for
8 strategic and specialized resources."

9 Do we see that?

10 MR. TIM FRYER: Yes.

11 MR. MICHAEL WATSON: And that's really
12 what we're talking about here, correct?

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: And so that was
15 an important component of a 30 percent component,
16 right?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: And -- and you
19 said at one -- in your evidence, you said:

20 "The likelihood was that Hydro One
21 wouldn't provide the shared services
22 back to Power."

23 Remember saying that this morning?

24 MR. TIM FRYER: Not specifically but I
25 definitely believe you're telling me --

1 MR. MICHAEL WATSON: Well, I remember
2 you saying it because I wrote it down. And when you
3 said Power, I take it you were talking about Collus
4 Power.

5 MR. TIM FRYER: Yeah. Can you read
6 that to me again?

7 MR. MICHAEL WATSON: Sure. Quote:
8 "The likelihood was that Hydro One
9 wouldn't provide the shared services
10 back to Power."

11 MR. TIM FRYER: Okay, yes. I did -- I
12 do recall saying that, and my premise was that I
13 didn't expect that we would be doing something like
14 billing --

15 MR. MICHAEL WATSON: All right. And -
16 - and --

17 MR. TIM FRYER: -- through Hydro One.

18 MR. MICHAEL WATSON: -- just -- just
19 so you know, my -- my second job is as a court
20 reporter. Okay, so -- and -- and what was the source
21 of that expectation that you didn't think Hydro One
22 would do that?

23 MR. TIM FRYER: When I made the
24 statement, I guess I was just looking at it from my
25 experience, so to speak.

1 MR. MICHAEL WATSON: That -- that's
2 fine. I understand. And -- and you had a lot of
3 experience. What was that experience with Hydro One
4 that made you think that?

5 MR. TIM FRYER: I wouldn't see us
6 using their billing services, I guess, is the way I
7 was looking at it.

8 MR. MICHAEL WATSON: Why?

9 MR. TIM FRYER: I guess just kind of
10 thinking along the lines of more about the customers
11 becoming part of a billing system that handled
12 millions of -- a million customers plus at the time, I
13 guess, when I was -- was making that comment.

14 MR. MICHAEL WATSON: Were you
15 concerned about Collingwood's fifteen thousand
16 (15,000) approximately customers getting lost in Hydro
17 One?

18 MR. TIM FRYER: And I would -- I would
19 say yes, that would be part of it, yes.

20 MR. MICHAEL WATSON: Okay. Now I want
21 to go onto something else. You were asked this
22 morning many questions about the valuation that -- of
23 Collus Power that was being done in the spring of
24 2011?

25 MR. TIM FRYER: Yes.

1 MR. MICHAEL WATSON: And about the
2 possibility of the sale of all or part of Collus?

3 MR. TIM FRYER: Yes.

4 MR. MICHAEL WATSON: Do you remember
5 that at one point, you said, Every time there was a
6 new Council, there was the possibility of something
7 being done about Collus, in response to that question?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: And I take it
10 what you mean is that every time there was a new
11 Council, every -- what it was back then, every --
12 every four (4) years, that possibility of something
13 like a sale of all or part of Collus came up.

14 Is that what you're saying?

15 MR. TIM FRYER: Or certainly we knew
16 it would be a possibility that it would come up.

17 MR. MICHAEL WATSON: All right. And -
18 - and I take it, this is going back many elections
19 over some decades, perhaps even. Is that right?

20 MR. TIM FRYER: Yes. So --

21 MR. MICHAEL WATSON: All right. And -
22 - and did new Councils discuss that, to your
23 knowledge, that possibility over the years?

24 MR. TIM FRYER: Not to any significant
25 degree.

1 MR. MICHAEL WATSON: But there was
2 some discussion, I take it?

3 MR. TIM FRYER: I -- I am sure that
4 there would have been, yes.

5 MR. MICHAEL WATSON: Okay. And so I
6 take it, then, that in the spring of 2011, the
7 prospect of a -- the prospect -- the possibility of a
8 sale of all or part of Collus shares did not come as
9 any thunderbolt to you. It wasn't a huge surprise
10 because of what had been going on and the discussions
11 previously.

12 MR. TIM FRYER: Well --

13 MR. MICHAEL WATSON: Is that fair?

14 MR. TIM FRYER: -- the valuation was
15 in the spring, and that wasn't a surprise, because
16 certainly, the shareholder can ask us to tell them
17 what the value of their utility is.

18 MR. MICHAEL WATSON: Right. And --
19 and a -- a valuation is -- is -- it really not only
20 does prudent but really necessary before you consider
21 and enter into any kind of transaction to sell all or
22 part of shares, or do a merger, or an acquisition, or
23 anything significant, right?

24 MR. TIM FRYER: With a third party
25 giving you the -- the information, yes --

1 MR. MICHAEL WATSON: Right.

2 MR. TIM FRYER: -- because their
3 objective.

4 MR. MICHAEL WATSON: Right. And, you
5 know, we've seen some of the documentation, a draft
6 letter about -- or -- or a draft memo about reducing
7 costs within the Town?

8 You've seen that, right?

9 MR. TIM FRYER: Yes.

10 MR. MICHAEL WATSON: All right. And I
11 -- I take it you -- well, you were a voter in
12 Collingwood, right?

13 MR. TIM FRYER: M-hm. Yes.

14 MR. MICHAEL WATSON: Yes? And so
15 therefore you paid attention, I take it, to the
16 various platforms of the politicians in the October
17 2010 municipal election?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: All right. And
20 Sandra Cooper in particular, who was elected mayor,
21 and who had been on Council for many years ran partly
22 on a -- a platform of cutting costs, and trying to get
23 the financial house in order.

24 Is that a fair way to put it?

25 MR. TIM FRYER: She would have, yes.

1 MR. MICHAEL WATSON: Well, she -- not
2 only she would have, she did?

3 MR. TIM FRYER: Yes.

4 MR. MICHAEL WATSON: Yes. And -- and
5 you -- you don't need a valuation of Collus to figure
6 out a way of cutting costs, right?

7 MR. TIM FRYER: No.

8 MR. MICHAEL WATSON: Right. And so --
9 all right, fair enough. We'll leave that point, then.

10 Now next, talking about the sale of
11 some shares, part shares, you said this morning -- and
12 -- and I noted this, it was interesting -- you said
13 that in the past, there had been sales of 10 or 15
14 percent of the shares of LDCs.

15 Do you remember saying that?

16 MR. TIM FRYER: I did say that, and I
17 -- I am aware of -- of 10 percent ownership for some.
18 It may not have been a share sale. I'm -- I can't say
19 that for certain, but I'm not sure what other kind of
20 sale it could be, but I believe Westario was a utility
21 that had a 10 percent interest sold to Fortis.

22 MR. MICHAEL WATSON: Sold to?

23 MR. TIM FRYER: Fortis.

24 MR. MICHAEL WATSON: All right. And
25 when was that?

1 MR. TIM FRYER: And -- and now I'm
2 completely speculating, because I --

3 MR. MICHAEL WATSON: Then don't.
4 Please -- please don't do that.

5 MR. TIM FRYER: -- so -- so I won't --
6 I won't do that.

7 THE HONOURABLE FRANK MARROCCO: That's
8 not helpful if -- if you're completely speculating.
9 That -- that's just not helpful.

10

11 CONTINUED BY MR. MICHAEL WATSON:

12 MR. MICHAEL WATSON: And -- and are
13 there any other examples of a very small minority
14 shareholding like that of one (1) entity in an LDC
15 other than that one?

16 MR. TIM FRYER: The only one that
17 comes to mind is Mississauga, when -- when OMERS -- it
18 wasn't OMERS. I believe Mississauga had a small
19 interest sale --

20 MR. MICHAEL WATSON: Okay.

21 MR. TIM FRYER: -- some years back.

22 MR. MICHAEL WATSON: I -- I take it,
23 therefore, apart from those two (2), the vast majority
24 -- the vast -- vast majority of transactions involving
25 LDCs, that -- that reduced the number from three

1 hundred (300) to approximately eighty (80) were
2 mergers and acquisitions of some form or other?

3 MR. TIM FRYER: Yes, they were.

4 MR. MICHAEL WATSON: Because
5 otherwise, it -- it's nothing -- the sale of a few
6 shares is really nothing more than an investment in an
7 LDC, and the number of LDCs remains the same, right?

8 MR. TIM FRYER: And I would --

9 MR. MICHAEL WATSON: Sorry, is that a
10 yes?

11 MR. TIM FRYER: Yes. Yes.

12 MR. MICHAEL WATSON: All right. And
13 sorry, but I -- if you want -- if you had something --

14 MR. TIM FRYER: No, I -- I'm fine,
15 yes.

16 MR. MICHAEL WATSON: All right. Now
17 moving on, then. You -- with respect to the RFP, you
18 said, quoting, "I thought the RFP should be sent to
19 everyone."

20 Do you remember saying that?

21 MR. TIM FRYER: The offer should be
22 made to everyone, yes.

23 MR. MICHAEL WATSON: Well, what you
24 said is the RFP should be sent to everyone.

25 MR. TIM FRYER: I said that, yes.

1 MR. MICHAEL WATSON: All right. And -
2 - and you then immediately said, "Well, to all
3 interested parties," right?

4 MR. TIM FRYER: Yes.

5 MR. MICHAEL WATSON: That's what you
6 said? All right. And the interested parties would be
7 possibly other LDCs within Ontario who might be
8 interested in doing some kind of strategic
9 partnership, or merger, or acquisition with Collus,
10 right?

11 MR. TIM FRYER: Yes.

12 MR. MICHAEL WATSON: And you have to
13 figure out who those were, right, who the interested
14 parties might be?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: By approaching
17 them, yes?

18 MR. TIM FRYER: Or make an all-out
19 offer.

20 MR. MICHAEL WATSON: All right, but
21 the all-out offer would be to the -- everyone --

22 MR. TIM FRYER: Yeah.

23 MR. MICHAEL WATSON: -- right. And
24 then --

25 MR. TIM FRYER: Yes.

1 MR. MICHAEL WATSON: -- but you
2 qualified by saying, Or to the interested parties.

3 MR. TIM FRYER: Yeah. And --

4 MR. MICHAEL WATSON: All right. And
5 to figure out -- you'd have to figure out who the
6 interested parties were to figure out, you know, to
7 what address to put on the front of the RFP, right?

8 MR. TIM FRYER: And that's why said
9 that I couldn't really comment specifically, because I
10 hadn't developed any kind of complete idea about it.

11 MR. MICHAEL WATSON: I understand.
12 But in order to identify interested parties -- and
13 KPMG had some discussion about this, to see whether
14 there was any interest out there, in -- to identify
15 them, you've got to go out and -- and talk to the, you
16 know, the potential suitors, right?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: And -- and there
19 would be some obvious ones that would be out there
20 that everybody in the LDC industry would know about,
21 right?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: And certainly,
24 your next door neighbour in Barrie, PowerStream, would
25 be right at the top of the list as to potential

1 interested parties, right?

2 MR. TIM FRYER: And our immediate next
3 door neighbour, Wasaga Beach.

4 MR. MICHAEL WATSON: All right.
5 Wasaga Beach, I take it, was fairly small compared
6 with PowerStream?

7 MR. TIM FRYER: Well, yes.

8 MR. MICHAEL WATSON: Very small, with
9 all due respect, fair enough?

10 MR. TIM FRYER: A similar size to us,
11 yes.

12 MR. MICHAEL WATSON: All right. And
13 so it would be no surprise that if people were trying
14 to figure out who might be interested parties, that
15 those people would go to PowerStream, Horizon,
16 Veridian, and poss -- Hydro One, fair?

17 MR. TIM FRYER: I -- definitely, yes.

18 MR. MICHAEL WATSON: And I'd like to
19 go to the financial evaluation that you were asked
20 about. And this CPS11306.

21

22 (BRIEF PAUSE)

23

24 MR. MICHAEL WATSON: Just while we're
25 getting that up, Mr. Fryer, we have heard evidence --

1 and I don't want to look at this just for the moment.

2 We've heard evidence that there was
3 some either suggestion or direction that the -- that
4 when -- when scoring, the various members of the -- of
5 the SPTT would be asked to give the maximum marks to
6 the top ranked bidder, and then lower marks to the
7 others.

8 So, for example, on the financial
9 component, the top one, because there was thirty (30)
10 -- thirty (30) points available, or 30 percent, would
11 be given thirty (30), and then the others would be
12 given lower amounts.

13 Do you remember something about that?

14 MR. TIM FRYER: It was said that that
15 was a -- a directive, that we were supposed to start
16 at the top mark, but I don't recall that being the
17 case.

18 MR. MICHAEL WATSON: When you say you
19 don't recall that being the case, are you saying you
20 don't recall that being a directive, or do you not --
21 or do you recall -- not recall it actually being done?

22 MR. TIM FRYER: I know it wasn't done.

23 MR. MICHAEL WATSON: You know it
24 wasn't done. I see.

25 MR. TIM FRYER: Yeah.

1 MR. MICHAEL WATSON: And -- and so let
2 -- let's just take a look and we want to get to the
3 financial ones, but just -- let's just look at the
4 first one here, which was the provision of strategic
5 and specialized resources, and I believe this is the
6 first tab and we see the various names on the left
7 side, right?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: Including you,
10 right?

11 MR. TIM FRYER: Yes.

12 MR. MICHAEL WATSON: And of course, on
13 -- on -- on this one the total of point value under
14 the criteria was 30 percent right?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: And do you see
17 that -- that everybody except Mr. Garbutt, in fact,
18 gave 30 percent to PowerStream, right?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: So everybody
21 except Mr. Garbutt seems to have followed that
22 directive, right, including you?

23 MR. TIM FRYER: I wasn't following the
24 directive, I just gave him 30 points because I felt
25 that that was what they deserved.

1 MR. MICHAEL WATSON: Oh, I see, yes.

2 And to be fair, you also gave 30 to Horizon, right?

3 MR. TIM FRYER: Yes, I did, and I

4 think that proves it.

5 MR. MICHAEL WATSON: Which was why I

6 wanted to -- I wanted to make sure it was proven.

7 Let's go down then, I believe, to the last one which

8 is the financial one, if I have this right. All

9 right, yes. Okay.

10 So we now have the -- so this now is

11 various other totals. And do you remember that you

12 were asked this morning about whether you'd seen any

13 document having the individual breakdowns, that is,

14 the individual votes by the members of the SPTT on --

15 on these items?

16 MR. TIM FRYER: I remember being asked

17 and I said I did not see it.

18 MR. MICHAEL WATSON: Right. And we

19 haven't seen any document that shows that thus far.

20 There were nine (9) members of the

21 SPTT?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: And -- and on

24 this one the -- all -- all of these items -- these are

25 the so-called financial items which together totalled

1 30 --

2 MR. TIM FRYER: Yes.

3 MR. MICHAEL WATSON: -- points, right?

4 And -- and we see that Hydro One
5 received 270 then for the payment of up to 50 percent
6 and the other considerations, do you see that?

7 MR. TIM FRYER: Yes, I do.

8 MR. MICHAEL WATSON: And that top
9 line, that's the 30 percent financial, right?

10 MR. TIM FRYER: Yes.

11 MR. MICHAEL WATSON: Okay. And so,
12 therefore, summoning up my -- well, not quite calculus
13 but arithmetic, 9 times 30 equals 270, right?

14 MR. TIM FRYER: Yes, it does.

15 MR. MICHAEL WATSON: So therefore all
16 members of the SPTT obviously gave Hydro One 30
17 points, right?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: And then we see
20 PowerStream at 243, do we see that?

21 MR. TIM FRYER: Yes, we do

22 MR. MICHAEL WATSON: Right. And --
23 and again I don't know how this worked exactly, but it
24 so happens that when you divide 243 by 9 you get
25 exactly 27. Can we accept that arithmetic?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And therefore,
3 the members of the SPTT gave PowerStream 90 percent on
4 financial, 90 percent of what the members together
5 gave to Hydro One. Do you see that?

6 MR. TIM FRYER: On average, yes.

7 MR. MICHAEL WATSON: Yes. Well, and
8 therefore some might have been below, but therefor
9 some above?

10 MR. TIM FRYER: Exactly. Three (3)
11 could have been 28, three (3) could have been 27,
12 three (3) could have been 26.

13 MR. MICHAEL WATSON: In -- indeed.

14 So when we talk about, you know, this
15 difference between Hydro One and PowerStream, when all
16 of the members of the SPTT did their own independent
17 reckonings and evaluations, they gave PowerStream 90
18 percent of what they gave Hydro One, right?

19 MR. TIM FRYER: On average, and even
20 if some had scored a little bit lower it couldn't have
21 been too much lower, because there's not enough room
22 there to -- to make up the difference.

23 MR. MICHAEL WATSON: Exactly.

24 Let's then talk about a little bit
25 more. We love the shotgun buy sell. So, I want to

1 talk about a couple of things. One, first of all, is
2 the concept, and the second is the actual terms in the
3 shareholder agreement.

4 So a shotgun buy/sell is -- is a -- a
5 process in an agreement whereby one party can make an
6 offer to the other party either to buy or sell the
7 other party's shares, right?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: Right. And the
10 shotgun nature of it is that the recipient of the
11 offer -- I -- and sorry, before I go there.

12 The offer or to either buy or sell
13 shares, has to name a price at which the offeror is
14 prepared either a) to sell or b) to purchase the
15 shares, right?

16 MR. TIM FRYER: Yes.

17 MR. MICHAEL WATSON: And the shotgun
18 nature of it is that the recipient has the choice
19 either to purchase or to sell the recipient's shares
20 at that price, right?

21 MR. TIM FRYER: Price and whatever
22 other parameters that offeror wanted to put forward.

23 MR. MICHAEL WATSON: In -- in --
24 indeed, I -- of -- of course, but focusing just on the
25 price right now.

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And what that
3 means is that the recipient of the offer can control
4 what ultimately ends up happening; that is, the
5 recipient ends up with the shares or the recipient
6 ends up selling its shares, right?

7 MR. TIM FRYER: Thus, it can be an
8 amiable arrangement.

9 MR. MICHAEL WATSON: Well, you may --
10 okay, you can go into that -- I'm trying to get an
11 answer. That's the way it works, the way I it, right?

12 MR. TIM FRYER: Yes, yes.

13 MR. MICHAEL WATSON: Okay, and the --
14 the purpose or one of the essential purposes of the
15 shotgun buy sell is to make sure that the offeror
16 offers a fair price, right?

17 And you're nodding, is that right?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: And of course
20 that's the essential nature of it, isn't it?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: Because if the
23 offeror offers to purchase or sell at too low a price,
24 the recipient will gobble that up and buy the shares
25 at that low price, right?

1 MR. TIM FRYER: You would expect so,
2 yes.

3 MR. MICHAEL WATSON: Of course. And
4 similarly, if the offeror offers to purchase or sell
5 at too high a price, the recipient can sell its shares
6 and get out at a high price right?

7 MR. TIM FRYER: Yes. And so the whole
8 idea of a shotgun buy sell is to get a fair price at
9 which either party may be prepared, fair market value,
10 for example, to buy or sell at that price. It's a
11 price leveling mechanism, right?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: Okay, now at --
14 and -- and -- and so have you see the -- the shotgun
15 buy sell provisions actually in the shareholder
16 agreement?

17 MR. TIM FRYER: Yes, I have.

18 MR. MICHAEL WATSON: All right, can we
19 please get that up, that is ALE3296, which is the
20 shareholder agreement.

21 And for some reason the shareholder
22 agreement starts at numbered page 4 at the bottom. I
23 think that this may actually have been a -- a schedule
24 to something else, but I want to go please to section
25 9.1, which I believe is around, I don't know, page 24

1 of -- yeah, of that one. Bring up page 24 of the --
2 of the document, of the PDF.

3 All right. So, it -- now, I take it
4 you haven't seen agreement that contains one of these
5 that actually says shotgun buy/sell, right?

6 MR. TIM FRYER: No.

7 MR. MICHAEL WATSON: All right, that's
8 a colloquial term to describe what's going on?

9 MR. TIM FRYER: Yes.

10 MR. MICHAEL WATSON: So the wild west
11 term maybe we can call it here. But here it's the
12 buy/sell provisions, right?

13 MR. TIM FRYER: And -- and this is the
14 agreement and we -- we can see it, but this is the one
15 that was actually signed.

16 And so 9.1 is the notice that is to --
17 that is to be given by one of the parties to the
18 other, right?

19 THE HONOURABLE FRANK MARROCCO: I
20 don't mean to interrupt here, but if -- if you're just
21 taking the witness through the agreement to have the
22 witness confirm what we can all read, then I don't
23 know that that's terribly helpful. If there's some
24 other question you propose to put, then by all means,
25 go ahead.

1 CONTINUED BY MR. MICHAEL WATSON

2 MR. MICHAEL WATSON: Right. Well,
3 what I wanted to get at is that buy sell agreements
4 work in different ways. And this one actually was an
5 offer to either sell or buy as opposed to an offer to
6 do only one.

7 THE HONOURABLE FRANK MARROCCO: That's
8 what it says.

9 MR. MICHAEL WATSON: Yes, all right.
10 So, what we -- what we see is in sub A,
11 subject of subparagraph B, et cetera, either of the
12 shareholders, and it's called the offer or shall be
13 entitled to give notice to the other shareholder or
14 the offeree, do we see that?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: All right.

17 And of course there were only two (2)
18 shareholders, right?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: Town and -- and
21 PowerStream at that time?

22 MR. TIM FRYER: Yes.

23 MR. MICHAEL WATSON: All right. And
24 the notice had to contain one little line, the price
25 at which the offeror will purchase to sell each share?

1 MR. TIM FRYER: Yes.

2 MR. MICHAEL WATSON: And to an
3 unconditional offer, irrevocable, et cetera. to
4 purchase all of the common shares, right, and three
5 (3), an unconditional offer or irrevocable, et cetera
6 to sell all of the shares, do you see that?

7 MR. TIM FRYER: Yes.

8 MR. MICHAEL WATSON: And so the way
9 this buy sell worked is that an offer had to contain
10 an offer to do both, both to purchase and -- or to
11 sell at that price, right?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: Okay, that's the
14 way this one worked, and I -- I think that that's all
15 I need here.

16 Now, the way then -- let's -- let's
17 suppose that the Town triggered the shotgun buy sell
18 by giving a buy sell notice, all right?

19 MR. TIM FRYER: Okay.

20 MR. MICHAEL WATSON: All right. And I
21 think you're aware of the fact that that's what
22 actually happened in November 2017, right?

23 MR. TIM FRYER: I'm very familiar with
24 it, yes.

25 MR. MICHAEL WATSON: Right. And --

1 and PowerStream never exercised this power, did it?

2 MR. TIM FRYER: No. They -- they
3 could have.

4 MR. MICHAEL WATSON: Of course they
5 could have, but PowerStream didn't, right?

6 MR. TIM FRYER: I agree, yes.

7 MR. MICHAEL WATSON: It was the Town
8 that decided to do that, right?

9 MR. TIM FRYER: Yes.

10 MR. MICHAEL WATSON: Okay. So when
11 the Town made it's -- it's offer, it had to make an
12 offer at a specified price both to purchase or to
13 sell, right? Either one.

14 MR. TIM FRYER: Yes.

15 MR. MICHAEL WATSON: And PowerStream
16 then could choose what to do to accept the offer that
17 the Town would purchase the shares, or to accept the
18 offer that the Town sell its shares, right?

19 MR. TIM FRYER: Yes.

20 MR. MICHAEL WATSON: And that is
21 within the power of the recipient of the offer, called
22 the offeree here to do, right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: And so when -- if
25 the Town were to make the offer, the Town then could

1 not control what actually ended up happening, it's up
2 to the recipient.

3 MR. TIM FRYER: Yes.

4 MR. MICHAEL WATSON: And the Town,
5 therefore, could avoid that possibility of not knowing
6 what would happen, simply by never exercising its
7 right and never making an offer, right?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: Whereas, if
10 PowerStream had ever made the offer, the Town could've
11 chosen what to do, right?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: And so the Town
14 had it within its power, under the shotgun buy sell,
15 not ever to incur the risk of having it's -- it's
16 shares sold out from under it, right?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: Simply by not
19 making an offer?

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: But it chose to
22 make an offer, right?

23 MR. TIM FRYER: Yes.

24 MR. MICHAEL WATSON: Thank you.

25 I wanted to ask one last thing, and it

1 had to do with something that -- you remember you were
2 asking questions of Mr. Erling yesterday?

3 MR. TIM FRYER: Yes.

4 MR. MICHAEL WATSON: It had to do with
5 Mr. Bentz specifically, this is my last point. Could
6 I have the transcript brought up from yesterday,
7 please. Yesterday's transcript. And page 144. At
8 the bottom, starting at line 19.

9 And this is you questioning Mr. Erling
10 and do you remember you were questioning him about the
11 notes, Mr. Bentz's notes that are referred to in the
12 Foundation document?

13 MR. TIM FRYER: Yes.

14 MR. MICHAEL WATSON: All right. I'm
15 not going to go through all of this, but I just want
16 to orient you very quickly.

17 Mr. Fryer, line 19:

18 "I would also suggest that another
19 estimation, example, and this was -- you remember
20 estimation of value?

21 MR. TIM FRYER: Yes.

22 MR. MICHAEL WATSON: All right.

23 Comes from the meeting that happened
24 with Mr. Houghton and Mr. Brian Bentz back in December
25 2010, and it's listed in the -- in the document under

1 paragraph 112. Do you remember that?

2 MR. TIM FRYER: Yes.

3 MR. MICHAEL WATSON: I'd like to go
4 over, not the next page, because it's not interest --
5 not stuff I'm interested in, but the page after where
6 this continues.

7 All right, and so discussion about not
8 blaming anybody for not reaching the -- reading the
9 Foundation document, and then line 7. I don't blame
10 you.

11 So circling back to it again, if I
12 could bring up ALE4330, to our initial look at the
13 balance sheet, et cetera. And so we had spoken about
14 a rough figure of, say, -- sorry, do I have this
15 right? No, I don't. I don't.

16 I'm terribly sorry, I need to go back
17 to the previous page 145. Thank you.

18 So this is Mr. Bentz's notes that he
19 had written out from the meeting.

20 MR. TIM FRYER: Yes.

21 MR. MICHAEL WATSON: And if we just --
22 I'm sorry, I'm quoting, okay.

23 And if we just scroll down to see the
24 notes, I think that's probably pretty good because
25 it's the 20 million or actually just -- you know, et

1 cetera.

2 And then going -- scrolling down. So
3 from this meeting appears to be an opportunity through
4 professional familiarity to become informed about the
5 current circumstances, I worked with Brian Bentz close
6 to 30 years ago, we can skip down a little bit more.

7 You ask whether he is familiar with
8 him, yes, and then line 20. Thank you. So, as CEO of
9 PowerStream, which could be described as an acquirer -
10 - acquirer in the LDC market. He gave a quick opinion
11 with a range that he thought Collus would probably be
12 -- his note says back of envelope 20, 25 million less
13 debt. Do you see that?

14 MR. TIM FRYER: 15, 20 million.

15 MR. MICHAEL WATSON: 15, I'm sorry,
16 yes. That's what you put to -- to Mr. Erling?

17 MR. TIM FRYER: Yes.

18 MR. MICHAEL WATSON: And I take it
19 your supposition was that the notation on Mr. Bentz's
20 notes were -- constituted his estimate of value, that
21 was your supposition?

22 MR. TIM FRYER: I was saying that,
23 yes.

24 MR. MICHAEL WATSON: All right. Could
25 we please then go to FD, paragraph 112. It's on page

1 45.

2 And I'm going to tell you to be fair
3 and this -- it hasn't -- hasn't come out yet, but
4 there will be evidence, I expect, and I expect it will
5 come from Mr. Bentz, that these notes were actually
6 made in April of 2011 and they were made in
7 preparation for a PowerStream Board meeting at which
8 he was explaining the background of all of this.
9 including everything that happened up to that date,
10 starting with the call -- the call from Mr. Houghton
11 back at the end of November of 20 -- of 2010.

12 MR. TIM FRYER: Okay.

13 MR. MICHAEL WATSON: And so if we can
14 just go down -- yes, all right. And -- and we see Mr.
15 Bentz's notes included his description of discussions:

16 "Also in his role as executive
17 director of the Town of Collingwood,
18 basically runs municipal debt there,
19 has a lot of clout."

20 And then going down:

21 "Talked about fiscal situation in
22 Collingwood, 20 million in debt.
23 Last council spent a lot and got
24 thrown out."

25 Now, these -- these are notes of the

1 discussion that he had with Mr. Houghton on December
2 3rd. I take it you agree this sounds as though this
3 is what Mr. Houghton is saying to Mr. Bentz about the
4 fiscal situation in Collingwood, his home
5 municipality?

6 MR. TIM FRYER: Yes, he is, yes.

7 MR. MICHAEL WATSON: All right. And
8 then the next one (1):

9 "Exploring path of what to do at
10 LDC. Preliminary discussion at
11 Collus Board at Town to look at
12 options."

13 This again looks like it's very much
14 Mr. Houghton telling Mr. Bentz what's going on?

15 MR. TIM FRYER: Yes.

16 MR. MICHAEL WATSON: "RFP with
17 multiple bidders," what he was thinking at that point?

18 MR. TIM FRYER: Yes.

19 MR. MICHAEL WATSON: Right. And then
20 sorry, that -- that one (1) from the telephone call,
21 "Then had breakfast with him shortly thereafter," and
22 there's evidence about that.

23 And then going down:

24 "Talked about process and value
25 range. Said back of envelope 15 to

1 20 million on enterprise value less
2 debt."

3 Now, before I put that same proposition
4 to you, Mr. Houghton was CEO of Collus, right?

5 MR. TIM FRYER: Yes.

6 MR. MICHAEL WATSON: And he had access
7 to all of the financial information, right?

8 MR. TIM FRYER: Yes.

9 MR. MICHAEL WATSON: Right. And, of
10 course, all of that financial information was within
11 Collus, which was an OBCA corporation, right?

12 MR. TIM FRYER: Yes.

13 MR. MICHAEL WATSON: It was not what
14 we call a reporting issuer or a public corporation?

15 THE HONOURABLE FRANK MARROCCO: I
16 don't know if the witness can -- it -- it isn't, is
17 it?

18 MR. MICHAEL WATSON: Well, no, no,
19 it's not. And --

20 THE HONOURABLE FRANK MARROCCO: All
21 right. So, then it isn't.

22 MR. TIM FRYER: No reports to the OEB,
23 yeah.

24 MR. MICHAEL WATSON: And that's what
25 I'm asking the witness, Your Honour. All right.

1 CONTINUED BY MR. MICHAEL WATSON:

2 MR. MICHAEL WATSON: And -- and so --
3 and so that information would not be public?

4 MR. TIM FRYER: Which information,
5 sorry?

6 MR. MICHAEL WATSON: Yes, the -- the
7 financial information, Enterprise Value and all the
8 numbers that would go into that.

9 MR. TIM FRYER: I -- I would think
10 that it would be considered public because you're
11 putting your financial statements to -- to the OEB and
12 those are publically displayed.

13 MR. MICHAEL WATSON: This is certainly
14 something that Mr. Houghton would know intimately,
15 right?

16 MR. TIM FRYER: Certainly.

17 MR. MICHAEL WATSON: All right. And
18 is -- can -- can you see, therefore, that maybe your
19 supposition was incorrect, that this may very well
20 have been a statement made by Mr. Houghton rather than
21 by Mr. Bentz?

22 MR. TIM FRYER: It's very possible,
23 yes.

24 MR. MICHAEL WATSON: Those are my
25 questions, Your Honour.

1 THE HONOURABLE FRANK MARROCCO: Mr.
2 Marron...?

3 MR. GEORGE MARRON: Yes, thanks, Your
4 Honour.

5

6 CROSS-EXAMINATION BY MR. GEORGE MARRON:

7 MR. GEORGE MARRON: This is one (1) of
8 my first forays into the electronic world, at least in
9 a hearing. I just wanted to refer to document number
10 CPS0007 triple -- or sor -- 70070001. It's the
11 minutes of the Board of Directors of Collus Power
12 meeting of Friday June the 10th at 9:08.

13 It indicates that you were present, Mr.
14 Fryer. It's the point in time when, on the second
15 page, it indicates that Mr. Houghton appeared with a
16 solar roof ventilation unit and made a bit of a pitch,
17 I take it, to the Collus Board about the unit.

18 And he also indicated that he intended
19 to propose a project and that he would be assisted by
20 Mr. McAllister and report back to the Board. It
21 indicates then that my client, Mayor Cooper, left the
22 meeting?

23 MR. TIM FRYER: Yes.

24 MR. GEORGE MARRON: Okay. And then it
25 goes on on page 3 to indicate the Board made a

1 decision to move forward with the initiative?

2 MR. TIM FRYER: Yes.

3 MR. GEORGE MARRON: All right. And it
4 states the reason as showing that the Company would be
5 considered perhaps as a leader with a positive message
6 for the utility and council to get the message out
7 regarding conservation?

8 MR. TIM FRYER: Yes.

9 MR. GEORGE MARRON: And the Board
10 concluded its meeting. Okay. So, she wasn't present
11 then when the Board made the resolution or the
12 agreement to support this project and move forward
13 with it?

14 MR. TIM FRYER: Yes. According to the
15 minutes, yes.

16 MR. GEORGE MARRON: Thank you. The --
17 just so I understand, you're -- you're listed in the
18 Foundation Documents and a lot of the material that
19 I've read as being a member of the Strategic
20 Partnership Task Team?

21 MR. TIM FRYER: Yes.

22 MR. GEORGE MARRON: And -- and you're
23 making a distinction. You're -- you're putting
24 yourself in the position that the KPMG personnel, two
25 (2) of them, where, in other words, they were -- they

1 didn't participate by way of vote or a show of hands
2 or -- indicating their appraisal or -- of the process
3 that was being presented?

4 MR. TIM FRYER: I believe what I was
5 conveying was, of the nine (9) members, I considered
6 the three (3) Board members, Mr. McFadden, Mr.
7 Muntester (sic), and --

8 MR. GEORGE MARRON: Right.

9 MR. TIM FRYER: -- and Mr. Garbutt, to
10 -- to be what I was considering voting members as well
11 as the mayor and the deputy mayor. And then the other
12 four (4) members, myself, Mr. Houghton, Ms. Wingrove,
13 and Mr. Herhalt, from KPMG, I considered them in my
14 concept as being resources with providing input, but
15 the decision makers were the other five (5).

16 MR. GEORGE MARRON: Well -- well, that
17 -- well, that's comes as a bit of a surprise to me
18 because we've heard from Wingrove. She indicated she
19 was a member of the Strategic Partnership Task Team
20 and she voted on -- and, in fact, she was taken
21 through her evidence in reference to how she assessed
22 certain aspects of the RP -- RPF.

23 MR. TIM FRYER: And definitely all
24 nine (9) of us had the same -- same process and the
25 same vote in regards to the scoring of the RFP.

1 MR. GEORGE MARRON: Okay. So -- so,
2 what you're saying, in effect, as I -- just -- just so
3 that I understand this, is you were there. You were
4 giving -- as you indicated, as a resource, you were
5 giving some opinions.

6 I take it that you were giving those
7 opinions if -- if they were being sought by members of
8 the -- of the task team?

9 MR. TIM FRYER: Yes.

10 MR. GEORGE MARRON: Okay. But that,
11 at the end of the day, when it came time to tally or
12 to vote, that you also voted?

13 MR. TIM FRYER: We all did --

14 MR. GEORGE MARRON: Okay.

15 MR. TIM FRYER: -- equally.

16 MR. GEORGE MARRON: And there were
17 nine (9) members then?

18 MR. TIM FRYER: Yes, there were.

19 MR. GEORGE MARRON: Now, you made a --
20 you made a point and indicated that 50 percent or more
21 would be losing control. I understand more, I mean,
22 if it's 51 percent, obviously, it's 51/49, so it's a
23 control position.

24 But -- but I didn't quite comprehend
25 when you said that 50 percent -- that if I sold you 50

1 percent of something, half of something, I'd be losing
2 control.

3 What -- what I'd be doing would be
4 creating a different entity. It'd be taking something
5 that I possessed and controlled and I'd be turning it
6 into a different entity whereby I would -- would not
7 lose control, but I'd have to share control?

8 MR. TIM FRYER: And I'm simply of the
9 point of view that 50 percent does run the risk of
10 losing control, yes.

11 MR. GEORGE MARRON: Well, I guess
12 that's the area that I'm having a little bit of
13 difficulty in. I -- I'm seeing a different situation
14 being created, not that it would mean losing control,
15 but it would be sharing control?

16 MR. TIM FRYER: And I'm understanding
17 what you see. And I'm just explaining what I see.

18 MR. GEORGE MARRON: Yeah. So, it's
19 more a question of perspective?

20 MR. TIM FRYER: I'm sorry?

21 MR. GEORGE MARRON: It's a question of
22 perspective then?

23 MR. TIM FRYER: I would say so, yes.

24 MR. GEORGE MARRON: Like, the glass is
25 half full or the glass is...

1 MR. TIM FRYER: Precisely.

2 MR. GEORGE MARRON: Okay. All right.
3 Half empty, okay. The -- the other area I have is
4 concerning this timing of the approach that you made
5 to Brian Bentz. I mean, you -- you're an executive
6 with the Collus group of companies.

7 You had an email communication with him
8 on the 15th of September 2011 referring to a potential
9 golf game on the 23rd of September?

10 MR. TIM FRYER: I think the 19th. Was
11 it -- was it the 23rd?

12 MR. GEORGE MARRON: Well -- well, the
13 -- the 15th was a Thursday and the game was proposed
14 for the Tuesday, so I --

15 MR. TIM FRYER: The 19th, I think.

16 MR. GEORGE MARRON: -- so I did what I
17 thought proper advance of -- of the numbers, but it
18 could be stand -- I guess I could stand --

19 MR. TIM FRYER: I believe it was the
20 19th because I believe that was the day that they --

21 MR. GEORGE MARRON: Okay.

22 MR. TIM FRYER: -- were going to be
23 here to give --

24 MR. GEORGE MARRON: Well, in any event
25 --

1 MR. TIM FRYER: -- their presentation.

2 MR. GEORGE MARRON: Yeah. Okay.

3 Well, in any event, it's a point in time after August
4 the 3rd, which was the first meeting of the Strategic
5 Partnership Task Team?

6 MR. TIM FRYER: Yes.

7 MR. GEORGE MARRON: Okay. And, I
8 mean, at that point, you would have known that
9 PowerStream was interested in making a bid?

10 MR. TIM FRYER: Yes. They were --
11 they were going to provide an expression of interest
12 proposal at the -- to council that same day.

13 MR. GEORGE MARRON: Well -- well, did
14 you have any concerns about the optics of this? I
15 mean, you're --

16 MR. TIM FRYER: Not at the time, no.

17 MR. GEORGE MARRON: Well, have you any
18 concerns at this point in time --

19 MR. TIM FRYER: No.

20 MR. GEORGE MARRON: -- how it would
21 look?

22 MR. TIM FRYER: No.

23 MR. GEORGE MARRON: And here -- here's
24 somebody who's head of -- well, let's just -- here --
25 here's an individual, Brian Bentz, who basically is in

1 charge of PowerStream and -- and the executive branch,
2 the Board. You're with Collus. And it's Collus
3 that's interested in selling at least a portion of the
4 business.

5 Two (2) of you are meeting, and this is
6 in September, at a point in time when there were
7 active steps being taken to assess who might
8 eventually end up being the winning proponent of 50
9 percent of Collus?

10 MR. TIM FRYER: Yes.

11 MR. GEORGE MARRON: It didn't cause
12 any concern?

13 MR. TIM FRYER: Not at the time, no.

14 MR. GEORGE MARRON: What do you mean,
15 "not at the time"? You mean, it does now?

16 MR. TIM FRYER: No.

17 MR. GEORGE MARRON: So, it would -- it
18 didn't cause any concern at the time because you
19 didn't think about it?

20 MR. TIM FRYER: Sorry?

21 MR. GEORGE MARRON: You didn't
22 consider it at the time?

23 MR. TIM FRYER: At the time, I did not
24 consider it, no.

25 MR. GEORGE MARRON: Well, would you

1 agree with me that it might cause some concerns given
2 the optics of it?

3 MR. TIM FRYER: No.

4 MR. GEORGE MARRON: Can you explain
5 that, why -- why that would be?

6 MR. TIM FRYER: Because when I read
7 through it, it simply is a social invite, and it was
8 from a previous discussion, so.

9 MR. GEORGE MARRON: Well, no, I
10 appreciate that, but -- and you indicated you had
11 known him or met him a long time ago. But this -- he
12 wasn't somebody that you saw in a regular way?

13 MR. TIM FRYER: No.

14 MR. GEORGE MARRON: So, that's --
15 that's what causes what I suggest as some concern, as
16 that suddenly there's a golf game in the offing and
17 it's September 2011 and people are lining up to make
18 bids for Collus?

19 MR. TIM FRYER: And I didn't.

20 MR. GEORGE MARRON: Pardon?

21 MR. TIM FRYER: I said I didn't have a
22 concern with it.

23 MR. GEORGE MARRON: Well, did Mr.
24 Bentz have any concern? Did he voice any concern to
25 you?

1 MR. TIM FRYER: No. And there wasn't
2 any more communication after that point.

3 MR. GEORGE MARRON: Well, is that just
4 because there was no communication or because there
5 was some sort of concern?

6 MR. TIM FRYER: No. No, no concern.

7 MR. GEORGE MARRON: Or some thought --

8 MR. TIM FRYER: Just there was no
9 communication.

10 MR. GEORGE MARRON: Well, or some
11 thought that it might be inappropriate?

12 MR. TIM FRYER: There would be no
13 communication before that and no communication after
14 that.

15

16 (BRIEF PAUSE)

17

18 MR. GEORGE MARRON: All right. Thank
19 you. Those are my questions.

20 THE HONOURABLE FRANK MARROCCO: Mr.
21 Bonwick?

22 MR. GEORGE MARRON: Oh, just -- could
23 -- could I just -- just one (1) matter. I -- I --

24 THE HONOURABLE FRANK MARROCCO: Yes.

25 MR. GEORGE MARRON: I missed a point

1 here.

2 THE HONOURABLE FRANK MARROCCO: Go
3 ahead.

4

5 CONTINUED BY MR. GEORGE MARRON:

6 MR. GEORGE MARRON: I mean, you
7 indicated to us that you gave some consideration to
8 Hydro One. And, you know, you -- you appraised them
9 at the highest point with the dollar figure. I mean,
10 that was pretty straightforward. There it was.

11 And -- but you indicated that you had
12 concerns with Hydro One because of the personnel
13 situation, the bureaucracy that they perhaps
14 presented. They were a large group and might make for
15 some significant changes to the operation here in
16 Collingwood, of Collus?

17 MR. TIM FRYER: And that's why I
18 scored them a 10 on the partnership part of things.

19 MR. GEORGE MARRON: Right. And -- and
20 scored them a lot less on the other matters?

21 MR. TIM FRYER: Yes.

22 MR. GEORGE MARRON: Right. And -- and
23 this was something -- Okay. So, this -- this scoring
24 hadn't occurred at the point in time of the proposed
25 golf game in September of 2011? You hadn't scored

1 Hydro One at that point?

2 MR. TIM FRYER: No. The RFPs hadn't
3 gone out until October.

4 MR. GEORGE MARRON: Yeah. Well,
5 that's -- yeah. Okay. Thank you. Thank you, Your
6 Honour.

7 THE HONOURABLE FRANK MARROCCO: Mr.
8 Bonwick...?

9 MR. PAUL BONWICK: Thank you, Your
10 Honour. I likely have a half an hour worth of --

11 THE HONOURABLE FRANK MARROCCO: Sure,
12 go ahead.

13 MR. PAUL BONWICK: Do you want to do
14 it now or would you like to -- it's up to you
15 entirely, or we could take a break, it's up to you.

16 THE HONOURABLE FRANK MARROCCO: No,
17 no. I -- I think, as everybody -- we'll just carry
18 on.

19 MR. PAUL BONWICK: Okay. Yeah, that's
20 great with me.

21

22 CROSS-EXAMINATION BY MR. PAUL BONWICK:

23 MR. PAUL BONWICK: Thank you for the
24 time, Mr. Fryer. I'm just going to address one (1)
25 matter here before I move into the rest of it. And I

1 think I'm going to take the exact opposite approach
2 that Mr. Marron took in the -- in the last reign of
3 questioning, taking a walk back in time, in 2011.

4 You identified the fact that you had a
5 working professional relationship with Mr. Bentz over
6 some extended period of time going back thirty (30)
7 years?

8 MR. TIM FRYER: We were definitely
9 professionally involved over that period of time.

10 MR. PAUL BONWICK: Right. You're both
11 what I would refer to as senior executives within
12 neighbouring LDCs?

13 MR. TIM FRYER: Yes.

14 MR. PAUL BONWICK: And so I would
15 submit the exact opposite premise and say, to me --
16 and I'm asking your opinion -- would it not only make
17 sense that if you had a colleague visiting the area
18 from a neighbouring LDC that you might extend an
19 invitation for lunch, a phone call, golf, something
20 where -- especially considering your past?

21 MR. TIM FRYER: In this particular
22 case, it was because of our past social relationship.

23 MR. PAUL BONWICK: Fair enough. And
24 in fact, you have relationships, I assume, with people
25 from Veridian and -- I can't name all the LDCs within

1 the region but a lot of --

2 MR. TIM FRYER: Definitely --

3 MR. PAUL BONWICK: -- longstanding
4 relationships --

5 MR. TIM FRYER: -- definitely, yes.

6 MR. PAUL BONWICK: -- considering your
7 history with the -- within the LDC sector.

8 MR. TIM FRYER: Yes.

9 MR. PAUL BONWICK: Is it fair to say
10 that if they were coming in for some particular reason
11 and it was somebody you had a longstanding
12 relationship, you might extend the same invitation?

13 MR. TIM FRYER: Very possibly.

14 MR. PAUL BONWICK: I think that seems
15 reasonable in my perspective, not that I'm the Judge.

16 I want to address a couple of matters
17 just from a housekeeping perspective, and there seems
18 to be some confusion as it relates to dividends and
19 benefits.

20 And so as a person that's worked in the
21 financial world most of his life -- and I say that on
22 the accounting -- on the accountant side of things --
23 would you agree that, for example, if you owned
24 CIBC -- the building CIBC was in, and CIBC was paying
25 rent, and in the same breath, you were a shareholder

1 within CIBC.

2 Would you agree that the two (2) are
3 completely unlinked?

4 MR. TIM FRYER: I'm not sure I'm
5 following your question.

6 MR. PAUL BONWICK: So if the Bank of
7 Commerce was your tenant hypothetically speaking --

8 MR. TIM FRYER: Yes.

9 MR. PAUL BONWICK: -- and they had to
10 pay you rent because you owned the building --

11 MR. TIM FRYER: Yes.

12 MR. PAUL BONWICK: -- does that have
13 anything to do with the fact that you might
14 hypothetically own shares in the bank, and they pay a
15 dividend at the end of the year?

16 MR. TIM FRYER: I guess I'd say no.

17 MR. PAUL BONWICK: And getting at, of
18 course, is there two -- in the accounting world, they
19 are two very separate and distinct things.

20 MR. TIM FRYER: M-hm. Okay.

21 MR. PAUL BONWICK: Rents, being one
22 thing.

23 MR. TIM FRYER: Yeah.

24 MR. PAUL BONWICK: Respectfully, if
25 you had a different tenant in there that was

1 publically traded or had shares -- it was a
2 corporation --

3 MR. TIM FRYER: M-hm.

4 MR. PAUL BONWICK: -- you own the
5 building, and they paid you rent. You lent them
6 money, and they paid you interest on the loan.

7 MR. TIM FRYER: Okay.

8 MR. PAUL BONWICK: That is a
9 completely separate calculation as it relates to
10 getting a dividend based on the shares you might have
11 on that company.

12 MR. TIM FRYER: It would be a
13 different accounting, yes.

14 MR. PAUL BONWICK: And certainly, it
15 would be reasonable for the person that owns the
16 building and lent the money and has some share
17 interest in it to separate those things and say, I'm
18 not getting a dividend because I'm getting the rent.
19 I'm getting the rent because I own the building.

20 MR. TIM FRYER: Yes.

21 MR. PAUL BONWICK: I'd like to spend a
22 little bit of time on this -- use of this word
23 "shotgun clause." And to Michael's point, it's one
24 that I very rarely hear within the business circles.
25 I've seen many, many dozens of partnership agreements

1 in my life, both public and public-private, and I
2 can't recall ever seeing one.

3 And I'm interested in your opinion on
4 this where there's not a buy-sell provision. Can you
5 imagine a scenario -- and I'm -- where, in fact, you
6 entered into an agreement with PowerStream that you
7 had no option for exit?

8 MR. TIM FRYER: When I made the
9 suggestion about shotgun, it was because I felt that
10 that needed to be built into the agreement, the exit
11 strategy.

12 MR. PAUL BONWICK: The actual language
13 used within all legal documents -- certainly that I've
14 ever seen -- is a buy-sell provision when you get
15 contractually obligated -- not shotgun -- but I
16 understand where you're going.

17 MR. TIM FRYER: It was a -- it was a
18 layman's description -- yes.

19 MR. PAUL BONWICK: Thank you. Within
20 the context of "shotgun," would you agree that comes
21 into play when a situation has unfolded whereby one
22 partner, for whatever reasons, does not want to be
23 partners with the other?

24 MR. TIM FRYER: Most definitely that
25 would be the premise, yes.

1 MR. PAUL BONWICK: Thank you. Can you
2 imagine a scenario -- you're familiar with Alectra
3 obviously and formerly PowerStream?

4 MR. TIM FRYER: Yes.

5 MR. PAUL BONWICK: You're familiar
6 with its ownership makeup?

7 MR. TIM FRYER: Yes.

8 MR. PAUL BONWICK: The fact that its
9 Board of Directors hosts several regional, somewhat
10 big city mayors, people from the public at large, it's
11 quite a diverse Board?

12 MR. TIM FRYER: Most definitely.

13 MR. PAUL BONWICK: Would you agree
14 that it operates, certainly based on your assessment,
15 at the highest ethical standards?

16 MR. TIM FRYER: I would expect so.

17 MR. PAUL BONWICK: Same applies for
18 Mr. Bentz?

19 MR. TIM FRYER: Most certainly.

20 MR. PAUL BONWICK: And so is it
21 reasonable to think that it would be a challenge to
22 find a scenario where a publicly-traded LDC that has
23 become a partner with you would exercise that clause
24 under any scenario under -- other than when it's
25 really become an unworkable situation?

1 MR. TIM FRYER: I can't say anything
2 for certain because it would be based on the
3 circumstances.

4 MR. PAUL BONWICK: Thank you. Does
5 that seem reasonable though?

6 MR. TIM FRYER: It's -- it's
7 reasonable that Alectra would not be concerned with
8 exercising the --

9 MR. PAUL BONWICK: They're not in the
10 business of trying to create partnerships. Would you
11 agree with that, whereby they're getting past their
12 two (2) year birthday and then snapping up the LDC and
13 moving somebody aside?

14 MR. TIM FRYER: The only thing I can
15 say to that, Mr. Bonwick, is that the terms were
16 worked out with PowerStream, and then PowerStream
17 became Alectra. So it's difficult for me to talk
18 about Alectra in that -- at that point in time that we
19 were working on -- with PowerStream.

20 MR. PAUL BONWICK: And I think that's
21 quite fair. But realistically, you have 30-some years
22 experience within the industry. You work next door
23 with -- next door to Alectra, and so you can certainly
24 have some opinions on it, and that's all I was trying
25 to get at.

1 MR. TIM FRYER: Alectra's an acquirer
2 of utilities, so.

3 MR. PAUL BONWICK: There was some
4 discussion related to the partnership. And,
5 Mr. Fryer, when you said 50 percent or more is losing
6 control is your position, I took some time, and I just
7 kind of googled it.

8 The actual legal definition of a
9 minority shareholder whereby you're losing control:

10 "A shareholder who owns less than
11 50 percent of shares of a
12 corporation or stock is considered a
13 minority shareholder."

14 Would you agree that's when you lose
15 control?

16 MR. TIM FRYER: That's why I said
17 "may" when I said 50. It may put you in a situation
18 of not being in control.

19 MR. PAUL BONWICK: And if I could call
20 up the document Michael -- or sorry, no. I'll go to
21 this one here -- shotgun. ALE0002782, page 43. Top
22 of that page, please.

23

24 (BRIEF PAUSE)

25

1 THE HONOURABLE FRANK MARROCCO: It's
2 got a nine (9) or a ten (10). It almost looks like
3 maybe it might be the other direction.

4 MR. PAUL BONWICK: All right.

5 THE HONOURABLE FRANK MARROCCO: No,
6 no. Try going up.

7 MR. PAUL BONWICK: Up a little bit,
8 please. Sorry. Provisions down one. Down, down,
9 down just a little bit. I'm hoping I haven't given
10 you the wrong file. "Arbitration procedures." There
11 it is right there at the bottom of 43.

12

13 CONTINUED BY MR. PAUL BONWICK:

14 MR. PAUL BONWICK: So I would submit,
15 based on the definition that I just read to you, in
16 fact Collingwood or Collus nor Alectra was neither in
17 a majority or a minority situation by way of the
18 buy-sell provision. Both had control over the
19 eventual sale or disposition of the shares.

20 Is that reasonable?

21 MR. TIM FRYER: Yes, they did.

22 MR. PAUL BONWICK: But in terms of
23 there's been some reflection over the course of the
24 last few days about Alectra being the size that it is
25 versus Collus being the size that it was and sort of

1 Alectra being the elephant in the room, so to speak.

2 But I'll refer you to 8.2 arbitration
3 procedures. There is an -- and you can scroll down a
4 little bit there, please -- there is an extensive
5 reference to various arbitration procedures that would
6 come into play should the competing interests or
7 should there be a disagreement between shareholders
8 far before you ever have to exercise a buy-sell
9 provision.

10 And I think you can see that there's
11 various forms of arbitration. There's legal
12 proceedings that would be involved. There's a series
13 of steps, in other words, that would lead up to --
14 should you have a disagreement with the larger player
15 that provides protections for the smaller participant.
16 Would you agree with that?

17 MR. TIM FRYER: If they choose to
18 follow these, yes.

19 MR. PAUL BONWICK: If they choose to
20 follow those. Thanks. And what I'm trying to get at,
21 Mr. Fryer, is just simply, it really didn't matter
22 that one is much larger than the other. There is a
23 schedule in here that protects both parties as it
24 relates to arbitration if you've come to a matter that
25 you can't resolve with in the Board.

1 MR. TIM FRYER: If you choose to go
2 through the dispute process, yes.

3 MR. PAUL BONWICK: Thank you. You had
4 the opportunity to provide some testimony and some
5 cross-examination to KPMG yesterday.

6 If I understood your proof correctly --
7 and I want to make sure that I did -- you appear to
8 hold KPMG in high regard, as well as -- and I don't
9 know the names of the three people that were working
10 there. I apologize. But you appeared to hold them in
11 high regard.

12 MR. TIM FRYER: Certainly.

13 MR. PAUL BONWICK: You recognize the
14 services that KPMG has provided in the past, not only
15 to you but in terms of being a provincial global
16 player?

17 MR. TIM FRYER: Yes.

18 MR. PAUL BONWICK: And so would it
19 seem -- it would seem reasonable, based on that level
20 of confidence, that you would have -- and that level
21 of respect that you would have some level of
22 confidence in terms of how their -- and I'll use your
23 language -- trying to create a scenario where we're
24 comparing apples to apples in the financial section of
25 the assessment.

1 MR. TIM FRYER: Yes.

2 MR. PAUL BONWICK: And so they were
3 charged with that responsibility. You had confidence
4 in them, you recognize all their abilities, and they
5 presented you with apples to apples comparables.

6 MR. TIM FRYER: I felt they had, yes.

7 MR. PAUL BONWICK: If I could go to
8 FD001.4.1. I'll get the language right.

9

10 (BRIEF PAUSE)

11

12 MR. PAUL BONWICK: I apologize. I'm
13 thinking that is the scoring criteria. It's
14 CPS0006920.

15

16 (BRIEF PAUSE)

17

18 MR. PAUL BONWICK: Thank you. You've
19 walked through it -- just -- whoops -- you've walked
20 through it just a few moments ago with Michael
21 representing PowerStream -- some of your scoring.

22 I took the liberty over lunch of
23 scoring out the points you've allocated for
24 PowerStream.

25 MR. TIM FRYER: Okay.

1 MR. PAUL BONWICK: And in the overall
2 scoring, you scored PowerStream as -- if you could
3 scroll down -- I believe it was a total of 62 points
4 for the non-financial portion.

5 MR. TIM FRYER: Yes.

6 MR. PAUL BONWICK: And I reference
7 that the 62 points is actually the lowest score out of
8 the other eight (8) participants --

9 MR. TIM FRYER: Okay.

10 MR. PAUL BONWICK: -- allotted to
11 PowerStream.

12 MR. TIM FRYER: Okay.

13 MR. PAUL BONWICK: I also took the
14 scoring calculation for you on Hydro.

15 MR. TIM FRYER: Yes.

16 MR. PAUL BONWICK: And if -- you're
17 welcome to take a count there -- but I scored you at
18 26 on Hydro. Would you accept that?

19 MR. TIM FRYER: I -- it would have
20 been around that, yes.

21 MR. PAUL BONWICK: So you scored
22 PowerStream in the top end of the criteria for the
23 non-financially related matters.

24 MR. TIM FRYER: Yes.

25 MR. PAUL BONWICK: You scored

1 Hydro One the lowest in the non-financially related
2 matters.

3 MR. TIM FRYER: Yes.

4 MR. PAUL BONWICK: And so I would
5 submit or would you agree that if you gave Hydro One
6 the 30 points, that would take you to 56 points?

7 MR. TIM FRYER: Thirty (30) points for
8 what?

9 MR. PAUL BONWICK: The financial
10 scoring --

11 MR. TIM FRYER: Yes, yes.

12 MR. PAUL BONWICK: It was my
13 understanding it was a financial scoring. I apologize
14 for not being clear on that.

15 MR. TIM FRYER: Yes.

16 MR. PAUL BONWICK: You gave Hydro One
17 26 points on the non-financial scoring.

18 MR. TIM FRYER: Yes.

19 MR. PAUL BONWICK: It totals
20 56 points.

21 MR. TIM FRYER: Yes.

22 MR. PAUL BONWICK: Going back to the
23 level of confidence that you've demonstrated in KPMG,
24 KPMG, as you recall from the screen earlier today,
25 scored -- in the apples-and-apples comparable --

1 scored Hydro One, for argument's sake, about \$900,000
2 higher than the second closest bid which was
3 PowerStream. Do you recall that?

4 MR. TIM FRYER: So not necessarily
5 "scored," but showed us that the total value. That is
6 what you said.

7 MR. PAUL BONWICK: Thanks very much
8 for using that language because you're using better
9 language than I am. I would agree, so I'll rephrase
10 it. They showed you in an apples to apples comparison
11 that Hydro One was approximately \$900,000 higher than
12 the second place bid which was PowerStream.

13 MR. TIM FRYER: That's what I recall,
14 yes.

15 MR. PAUL BONWICK: And so, is it
16 reasonable to assume that PowerStream may have got
17 half the points that you would have allocated to Hydro
18 One, being the second place finish?

19 MR. TIM FRYER: Hydro One got thirty
20 (30) points --

21 MR. PAUL BONWICK: Right. But I can't
22 see your financial score, sorry.

23 MR. TIM FRYER: But -- but thirty (30)
24 times -- everyone had to score then with the highest
25 financial scoring --

1 MR. PAUL BONWICK: And I apprec --

2 MR. TIM FRYER: -- which was thirty
3 (30).

4 MR. PAUL BONWICK: I -- I appreciate
5 that just by the math that --

6 MR. TIM FRYER: Yeah.

7 MR. PAUL BONWICK: -- was done. But
8 when you go to the second place score, you don't know
9 if somebody scored -- you don't know exactly what the
10 scores are because it doesn't divide evenly?

11 MR. TIM FRYER: The -- now you're
12 referring to the PowerStream score --

13 MR. PAUL BONWICK: Correct.

14 MR. TIM FRYER: -- that averaged out
15 to twenty-seven (27)?

16 MR. PAUL BONWICK: So, what I'm
17 getting at is, irrespective of what score you
18 allocated for the financial component because we can't
19 see them --

20 MR. TIM FRYER: Yes.

21 MR. PAUL BONWICK: -- no matter what
22 score you allocated to PowerStream, PowerStream was
23 going to be the clear winner?

24 MR. TIM FRYER: Yes.

25 MR. PAUL BONWICK: And so, when I take

1 everybody else out of the equation and I suggest, if
2 you were the only one scoring, the eventual product
3 would have been exactly the same?

4 MR. TIM FRYER: PowerStream.

5 MR. PAUL BONWICK: PowerStream. Thank
6 you.

7 THE HONOURABLE FRANK MARROCCO: I -- I
8 -- maybe I missed it, but did you -- you agreed with
9 that, did you, or --

10 MR. TIM FRYER: Yes. That --

11 THE HONOURABLE FRANK MARROCCO: Okay.

12 MR. TIM FRYER: I was stating who it
13 would have been, yes.

14 THE HONOURABLE FRANK MARROCCO: Thank
15 you. That was your last question, Mr. Bonwick?

16 MR. PAUL BONWICK: No.

17 THE HONOURABLE FRANK MARROCCO: Oh.
18 No, no, I wasn't trying to hurry you along.

19 MR. PAUL BONWICK: I can see that far
20 though. Like, I get...

21

22 CONTINUED BY MR. PAUL BONWICK:

23 MR. PAUL BONWICK: I'd like to talk a
24 little bit about your thirty (30) years, or
25 thereabouts, with --

1 MR. TIM FRYER: M-hm.

2 MR. PAUL BONWICK: -- with Collus.

3 You had a long career with one (1) employer, which
4 isn't always heard of today. Clearly, there was a
5 high level of confidence in your abilities throughout
6 that period of time or, quite frankly, it wouldn't
7 have worked. Is that a reasonable statement?

8 MR. TIM FRYER: And the job was a
9 great job.

10 MR. PAUL BONWICK: And -- thank you.
11 And irrespective of your love for the job and the
12 community, there's been a lot of evidence shown that
13 you're not afraid to break from the fray and give a
14 counter opinion if you believe it's in the best
15 interest of either the utility or the community.

16 Is that a fair statement?

17 MR. TIM FRYER: Yes.

18 MR. PAUL BONWICK: And so, while some
19 people may not like the fact that you're providing
20 challenging comments, you're simply doing it because
21 you believe in your heart that this is information
22 that's of value?

23 MR. TIM FRYER: Yes.

24 MR. PAUL BONWICK: So, I want to link
25 that back to the fact that, in all the assessments

1 that you did throughout the process on the Strategic
2 Ta -- I never get the acronym right, the Strategic
3 Task Force, was done based on what you thought was in
4 the best interest of the community?

5 MR. TIM FRYER: Yes.

6 MR. PAUL BONWICK: I did want to
7 clarify one (1) thing. And I do appreciate counsel
8 going through this this morning, but I -- I open up
9 every conversation the same way.

10 Over the course of the last nine (9)
11 years, have we had any conversations about the share
12 sale or any matter related to this issue?

13 MR. TIM FRYER: No, we have not.

14 MR. PAUL BONWICK: Just to be
15 perfectly clear, during the time you were involved
16 with the Strategic Task Force, did I have any
17 engagement with you about scoring criter -- period,
18 any engagement?

19 MR. TIM FRYER: No, we did not.

20 MR. PAUL BONWICK: Thank you.
21 Throughout this thirty (30) years, so you get to give
22 a barometer or a measuring stick that many can't, you
23 had a management team, Cindy Shuttleworth, if I'm
24 pronouncing her name properly? Or sorry, no.

25 MR. TIM FRYER: So, not through the

1 thirty (30) years.

2 MR. PAUL BONWICK: No, no, no. I
3 understand. I'm -- sorry, I'll get to that.

4 MR. TIM FRYER: Yeah.

5 MR. PAUL BONWICK: You had Cindy
6 Shuttleworth and, I apologize if I'm pronouncing the
7 name wrong, Pam -- Pam Hogg, Larry Irwin, Marcus
8 Firman, Ed Houghton, of course, yourself.

9 That sort of represented, for lack of a
10 better description, a core management team?

11 MR. TIM FRYER: They were senior
12 management people, yes, for the utility.

13 MR. PAUL BONWICK: Senior management
14 people?

15 MR. TIM FRYER: Yes.

16 MR. PAUL BONWICK: Can you speak to
17 your experience in terms of the relationship that that
18 team had, namely the Collus or the utilities group,
19 had with the Town of Collingwood staff leading up to
20 2012? So, I'm reflecting on Carman Morrison, Gord
21 Norris, the senior management staff at town hall,
22 councils.

23 What was the -- could you give us a
24 flavour of what the environment was like between these
25 two (2) groups of senior managers?

1 MR. TIM FRYER: I certainly would
2 consider it at least cordial and probably even more so
3 a very good working relationship.

4 MR. PAUL BONWICK: Would it be fair to
5 say almost familiar in nature that Christmas parties
6 were attended, there was -- there was really a very
7 strong positive, constructive working relationship
8 between the two (2) groups?

9 MR. TIM FRYER: Yes.

10 MR. PAUL BONWICK: I'd like to move
11 forward to 2012, and recognizing you're no longer with
12 Collus PowerStream at 2012, if I understand correctly?

13 MR. TIM FRYER: September 30th, yes.

14 MR. PAUL BONWICK: But in November
15 2012 you did take a seat on council, correct, or was
16 that '14?

17 MR. TIM FRYER: That would have been
18 '14.

19 MR. PAUL BONWICK: That -- '14, sorry.
20 Thank you for the correction on that. So, when you
21 took a seat on council in 2014, how did you find the
22 relationship between this longstanding family of inner
23 workings -- how did you find the relationship under
24 the leadership of Mr. Brown and council?

25 MR. TIM FRYER: It had changed --

1 MR. PAUL BONWICK: I think for the
2 benefit of --

3 MR. TIM FRYER: -- to a degree. I --
4 I won't try to assess how much it changed, but there
5 was a change.

6 MR. PAUL BONWICK: And I'm going to
7 press you a little bit on this because, in fairness,
8 you worked with these people for many years. I'm sure
9 you maintained some level of -- of relationship with
10 at least some of them after you left Collus. You're
11 from the community.

12 I don't want to lead you as a witness.
13 I wanted you to come out and give a reasonable
14 description in terms of how you thought the
15 relationship had unfolded to and where it had gone.

16 MR. TIM FRYER: I guess I can only
17 comment on my relationship. And, as a member of
18 council, unfortunately, I did find that the
19 relationships I had had changed.

20 MR. PAUL BONWICK: Would it be fair to
21 say that under CAO Brown and -- and that council in
22 2014, the -- the situation had become unworkable,
23 caustic, an incredibly challenging environment?

24 MR. TIM FRYER: I wouldn't say that
25 only because I -- I wouldn't have been privy to the

1 kinds of things that would have to get me to draw that
2 conclusion.

3 MR. PAUL BONWICK: Fair enough. Are
4 you aware that several of your colleagues have --
5 former colleagues had filed complaints in terms of
6 harassment and challenges as it related to the
7 relationship between Collus and the municipality?

8 MR. TIM FRYER: No.

9 MR. PAUL BONWICK: You weren't aware
10 of that.

11

12 (BRIEF PAUSE)

13

14 MR. PAUL BONWICK: During your time at
15 Collus were you ever provided a bonus at the end of
16 the year, a financial bonus?

17 MR. TIM FRYER: We were a performance-
18 based system, yes.

19 MR. PAUL BONWICK: And so, to the
20 question at hand, you would have been provided annual
21 bonuses if you had met your objectives or delivered --

22 MR. TIM FRYER: Yes.

23 MR. PAUL BONWICK: -- a good result?

24 MR. TIM FRYER: Yes.

25 MR. PAUL BONWICK: Were those bonuses

1 ever reflected in the public domain?

2 MR. TIM FRYER: No.

3 MR. PAUL BONWICK: During your time
4 with Collus after the Provincial restructuring was
5 your wage ever brought out into the public domain?
6 And I'm thinking more specifically -- I think they
7 call it the sunshine list.

8 MR. TIM FRYER: No.

9 MR. PAUL BONWICK: Why was that?

10 MR. TIM FRYER: It didn't have the
11 requirements of the sunshine list. The sunshine list
12 was municipal, where there was funding mechanisms
13 available to municipalities, therefore, the government
14 required that you had to publish your employee payment
15 information.

16 MR. PAUL BONWICK: So, is it
17 reasonable to state that, in fact, your Board of
18 Directors or your CAO was under the structure it had
19 prohibited from publically announcing your wage or
20 your bonuses?

21 MR. TIM FRYER: It wouldn't have been
22 prohibited because the Board could choose through
23 proper contractual terms with its employees that it
24 could put certain information out, maybe a -- a
25 payment range or something like that.

1 But it wouldn't have been necessarily
2 prohibited.

3 MR. PAUL BONWICK: I -- I appreciate
4 they could have made contractual changes, but within
5 the existing frame, the work that you were operating
6 within, was the border, was the president and CEO in a
7 position to publicly announce your wage or your
8 bonuses?

9 MR. TIM FRYER: Not the specifics.

10 MR. PAUL BONWICK: Thank you.

11 Was it common in the industry that that
12 ever happened, in the LDC world?

13 MR. TIM FRYER: Not common, a few did.

14 MR. PAUL BONWICK: I'm going to be
15 just a couple more minutes here, Your Honour.

16 I'd -- I'd like to just address a
17 couple of comments Mr. McDowell raised with you
18 earlier today.

19 And my world words are very important
20 and description of services are very important, titles
21 are very important, and so I've had the benefit of
22 working with business consultants, as have you,
23 correct?

24 MR. TIM FRYER: Yes.

25 MR. PAUL BONWICK: You spoke about the

1 high degree of confidence that you have in KPMG?

2 MR. TIM FRYER: Yes.

3 MR. PAUL BONWICK: You recognize that
4 KPMG, when they provided the services, had one person
5 that was providing financial advice?

6 MR. TIM FRYER: Yes.

7 MR. PAUL BONWICK: You had one person
8 providing business advice, strategic advice as it
9 related to scoring structure?

10 MR. TIM FRYER: Yes.

11 MR. PAUL BONWICK: Two (2) very
12 separate things in reality.

13 MR. TIM FRYER: Yes.

14 MR. PAUL BONWICK: One is a -- kind of
15 an accounting process, if I may, and I apologize if
16 I'm not using the right language that it -- that you
17 would use, but it's kind of a -- it's a numbers
18 crunching exercise. The other one is a business
19 strategic kind of exercise.

20 MR. TIM FRYER: Yes.

21 MR. PAUL BONWICK: And so I was
22 confused when you were led with questions about a
23 trusted business advisor for the accountant that was
24 working for Gaviller's, and in my mind using the KPMG
25 analogy, when an accountant from Gavillers who deals

1 with the costing and the accounting, typically not be
2 moving outside their fray to start talking about
3 whether you should have a shotgun provision or not
4 have a shotgun provision, about whether you should
5 have share sales or not have share sales, but rather
6 talk about what the implications of those decisions
7 are.

8 MR. TIM FRYER: I can't answer that
9 because I don't know the experience.

10 MR. PAUL BONWICK: Okay, you work with
11 Mr. Neate, and I apologize I've never met him so if I
12 have mispronounced his name, is it not typical for an
13 accountant to offer advice related specifically to
14 financial matters and the implications of strategic
15 business decisions, what that means in -- from a
16 financial perspective?

17 MR. TIM FRYER: In the case of our --
18 our external auditor and -- and the information they
19 were providing us, it had a -- it stretched across
20 corporate structure and -- and those types of things.

21 MR. PAUL BONWICK: So it's -- is it
22 reasonable to say you wouldn't have hired Mr. Neate or
23 brought Mr. Neate in to give you advice in terms of
24 how you might develop the back end billing, how you
25 might develop a new service for Collus, would you

1 normally use his services for something like that?

2 MR. TIM FRYER: No.

3 MR. PAUL BONWICK: Would you normally
4 bring him in to help you develop a share agreement
5 with a third-party?

6 MR. TIM FRYER: No.

7 MR. PAUL BONWICK: And so what I'm
8 trying to get at is it's kind of a strange thing for
9 an accountant to offer advice in terms of how the
10 structure of the shared service agreement should be,
11 but rather does it not seem reasonable that Mr. Neate
12 should be offering advice on the implications of those
13 decisions financially?

14 MR. TIM FRYER: Mr. Neate was brought
15 in for his expertise in regards to tax and -- and
16 knowledge of the -- but did participate in the
17 meetings where those information things were -- were
18 shared and -- and I guess he felt he -- he had a
19 reason to take note of it.

20 MR. PAUL BONWICK: I've been in that
21 environment. Everybody's an expert. I just want to
22 close out with the solar vent issue, again in keeping
23 with this.

24 Hypothetically, of course, you -- you
25 spoke positively about the meeting and the

1 presentation regarding the solar attic fan earlier
2 today, is that correct?

3 MR. TIM FRYER: I have a recollection
4 that it was done and approved by the Board, yes.

5 MR. PAUL BONWICK: Seemed to be a
6 positive decision based on what I read in the minutes,
7 I wasn't at the meeting.

8 MR. TIM FRYER: They -- they certainly
9 accepted that, yes.

10 MR. PAUL BONWICK: Hypothetically, of
11 course, if you had shares or financial interest in my
12 company, do you think you should have declared a
13 conflict?

14 MR. TIM FRYER: In which company is
15 that?

16 MR. PAUL BONWICK: The one that was
17 working with the solar attic vents that you talked
18 about earlier?

19 MR. TIM FRYER: That's hypothetical
20 and I'm not going to speculate how I would have acted.

21 MR. PAUL BONWICK: But I think in
22 fairness, when Mr. McDowell put it to you and said,
23 okay, we don't know for sure, but hypothetically if
24 Mr. Houghton had shares, you did give an answer on
25 that one.

1 And so I think the real answer is you
2 don't have any interest at all, never have, never
3 will, financial interest in -- in that particular
4 entity, and so there would be no need for you to be
5 concerned about declaring conflicts, is that a fair
6 statement?

7 MR. TIM FRYER: No, because I would
8 look at it in my fiduciary responsibility based on my
9 professional degree.

10 MR. PAUL BONWICK: I think I -- I'm
11 going to take responsibility for not answering the --
12 asking the question properly.

13 You have never had any interest in any
14 of that product or what was presented to the Board
15 that day. And so the hypothetical really is
16 irrelevant because you never had a conflict on it,
17 correct?

18 MR. WILLIAM MCDOWELL: Well, I think
19 Mr. Bonwick may have misunderstood the question that I
20 was putting to the witness, which was if Mr. Houghton
21 had an interest, whether Mr. Houghton ought to have
22 declared, not --

23 MR. PAUL BONWICK: Actually, it is in
24 a way which hypothetically, and I could --

25 THE HONOURABLE FRANK MARROCCO: I

1 think the question that Mr. Bonwick is trying to put
2 to the witness is if you don't own -- if you didn't
3 own any shares then you don't have a conflict, I think
4 that's the question he's --

5 MR. WILLIAM MCDOWELL: If that's the
6 question, that's a fair question.

7 THE HONOURABLE FRANK MARROCCO: I
8 don't know, Mr. Bonwick, if I understood what you were
9 asking, but if that was it --

10 MR. PAUL BONWICK: That is exactly it,
11 Your Honour, I was trying to go down the same path as
12 -- leading the witness on a hypothetical that of
13 course doesn't exist, and I was trying to correct the
14 record for Mr. Fryer, letting him know that at no
15 point has he ever had a conflict in the -- in this
16 scenario, but rather I was using sort of the same
17 framework Mr. Fryer -- Mr. McDowell had used for
18 somebody else.

19 MR. TIM FRYER: But I'm still confused
20 on what the question is.

21 THE HONOURABLE FRANK MARROCCO: Well,
22 I'm going to put it -- I think it's a question of
23 argument, I get the question.

24

25 CONTINUED BY MR. PAUL BONWICK:

1 MR. PAUL BONWICK: When you announced
2 your retirement date, it was after the OEB decision,
3 is that what I understood from an earlier
4 conversation?

5 MR. TIM FRYER: When they became aware
6 that the OEB had approved the sale, yes.

7 MR. PAUL BONWICK: How -- how long did
8 you stay in your position or how much notice did you
9 give in terms of sticking around after the decision
10 was made?

11 MR. TIM FRYER: Between three (3) and
12 four (4) months, probably.

13 MR. PAUL BONWICK: So I would assume
14 that's more about a succession planning exercise and
15 trying to help with the transfer of files and making
16 sure people, your colleagues, are up to speed?

17 MR. TIM FRYER: And that list that we
18 had talked about earlier, the major projects would
19 have been trying to get some of them finalized because
20 I would've been the sole person working on it, maybe.

21 And so just try to get those things
22 done and away.

23 MR. PAUL BONWICK: I did go through
24 that list and it was quite extensive, and I've seen
25 similar lists for other CFOs working in other

1 utilities.

2 Is it fair to say that many things on
3 that list were actually shared responsibilities, not
4 simply yours, but --

5 MR. TIM FRYER: We have people in the
6 finance department, yes.

7 MR. PAUL BONWICK: You -- you kind of
8 handled the financial component of it, you and your
9 team.

10 MR. TIM FRYER: Yes.

11 MR. PAUL BONWICK: But many other
12 things beyond that on each section was the
13 responsibility of Darius, Mr. Houghton, any number of
14 different people --

15 THE HONOURABLE FRANK MARROCCO: At
16 that particular time, Darius had already retired, but
17 I know what you're saying and -- and -- and definitely
18 it was -- it was shared work.

19

20 CONTINUED BY MR. PAUL BONWICK:

21 MR. PAUL BONWICK: Did you believe
22 when the decision was finally made at the time, it's
23 easy to reflect back with a lens now and -- did you
24 believe at the time that the best possible decision
25 was made for Collus and the tax payers based on the

1 process that unfolded?

2 MR. TIM FRYER: I believe that the
3 process had been appropriate to meet the requests of
4 the shareholder.

5 MR. PAUL BONWICK: Thank you, that
6 ends my questions.

7 THE HONOURABLE FRANK MARROCCO: Thank
8 you. Any re-examination?

9 So Mr. Fryer, you've been answering
10 questions all day. You're a witness at this stage,
11 you're not going to ask yourself any questions?

12 MR. TIM FRYER: No, I'm not going to
13 do that.

14 THE HONOURABLE FRANK MARROCCO: If
15 there's something that you want to explain or
16 something you -- go ahead, but I -- I'm -- it's not a
17 time for submissions and you're not going to be asking
18 yourself questions.

19 MR. TIM FRYER: I understand that,
20 sir, and -- and your counsel had explained to me that
21 I might have the opportunity to make some remarks,
22 after the questioning. I do --

23 THE HONOURABLE FRANK MARROCCO: But it
24 doesn't have to be in the nature of the kind of
25 submission that would be made at the closing or

1 something like that.

2 If there's something you want to
3 explain or something you want to say, then go ahead.

4 MR. TIM FRYER: And -- and I was going
5 to say that it's been a long day and -- and I've had
6 quite a bit of testimony because I guess the thing
7 that I would be looking to do would be try to make
8 sure that I put something in so that I could use it in
9 my closing submission, and I -- and -- and I would've
10 hoped that I could have gone through the transcript to
11 have a look at that.

12 THE HONOURABLE FRANK MARROCCO: I'm --
13 I'm prepared to do that. Give you the opportunity to
14 do that and hear you tomorrow morning.

15 At least I don't see any reason that --
16 yes. So that we can accommodate you tomorrow morning.

17 But this is not a closing submission or
18 anything of that nature. It's if you've left
19 something out or there's something you want to
20 explain, then you'll have the -- then that's what you
21 would be doing.

22 MR. TIM FRYER: And I will say that
23 I'm not anticipating anything significant because I
24 recognize that I'm still a participant as well. And
25 if there's something that I feel I need to get into

1 evidence, I have the opportunity through the other
2 witnesses, so.

3 THE HONOURABLE FRANK MARROCCO:

4 Precisely, precisely.

5 All right, so then we'll adjourn until
6 tomorrow morning.

7 MR. TIM FRYER: Okay.

8 MR. WILLIAM MCDOWELL: Sorry, I
9 wonder, just hearing Mr. Fryer, whether -- if Mr.
10 Fryer goes home tonight and looks at the transcript
11 and -- and jots down some points, whether it might be
12 in everybody's interest if he simply filed that rather
13 than coming and reading it.

14 THE HONOURABLE FRANK MARROCCO: Let me
15 ask him.

16 Do you want to -- do you want to do it
17 that way?

18 MR. TIM FRYER: If -- if -- if I think
19 --

20 THE HONOURABLE FRANK MARROCCO: We'll
21 receive it as an exhibit.

22 MR. TIM FRYER: Yes, as I said, I'm
23 not -- I'm not anticipating anything significant. So
24 as long as it was just a matter of maybe correcting
25 one (1) or two (2) things, I can do it either way so.

1 THE HONOURABLE FRANK MARROCCO: Well,
2 if you can do it simply by telling us, that's fine.
3 If you decide to reduce it to writing, assuming you
4 don't say anything outrageous, we'll receive it as a -
5 - as a -- as the clarification that -- that you wanted
6 to make.

7 MR. TIM FRYER: Yes.

8 THE HONOURABLE FRANK MARROCCO: So you
9 can do it in writing if you want to.

10 MR. TIM FRYER: Yes, and as I said, I
11 don't anticipate anything significant right now.

12 THE HONOURABLE FRANK MARROCCO: All
13 right. Tomorrow morning. Thank you.

14

15

16 --- Upon adjourning at 5:07 p.m.

17

18

19 Certified Correct,

20

21

22 _____

23 Wendy Woodworth, Ms.

24

25

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<hr/> \$	1:34 81:18	14th 1:23	193:7	221:11
\$1 116:24 117:1	10 39:19 60:23 62:15 71:12 143:10 147:22,25 199:13,17 ,21 235:18 245:2	15 39:19 71:17 105:16 199:13 220:14,15 222:25	200:23 214:17 226:25 232:5 239:2 243:12 256:25 257:8 262:11 272:25	2011 15:19 16:19 22:18 23:25 26:10 31:7,20 33:14 36:1 38:9 50:13 52:8 54:9 56:6,24 74:13 104:15 115:18 116:9 166:19 180:9 195:24 197:6 221:6 230:8 233:17 235:25 237:3
\$1.1 151:5		15,000 195:16	2:30...fas t 58:21	
\$1.7 6:22		150 26:6	2:36 137:13	
\$124,000 7:12		159 3:9	2:49 137:14	
\$200,000 118:6	10:01 5:1	15th 54:8 56:6 230:8,13	20 110:8 111:13,22 112:6,7 128:13 129:11 130:4,23 131:22 159:13 160:24 161:4,8,2 3 162:18,24 163:1,13 164:4,10 165:22,24 219:25 220:8,12, 14 221:11,22 223:1	
\$5 6:24	10s 95:6	16.3 31:22		
\$900,000 251:1,11	10th 225:12	163 31:15		
<hr/> 1	11:30 5:18 71:16	179 3:10		
1 5:16 10:4 12:6 36:19 50:2,23 110:12 119:2,22 122:22 124:23 125:8,11 131:1 134:9 158:15,19 163:24 173:18 179:9 183:7,8,1 1,14 190:9 193:7 200:14 222:8,20 225:7 234:23 236:24 254:3 255:7 272:25	11:31 81:17	18 106:9 107:19		
	112 219:1 220:25	19 218:8,17		
	118 4:3	1990s 182:8		2012 7:24 10:9 16:19 140:8 145:21,23 150:25 256:20 257:11,12 ,15
	119 4:4	19th 230:10,15 ,20		
	11th 26:9	<hr/> 2		
	12 84:12	2 16:1 25:8 58:21 106:22 107:3,7 120:4 132:9,14 143:18 156:19 162:21 163:19 164:5,6 165:14 173:19 175:19 184:22 189:23		
	120 4:5			
	121 4:6			
	122 4:7			
	123 4:8			2013 113:14
	124 4:9			2014 154:7 257:21 258:22
	126 3:8			
	13th 116:22		2000s 182:14	
	14 257:16,18 ,19		2001 6:7 15:19 184:20	2017 215:22
	14.1 31:21		2006 56:15,21, 24	2018 154:7
1.7 7:4 149:19 150:6	140 16:20 22:15		2010 198:17	2019 1:23
	144 218:7			20-day 109:9,20 166:5
				21st

84:10,15	3 42:8	0:10	40 17:19	3 7:3
225 3:11	63:19	62:25	40/40 95:4	150:16
22nd 74:15	84:20	300	43 244:21	159:17
84:16	90:15	182:9,11	245:11	160:6
236 3:12	106:20,21	201:1	45 221:1	51 228:22
239 83:2	107:7	30-some	4th 140:8	51/49
23rd 84:16	120:4	243:21		228:22
230:9,11	129:19	30th 33:14	<hr/>	55 17:19
24 212:25	130:1	34:6,23	5	56
213:1	164:22	36:1,23	5 3:7	250:6,20
243	209:10,11	145:21	17:20	<hr/>
208:20,24	,12 215:5	257:13	47:3 89:1	6
24th	225:25	31st 11:2	132:17	6 144:4
31:7,20	227:6	12:19	169:16	175:1
32:18	268:11	13:15	227:15	60 111:5
35:22	3,000 57:1	16:19	5.5	144:22
84:16	3.1 103:24	150:25	149:18,24	60/40
25 126:5	3.3 6:25	345 74:7	5/5/5/5	133:23
220:12	3.5 14:22	39 164:18	95:4	617 108:25
26 209:12	30	3rd 152:16	5:07	109:3
249:18	54:22,25	222:2	273:16	62 249:3,7
250:17	55:4	231:4	50 39:14	622 12:23
27 208:25	60:21	<hr/>	40:2,5,9,	65 144:22
209:11	62:14,15,	4	12,16,25	<hr/>
252:15	21 63:5,8	4 3:3	41:19,20,	7
270	66:7	52:14,17	24 60:17	7 219:9
208:5,13	83:12,16,	88:6,20,2	61:10,19	70 62:22
273 3:20	23 101:23	2,25	66:5,8	70070001
27th 37:16	126:17	89:15	92:1,7	225:10
38:3,9,25	180:9	90:8,13	94:14	7026_0001
40:22	183:17	92:12	95:2	104:11
45:2	193:6,15	95:3,7	96:21	7th 87:20
28 209:11	205:9,10,	107:3,25	99:19,24	<hr/>
28th 77:1	11	117:19	100:13,16	8
152:2,9	206:14,18	128:2	101:6	8 158:2
293 62:4	,24 207:2	131:3	103:23	249:8
83:7	208:1,9,1	132:17	106:14	8.2 246:2
192:24	3,16	139:11	110:2	80 182:17
193:3	220:6	196:12	126:16,21	201:1
2nd 75:10	237:6	212:22	178:12	80s 55:24
104:14	250:6,7	227:12	208:5	82 182:17
152:13	251:20,23	268:12	228:20,25	8th 38:21
<hr/>	252:3	4.1 62:9	229:9	41:4 42:7
<hr/>	253:24	4:00 85:4	232:8	
	255:21	4:30	244:5,11,	
	256:1	85:5,6	17	
	30/30 95:6		50/50	
	30:30:10:1		6:14,16,2	

45:5,12	109:11	accounts	176:7	261:16
87:21	110:25	116:9	active	addressed
115:18	111:1	accurate	232:7	16:15
	156:6	95:21	activities	156:11
<u>9</u>	208:25	116:8	170:9	adequate
9 83:18,24	216:16,17	accurately	actual	165:9
84:12	249:18	9:16	134:23	175:11
207:20	acceptable	achievable	210:2	adjourn
208:13,24	12:14	76:11	241:12	272:5
227:5,24	112:12	achieve	244:8	adjourning
228:17	acceptant	49:1,12	actually	84:21
245:2	86:23	176:24	5:15 11:3	273:16
255:10	accepted	achieved	17:13	adjusted
9.1 212:25	26:8	178:6	50:23	151:13
213:16	143:22	achieving	55:9	adjustment
9:08	265:9	96:1	71:11	151:3,5
225:12	accepting	acquaintan	76:17	admin 8:16
90	111:20	ces 55:19	89:12	advance
209:3,4,1	130:7	acquire	99:24	47:23
7	access	50:5	101:24	76:4
90s 55:24	97:18	acquirer	109:20	230:17
97 1:19	223:6	220:9,10	116:13	advantage
	accommodat	244:1	117:12	43:16
<u>A</u>	e 271:16	acquisitio	136:1	advantageo
a.m 5:1	according	n 185:3	150:8,25	us 80:18
81:17	106:23	197:22	205:21	advantages
abilities	151:13	202:9	212:15,23	192:16
248:4	226:14	acquisitio	213:5,15	advice
254:5	account	ns 158:8	214:4	52:1
ability	115:24	201:2	215:22	176:4,11
106:4	116:2,5,2	acronym	217:1	262:5,8
119:23	3 118:24	255:2	219:25	263:13,23
128:22	accountant	across	221:5	264:9,12
181:17	94:17	83:16,24	249:7	advise
able 44:14	126:24	102:7	266:23	59:22
49:10	149:12	103:22	269:3	advised
58:11	238:22	167:12	Adams	81:9
85:20	262:23,25	263:19	157:3	88:20
111:23	263:13	Act 91:5	add 25:5	147:22
133:2,14	264:9	187:18	added	advising
151:1,2	accounting	acted 9:9	150:9	81:6
165:13	167:1	265:20	additional	advisor
170:12	238:22	acting	45:11	148:21
absence	239:18	139:18	address	150:21
141:1,12	240:13	accounts	84:9	262:23
accept	262:15	116:9	203:7	
104:20	263:1	active	236:24	
		activities	238:16	
		adequate		
		adjusted		
		adjustment		
		admin		
		advance		
		advantage		
		advantageo		
		us		
		advantages		
		advice		
		advise		
		advised		
		advising		
		advisor		

affected 20:7 103:5 136:6	212:16,20 ,22 213:4,14, 21 226:12 241:6,10 264:4,10	245:16,24 246:1 Alectra's 244:1	187:21 197:3 199:17 251:9	29:9,11 30:6 37:5 102:18 127:19
affiliated 107:12		allegation s 141:20 142:6	Amaizeingl y 115:11,23 116:4 118:9 119:5 124:23	and/or 42:17 angst 34:15 announce 261:7 announced 268:1 announceme nt 5:16 announcing 260:19 annual 8:15 34:7 259:20 annually 14:17 19:1 answer 9:16 53:12 61:1 63:22 90:6 166:2 190:19,24 211:11 263:8 265:24 266:1 answering 266:11 270:9 answers 169:6 181:23 anticipate 273:11 anticipate d 39:17 156:16 anticipati
afraid 254:13	agreements 9:25 10:7 11:9	allegedly 169:20 176:7		
afternoon 58:10 81:21,23	12:12 13:7 14:10,16, 19	allocate 19:6 101:23	amended 10:7	
afterwards 53:4 190:15	15:3,10 20:17 65:17	allocated 13:20 19:4,5 248:23 251:17 252:18,22	amending 9:24 11:9	
ago 54:22 58:1 90:7 158:3 163:18 188:24 220:6 233:11 248:20	112:19,25 168:1,8 214:3 240:25 ahead 126:7 159:5 213:25 235:3 236:12 270:16 271:3	allocation s 8:11 allotted 249:10 all-out 202:18,21 allow 49:4 75:8 114:9 allowed 110:21 already 33:19 58:14 128:2 150:8 269:16 alternativ es 48:22 am 9:15 38:5 54:15 125:25 130:24 145:10 149:5 154:9	amendments 10:3 168:7 amiable 211:8 Amiably 130:21,22 amicable 160:9,11 among 183:10 amongst 73:18 83:14 96:11 98:7 154:16 amount 6:16,23 15:12 110:19,22 117:23 125:13 160:13 amounts 205:12 analogy 262:25 analysis 8:13 22:17	
agreed 117:10,12 253:8				
agreeing 119:18	Aird 176:6			
agreement 10:11,15 11:2 12:20 13:6,10 16:6 20:18 64:7,17 65:11 101:13 106:19,24 107:9,10 109:19 111:19 113:17,20 154:10 159:20 167:22 171:7 176:12,17 210:3,5	aired 91:23 ALE0002782 244:21 ALE0005133 .0002 4:9 ALE3296 212:19 ALE4330 219:12 ALE5133.00 02 105:8 Alectra 2:7 111:7 179:9 242:2 243:7,17, 18,23			

ng 271:23 272:23	28:16 84:25 137:8	18:2	230:4 237:1	April 221:6
anticipati on 44:13	apart 200:23	applies 242:17	approached 83:23	arbitratio n 245:10
antidotal 128:5	apologize 247:10	88:11 106:20,21	91:16 155:9 190:6 191:3	246:2,5,1 1,24
anybody 139:17 148:3 191:13 219:8	248:12 250:13 256:6 262:15 263:11	appointmen t 5:17	approaches 98:17	area 32:3 39:14 54:23 56:20 157:22 229:12 230:3 237:17
anyone 16:13 30:6 45:11 48:12 67:18 70:6 73:25 87:15 142:2 162:8 169:18 170:19	apparently 137:17	apportion 21:22 83:15	approachin g 202:16	aream 126:12
	appear 247:7	apportione d 62:14	appropriat e 35:11	areas 23:5 126:12 179:14
	APPEARANCE S 2:1	apportioni ng 83:23	36:18 67:1 86:14 88:7 94:15 159:20 175:7,14, 15 270:3	aren't 136:6
	appeared 100:3 225:15 247:10	appraised 235:8	appropriat ely 8:12	argument 20:14 94:25 267:23
	appears 163:23,24 167:9 174:25 220:3	appreciate 27:25 114:16 233:10 252:4 255:7 261:3	appropriat eness 176:23	argument's 251:1
anything 14:10 25:14,20 39:16 41:24 44:21 59:5 67:13 68:6 89:5 93:11 104:8 126:21 135:25 138:15 146:21 148:9 157:8 163:1,2 197:23 239:13 243:1 271:18,23 272:23 273:4,11	apples 82:4 247:24 248:5 251:10	apprised 34:8 175:5	approval 111:10,11 124:4	arises 152:5
	apples- and- apples 250:25	approach 6:11 27:20 86:21 88:25 89:2 91:9 96:21 100:24 108:7 117:7 118:8 168:1 185:11 188:9 190:7	approve 12:16 18:24 104:20 145:18	arithmetic 208:13,25
	apples-to- apples 73:3		approved 16:1 120:10 145:7,12 265:4 268:6	arose 165:22,25
	applicable 29:25 158:11		approximat ely 6:24 54:25 195:16 201:1 251:11	arrangemen t 6:2 8:9 13:24 14:7,25 96:8 104:24 154:22 211:8
anyway	applicatio n 140:10 applied 15:20			arrangemen ts 7:15,24 9:1 21:15 64:7

arrived 131:21	104:3	26:17	33:24	215:21
article 157:4	assigning 71:6 101:25	84:10 170:3	78:18 80:2,3,10 83:16	259:4,9 268:5
aside 123:15 243:13	assist 44:14 165:2	attendance 26:11	90:4 205:10 260:13	away 72:25 76:17 120:8 268:22
aspect 10:21 95:1	assistance 51:14 175:23	attended 93:17,25 143:9 175:4,13 257:6	average 209:6,19	awful 29:15 129:5,24
aspects 34:17 52:18 227:22	assisted 225:19	attending 52:6 56:9 104:25 175:10	averaged 252:14	awkward 85:10,14
assess 232:7 258:4	assists 77:20	attention 87:18 105:21 198:15	avoid 217:5	<hr/> B <hr/>
assessed 31:21 227:21	Associate 1:7 2:4	attitude 119:9,12 120:24 123:10,19 265:1,17	avoided 191:21	background 221:8
assessment 32:14 242:14 247:25	associated 125:18	attic 119:9,12 120:24 123:10,19 265:1,17	aware 11:1 13:8 26:24 27:5,13 30:10,12 36:2,5,21 ,24 37:12 39:17 40:21 50:7 54:17 68:14,16, 19,21 70:13 73:21 76:6 87:23 99:19 101:5 109:20 118:10 121:4 140:15 146:14,18 151:8 159:15 161:8 166:12 176:6,8,1 1 177:19 180:25 181:12 182:7 199:17	bad 188:11 Bain 2:8 balance 219:13
assessment s 254:25	assume 94:20 122:8 125:25 128:22 131:10 138:2 144:7 148:25 237:24 251:16 268:13	attitude 134:8		bank 118:24 239:6,14
asset 28:8 39:24 133:2	assumed 26:25 27:9 35:2,13 48:17 122:6	AUDIBLE 16:12 184:4		bankrupt 124:24
assets 6:19 24:13,16 75:25 184:7,10, 15 185:4 186:2 187:6 188:5	assuming 51:9 89:23 273:3	audit 148:16 170:3		bankruptcy 125:19
assign 72:7,19 73:6	asymmetry 128:22 162:7,20	auditors 8:11 18:24		barometer 255:22
assigned 66:7 73:11,13 101:21 103:20	attempt 167:22	August 231:3		Barrie 54:21 55:9,17 179:23 180:5 203:24
	attend	authorizat ion 144:5 190:7		base 15:10 132:19
		available 19:12 29:14,24 32:14		based 15:3,7 43:10 44:19 133:22 134:2 240:10 242:14 243:2

245:15	37:12	59:17,18	212:25	Bentz's
247:19	40:21	61:11	227:4	218:11
255:3	41:17,19	63:6	230:19,20	219:18
259:18	43:11,15	68:22	249:3	220:19
265:6	68:20	73:14	254:14,21	221:15
266:8	99:18	76:25	269:21,24	Berlis
269:25	220:4	78:13	270:2	176:6
basically	242:23,25	79:14	believed	best 58:17
22:8	258:22	80:6,25	8:24 9:22	60:15
37:18	becoming	81:2,5,9	35:16	79:15
42:23	40:7	87:7,20	121:7	90:21
49:13	195:11	90:20	Belina 2:8	102:17
111:23	beginning	92:21	beneficial	112:23
112:20	7:21,24	93:16,21	6:1	136:17
152:17	16:19	96:20	7:8,25	188:20
186:18	28:2	99:16	8:3 9:2,6	254:14
221:18	behalf	100:19	81:2	255:4
231:25	131:16	105:15	192:5	269:24
basis	134:13	112:6	benefit	better
13:21	159:2	114:7,18,	173:14	45:3,7,13
16:2 18:3	behind	19	174:11	47:25
29:7 49:6	88:3	119:6,18	258:2	122:11
94:24	118:12	121:9,13	261:21	183:10
117:16	144:21	122:22	benefits	186:12,15
171:6	169:1	132:13	10:1,16	251:8
Bay	174:19	136:14	11:11	256:10
55:10,15	181:4	138:19	17:22	beyond
56:2	belief	139:7	238:19	27:3
58:13,15	86:12	144:12	Bentz	269:12
180:14	146:21	145:22	54:8,17,1	bid 20:20
183:16	158:13	146:20	9 56:1	62:22
Beach	beliefs	152:13	57:4,11	97:6
122:22	86:18	153:19,24	58:2	101:22
204:3,5	believe	160:2	59:6,16,2	103:21
bear	8:1 12:21	161:17	4 179:18	104:4
123:16	13:25	162:17	180:13	105:20
became	15:5	170:21	181:1	231:9
43:18	23:20,24	171:11,12	183:15	251:2,12
67:4	24:3,5	,22	218:5,24	bidder
101:5	25:2	174:15	220:5	52:6
120:16	26:11,25	178:20	221:5	57:12
154:12	29:18	181:3,17	222:3,14	66:18
161:8	31:3	187:11,12	224:21	68:6
187:25	35:23	188:15	230:5	205:6
243:17	37:15	189:7,24	231:25	bidders
268:5	38:10	192:6	233:24	20:22
become	40:23	193:25	237:5	53:2,20
30:9,12	48:1,9	199:20	242:18	68:2,4
		200:18		
		206:5		
		207:7		

98:9	258:7	45:8	21	150:2
222:17	271:6	bonafide	252:1,4,7	bottom
bids 82:3	blame	37:19	,13,16,21	54:7
97:19	219:9	bonus	,25	74:13
99:13	blaming	259:15,16	253:5,15,	75:8 98:5
233:18	219:8	bonuses	16,19,22,	99:7
bill 118:3	board 20:9	259:21,25	23	115:17
119:24	26:17	260:20	254:2,10,	155:6
billed	38:21	261:8	18,24	212:22
118:5	41:5	Bonwick	255:6,14,	218:8
billing	42:6,20,2	2:10 3:12	20	245:11
19:3	4 44:9	68:14,17	256:2,5,1	bought
21:1,4	45:4	69:5,10,1	3,16	164:5
56:12	46:23	5	257:4,10,	bouncing
117:20,25	47:11	70:4,6,14	14,19	179:16
120:14,19	64:1,15	,19,24	258:1,6,2	branch
,24 123:4	65:4 76:7	121:4	0	232:1
194:14	88:16,17	234:21	259:3,9,1	brand-new
195:6,11	104:13,18	236:8,9,1	4,19,23,2	29:2
263:24	115:19	3,19,22,2	5	break 5:19
birthday	119:17,18	3	260:3,9,1	71:16
243:12	120:10	237:10,14	6	76:23
bit 13:4	122:15,18	,23	261:3,10,	77:16
19:2	124:3,7,1	238:3,6,9	14,25	81:14
62:24	0,14	,14	262:3,7,1	84:12
63:4,8	138:25	239:6,9,1	1,14,21	137:8
82:19	139:3,17	2,17,21,2	263:10,21	236:15
85:10,14	150:17	4	264:3,7,2	254:13
97:23	169:13	240:4,8,1	0	breakdowns
104:15,18	170:3	4,21	265:5,10,	207:13
105:17	173:14,24	241:12,19	16,21	break-even
117:24	177:11	242:1,5,8	266:10,19	18:3,4
126:13	182:25	,13,17,20	,23	breakfast
129:23	188:8	243:4,9,1	267:1,8,1	222:21
144:18	221:7	5,20	0,25	breath
156:25	222:11	244:3,19	268:1,7,1	238:25
157:21	225:11,17	245:4,7,1	3,23	Breedon
166:23	,20,25	3,14,22	269:7,11,	2:19
179:16	226:9,11	246:19	20,21	Brian
193:6	227:6	247:3,13,	270:5	54:8,10,1
209:20,24	232:2	18	Bonwick's	7,19,20
220:6	242:9,11	248:2,7,1	69:22	56:10,13,
225:16	246:25	2,18	121:17	18 179:18
227:17	260:17,22	249:1,6,1	books	218:24
229:12	265:4	0,13,16,2	150:25	220:5
240:22	266:14	1,25	border	230:5
245:7,9	boardroom	250:4,9,1	261:6	
246:4	139:6	2,16,19,2	borrowing	
253:24	Board's	2	111:12	
		251:7,15,	112:2	

231:25	103:2	8:15	n 240:9	236:17
brief 5:15	118:13	33:17	249:14	carrying
7:18 13:1	broken	63:17	calculatio	138:23
31:17	137:4	97:23	ns 21:21	case 21:8
32:5,10	brought	148:21	calculus	25:13
33:10	21:17	150:21	208:12	44:10,13
37:1,24	87:18	187:17,18	calendar	76:9
42:10	101:12	,24 232:4	112:6	87:10
47:15	177:24	240:24	camera	100:1
51:3	192:24	243:10	36:22	116:13
53:6,25	218:6	261:22	37:16	117:6
54:4 62:6	260:5	262:8,18,	87:19,24	118:9
74:9	263:23	23 263:15	88:16	131:14
75:1,5	264:14	buy 39:23	93:18	166:8,10
82:15,22	Brown	64:7	104:19	172:9,12
83:4 84:6	257:24	79:1,2	139:8	205:17,19
107:21	258:21	109:12	CAO 6:17	237:22
109:1	budget	114:10,22	23:2	263:17
115:14	23:15	,24	258:21	cases
124:18	50:20	128:22	260:18	135:21
126:1	building	163:19,20	capacity	cash 7:13
136:21	143:11	209:25	150:21	catch
137:1,23	238:24	210:6,12	capital	103:12
140:5	239:10	211:15,24	64:6,16	cause
147:7,18	240:5,16,	212:8,10,	133:23	10:15
156:22	19	15	134:2	34:15
158:24	built	214:3,5	151:3	85:1
164:15	241:10	215:9,17,	card 118:2	101:13
167:18	bullet	18 217:14	care	112:6
178:18	63:9	buy/sell	67:2,7	143:19
193:1	64:6,11,1	210:4	120:14	232:11,18
204:22	4 66:6	213:5,12	career	233:1
234:16	83:11,17	buyer	254:3	caused
244:24	108:22	152:6	Carman	157:21
248:10,16	150:23	buying	256:20	causes
259:12	193:7	129:11	carried	84:24
briefly	bullied	132:20	42:15	233:15
155:18	142:2	buy-sell	154:11	caustic
bring	bullying	241:4,14	carries	258:23
33:12	141:21	245:18	138:18	CBB39
74:20	142:6	246:8	carry	147:3
84:2	bumped	<hr/> C <hr/>	20:17	164:18
145:14	56:8	calculated	71:17	ceases
163:6	bureaucrac	134:1	136:11	145:4
167:25	y 235:13	calculatin	146:22	CEO 9:9
213:1	business	g 15:15		55:11
219:12		calculatio		
264:4				
bringing				
50:9 88:3				

68:24	146:8,18	242:21	charges	176:3,10,
69:1	148:22	challenges	17:24	15,21
147:13	174:18	259:6	18:2	177:2,5,9
220:8	175:13	challengin	19:25	,21
223:4	176:18	g 167:6	118:7	178:2,5,1
261:6	181:15	254:20	charm 83:7	5,20,24
certain	185:9	258:23	chart	Chief 1:7
14:12	192:15	Chambers	97:3,9,18	choice
31:9,10	196:15	1:18	chat	58:17
32:18	197:16	chance	59:4,6,8	210:18
45:16,18	203:23	21:3 59:4	chatter	choices
46:8	224:13,16	77:9	30:23	143:18
51:12	240:14	change	136:2	choose
61:5,22	241:13	15:4,8	Chenoweth	216:16
68:19	242:14,19	34:20	2:16 3:9	246:17,19
73:15	243:23	72:6 91:9	141:24	247:1
97:16,21	247:12	258:5	142:9,16	260:22
101:11	257:1	changed	159:5,7,8	chose
115:4	265:8	28:22	,22	158:19
116:16	Certificat	257:25	160:4,14,	160:13
120:22	e 3:20	258:4,19	20	217:21
125:12	Certified	changes	161:3,11,	chosen
131:13	273:19	21:17	14,20	86:12
136:10	cetera	49:8	162:4,12,	167:12
138:21	214:11	55:13	15	168:21
148:9	215:3,5	167:1	163:3,11,	217:11
151:2	219:13	180:16	16,22	Christmas
153:1,2	220:1	181:2	164:3,20,	257:5
161:19	CFO 46:11	186:20	21,24	CIBC
190:1	66:13	235:15	165:8,17	238:24
191:1,21	86:13	261:4	166:1,11,	239:1
199:19	91:16	Chaplin	16,25	Cindy
227:22	CFOs	6:13	167:4,8,1	10:22
243:2	268:25	17:14	6,20	255:23
260:24	Chadwick	133:22	168:17	256:5
certainly	111:25	characteri	169:5,15,	circles
12:11	chain 54:7	stics	18,24	240:24
32:2	chair	21:5	170:7,13,	circling
36:13	22:20	charge	18,22	219:11
39:22	26:17	19:25	171:3,15,	circulatio
46:20	27:2	119:24	18,24	n 28:1
47:4 50:7	88:17	122:25	172:6,14,	circumstan
52:24	138:6	232:1	22,25	ces 39:18
57:14	139:21	charged	173:3,11,	143:6
63:11	challenge	123:2	17,22	151:16
76:6 81:7	129:14,16	248:3	174:1,5,1	220:5
88:3	130:8		0,14,23	
123:20			175:6,12,	
127:3			18,22	
128:7				

243:3	99:12	CNN 136:8	10:24	176:7,13
city	clear	co 49:16	13:18	182:8,24
242:10	43:9,18	code	14:2	184:14
CJI7986	44:4,10,1	155:20	18:8,9,13	186:22
33:8	8 100:4	156:11	22:17,20	189:15
clarificat	182:20	colleague	23:10,22	192:12,13
ion 273:5	186:15	237:17	24:21	,19 194:3
clarificat	250:14	colleagues	31:21	195:23
ions	252:23	259:4,5	32:15	196:2,7,1
108:1	255:15	268:16	33:17	3 197:8
clarify	cleared	collection	36:19	199:5
167:23	116:5,9	129:24	37:6,12	202:9
255:7	Clearly	Collingwoo	38:18	220:11
clarity	254:4	d	40:22,23	222:11
167:25	Clearview	1:2,17,20	41:4 42:7	223:4,11
clause	6:19	2:18 11:1	45:4	225:11,17
99:15,17	184:7,15	13:20	48:25	230:6
100:3,12	185:22	14:5,12	50:3	232:2,9
101:17	186:4,8	18:9,12	59:12	233:18
103:3	187:2	23:14	60:7	235:16
107:24	188:4,11	52:19	63:17	245:16,25
108:3,21	189:21,23	55:16	64:1,15	254:2
109:4,16,	190:4,6,7	57:8	66:14	256:18
23	,9,23	58:2,7	67:5,23	257:12
110:1,4,1	191:3,13,	74:17,19	70:25	258:10
8	14	78:5	78:4,8	259:7,15
112:10,13	client	106:22	79:17,19,	260:4
114:9	225:21	111:19	20,22	263:25
128:10,11	close	114:6,12	80:7 81:6	269:25
,21	168:11	129:2	87:19	Collus's
130:12	220:5	132:17	88:15	134:1
131:9	264:22	188:5,12	92:11	column
132:8	closed	189:1,6	104:13,14	97:24
146:1,4,9	22:9	191:4	,22	columns
150:11	150:25	198:12	111:6,15	98:6
159:10,11	closest	221:17,22	115:19	comes
,16,19	251:2	222:4	119:10,11	31:13
160:1,5,1	closing	235:16	123:7,16	104:19
6,22	14:7 19:9	245:16	128:18	200:17
161:22	22:5	256:19	132:3	218:23
163:24	168:1,11	Collingwoo	138:6	227:17
164:24	270:25	d's 87:10	141:2	241:20
165:12,20	271:9,17	195:15	144:25	comfortabl
,23	clout	colloquial	152:7	e 11:16
166:5,7	221:19	213:8	153:1,10,	coming
240:23	Club 58:13	Collus	20 154:13	57:17,18
242:23		2:21 5:25	155:19	68:11
clauses			156:8	139:2
			163:20	143:1
			173:13,19	
			,23	

164:2	community	127:20	227:14	233:1
238:10	254:12,15	259:5	concepts	235:12
272:13	255:4	complete	65:15	concluded
commencing	258:11	8:8	172:1	226:10
5:1	companies	203:10	concern	conclusion
comment	17:25	completed	10:16	259:2
20:9	187:10	87:15	92:17	conclusion
160:18	230:6	106:6	111:21	s 36:12
161:12,16	company	completely	160:23	conditions
164:1	19:20	173:10	161:4,21	13:16
177:10	32:1	200:2,8	162:5	conduct
195:13	69:22	239:3	163:17,18	29:9
203:9	75:23	240:9	,23,25	47:24
258:17	76:10	complicate	164:21	48:21
comments	77:10,11	d 129:25	165:11,20	155:20
30:22	78:5,9	component	,21,22	156:11,14
163:5,12	79:12,18,	61:20	166:4,5,6	conducted
176:22	23 80:17	63:12,13,	232:12,18	29:5
254:20	81:10	15 103:20	233:15,22	conference
261:17	91:7	104:4	,24	116:21
Commerce	120:19	193:15	234:5,6	confidence
239:7	121:8,12,	205:9	concerned	247:20,22
commercial	17 128:17	252:18	9:14	248:3
117:5	145:4	269:8	79:16,21	250:23
commission	148:14	components	86:24	254:5
142:7	156:1	60:22	138:11	262:1
commission	226:4	62:15	154:19	confident
ed 129:18	240:11	92:1	162:1	8:10
Commission	265:12,14	95:14	168:6	confidenti
er 137:11	comparable	97:6	177:18,20	al 52:23
committee	250:25	101:22	,22	141:7,9
159:3	comparable	105:20	195:15	confirm
170:3	s 248:5	comprehend	243:7	213:22
common	comparativ	228:24	266:5	confirming
215:4	e 8:13	con 93:20	concerning	8:16
261:11,13	73:3,6	concentrat	230:4	28:15
communicat	compared	ing 10:25	concerns	151:10
ing 27:16	204:5	concept	11:8	conflict
communicat	comparing	43:10	36:19	265:13
ion 230:7	247:24	44:4	44:25	266:16
234:2,4,9	comparison	160:6	70:22	267:3,15
,13	82:4	162:6,7	87:16,18	conflicts
communicat	251:10	169:21,23	134:23	266:5
ions	competing	170:1,5,1	143:16	confused
59:20	134:10	7,23	150:11	169:6
	246:6	174:15	159:11	
	complaints	210:2	164:6	
			166:12,13	
			231:14,18	

262:22	208:6	consultant	22:13	150:16
267:19	considered	s 261:22	42:4	211:3
confusion	6:8 28:20	consulted	71:19	217:1
238:18	37:7,9,13	174:25	81:20	228:21,23
conjunctio	39:13	consumptio	82:24	229:2,7,1
n 187:13	46:24	n 117:16	85:16	0,14,15
connection	78:11	contact	95:9	244:6,9,1
121:23	88:21	56:5,23	102:25	5,18
consensus	90:9	140:12	107:17	245:18
171:6,12,	92:13	contacted	115:9	controlled
20	141:12	189:1,5	125:15	229:5
172:2,5,1	148:23	contacting	137:19	conversati
5 173:8	169:12	152:16	142:12,21	on 25:3
consequenc	171:1,13	contain	164:20	35:2 69:5
e 80:13	172:11,13	214:24	200:11	92:11
152:3	224:10	215:9	214:1	255:9
consequenc	226:5	contained	224:1	268:4
es 79:7	227:5,13	8:14	235:5	conversati
conservati	244:12	17:14	245:13	ons 6:17
on 226:7	considerin	contains	253:22	25:20
consider	g 6:15	213:4	267:25	75:13
40:4	35:6	contemplat	269:20	81:11
46:21	40:13	ed 152:23	continues	94:10
57:10	75:19	153:9	219:6	98:12
63:5 88:5	92:19	content	continuing	112:21
100:2	99:19	30:7	49:9	168:12
101:12	134:19	93:13	contractua	255:11
143:4	227:10	contention	l 260:23	conversion
159:18	237:20	90:2	261:4	19:21
186:1	238:6	contents	contractua	77:4
197:20	consistent	3:1 11:22	lly	convey
232:22,24	13:23	65:10	241:15	29:23
257:2	14:6,24	context	contrary	30:24
considerat	31:24	76:13	165:18	conveyed
ion 57:22	110:5	241:20	contribute	25:3
65:5,12	consolidat	continuat	d 154:23	27:12
159:25	ion 183:2	on 12:20	contributi	45:19
235:7	constitute	continue	on 174:3	47:1 77:2
considerat	187:9	10:11	control	93:20
ions 20:7	constitute	49:4 77:7	22:25	152:18
59:11	d 220:20	86:16	24:19,20	183:5
64:9,18	constructi	168:25	41:15,25	190:17
65:9,18,2	ve 257:7	181:16	64:19,25	conveying
3 66:5,8	consult	continued	65:6,13,1	152:17
83:13	16:13	3:6 5:22	9 96:23	227:5
97:13	consultant		106:5	Cooper
103:24	29:20		114:6,17,	2:12
			20 128:12	22:20

23:19	1	122:19	47:12	couple
198:20	128:14,25	123:7,22	50:21	11:9
225:21	129:12,19	192:4	53:16,19	30:17
cooperatin	132:14	cost-	86:12	34:21
g 103:9	146:17	effective	93:19	81:25
cooperativ	151:25	9:13,20	104:22	115:10
e 55:10	153:11	10:1	105:10,13	129:8
180:14	155:16	49:11,16,	,19,24	133:17
183:16	163:13	17	109:21	147:4
copy 23:18	165:23	cost-	111:10,12	210:1
31:6	170:10,15	effective	,23 112:2	238:16
cordial	172:17	ly 8:9	129:10	261:15,17
257:2	177:25	costing	130:8	course
core	193:12	263:1	135:2	15:12,23
256:10	252:13	costs	154:7	17:11
Corp 74:17	257:15	8:6,17,22	158:8	20:14
76:1	261:23	14:18,23	161:12,16	86:19
104:14	265:2	16:4	169:13	135:16
corporate	266:17	17:6,11,2	174:24	149:15
19:23	267:13	1 18:25	177:18	171:4
76:7 77:6	273:19	19:4,13,1	185:22	175:2
80:21	correcting	5 24:11	190:5,9,1	179:9
81:3,8	272:24	25:1	4	184:2,14
263:20	correction	50:14,24	196:6,11	193:3
corporatio	257:20	96:13	198:21	206:12
n 2:8,22	correctly	123:3,8,1	221:23	210:24
18:4	17:2	6,18	226:6	211:19
39:25	53:16	198:7,22	231:12	212:3
91:1	144:12	199:6	257:15,21	214:17
107:13	145:23	could've	,24	216:4
146:7	247:6	217:10	258:18,21	223:10
187:18	257:12	council	councillor	239:18
223:11,14	correspond	1:18 11:4	161:6,23	245:23
240:2	ence	13:13	162:9	255:10
244:12	74:12	22:22	councils	256:8
corporatio	cost 8:18	27:13	196:22	264:24
ns 86:18	9:11,17,2	28:21,25	256:22	265:11
187:18,24	0 10:17	29:2	counsel	267:13
correct	12:14	33:14,15	2:3,5,10,	court
11:3	13:21	34:8	14 71:15	82:19
18:22	14:21	35:12,16	255:7	194:19
26:12	15:10,24	36:1,5,7,	270:20	cover
45:22	23:6	21	count	147:4
86:7	24:20	37:16,19	249:17	covered
111:17	95:17	38:2,3,9,	counted	123:23
126:18	96:1,7	14,19	83:17	CPS 102:10
127:2,9,2	112:22	40:19	counter	104:10
	113:15	45:2,12	254:14	CPS0002668
	118:19	46:3,23		

4:6	119:1,4	currently	268:2	262:25
CPS0006920	criter	66:7	dated 77:1	dealt
248:14	255:17	CUS 75:25	152:2	141:16
CPS0007	criteria	76:2,4	David	187:12
225:10	47:21	customer	108:12,18	Dean 22:20
CPS0007018	51:7	8:17	day 7:21	26:17
_0001 4:3	60:9,10	56:12	74:14	debt
CPS0007026	61:3	116:11	84:13	6:8,9,12,
_0001 4:7	62:10,23	117:4,5,6	85:4	21,23
CPS0011306	64:2	118:4	131:22	22:24
4:8	73:18	119:24	145:6	23:12
CPS11306	83:8	127:10,17	153:9	24:19,22
103:8	95:3,5	128:4	160:24	133:23
204:20	126:16,25	132:19	161:5,23	220:13
CPS2668	127:7,25	133:19	162:18	221:18,22
82:13	193:5	customers	228:11	223:2
155:4	206:14	117:7,14	230:20	debt/
CPS4397	248:13	118:1	231:12	equity
37:22	249:22	119:21	266:15	6:14
CPS7018_00	criterion	127:20	270:10	decades
01 115:12	127:18	136:6	271:5	55:23
CPS7018_30	critical	189:12	days 54:21	196:19
001 41:8	128:5	191:20	110:8	December
cranked	cross-	195:10,12	111:13,22	87:20
138:7	examinati	,16	112:6,7	92:12
create	on	cutting	128:13	104:14
23:13	3:8,9,10,	198:22	129:11	218:24
24:22	11,12	199:6	130:4,23	222:1
82:3	126:9	<hr/>	159:13	decent
153:14	159:7	D	161:8	19:15
243:10	179:6	damage	162:24	73:2
247:23	225:6	157:3	163:1,13	decide
created	236:22	Darius	164:4,10	77:7
166:17	247:5	269:13,16	165:22,24	110:21,24
229:14	crunching	data	245:24	,25 273:3
creating	262:18	66:17,23,	deadlock	decided
229:4	culminatio	24 67:6,7	130:14	6:17
creation	n 118:12	68:3	deal 87:14	20:13
176:16	current	129:24	112:19	80:21
credit	10:12	date	142:5	86:21
116:25	52:17	57:4,16	149:20	87:11
117:2,8	96:8	58:3	dealing	92:22
118:2,18,	116:3,23	87:20	11:16	95:6
20,21	118:14	145:20	12:9 91:9	99:24
	125:15,16	152:10	100:6	100:13,15
	151:11	164:9	127:16	135:3
	179:10	165:1,10	185:24	158:8
	220:5	221:9	deals	172:1

216:8	deeply	269:6	25:17	differenti
deciding	151:23	department	36:14	al 6:22
112:23	definitely	s 16:1	89:24	117:21
188:9	76:21	17:12	152:4	differentl
decision	99:14	dependent	details	y 62:25
25:24	111:10	107:4,11,	140:13	152:23
43:7 48:6	120:5	12	determine	difficult
79:13	123:22	depending	48:21	167:25
86:20	125:21	151:16	60:14	168:19
88:2	171:16	deposit	70:6	243:17
90:24	174:4	117:4	determined	difficulty
112:3	193:25	118:19,23	26:16	118:10
122:16	204:17	depth 90:1	61:12	166:2
124:13	227:23	139:25	develop	229:13
130:9	237:8	deputy	130:14	dig 153:6
226:1	238:2,5	93:24	263:24,25	direct
227:15	241:24	157:5	264:4	166:2
265:6	242:12	227:11	developed	168:12
268:2,9	269:17	deregulati	171:20	directed
269:22,24	definition	on 184:23	203:10	36:7
decision-	244:8	describe	difference	67:13
maker	245:15	89:12	98:17	direction
185:23	degree	186:18	150:2,9	43:4
decision-	38:15	213:8	209:15,22	182:20
making	63:6	described	different	183:1,2
26:4	112:4	10:15,17	17:1	205:3
48:13	113:5	27:23	28:24	245:3
decisions	196:25	173:5	41:3 45:3	directive
47:10,13,	258:3	180:6	78:15	205:15,20
18,21,22	262:1	220:9	85:18,23	206:22,24
81:12	266:9	describes	87:11	directly
90:21	delay 20:4	13:5	89:10	7:5 12:6
91:1	82:20	22:19	90:25	45:19
263:6,15	delivered	109:4	92:19	67:10
264:13	33:23	descriptio	130:15	68:6
deck	259:21	n 4:2	132:18	112:21
38:2,4,13	delivery	13:15	142:15	113:9
,19	52:16	186:12,18	163:18,25	director
declared	delving	221:15	164:6	9:10
265:12	55:11	241:18	165:21	221:17
266:22	demonstrat	256:10	166:5	directors
declaring	ed 250:23	258:14	189:23	42:6 44:9
266:5	department	261:20	190:2,19	64:1,16
deem 150:4	9:11,12	deserved	214:4	65:4
deemed	17:16	206:25	229:4,6,1	104:13
133:23	23:3	detail	3 239:25	225:11
134:2	166:23		240:13	242:9
	186:25		269:14	

260:18	222:1,10	distracted	151:19	34:13
disadventa	233:8	95:23	158:4	35:17
geous	244:4	distributi	163:6,7	36:3,5,10
153:15	discussion	on 6:11	165:3	55:17
disagreeme	s	86:18	166:18	61:24
nt	38:12,17	133:22	177:24	86:14
246:7,14	48:5	186:9	192:23	93:6
discovered	50:10	187:9,19	207:13,19	111:25
80:13	51:6 60:9	diverse	213:2	112:5
discuss	61:2,15	242:11	218:12,25	126:11
42:16	65:22	divide	219:9	133:3,8,1
73:12	66:2,18	208:24	225:9	5 147:14
77:16,17	70:17	252:10	244:20	148:17
88:11	76:19	dividend	documentat	195:23
158:7	78:1	7:13	ion	196:7
196:22	80:24	149:25	152:18	205:21,22
discussed	86:19	157:13,17	155:24	,24 252:7
44:16	92:3 94:7	,19	198:5	255:3
48:8	96:11	158:6,9	documents	265:4
52:12,22	98:15,25	239:15	11:2 57:1	268:22
58:1	99:10	240:10,18	85:19,20	door 143:9
78:22	101:16	dividends	113:23	203:24
79:6,25	108:21	238:18	143:1	204:3
98:13	112:11,15	dividing	155:24	243:22,23
105:4	113:2,5,9	60:22	226:18	Douds
discusses	,23	division	241:13	55:10
74:12	124:13	83:19	dollar	181:4
discussing	146:11,15	divorce	118:19	dozen
5:24 25:6	182:24	160:7	235:9	179:14
discussion	185:2	divorced	dollars	dozens
43:7,23	188:4,13	130:19	7:11	240:25
44:2	197:10	doctor's	118:6	draft
48:10	221:15	144:5	domain	31:6,13
50:8	displayed	document	260:1,5	33:23
51:21	224:12	12:23	Don 55:10	35:21
60:14	dispositio	16:24	done	76:15
61:12	n 245:19	17:14	8:7,9,12	198:5,6
73:17	dispute	22:15	9:8,12	drafted
79:5	247:2	24:6 26:6	11:6 12:4	112:10
83:14	dissolved	30:10	19:8,9	165:23,25
94:4 98:7	79:19	31:15	21:21	dragging
105:23	distaste	32:16,24	23:23	84:20
106:3	138:12	33:13	24:5,10,2	draw
115:1,4,2	distinct	62:4 74:7	4	105:21
2 147:21	239:19	83:2,8	25:17,25	169:1
197:2	distinctio	85:24	26:22	259:1
203:13	n 226:23	108:25	27:6	drawn
219:7			28:18	

156:6	22:18	201:1	163:1	254:3
due 171:4	23:24	eighty-two	170:19	employment
204:9	55:24	182:17	195:21	145:4,25
duly 42:14	76:18	either	212:24	empowered
during	85:9	53:3 79:1	253:1	37:18
15:19	145:23	86:9	267:18	40:24
23:15	182:14	97:21	email	empowermen
25:20	easily	102:8	31:11	t 45:8
30:4	63:18	109:11	54:7,8,14	empty
35:17	127:4	146:2	55:1 56:6	230:3
43:5 50:8	easy 83:19	186:4	57:1,5,11	encompassi
53:3	269:23	205:3	,22	ng 43:14
68:12,18	Ed 22:20	210:6,12,	58:3,23	44:6
87:12	26:23	14,19	59:1,9,20	52:16
90:20	158:19	212:9	74:12,21	encountere
109:10	256:8	214:5,11	76:14,23	d 118:9
171:9	EDGAR 3:5	216:13	77:15,21	engage
177:15	5:9	254:15	78:24,25	50:5
255:15	educated	272:25	81:9	engaged
259:14	34:5	elected	138:1,7	61:2
260:3	Edwin 2:16	22:23	140:16	engagement
duties	effect	198:20	158:3	255:17,18
11:17	161:12	election	164:9	engineerin
168:7	228:2	198:17	230:7	g 21:8
<hr/>	effective	elections	emailing	enhance
E	145:20	196:18	86:8	192:14
eager	effectivel	electric	emailings	enjoy
190:11	y 8:19	186:16,17	113:3	58:18
earlier	164:25	electricit	emails	enjoyed
50:13	165:13	y 91:5	30:16	10:17
76:22	efficienci	118:7	85:23	ensued
77:3,15	es 10:17	184:23	135:6,25	115:22
79:16	23:13	186:9	employee	ensuring
83:9	24:22	187:10,19	155:20	96:6
90:18	183:10	electronic	260:14	entail
91:24	efficient	67:4	employees	192:18
92:17	8:22	225:8	17:11,22	enter
95:17,25	9:17,21	elephant	18:11	38:18
121:21	efforts	246:1	19:24	197:21
139:7	88:3	eliminatio	28:9,10	n 154:2
179:19	eight	n 154:2	34:14	else 25:9
180:9	158:2	27:4	91:5	44:21
183:17	249:8	86:10	127:14	93:12
250:24	eighty	93:12	141:16	148:3
261:18	182:16	employer	146:20	
265:1,18			189:25	
268:3,18			260:23	
early			enter	
			38:18	
			197:21	
			entered	
			64:25	
			174:6,8	
			241:6	
			entering	

49:1	117:12	establishe	56:24	91:25
104:24	equal	d 164:11	eventual	93:24
enterprise	100:25	estimate	168:3,4,2	95:19
223:1	equally	220:20	1 174:17	102:8
224:7	172:12	estimation	245:19	126:17
entire	228:15	19:18	253:2	132:22
114:10	equals	218:19,20	eventually	134:7
entirely	172:13	et 214:11	18:3	135:13
163:18	208:13	215:3,5	21:18	141:15,21
236:15	equate	219:13,25	67:4	142:1
entities	39:6 95:3	ethical	111:8	179:17
33:18	equated	242:15	124:24	182:4
66:14	25:22	evaluate	160:21	193:19
166:22	64:12	71:24	174:6,7	204:25
entitled	69:25	72:12	176:24	205:2
214:13	122:3	evaluated	232:8	221:4
entity	equating	47:19	everybody	222:22
16:15	9:5	73:1	84:20	227:21
18:8	equation	evaluating	89:18	254:12
64:19	253:1	57:13	143:22	272:1
65:6,12,1	equity	71:9,21	151:8	evident
8 80:22	6:12,23	72:10,23	203:20	165:2
128:24	133:23	127:18	206:17,20	ex 157:13
129:1	Erling	evaluation	236:17	exact
181:9	19:2	48:14	253:1	15:24
200:14	20:15	62:10	everybody'	237:1,15
229:4,6	145:11	71:3,11	s 84:23	exactly
266:4	218:2,9	72:15	264:21	15:5
entity's	220:16	82:2 83:8	272:12	20:16
75:14	Erling's	97:5	everyone	108:11
76:20	29:19	193:4	77:17	116:16
envelope	erosion	204:19	173:5	185:13
220:12	154:16,18	evaluation	201:19,22	208:23,25
222:25	,23 155:1	s 105:11	,24	209:10,23
environmen	especially	209:17	202:21	252:9
t 256:24	237:20	evenly	251:24	253:3
258:23	essence	252:10	everything	267:10
264:21	64:4,11	event	77:12	Examination-in-
envisioned	167:12	75:22	122:16	Chief 3:6
89:18	essential	152:5	144:17	5:22
109:23	175:20	163:8	221:9	examined
110:5	211:14,20	165:11	evidence	96:3
envisionin	essentiall	171:25	15:23	example
g 89:11	y 41:24	230:24	62:20	44:11
109:15	171:14	231:3	72:14	91:3
envy		events	76:16	127:14
			77:4,16,1	149:18
			7 86:8	

205:8	exhibit	195:3	221:8	113:15
212:10	4:2	243:22	229:17	246:4
218:19	272:21	256:17	explanatio	268:24
238:23	Exhibits	263:9	n 49:21	extent
examples	3:3 4:1	expert	exploratio	9:18
200:13	exist	264:21	n 28:23	159:24
exceed	267:13	expertise	explore	168:2
15:22	existed	12:8	23:6	external
exceeded	7:24	43:17	24:20	8:11
16:5	14:25	44:14	40:24	18:24
except	existing	153:4	explored	263:18
92:10	261:5	169:2	139:13	extra
206:17,21	exit 99:5	264:15	153:24	167:2
exchange	102:21	explain	exploring	extract
59:20	241:7,10	6:4 15:6	88:6	149:19
execution	expand	28:3	222:9	
43:3	108:3	62:13,16	express	<hr/> F <hr/>
executive	expect	87:24	85:25	fa 160:15
146:11	53:12	88:7,14	159:14	fact 15:11
221:16	124:16	99:22	161:4	19:17
230:5	150:20	106:12	162:5	27:11
232:1	151:12	117:1	190:8	28:17
executives	156:9	139:8	expressed	33:25
237:11	185:15	140:13	53:13	45:17
exemption	194:13	143:14	93:7,25	56:25
78:14,18	212:1	233:4	138:22	57:21,25
80:3,10	221:4	270:15	159:11	70:18
112:24	242:16	271:3,20	161:21	88:5,24
153:2	expectatio	explained	163:17	91:10
exercise	n 29:17	15:23	164:22	92:12
18:21	93:8	26:24	165:11	99:19
20:11	147:2	36:17,20	166:4,6,1	101:5
48:21	192:21	37:4	2,13	103:2
55:8	194:21	46:15	167:9	108:7
118:22	expectatio	48:12	expression	110:11
242:23	ns 31:25	71:2 77:3	53:7	122:3,20
246:8	expected	88:1	57:18	134:1
262:18,19	29:12	112:1	231:11	135:14
268:14	53:6	138:25	expression	143:24
exercised	176:18	139:23	s 52:14	146:18
27:1	expecting	147:24	extend	150:23
132:9,15	30:19	158:6	237:18	153:22
216:1	31:9	168:5	238:12	160:6
exercising	experience	169:19	extended	166:17
217:6	149:10	190:8	237:6	174:24
243:8	194:25	191:13	extensive	177:17
		270:20		178:4
		explaining		181:12
		76:9		182:7

206:17	204:5	39:22	figures	82:1
215:21	fairness	77:8	151:13	83:13,25
227:20	258:7	78:14	figure's	92:1
237:4,24	265:22	79:18	133:13	94:23
239:13	faith	90:11	figuring	95:14
241:5	148:25	91:5	20:1,2	97:5,13,19
242:8	fallen	94:22	185:19	101:22,25
245:16	144:21	102:18	file	103:20
254:19,25	falling	122:14	245:10	104:4
260:17	118:11	123:20	filed	105:20
factor	familiar	134:25	259:5	126:16,25
57:21	32:15,20,	143:18	272:12	130:7
factors	23 38:4,5	159:17	files	151:1
63:21	54:13	160:19	268:15	155:25
fair 14:3	215:23	161:10	filing	156:7
37:7 45:5	220:7	173:9	112:22	158:10
47:17	242:2,5	174:21	113:15	185:9
91:17	257:5	177:16	final	198:23
98:16	familiarit	181:15	109:19	204:19
132:6	y 220:4	183:8	151:10,13	205:8
133:16	family	185:10,12	finalize	206:3
151:17	257:22	191:18	13:7	207:8,25
154:5,20	fan 185:19	206:24	finalized	208:9
169:25	265:1	241:9	10:8	209:4
197:13	fashion	248:6	11:11,12,	223:7,10
198:24	86:14	264:18	20 12:1,2	224:7,11
199:9	107:13	fi 47:12	69:20	238:21
204:9,16	favour	fiduciary	268:19	247:24
207:2	160:15	field	finally	250:9,13
211:16	FD 220:25	153:4	112:10	251:22,25
212:8,9	FD001.4.1	fifteen	269:22	252:18
221:2	248:8	71:17	finance	259:16
237:23	February	195:15	17:17	262:5
238:9	140:8	fifty	166:23	263:14,16
243:21	feedback	126:21	269:6	265:11
254:16	53:3	figure	financial	266:3
257:4	feel	18:16	19:14	269:8
258:20	271:25	21:21	33:16	financiall
259:3	feelings	58:20	60:17,21	y 264:13
266:5	93:21	151:3	61:9,20	financials
267:6	felt	199:5	62:14,22	72:15
269:2	8:6,10	202:13	63:6,7,19	finding
fairly	12:11	203:5,6	64:2,9	40:15
19:15	20:10	204:14	66:5	49:3
21:2	30:24	219:14	72:10,13,	findings
60:18		235:9	18 73:18	71:25
117:11				104:20
125:11				145:15
132:24				
179:14				

fine	206:4, 6	187:17	89:15	84:8
143:17, 24	210:1	201:2	90:21	85:5, 7, 13
163:10	225:8	formal	92:3	94:13, 19
170:19	231:4	29:7	101:1	102:11, 14
188:23	fiscal	formally	124:7, 10	, 20
191:22	17:9	61:16	136:17	106:10, 25
195:2	221:21	format	143:21	107:6, 14
201:14	222:4	73:1, 3, 6	151:9	114:3, 8, 1
273:2	five 46:22	149:11	168:7	5, 21, 25
finetuning	47:3 89:1	formation	171:8	115:6
31:12	132:17	91:3	190:13	124:22
finish	169:16	176:12	210:22	125:1, 4, 9
251:18	172:4, 19	formed	226:1, 12	, 17, 23
finished	227:15	174:19	257:11	126:2, 6
56:16	flavour	178:9	Foundation	137:6, 16
firm	256:24	186:13	12:23	142:18
181:15	flower	187:12	16:23	159:4
Firman	93:25	former	22:15	164:12, 17
256:8	flux 12:12	93:24	26:6	178:23
firring	19:21	128:18	31:15	179:1
12:4	77:12	259:5	62:4 74:7	200:7
first 6:10	fo 53:19	formerly	83:2, 7	213:19
34:22	focus	242:3	85:24	214:7
37:11	13:15	forming	108:25	223:15, 20
40:20	24:24	187:16	177:24	225:1
42:13	26:19	forms	192:23	234:20, 24
54:7, 25	95:18	246:11	218:12	235:2
55:4, 11	focusing	formulate	219:9	236:7, 11,
63:5	91:22	6:8	226:18	16
64:8, 17	210:24	forth	fourth	245:1, 5
65:16	forays	43:16	90:16	253:7, 11,
66:21	225:8	113:3	frame	14, 17
67:13	force	131:23	261:5	266:25
83:10	104:21	148:8	framework	267:7, 21
90:23	170:10	Fortis	267:17	269:15
99:11, 16	255:3, 16	199:21, 23	Frank 1:7	270:7, 14,
100:8	forgetting	forum	5:3, 14	23 271:12
102:21	166:7, 9	56:16	16:21, 25	272:3, 14,
103:22	form 6:9	forward	17:5, 8	20
110:11	12:13	20:17	18:5, 15, 2	273:1, 8, 1
129:17	68:24	37:17	0 19:7	2
144:10	83:12	43:1, 8	20:5, 19	frankly
150:22	92:14	49:6	21:19	141:20
152:3	106:19	75:20	22:2, 10	254:6
160:1, 3	176:23	77:11	41:9, 12, 1	fray
178:12	185:23	86:24	8 42:1	254:13
180:18			71:10, 14	263:2
188:4			81:15	Frederick
			82:17	2:16 3:9
				141:24

142:9,16	77:17	40:4,14,1	73:8,14,2	113:14,18
159:7,8,2	110:12	9	1	,21,24
2	131:1	41:1,6,16	74:2,5,20	114:7,11,
160:4,14,	163:7	,22	,23	18,23
20	203:7	43:9,24	75:8,9,15	115:3,20
161:3,11,	fruition	44:3,7,18	76:21	116:10,15
14,20	88:4	,23	78:3,13,2	117:3
162:4,12,	Fryer 2:14	45:6,15,2	0,23	119:6,13,
15	3:5	3	79:9,14	16
163:3,11,	5:5,7,9,1	46:1,7,11	80:6,11,1	120:16,21
16,22	2,13	,16,20	5,20,25	121:2,7,1
164:3,20,	6:3,6	47:20	81:4,22,2	3,18,25
21,24	7:10	48:1,9,16	3 82:6,11	122:14,19
165:8,17	8:1,4,24	,20	83:20	123:11,20
166:1,11,	9:3,22	49:3,19,2	84:1 86:6	124:2,11,
16,25	10:4,10,1	3 50:7,17	87:4,7,17	15,25
167:4,8,1	9 11:13	51:1,8,16	88:15,23	125:3,6,1
6,20	12:3,19	,19	89:14,17,	0,21
168:17	13:11,25	52:3,9,13	23	126:12,14
169:5,15,	14:9	,24	90:11,19	,19
18,24	15:2,9,17	53:5,15,2	91:18,20	127:3,11,
170:7,13,	,21	2	92:5,9,15	15,22
18,22	16:9,12,1	54:15,20	,21,25	128:7,15,
171:3,15,	7	55:2,7,22	93:4,8,15	19,23
18,24	17:4,7,10	56:3,7,25	94:5,9,12	129:1,4,1
172:6,14,	18:7,19,2	57:6,14,2	,14,16,22	3,20
22,25	3 19:11	3 58:5	95:15,22	130:2,5,1
173:3,11,	20:8,23	59:7,14,1	96:5,14,2	5,21,24
17,22	21:23	7,21,25	0,25	131:5,11,
174:1,5,1	22:6	60:2,8,13	97:7,10,1	17,25
0,14,23	23:20,24	61:4,11,1	5,20	132:4,10,
175:6,12,	24:3,12	6,21	98:3,11,1	13,21
18,22	25:2,19	62:1,11,1	6	133:1,6,1
176:3,10,	26:1,13,2	7 63:3	99:2,8,14	3,20,24
15,21	3	64:3,10,2	,23	134:3,11,
177:2,5,9	27:7,19,2	1	100:14,17	22,25
,21	4 28:6,21	65:2,8,14	101:10,19	135:11,15
178:2,5,1	29:6,12,1	,20,25	102:2,16,	,20,24
5,20	8 30:9,14	66:10,20,	23	136:14
friction	31:3,8,23	24	103:6,11,	138:3,8,1
154:12	32:2,17,2	67:11,16,	16 104:5	6,24
Friday	2	19,24	105:1,6,1	139:6,12,
42:7	33:1,5,21	68:5,9,16	5	20
225:12	34:4	,22	106:1,7,1	140:17,21
friend	35:1,9,19	69:2,7,12	8 107:2,8	,23,25
126:10	36:4,13,2	,17,21	108:16,19	141:3,6,1
142:14	4 37:8,15	70:8,10,1	,23	0,18,22
163:4	38:5,10,1	5,20	109:17,24	143:3,7,1
165:19	5,20	71:1,7,23	110:7,17	5,25
front	39:5,12	72:4,8,12	111:18,24	144:3,8,1
		,20,25	112:14,20	1,20

145:1,5,1 0,21	174:4,9,1 2,18	199:3,7,1 6,23	2,22 224:4,9,1	1,15,18,2 1
146:3,8,1 3,16,24	175:3,9,1 6,20	200:1,5,1 6,21	6,22 225:14,23	251:4,13, 19,23
147:15,24	176:1,8,1	201:3,8,1	226:2,8,1	252:2,6,1
148:4,7,1	4,18	1,14,21,2	4,21	1,14,20,2
3,19,22	177:1,4,7 ,14	5	227:4,9,2 3	4
149:1,5,2 2	178:1,3,9	202:4,11, 15,18,22,	228:9,13, 15,18	253:4,10, 12
150:1,7,1 3,18,22	179:7,12, 20,24	25	229:8,16, 20,23	254:1,8,1 7,23
151:7,21	180:2,7,1	203:3,8,1 7,22	230:1,10, 15,19,22	255:5,13, 19,25
152:1,9,1 5,25	1,17,20,2 3	204:2,7,1 0,17,25	231:1,6,1 0,16,19,2	256:4,11, 15
153:12,18	181:3,10, 14,24	205:14,22 ,25	2	257:1,9,1 3,17,25
154:8,14, 24	182:2,5,1 1,18,22	206:8,11, 15,19,23	232:10,13 ,16,20,23	258:3,16, 24
155:10,15 ,22	183:4,11, 18,25	207:3,16, 22	233:3,6,1 3,19,21	259:8,17, 22,24
156:2,9,1 2,17	184:4,9,1 2,16,19,2	208:2,7,1 0,14,18,2	234:1,6,8 ,12	260:2,8,1 0,21
157:12,18 ,23	158:2 5	1	235:17,21	261:9,13, 24
159:14	185:5,8,2 2	209:1,6,1 0,19	236:2,24	262:2,6,1 0,13,20
160:2,10, 17,25	186:6,11, 16,23	210:8,16, 21	237:8,13, 21	263:8,17
161:7,13, 17,25	187:4,7,1 1,21	211:1,7,1 2,18,21	238:2,5,8 ,13	264:2,6,1 4
162:10,13 ,25	188:1,6,1 5,21	212:1,7,1 2,17	239:4,8,1 1,16,20,2	265:3,8,1 4,19
163:9,14, 21	189:3,7,1 0,13,16,1	213:6,9,1 3	3	266:7
164:1,8,2 3	9,22	214:15,19 ,22	240:3,7,1 2,20	267:14,17 ,19
165:4,15, 24	190:21,25	215:1,7,1 2,19,23	241:8,17, 24	268:5,11, 17
166:9,15, 21	191:5,9,1 1,15,18	216:2,6,9 ,14,19,23	242:4,7,1 2,16,19	269:5,10
167:3,7,1 5	192:2,6,1 1,15,20	217:3,8,1 2,17,20,2	243:1,6,1 4	270:2,9,1 2,19
168:5,22	193:10,13 ,17,24	3	244:1,5,1 6	271:4,22
169:11,16 ,23	194:5,11, 17,23	218:3,13, 17,21	245:21 246:17,21	272:7,9,1 0,18,22
170:1,11, 16,21,25	195:5,9,1 8,25	219:2,20	247:1,12, 17	273:7,10
171:11,16 ,22	196:3,8,1 5,20,24	220:14,17 ,22	248:1,6,2 5	Fryer's 74:14
172:3,8,1 8,24	197:3,12, 14,24	221:12	249:5,9,1 2,15,19,2	full 42:13 63:4
173:2,9,1 6,21,24	198:2,9,1 3,18,25	222:6,15, 18	4	90:13
		223:5,8,1	250:3,7,1	229:25

fully 13:20 43:2 51:23 88:6,10,2 1 89:13 90:9 92:13 111:4 123:12 162:2	Geddes 190:5 general 8:5 25:21 30:2 50:10 129:21 155:11 158:12 173:23 generally 117:8 generals 136:9 generate 153:20 George 2:12 3:11 225:3,6,7 ,24 226:3,9,1 6,22 227:8,16 228:1,10, 14,16,19 229:11,18 ,21,24 230:2,12, 16,21,24 231:2,7,1 3,17,20,2 3 232:11,14 ,17,21,25 233:4,9,1 4,20,23 234:3,7,1 0,18,22,2 5 235:5,6,1 9,22 236:4 Georgian 55:10,15 56:2 58:12,15 180:14 183:16	gets 167:12 getting 23:22 24:9,19 28:7,14 31:10 58:1 67:6 71:11 104:8 111:12 119:20 130:8 147:1 166:2 168:10 181:8 195:16 204:25 239:17 240:10,18 ,19 243:11 252:17 GIS 21:7,9 given 38:7 65:23 66:5 71:24 105:14 134:13 156:8 159:25 160:6,12 182:7 205:11,12 213:17 233:1 245:9 giving 102:3 114:22 197:25 215:18 228:4,5,6 glass 229:24,25 Glicksman	113:1 global 247:15 goal 9:25 10:5 49:25 50:15 95:19 96:4,12 goals 12:6 48:24 49:21 50:23 65:24 183:12 gobble 211:24 golf 57:5 58:10,23 59:16,24 230:9 233:16 235:25 237:19 golfing 58:4 gone 18:21 55:14 100:1 236:3 258:15 271:10 googled 244:7 Gord 256:20 governance 98:1,10 105:22,25 106:13 government 181:12,22 183:1 185:13 260:13 government	's 98:25 grave 84:24 great 58:19 59:3 174:11 236:20 254:9 greater 23:13 24:22 Green 115:11 116:4 118:9 119:5 121:13,24 122:2 124:23 Green's 115:23 ground 39:11 group 17:18 47:8 56:11 230:6 235:14 256:18 groups 256:25 257:8 grow 49:13,22, 23 50:1,4 130:16 189:14 growing 63:17 132:18 guess 35:21 37:8 47:20 59:8 63:9
---	---	---	--	---

75:15	handle	having	60:18	148:3
81:4	28:16	35:6	he'd 29:21	256:7
89:1,19	handled	43:11	held 1:16	hold
90:14	113:7,25	95:1 96:9	104:14	247:8,10
114:23	178:13	98:25	help 7:8	Holdco
115:5	195:11	99:10	23:12	153:11
119:20	269:8	101:16	24:25	holding
131:25	hands	111:6	33:13	75:23
132:3,7	171:19,23	116:11	40:2 82:9	76:10
146:16,24	227:1	141:25	110:14	77:10,11
166:21,22	hang 58:9	166:1	264:4	78:5,9
172:8,9	happen	207:13	268:15	79:12,18,
184:20	78:2	217:15	helpful	22 80:17
186:12,15	87:23	229:12	159:23	81:10
191:21	90:12	head 39:16	168:16,18	home 222:4
194:24	98:23	101:4	200:8,9	272:10
195:6,9,1	217:6	116:21	213:23	homes
3 229:11	happened	231:24	here's	119:12
230:18	11:23	heading	105:18	homework
239:16	20:6 46:2	98:1 99:6	231:23,25	133:3,8,1
258:16	51:9 61:8	headlong	Herhalt	5
264:18	98:22	144:16	51:21	Honour
271:6	139:5	heads 23:4	171:2	141:24
guessing	177:15	hear	227:13	179:4
81:3	189:1	240:24	he's 77:21	223:25
guest	215:22	271:14	164:2	224:25
58:12	218:23	heard 22:4	267:4	225:4
<hr/>	221:9	26:10	Hey 54:10	236:6,10
half 94:24	261:12	38:24	high 49:5	261:15
96:18	happens	62:20	212:5,6	267:11
126:5	90:25	91:24	247:8,11	HONOURABLE
128:13	178:13	93:23	254:5	5:3,14
129:12,17	208:24	132:22	262:1	16:21,25
165:14	harassment	133:21	higher	17:5,8
178:14	141:20	134:6,7	191:19	18:5,15,2
179:13	259:6	136:8	251:2,11	0 19:7
229:1,25	hard	141:15	highest	20:5,19
230:3	129:25	166:17	102:3	21:19
236:10	hate 55:23	204:25	235:9	22:2,10
251:17	haven't	205:2	242:15	41:9,12,1
hall 1:17	54:11	227:18	251:24	8 42:1
256:21	76:16	254:4	hired	71:10,14
hand 99:7	102:7	hearing	263:22	81:15
188:12	190:20	225:9	history	82:17
259:20	207:19	272:9	238:7	84:8
handed	213:4	heart	Hogg 143:8	85:5,7,13
11:8	245:9	254:21		94:13,19
		heavy		102:11,14

,20	hosts	198:23	17,19	167:13
106:10,25	242:9	housed	hypothetic	181:4
107:6,14	Houghton	67:4	al 265:19	186:1
114:3,8,1	2:16 9:9	housekeepi	266:15	189:18
5,21,25	11:18	ng 238:17	267:12	203:10
115:6	20:9 24:4	How's 7:21	hypothetic	212:8
124:22	25:6	huge 134:9	ally	ideas
125:1,4,9	26:16	197:9	239:7,14	172:1
,17,23	27:1,4,10	hundred	264:24	identified
126:2,6	,17 33:16	7:11	265:10,23	17:3 46:3
137:6,16	36:6	118:6	266:24	124:9
142:18	69:1,4	182:9,11		237:4
159:4	70:4	201:1	<hr/>	identify
164:12,17	100:23	Hurontario	I	104:7
178:23	113:1,10	1:19	i.e 75:24	203:12,14
179:1	115:24	hurry	159:13	IFRS 19:22
200:7	116:20	253:18	161:22	77:5
213:19	131:15	Hydro	162:7	I'll 11:3
214:7	140:8,10	20:24	178:6	13:3
223:15,20	141:16	21:9	Ian 157:3	76:24
225:1	142:2,7	76:9,15,2	I'd 8:25	85:20
234:20,24	143:9	5 77:2	29:12,23	91:3
235:2	145:6	78:25	31:9 63:1	126:12
236:7,11,	148:3	79:7	77:23	137:8
16	152:11	80:14	81:24	179:15
245:1,5	155:25	102:3,15	84:17,25	190:18
253:7,11,	158:20	103:3	85:22	244:20
14,17	167:9	127:19	90:23	246:2
266:25	168:9	151:24	91:21	247:22
267:7,21	171:1	152:6,21	99:2	248:8
269:15	218:24	153:2,16	100:10	251:9
270:7,14,	221:10	186:24	105:20	256:3
23 271:12	222:1,3,1	190:10,15	136:3	I'm 7:22
272:3,14,	4 223:4	191:14,19	154:24	15:4
20	224:14,20	193:20	204:18	17:19
273:1,8,1	225:15	194:8,17,	219:3	21:12
2	227:12	21	229:1,3,5	22:15
hope 54:10	256:8	195:3,16	,7 239:16	26:3 31:9
hoped	265:24	204:16	240:21	36:5,24
271:10	266:20,21	208:4,16	253:23	43:24
hopefully	269:13	209:5,15,	257:10	46:1,11
73:2	Houghton's	18	261:16	51:9
139:4	123:25	235:8,12	idea 19:15	54:22
hoping	hour 126:5	236:1	25:9	55:23
58:11	144:22	249:14,18	39:5,7,10	56:7,14
245:9	236:10	250:1,5,1	48:6	57:23
Horizon	hours	6	101:2	60:24
204:15	84:20	251:1,11,	122:24	61:21
207:2	house		133:11	62:8,17
			138:12,20	

67:16	229:8,12,	263:6,14	221:15	225:25
68:18	13,16,17,	264:12	includes	indicated
73:21	20 236:24	important	102:7	74:15
74:23	237:1,16	64:18	including	86:8
79:24	238:15	65:5,9,11	34:10	114:5
85:17	239:4	,18 75:21	173:15	151:5
86:17	240:17,18	87:2	175:24	169:8
89:23	,19	176:1	191:13	225:18
93:20	241:3,5	193:15	206:9,22	227:18
94:17,20	245:9	261:19,20	221:9	228:4,20
97:2,23	246:20	,21	incorrect	233:10
100:18	248:12	imposed	224:19	235:7,11
106:10	252:16	141:1,12	increase	indicates
107:3	255:23	142:23	14:22	225:13,15
111:24	256:3,6,2	impractica	15:16	,21
115:5	0 258:6,8	l 130:4	189:11	indicating
120:2	260:6	improper	increases	153:19
122:1	261:14	156:8	15:12,20	166:19
125:7	262:16	inappropri	incredibly	227:2
126:24	264:7	ate	258:23	indication
127:23	265:20	162:20	incrementa	individual
128:5	266:10	167:14	l 123:22	17:25
130:24	267:19,22	234:11	incur	88:25
136:5	270:12,16	in-camera	123:7	104:6
141:11,14	271:12,13	38:2	217:15	167:9
,25	,23,24	42:16,20	incurred	207:13,14
147:1,3	272:22,23	43:6,23	8:6 15:25	231:25
151:20	imagine	46:2	16:4	individual
155:13	241:5	104:19	19:13	ly 172:11
156:3	242:2	105:10	incurring	individual
158:13,21	immediate	incidental	123:3	s 27:23
163:10	100:7	56:23	indeed	167:10
164:8	204:2	inclinatio	182:24	169:10,11
165:18	immediatel	n 6:10	184:11,13	173:20
166:1,3	y 143:8	inclined	209:13	industrial
167:21	148:5	154:24	210:24	117:6,7
172:7,22	202:2	include	independen	industry
179:8	impact	5:19	t	39:18
181:20,21	91:15	103:4	106:15,23	56:24
185:19	158:9	included	107:1,3,7	128:1
192:8	implicatio	13:17	209:16	203:20
199:18,19	n 79:3	17:17	independen	243:22
200:1	implicatio	65:17	ts 107:11	261:11
201:14	ns 76:22	101:18	indicate	inference
211:10	77:25	109:16	146:20	156:6
215:23	78:8	110:1	172:19	inflationa
218:14	106:3	157:13		
219:5,16,	110:15,17			
22 220:15	191:16			
221:2				
223:25				

ry	68:23	135:17	,13	y 147:12
15:3,8,12	143:10	instead	203:2,6,1	involve
,16,20	152:10,12	78:3	2	11:14
influences	220:4	153:10	204:1,14	involved
49:7	initial	186:12	219:5	16:8
informatio	25:20	instructed	231:9	17:12,13
n 11:5	29:1	37:17	232:3	21:6 22:7
18:17	110:22	39:3,4	241:3	25:9
19:12	126:20	instructin	interestin	38:11,17
27:25	184:10	g 131:15	g 199:12	43:15
28:7	219:12	instructio	interests	46:12
29:6,13,1	initiate	ns 136:11	246:6	66:2,18
4,20,22	119:19	138:23	internal	69:23
30:8 31:2	146:9	intend	30:23	71:3
34:9,12	initiated	77:23	133:10	72:23,24
35:12,22	188:3,4,1	intended	136:2	76:19
36:18,22	3	52:23	internally	80:23
44:20	initiating	225:18	21:25	81:7 82:2
45:11	185:13	intent	143:20	109:18
52:11,16,	188:16	190:8	internet	113:22
22	initiative	interest	82:20	119:11
67:21,22	55:21	7:4 52:14	83:1	121:5,8,2
71:24	56:2	57:19	103:14	2
73:24	119:10	118:25	137:4,9	122:2,12
75:16	226:1	152:6	interpreta	133:9,18
86:10	initiative	153:20	tion	142:24
103:19	s 136:17	155:25	127:9	143:22
105:18	144:21	156:7	interrupt	146:12
108:22	inner	190:8	213:20	149:10
117:15	257:22	199:21	interviews	154:17
122:15,18	input	200:19	94:21	168:11
127:23,25	23:15	203:14	intimately	176:6
128:6	112:4,9	219:4	224:14	185:2
130:8	113:16	231:11	introduced	189:25
156:2	170:12	240:6,17	162:6	237:9
157:13	171:17	254:15	investment	246:12
158:10,13	227:14	255:4	13:22	255:15
171:5	Inquiry	265:11	201:6	involvement
175:17	1:3 2:3,4	266:2,3,1	invitation	t 60:6
177:17	inserted	3,21	237:19	66:14,22
191:8	130:13	272:12	238:12	112:18
197:25	instance	interested	invite	120:25
223:7,10	9:9 21:7	40:7,15	57:4	121:6
224:3,4,7	172:9,20	58:9	59:24	123:25
254:21	instances	89:4,7,19	233:7	124:5
260:15,24	30:17	189:2,6	involuntar	159:16
263:18		191:14		173:19
264:17		202:3,6,8		175:24
informed				involves
24:4 26:2				

28:8	131:16	1	7:7,14,20	2
involving	149:18	John 2:4	8:2,20,25	51:5,13,1
200:24	150:20	join 58:11	9:15,23	7,24
ironing	173:4,5,7	joined	10:6,14	52:5,10,2
168:24	it'd	149:8	11:7,25	1
irrelevant	111:16,19	joins	12:17,22	53:1,11,1
266:16	229:4	149:3,17	13:3,14	8
irrespecti	item 155:9	joint	14:1,14	54:1,6,16
ve 252:17	items 63:9	104:12	15:6,14,1	,24
254:11	83:16,24	joke	8	55:3,20,2
irrevocabl	177:24	103:14	16:7,10,1	5 56:4,22
e 215:3,5	193:7	jots	3,18,23	57:3,10,2
Irwin	207:15,24	272:11	22:13,14	0,25
256:7	,25	judge	23:21	58:25
isn't	I've 25:10	84:11	24:1,7,17	59:9,15,1
58:18	30:14,22	238:15	25:15,23	9,22
129:4,5,7	83:17	JUDICIAL	26:5,15	60:1,4,11
191:4	86:16	1:3	27:3,15,2	,24
211:20	90:7	July 10:9	1 28:3,17	61:7,14,1
223:16,21	125:3,6	11:2	29:4,8,16	7,23
254:4	130:25	12:19	30:4,11,2	62:3,8,12
issue 60:3	134:7	13:15	5	,19 63:23
70:11	135:11	16:19	31:5,14,1	64:5,13,2
78:16,21	136:5	38:21	9,24	3
84:10	143:1	41:4 42:7	32:7,12,2	65:3,10,1
141:5	156:2	45:5,12	0,23	5,21
150:11,16	168:25	115:18	33:2,7,12	66:1,11,2
152:5,21	171:5	116:22	,22 34:21	1
153:21	174:21	145:23	35:4,14,2	67:8,14,1
154:12	177:9	150:25	5 36:9,16	7,20,25
155:19	226:19	jumping	37:3,11,2	68:7,12,2
162:18	240:25	126:13	1	0,25
171:7,8	241:13	June 37:16	38:1,7,11	69:3,9,13
172:16	261:21	38:3,9,25	,16	,18
255:12	263:11	40:22	39:1,9	70:3,9,12
264:22	264:20	45:2	40:1,10,1	,16,21
issued	268:24	225:12	8,20	71:2,8,13
32:18	271:5	Justice	41:2,7,11	,19,20
101:9	<hr/> J <hr/>	1:7 77:18	42:4,5,12	72:2,6,9,
issuer	January	115:4	43:22	16,22
223:14	50:13	<hr/> K <hr/>	44:1,5,15	73:5,9,16
issues	Joan 88:17	Kate 2:3	,21,24	,23
49:9	job 29:21	3:7	45:10,20,	74:3,6,11
76:25	91:16	5:5,11,22	24	,22
83:1	126:11	,23 6:4	46:5,9,13	75:3,7,12
97:23	194:19		,18	76:12
113:12	254:8,9,1		47:17,24	77:14,22

80:8,12,1 6,23 81:1,13,2 0,21,24 82:8,12,2 4,25 83:6,22 85:16,17 86:25 87:5,12 88:13,19 89:9,16,2 1 90:5,17 91:12,19, 21 92:7,10,1 6,23 93:2,5,11 ,23 94:6,10 95:9,10,1 6,24 96:10,16, 22 97:2,8,11 ,17,22 98:4,14,1 9 99:4,9,21 100:10,15 101:7,14, 20 102:9,13, 25 103:1,7,1 3,17 104:10 105:3,7,1 6 106:2,8 107:17,18 ,23 108:17,20 ,24 109:3,22, 25 110:13 111:14,21 112:8,16 113:8,16, 19,22 114:1 115:9,10,	16,21 116:12,18 119:3,8,1 4 120:13,18 ,23 121:3,11, 15,20 122:10,17 123:6,14, 24 124:8,12, 20 Ken 149:13 kickoff 26:9 kinds 43:23 65:22 150:20 259:1 knew 11:13 21:23 26:21 28:22 35:16 36:10 37:9 50:18 54:20 69:22,23 121:19,21 122:2,5 144:13 150:24 151:14 175:3 179:22 190:9 196:15 knowledge 27:22 45:10 124:5 177:15 196:23 264:16 known 17:3,6	18:6,18 35:19 90:20 136:3 176:4 231:8 233:11 KPM1032 32:8 KPM1804 77:21 151:18 KPM2496 140:3 KPM2668 95:12 KPMG 22:17 26:8 27:17 29:8 30:5 31:21 32:13 33:23 35:17 51:14,25 67:10,12, 15,18 68:8 73:1 82:3 97:3 135:7 140:9 167:10 175:23 177:12 203:13 226:24 227:13 247:5,8,1 4 250:23,24 262:1,4,2 4 KPMG's 30:8 82:9 <hr/> L <hr/> labour 17:11	lack 138:13 139:18 256:9 language 241:12 247:23 248:8 251:8,9 262:16 large 168:2 181:13 235:14 242:10 larger 128:17,19 ,23 181:9 183:10,16 246:14,22 Larry 256:7 last 56:10 57:7 58:20,25 64:6 75:20,21 79:25 105:21 115:17 119:8 152:5 156:19 207:7 217:25 218:5 221:23 237:2 245:24 253:15 255:10 late 55:24 74:12 182:14 later 5:20 80:12 84:15,22 140:8,14	144:4 160:21 162:19,23 175:9 lawyers 131:15,23 ,24 132:2 179:9 layman's 241:18 layout 60:15 LD 186:11 LDC 18:9,14 21:4 28:19 29:5 64:25 80:1,4,7 129:6,8 134:3 166:21 181:17 185:24 186:13 187:12,16 200:14 201:7 203:20 220:10 222:10 237:18 238:7 242:22 243:12 261:12 LDCs 6:8 39:19 50:5,9 87:8 89:7 157:21 181:9,13 182:9 183:10 187:9,25 199:14 200:25 201:7
---	--	--	---	--

202:7	90:3	50:13	236:10	82:19
237:12,25	123:15	198:6	limited	84:18
lead 51:21	led 155:1	letting	27:23	97:23
113:12	185:3	267:14	line	104:15,18
246:13	262:22	level 9:13	116:24	105:17
258:12	left-hand	15:22	117:2	120:5
leader	98:2	16:5	118:18,20	129:23
226:5	legal	49:5,6	,21	141:25
leadership	176:4,11,	75:24	119:1,4	156:25
257:24	20 241:13	247:19,20	208:9	166:2
leading	244:8	,21	214:24	169:6
22:8	246:11	250:23	218:8,17	179:16
256:19	length	254:5	219:9	193:6
267:12	159:12,15	258:9	220:8	209:20,24
Leaf	lengthy	leveling	lines	214:24
121:14,24	110:10	212:11	23:18	220:6
122:2	lens	levels	28:11,13	229:12
learn 24:1	269:23	23:8	29:13	240:22
69:13,18	lent	25:17	117:8	245:7,9
learned	240:5,16	leverage	122:23	246:4
45:12	less 41:20	7:3	195:10	253:24
70:4	53:8	leveraged	lining	258:7
73:24	94:24	111:4	233:17	Lloyd
learning	126:21	162:2	link	93:24
23:22	220:12	liaison	254:24	94:7
31:20	223:1	45:16	liquidity	138:5,6,1
44:22	235:20	liberty	99:12	4 141:16
least 17:9	244:10	248:22	108:11,15	157:9
27:2 49:4	let's	Libman	,18	loan 240:6
53:6	13:14	82:18	list 3:3	local
84:25	83:6	life	4:1 127:7	86:18
96:7	142:19	238:21	134:13,14	187:9
225:8	164:12	241:1	203:25	location
232:3	206:2,3	light 11:5	260:7,11	165:10
257:2	207:7	136:17	268:17,24	long 19:10
258:10	209:24	likelihood	269:3	54:12
271:15	215:16	20:24	listed	56:18
leave 85:8	231:24	193:20	83:16	134:14
140:20	letter	194:8	218:25	144:24
141:1,12	11:2,21,2	likely	226:17	182:8
142:23	2	74:16	lists	233:11
143:2,4,6	12:17,18	76:3	268:25	254:3
,10,12	13:9,10,1	79:19	little	268:7
147:11,12	6,17 16:8	81:10	5:20 7:20	271:5
,23 199:9	22:19	112:4	13:4 19:2	272:24
leaving	23:9,17,1	168:20	62:24	longer
56:17	8 24:18		63:4,7	120:5
				257:11

longstanding	254:11	245:17	0 19:7	Marron
ng	low 8:16	makers	20:5,19	2:12 3:11
238:3,11	114:13	227:15	21:19	225:2,3,6
257:22	192:4	makeup	22:2,10	,7,24
long-term	211:23,25	242:6	41:9,12,1	226:3,9,1
191:16	lower 8:22	manage	8 42:1	6,22
loop	63:8	144:17	71:10,14	227:8,16
26:18,20	205:6,12	management	77:18	228:1,10,
Lora 58:13	209:20,21	43:3	81:15	14,16,19
lose 41:15	lowest	188:8	82:17	229:11,18
64:19,25	249:7	255:23	84:8	,21,24
65:6,12,1	250:1	256:10,12	85:5,7,13	230:2,12,
9 96:23	lunch 5:19	,13,21	94:13,19	16,21,24
114:6,17	71:16	managers	102:11,14	231:2,7,1
192:15	237:19	256:25	,20	3,17,20,2
229:7	248:22	manner	106:10,25	3
244:14		9:21	107:6,14	232:11,14
losing	M	march	114:3,8,1	,17,21,25
41:24	MAAD 140:9	10:21	5,21,25	233:4,9,1
87:6	M-A-A-D	13:8,9	115:4,6	4,20,23
114:19	140:10	26:9	124:22	234:3,7,1
228:21	mail 72:14	136:10	125:1,4,9	0,18,22,2
229:1,10,	main 96:4	168:6	,17,23	5
14	maintain	Marcus	126:2,6	235:5,6,1
244:5,9	10:1	256:7	137:6,16	9,22
loss 10:16	55:25	mark	142:18	236:4
125:2,18	77:7	205:16	159:4	237:2
lost 11:11	106:5	market	164:12,17	massive
195:16	maintained	14:3 49:8	178:23	144:18
lot 25:10	258:9	92:14	179:1	material
29:14,15	maintainin	184:24	200:7	38:22
30:1	g 96:7	212:9	213:19	226:18
127:8,9	major	220:10	214:7	materials
129:5,24	17:11	marketplac	223:15,20	33:24
135:6	34:10	e 89:8	225:1	47:1
148:24	112:4	90:13	234:20,24	math 252:5
166:20	117:13	marks	235:2	Mather 2:4
167:5	268:18	205:5,6	236:7,11,	matter
183:21	majority	mark-up	16	20:1,2
195:2	39:6,15	18:1	245:1,5	37:8
221:19,23	40:5	Marrocco	253:7,11,	42:16
226:18	90:15	1:7	14,17	69:21
235:20	100:4	5:3,14	266:25	141:7
238:1	106:14	16:21,25	267:7,21	168:2,20
254:12	107:1,5	17:5,8	269:15	234:23
love	200:23,24	18:5,15,2	270:7,14,	236:25
209:25			23 271:12	246:21,24
			272:3,14,	252:21
			20	255:12
			273:1,8,1	
			2	

272:24	97:14	135:5,12,	261:17	39:1,9
matters	160:8	19,23	265:22	40:1,10,1
140:10	186:1	136:7,18,	266:18	8,20
159:9	213:11	23	267:5,17	41:2,7,11
175:1	224:18	137:3,10,	272:8	42:4,5,12
235:20	245:3	19,20,25	McDowell's	43:22
238:16	253:8	138:4,9,1	160:7	44:1,5,15
249:23	260:24	7	McFadden	,21,24
250:2	268:20	139:1,9,1	173:15	45:10,20,
263:14	272:24	4	227:6	24
maximum	mayor	140:2,7,1	McFadden's	46:5,9,13
205:5	22:20	8,22,24	108:13,18	,18
may 1:23	23:19	141:2,4,8	McGrann	47:17,24
10:16	45:16	,13,19,23	2:3 3:7	48:4,11,1
11:11	93:24	142:8,12,	5:5,11,22	8,23
17:10	157:5	13,21,22	,23 6:4	49:15,20
18:7	190:5	143:5,13,	7:7,14,20	50:2,12,2
22:22	198:20	23	8:2,20,25	2
31:7,20	225:21	144:1,6,9	9:15,23	51:5,13,1
32:19	227:11	,15,24	10:6,14	7,24
33:14	mayors	145:3,9,1	11:7,25	52:5,10,2
34:4,6,23	242:10	9,24	12:17,22	1
35:14,22	mayor's	146:5,10,	13:3,14	53:1,11,1
36:1,23	50:13	14,17,23,	14:1,14	8
50:20	McAllister	25	15:6,14,1	54:1,6,16
59:3 93:6	225:20	147:10,20	8	,24
103:9,14	McDowell	148:1,6,1	16:7,10,1	55:3,20,2
112:24	2:18 3:8	0,17,20,2	3,18,23	5 56:4,22
113:24	77:20	4	22:13,14	57:3,10,2
129:23	85:2,6,11	149:2,16,	23:21	0,25
133:11	125:25	23	24:1,7,17	58:25
140:23	126:4,9,1	150:5,10,	25:15,23	59:9,15,1
143:3	0,15,22	15,19	26:5,15	9,22
167:11	127:6,13,	151:6,17,	27:3,15,2	60:1,4,11
169:2	16	22	1 28:3,17	,24
176:4	128:3,9,1	152:8,14,	29:4,8,16	61:7,14,1
179:24	6,20,25	20	30:4,11,2	7,23
199:18	129:3,7,1	153:5,13	5	62:3,8,12
211:9	5,22	154:4,9,2	31:5,14,1	,19 63:23
212:9,23	130:3,11,	0	9,24	64:5,13,2
224:19	18,22	155:3,12,	32:7,12,2	3
244:17	131:2,8,1	18,23	0,23	65:3,10,1
251:16	4,20	156:5,10,	33:2,7,12	5,21
254:19	132:2,6,1	15,18,24	,22 34:21	66:1,11,2
262:15	1,16,25	157:16,20	35:4,14,2	1
266:19	133:4,12,	,25	5 36:9,16	67:8,14,1
maybe 25:5	16,21,25	159:1,8	37:3,11,2	7,20,25
39:23	134:5,12,	162:6	1	68:7,12,2
76:23	24	163:4	38:1,7,11	0,25
92:18		165:19	,16	69:3,9,13
		179:15		,18

70:3,9,12 ,16,21 71:2,8,13 ,19,20 72:2,6,9, 16,22 73:5,9,16 ,23 74:3,6,11 ,22,24 75:3,7,12 76:12 77:14,22 78:6,17,2 1 79:4,11,2 4 80:8,12,1 6,23 81:1,13,2 0,21,24 82:8,12,2 4,25 83:6,22 85:16,17 86:25 87:5,12 88:13,19 89:9,16,2 1 90:5,17 91:12,19, 21 92:7,10,1 6,23 93:2,5,11 ,23 94:6,10 95:9,10,1 6,24 96:10,16, 22 97:2,8,11 ,17,22 98:4,14,1 9 99:4,9,21 100:10,15 101:7,14, 20 102:9,13, 25	103:1,7,1 3,17 104:10 105:3,7,1 6 106:2,8 107:17,18 ,23 108:17,20 ,24 109:3,22, 25 110:13 111:14,21 112:8,16 113:8,16, 19,22 114:1 115:9,10, 16,21 116:12,18 119:3,8,1 4 120:13,18 ,23 121:3,11, 15,20 122:10,17 123:6,14, 24 124:8,12, 20 137:4 151:19 MEA 186:11,15 mean 8:18 15:7 25:22 39:6,10 40:3 41:20 44:6 72:23,24 76:24 99:22 115:5 126:25 145:2 148:4 172:15 181:7 185:19,21	190:16 196:10 213:20 228:21 229:14 230:5 231:8,15 232:14,15 235:6,9 means 84:11 149:24 211:3 213:24 263:15 meant 18:3 35:13 64:10 118:11 120:6 123:2 154:2 188:11 190:16 measure 127:2,4 measuring 255:22 mechanism 212:11 mechanisms 260:12 medical 5:17 140:20 141:5 143:2,3,4 ,17 144:2 medically 143:24 meet 88:11 91:4 270:3 meeting 26:9,11,1 8 33:14,15,	25 34:3 36:19 38:3,21 39:2 40:22 41:4,5 42:6,15,2 2 43:6,10,1 9 44:17,20, 22 45:2,4,12 ,17 51:10 53:7 56:10,17 72:1,3,5, 7 73:12 87:19 88:16 92:11 93:17 97:12,14 100:19 104:13,18 ,25 105:4,13, 24 115:19 119:17 139:3,15, 17 149:3,4,6 ,17 165:5 179:18 218:23 219:19 220:3 221:7 225:12,22 226:10 231:4 232:5 264:25 265:7 meetings 47:25 48:5 50:8 52:12,23 62:2 70:17 93:9,22	142:4 170:3 175:4,10, 13,19 182:25 264:17 member 11:4 13:13 45:21,25 47:4 66:12 87:13 104:7,8 109:21 129:9 148:13 154:6 160:25 169:20 170:20 171:10 177:17 226:19 227:19 258:17 members 46:23,24, 25 47:11 48:7 51:22 52:7 53:19 61:18 70:13,18 73:18 83:14 96:11 98:8 99:1,10 104:2 106:20,21 158:17 169:12,17 170:4 171:14 172:19 173:15 174:20 177:11
--	--	---	---	---

205:4	54:24,25	4,21	211:2,9,1	195:12
207:14,20	55:4,14	187:1,5,8	3,19,22	mind 39:21
208:16	56:13	,15,22	212:3,13,	84:2 89:6
209:3,4,1	71:24	188:2,10,	18	92:5 96:6
6	95:5	18,23	213:7,10	166:15
227:5,6,1	113:1	189:5,8,1	214:1,2,9	169:22
0,12	145:17	1,14,17,2	,16,20,23	170:2,5,1
228:7,17	233:11	0	215:2,8,1	7 190:4
memo 198:6	259:21	190:18,22	3,20,25	200:17
memories	263:11	191:2,7,1	216:4,7,1	262:24
102:5	method	0,12,17,2	0,15,20,2	minimize
memory	15:15	2	4	153:23
100:11,18	methodolog	192:3,8,1	217:4,9,1	minimum
101:4	y 15:24	2,17,22	3,18,21,2	132:14
103:2	18:25	193:3,11,	4	144:13
126:20	100:5	14,18	218:4,14,	minority
192:10	metrics	194:1,7,1	22	39:6 40:7
mention	127:1	5,18	219:3,21	41:17,20
33:25	MEU	195:1,8,1	220:15,18	90:14
163:13	186:17,22	4,20	,24	200:13
mentioned	M-hm 62:11	196:1,4,9	222:7,16,	244:9,13
12:18	115:20	,17,21	19	245:17
22:6	130:5	197:1,5,1	223:6,9,1	minutes
34:3,25	133:12	3,18	3,18,24	33:14
35:7 41:3	164:23	198:1,4,1	224:1,2,6	42:6
54:17	198:13	0,14,19	,13,17,24	71:12,17
67:3	239:20	199:1,4,8	244:20	80:1 90:7
99:16	240:3	,22,24	248:20	104:12,17
108:9	254:1	200:3,11,	Michael's	115:18
109:18	Michael	12,20,22	240:23	126:5
152:2	2:7 3:10	201:4,9,1	mid 182:14	143:10
160:3	178:25	2,16,23	Miller	147:23,25
168:25	179:3,6,7	202:1,5,1	149:13	225:11
mentioning	,8,13,21	2,16,20,2	million	226:15
38:3	180:1,4,8	3	6:22,25	261:15
100:12	,12,18,21	203:1,4,1	31:22	265:6
merge	,24	1,18,23	116:24	mispronoun
145:4	181:6,11,	204:4,8,1	117:2	ced
merger	19,25	2,18,24	118:18	263:12
197:22	182:3,6,1	205:18,23	149:19,24	misquoting
202:9	3,19,23	206:1,9,1	150:6	157:3
mergers	183:6,13,	2,16,20	151:5	missed
201:2	20	207:1,5,1	195:12	234:25
message	184:1,5,1	8,23	219:25	253:8
152:17	1,13,17,2	208:3,8,1	220:12,14	missing
226:5,6	1	1,15,19,2	221:22	110:12
met	185:1,6,1	2	223:1	Mississaug
	8	209:2,7,1	millions	
	186:3,7,1	3,23		
		210:9,17,		
		23		

a	,17 143:8	101:1	narrow	ns 104:23
200:17,18	179:17	138:5	84:4	109:18
misunderst	183:24	173:15	narrowing	112:18
anding	192:1,9	municipal	88:24	176:5
30:18	193:23	22:24	nature	neighbour
misunderst	195:22	24:19	5:17	203:24
ood 35:15	199:11	87:8	25:16	204:3
266:19	207:12	110:9	30:7	neighbouri
mix 37:10	255:8	129:10	52:1,11	ng
mo 118:23	271:14,16	149:11	210:10,18	237:12,18
model 50:9	272:6	181:17	211:20	neither
moment	273:13	186:16,17	257:5	146:8
178:16	Morrison	187:2	270:24	245:16
205:1	256:20	198:17	271:18	newspaper
moments	mostly	221:18	Neate	157:4
163:18	163:6	260:12	148:11	nine 63:9
248:20	motion	municipali	149:3,8,9	83:18,24
Monday	42:14	ties	,17	172:4,12
34:23	move 7:22	187:20,24	163:4,5,1	207:20
58:8	19:23	260:13	2	227:5,24
monetary	43:8	municipali	166:4,12	228:17
101:21	90:21	ty 7:5	263:11,22	245:2
102:17	91:6	87:6	,23	255:10
money	94:14	110:16	264:11,14	nodding
110:19	136:16	162:3	necessaril	101:4
111:12	226:1,12	222:5	y 120:7	211:17
118:19,20	236:25	259:7	133:10	no-harm
,23 120:8	257:10	municipall	251:4	145:17
133:5	moved	y 86:17	261:1	none 94:9
162:2	42:15	87:1	necessary	112:20
240:6,16	149:11	Munterster	15:4,8	155:8
month	moving	227:7	197:20	166:15
117:19,21	16:22	must've	necessitat	nonfinanci
118:7	43:1	38:24	e 34:19	al 71:21
144:13,14	86:24	myself	negotiated	non-
months	147:4	11:3	132:8	financial
11:10	150:24	17:17	160:18	62:15,22
22:8	151:15	30:18	165:7	127:7
120:4	201:17	67:2	168:2,3	249:4
129:19	243:13	146:17	negotiatio	250:17
130:1	263:2	227:12	n 16:8	non-
131:3	multiple	<hr/>	113:6	financial
140:8	222:17	<hr/>	131:10	ly 249:23
268:12	Muncaster	nail	162:11	250:1
morning	22:20	168:14,19	168:21	non-voting
5:4,11,13	26:17,24	namely	negotiatio	169:20
	27:4,9,17	256:18		
	33:16			

170:20	November	138:12	,25	31:14
nor 191:10	75:10	141:14	217:7,10,	36:9,16
245:16	76:19	203:19	19,22	40:1,10,2
normal	116:6,9	obviously	263:13	0 42:2
117:20	152:13,16	81:11	264:9	49:15
167:2	156:25	118:17	offered	50:22
normally	215:22	208:16	52:2	53:11
100:21	221:11	228:22	109:14	57:3
264:1,3	257:14	242:3	111:2	58:25
Norris	np 2:8,21	occasions	offeree	60:24
256:21	numerical	175:1	214:14	64:5
notation	101:25	occurred	216:22	66:21
220:19	numerous	6:7 101:8	offering	68:25
note 5:24	49:7	235:24	109:13	70:9
6:1,10,16	130:25	occurring	264:12	71:13
150:6,14	<hr/>	75:23	offeror	72:22
164:13	<hr/> 0	October	210:13,22	76:12
165:1,10	oath 5:6	74:12,15	211:15,23	78:17
166:14	OBCA 91:7	76:18	212:4	89:16
183:23	149:11	77:1	214:25	90:5,17
220:12	223:11	152:2,9	offers	91:12
264:19	objective	198:16	211:16,23	92:16
noted	25:12	236:3	212:4	94:6
108:2	45:9 96:2	OEB 12:15	office	95:10
199:12	133:7	145:7,11,	12:8	97:17
notes 90:5	176:2	15,17,22	18:24	101:14
148:11	198:3	223:22	56:13	102:9
164:9	objectives	224:11	116:21	103:16
218:11	259:21	268:2,6	143:7,9	109:22
219:18,24	objectivit	offer 23:7	officer	111:14
220:20	y 51:20	61:9	90:25	116:12,18
221:5,15,	obligated	102:17,19	offing	119:3
25	241:15	109:6,9,1	233:16	120:23
nothing	obligation	2	oh 55:22	121:11
5:18	13:6	110:18,22	122:3	122:10
34:18	observatio	111:7,14,	147:15	123:14
53:14	n 171:9	16,20	207:1	125:9
55:19	182:21	119:23	234:22	126:14
84:1	obtain	160:11	253:17	131:8
201:5,6	67:22	201:21	okay 7:22	134:5
notice	obtained	202:19,21	8:20 9:15	135:5
59:2	144:7,10	210:6,11,	13:14	136:18
140:13	obtaining	12 211:3	14:1,14	137:5,10
213:16	142:4	214:5,12	24:17	140:2
214:13,24	obvious	215:3,5,9	27:3 28:3	143:5
215:18		,10	29:16	144:6
268:8		216:11,12	30:25	151:21
		,16,18,21		155:6
				161:20
				180:23
				181:24

186:14	open 89:6	220:3	24:15	outrageous
194:11,20	103:8	247:4	112:25	273:4
195:20	255:8	270:21	118:5	outside
197:5	operates	271:13	131:21	9:8 66:11
200:20	242:14	272:1	144:3	73:25
207:9	operating	opposed	198:23	263:2
208:11	77:10	138:20	203:12	outstandin
211:10,13	261:5	214:5	orders	g 117:23
212:13	operation	opposite	136:10	outward
215:13,19	87:8	237:1,15	organizati	18:14
216:10	235:15	opposition	on	overall
219:22	operationa	86:1	49:14,22	249:1
221:12	l 8:8	optics	50:1,5	overly
225:24	operationa	231:14	52:17	79:21
226:10	lly	233:2	86:13	overseeing
228:1,10,14	120:11	option	130:16	120:24
230:2,3,21	Operations	37:18	173:23	overview
231:2,7	76:1	39:3	orient	25:22
235:23	OPERATOR	40:15	218:16	30:3
236:5,19	82:19	42:25	originally	owned
239:20	opi 34:5	43:2,8	152:23	86:17
240:7	opinion	241:7	others	87:1
248:25	6:2 34:6	options	17:18	187:6
249:9,12	37:17	22:17	86:9	238:23
253:11	135:17	24:14	102:4	239:10
263:10	143:25	29:9,10	113:7	owner
265:23	144:2	30:6	169:9,10	41:17,20
272:7	178:10	32:14	205:7,11	43:12
OMERS	220:10	35:21	otherwise	65:5
200:17,18	237:16	36:2,8	48:6	100:5
one-half	241:3	37:5	70:18	ownership
128:17	254:14	38:12	85:9,24	199:17
ones 10:12	opinions	43:7	92:4	242:6
47:12	91:14,15	75:19	145:4	owns
203:19	228:5,7	88:6,21,2	161:24	240:15
206:3	243:24	2 90:8,13	162:9	244:10
Ontario	opportunit	92:13,19	201:5	
1:20 21:9	ies	135:2	ought	
89:8	23:4,7,11	139:11,13	266:21	
181:13	24:10,20,	185:25	ours	
182:10	21	188:17	108:12	p.m 81:18
184:24	opportunit	190:10	ourselves	137:13,14
187:18	y 6:7,18	222:12	21:16	273:16
202:7	38:8	Orangevill	186:19	package
onto 60:18	58:15	e 122:23	outlined	63:19,20
119:24	189:4,9	order 6:20	86:3	packages
191:24		18:23	177:10	63:19
195:21		20:12,16		

page 3:2	112:12	198:20	192:18	240:25
4:2 42:8	144:11	237:21	241:22	244:4
99:5	145:16	238:10	242:23	partnershi
115:17	210:22	266:3	partners	ps 50:6
212:22,25	Pardon	269:16	19:12	243:10
213:1	233:20	parties	57:17	party 6:21
218:7	partial	14:20	93:17	25:11
219:4,5,1	39:13	67:1	122:21	30:19
7 220:25	43:12	89:4,7,19	148:15	133:9
225:15,25	90:14	154:16	177:8	160:11
244:21,22	117:18	162:7,21	241:23	197:24
paid	152:6	202:3,6,1	partnershi	210:5,6
116:15	153:19	4	p 12:7	212:9
154:12	participan	203:2,6,1	20:18	party's
198:15	t 246:15	2	33:4	210:7
240:5,6	271:24	204:1,14	38:18,21,	passing
Pajunen	participan	213:17	23	67:21
88:17	ts 249:8	246:23	39:5,8,10	past
Pam 256:7	participat	257:5	40:17	147:11
panel	e 47:6	partly	43:20	199:13
145:14	51:22	22:23	45:21	237:20,22
paperwork	66:16	198:21	48:19,24	243:11
148:8	131:12	partner	49:2	247:14
paragraph	227:1	20:16,21	50:3,16	path 86:13
12:23	264:16	21:18,20	51:7,10	222:9
13:5	participat	39:23	52:1	267:11
16:20	ed 119:10	40:7	59:11,12,	Patrick
22:15,19	participat	43:2,8,13	23 60:5	2:21
26:6,15	ing 48:13	44:13	65:1,24	Paul 2:10
31:15	51:6	48:22	66:12	3:12
42:13	131:18	49:3,12,2	84:4	122:5
62:4	particular	2 50:4,24	90:16	236:9,13,
74:7,11,1	10:20	52:19	95:1,19	19,22,23
3 75:20	44:12	60:19,22	96:2,12	237:10,14
83:1,7	55:21	63:20	104:21,24	,23
108:25	57:16	88:24	105:11	238:3,6,9
109:3,4	59:5 76:9	93:9,22	115:1	,14
115:17	77:13	96:9	135:4	239:6,9,1
116:19	91:14	100:19,25	154:17	2,17,21,2
138:10	95:16,18	110:18,19	158:18	4
152:3	105:20	,20,22,25	169:1	240:4,8,1
164:22	118:16	146:9	174:7	4,21
192:23	124:6	148:15	176:12,25	241:12,19
219:1	135:21	149:12	178:7	242:1,5,8
220:25	152:21	155:16	192:13,21	,13,17,20
parameters	153:17	159:21	202:9	243:4,9,2
89:22	172:12	165:5	226:20	0
102:17	173:6	168:4,21	227:19	244:3,19
		169:2	231:5	
		177:8	235:18	

245:4,7,1 3,14,22 246:19 247:3,13, 18 248:2,7,1 2,18 249:1,6,1 0,13,16,2 1,25 250:4,9,1 2,16,19,2 2 251:7,15, 21 252:1,4,7 ,13,16,21 ,25 253:5,16, 19,22,23 254:2,10, 18,24 255:6,14, 20 256:2,5,1 3,16 257:4,10, 14,19 258:1,6,2 0 259:3,9,1 4,19,23,2 5 260:3,9,1 6 261:3,10, 14,25 262:3,7,1 1,14,21 263:10,21 264:3,7,2 0 265:5,10, 16,21 266:10,23 267:10,25 268:1,7,1 3,23 269:7,11, 20,21 270:5	Paul's 121:8 PAUSE 7:18 13:1 31:17 32:5,10 33:10 37:1,24 42:10 47:15 51:3 53:25 54:4 62:6 74:9 75:1,5 82:15,22 83:4 84:6 107:21 109:1 115:14 124:18 136:21 137:1,23 140:5 147:7,18 156:22 158:24 164:15 167:18 178:18 193:1 204:22 234:16 244:24 248:10,16 259:12 pay 14:3 110:21 116:13 118:25 119:24 239:10,14 payers 269:25 paying 114:14 191:20 238:24 payment	7:5 103:23 115:25 117:13,17 ,18 120:19 208:5 260:14,25 payments 5:25 116:1 117:22 123:9 PDF 213:2 people 20:20 47:11 67:21 85:25 86:8 89:24 120:7 123:9 135:6,17 140:9 171:18 178:11 204:13,15 233:17 237:24 242:10 247:9 254:19 256:12,14 258:8 268:16 269:5,14 per 7:12 8:17 109:14 161:2 percent 14:22 17:19,20 39:14,19 40:2,5,16 ,25 41:20,24 60:17,21,	23 61:10,19 62:22 63:5 66:5,7,9 83:12 92:1,8 94:14 96:21 99:20,25 100:13,16 101:6 103:23 106:14 110:2 111:5 126:17 162:18 178:12 193:6,15 199:14,17 ,21 205:10 206:14,18 208:5,9 209:3,4,1 8 228:20,22 ,25 229:1,9 232:9 244:5,11 percentage 16:1 39:21 60:15 79:1 94:15 perception 135:13 153:15 154:10 percolated 67:1 perfect 97:25 104:16 perfectly 255:15	performanc e 259:17 perhaps 92:14 196:19 226:5 235:13 period 30:5 109:10,20 110:8,20 119:25 120:1,5 131:6,22 146:1,6 160:24 161:5,23 237:6,9 254:6 255:17 person 28:9 61:25 67:6 130:7 238:20 240:15 262:4,7 268:20 personal 58:23 59:8 personally 188:7 personnel 42:17 141:6 226:24 235:12 person's 144:2 172:11 perspectiv e 49:18 161:2 229:19,22 238:15,17 263:16
--	--	---	---	--

persuade 129:10	plate 166:20,23 167:14	36:12 41:22 48:10 63:9 64:6 70:3,22 74:3 75:13 76:18 78:1 79:21 87:12,22 88:8 89:1 101:23 105:25 107:25 108:22 114:9 122:8 132:7 136:15 137:8 138:14 140:1,20 142:6 153:8,25 160:14 168:14,22 171:23 181:21 196:5 199:9 206:13 218:5 222:17 225:14 228:20 229:9 231:3,8,1 8 232:6 234:2,25 235:9,24 236:1 240:23 243:18 267:15	17,23 139:10 205:10 206:24 208:3,17 248:23 249:3,7 250:6,7,1 7,20 251:17,20 272:11 policy 181:13,15 ,22 politician s 198:16 population 66:16 portion 39:24 43:6 71:22 76:14 106:13 232:3 249:4 posed 88:18 position 50:4 88:14 113:11 139:8,22 143:21 148:2 156:8 167:21 169:7 170:9,14 226:24 228:23 244:6 261:7 268:8 positions 92:2 positive 43:24	143:21 226:5 257:7 265:6 positively 264:25 poss 204:16 possessed 229:5 possibilit ies 55:12 185:16 possibilit y 28:22 34:13,15 37:20 39:22 50:11 145:13 152:12 196:2,6,1 2,16,23 197:7 217:5 possible 28:12,13 48:21 49:17 132:23 136:17 224:22 269:24 possibly 9:7 12:5 21:5 43:15 122:23 153:23 202:7 238:13 potential 28:19 38:17 40:8,21,2 4 80:13 94:1 168:3,4
pertaining 42:17	platform 198:22			
phone 237:19	platforms 198:16			
phrase 60:25 108:8 136:8 160:7	play 57:5 58:12,15, 20 59:16,24 241:21 246:6			
physician 142:24	player 246:14 247:16			
pick 177:7,8	please 6:5 12:24 26:6 37:22 42:8 54:2 62:4 74:21 75:3 95:12 105:17 106:9 107:19 108:25 140:11 192:23 193:5 200:4 212:19,24 218:7 220:25 244:22 245:8 246:4			
picked 46:6,10,1 4				
piece 98:21				
pillars 87:9				
pilot 119:19 120:14,24 122:12 123:8,17 124:1				
pitch 225:16				
placing 147:11				
plan 8:15 33:17 58:9				
planned 26:9	plus 13:21 34:11 182:12 195:12			
planning 48:2 50:19 79:15 80:18 268:14	point 7:4 10:20 25:8 31:20 33:22	points 62:13,21 64:11,14 66:6 71:15 83:12,16,		
plans 146:19				

203:16,25	PowerStrea	242:3	present	114:5
230:8	m 2:21	243:16,19	33:16	previous
potentiall	12:5	248:21,24	53:19	14:23
y 50:9	13:18	249:2,11,	225:13	17:9
57:12	14:2	22	226:10	219:17
132:3	19:18	251:3,12,	presentati	233:8
power 8:7	21:11,20,	16	on 34:12	previously
9:4 10:24	24 56:14	252:12,22	38:24	3:5 5:9
11:15	68:15,17	253:4,5	53:4	58:1
17:19	69:6,11,1	257:12	105:9,14	152:17
18:6,9	4,16,19,2	PowerStrea	231:1	197:11
19:5,19	3	m's 70:24	265:1	price
20:25	70:2,5,14	practice	presentati	109:14
21:10	,19 86:5	7:16	ons 23:16	114:13
22:17	104:23	precisely	52:6	123:18
23:22	106:13,14	230:1	53:3,20	210:13,20
31:21	,21 108:6	272:4	presented	,21,25
32:15	109:6	prefer	38:2,8,13	211:16,23
37:6,13	111:7	28:10	,19 71:25	,25
38:18	112:16,21	preferred	97:14	212:5,6,8
40:23	113:2,5,1	42:25	105:19	,10,11
41:4 42:7	0 114:9	Preliminar	119:17	214:24
45:4 49:1	121:21,24	y 222:10	120:10	215:11
50:4	122:4,6,2	premature	124:3	216:12
59:12	2 128:16	20:6	227:3	prior
60:7	129:5	premise	235:14	10:12
64:1,15	131:24	174:19	248:5	19:9 22:4
67:23	144:25	181:4,16	266:14	54:25
70:25	146:20	190:12	presenting	55:4
78:4,9	152:22	194:12	34:6	186:19
79:17,20,	154:13	237:15	57:18	187:13
22 80:7	163:19	241:25	president	privy
104:13,22	164:25	premises	136:9	94:20
115:19	165:13	169:1	261:6	258:25
119:10,11	168:23	preparatio	press	pro 52:15
123:7,16	176:13,25	n 221:7	258:7	134:18
152:7	178:7	prepared	pretty	prob 182:7
153:1,10,	179:10,19	12:13	12:14	probably
20 155:19	203:24	72:5	28:15	12:13
156:8	204:6,15	88:8,10	79:18	20:3
173:14	206:18	89:25	126:1	21:2,9,17
182:25	208:20	139:24	130:4	34:14
193:22	209:3,15,	148:11	132:24	39:16
194:3,4,1	17 214:21	210:14	219:24	58:16
0 195:23	216:1,5,1	212:9	235:10	85:3
216:1,21	5 217:10	271:13	prev 14:10	94:20
217:14	220:9	prevailing		95:5
225:11	221:7			98:22
Powers	231:9			
40:22	232:1			
	241:6			

99:16	proceeds	220:4	g 255:24	213:24
118:5	157:10,12	237:5	256:6	225:19
122:8	,14	266:9	pronouns	proposed
125:19	process	profession	185:19	63:25
128:1	57:13	alism	proof	64:6 86:3
129:4	60:6	138:13	156:4	230:13
136:3	66:15	139:19	247:6	235:24
141:14	68:1,19	profession	proper	propositio
157:14	73:11	ally	230:17	n 223:3
159:18	89:6,11	237:9	260:23	prospect
182:7	90:18,20	profession	properly	197:7
219:24	91:11,22,	als	127:1	protection
220:11	24 92:4	177:13	135:4	114:12
257:2	93:1,14	program	177:20	protection
268:12	119:19	123:4,8,1	178:13	s 246:15
problem	120:12	7	255:24	protects
82:18	124:4	progress	266:12	246:23
133:1	129:18	91:15	property	proven
143:19	133:18	prohibited	42:18	207:6
153:17	134:17,23	260:19,22	proponent	proves
problemati	135:4	261:2	69:15	207:4
c 158:1	173:10,12	project	73:19	provide
problems	174:6,16,	119:11,15	86:17	13:19
84:25	21	,16,19	87:1	20:24
85:1	175:2,15,	120:15,25	112:17	21:24
129:8	19,21,24	121:1,5,2	232:8	49:16
procedure	176:24	2 122:12	proponents	51:14,25
51:15	177:3,6,7	124:1	52:15,17	117:15
procedures	,16,20	225:19	57:15,18	127:24
245:10	188:3	226:12	67:12	170:12
246:3,5	210:5	projects	89:15	193:21
proceed	222:24	268:18	128:2	194:9
39:3,4	227:2,24	promise	155:8	231:11
45:9 88:7	247:2	116:10	proposal	247:4
90:22	255:1	promissory	99:25	provided
112:24	262:15	5:24	119:23	9:17,20
155:17	270:1,3	6:1,10,15	124:3	11:5 18:8
175:8	produce	150:6	127:23	21:25
proceeded	29:15	183:23	134:21	22:3 26:8
171:8	product	promote	231:12	31:6
173:7	36:12	122:20	proposals	36:11
177:20	124:6,9,1	promoting	71:4	76:17
proceeding	4 253:2	120:6	72:11	78:15
166:19	266:14	prompted	89:3,20,2	97:9
proceeding	products	58:3	2 151:9	127:22
s 77:4	119:21	pronouncin	propose	171:5
246:12	profession		103:4	175:17
	al 56:9			
	156:13			

186:9	prudent	155:4	92:20	267:1,4,6
247:14	197:20	164:13	160:15	,20,22,23
259:15,20	pubic	purchase	190:12	questionin
262:4	186:23	6:18,25	224:11	g
provides	public	10:13	226:23	218:9,10
246:15	9:10 11:1	43:11	266:20	237:3
providing	18:9	44:8		270:22
18:13,14	19:24	109:7	<hr/>	questions
19:19	34:11	113:20	qualificat	22:16
21:9	35:12	123:18	ions	34:22
51:20	36:18	128:13	173:25	66:19
68:14	54:21	165:13	qualified	70:5
115:5	91:6	184:7,10	203:2	81:14,25
171:17	112:4	189:24	qualitativ	85:18
192:18	133:2	210:14,19	e 63:20	90:6
227:14	161:18	211:23	127:5	95:13
254:19	175:19	212:4	quality	115:11
262:5,8	180:5	214:25	49:6	122:11
263:19	186:5,19,	215:4,10	127:10	124:21
province	25 223:14	216:12,17	quantum	126:13
55:12	224:3,10	purchased	52:2	128:10
134:4	241:1	184:15	question	129:25
180:15	242:10	purchasing	49:25	133:17
181:1	260:1,5	6:18 19:3	50:22	147:5
182:20	publically	111:9	62:18	159:2
provincial	224:12	186:2	63:22	178:21
183:1,9	240:1	purpose	65:3 78:7	183:22,24
247:15	260:19	24:9	79:16	191:25
260:4	publicly	104:23	83:10	195:22
provision	261:7	211:14	88:18	218:2
14:11	publicly-	purposes	98:9	224:25
43:15	traded	50:3	103:9	234:19
63:16	242:22	149:14	124:23	262:22
162:21	public-	211:14	134:6	270:6,10,
192:14	private	pursue	141:25	11,18
193:7	241:1	99:24	142:10,15	quick
206:4	publish	181:4	156:16,19	220:10
241:4,14	260:14	pursued	162:23	quickly
245:18	PUC 55:9	45:1,4,14	166:3	132:24
246:9	pull 82:12	90:1	182:1	179:14
263:3,4	85:20	push 183:9	188:10	218:16
provisions	135:10	pushing	190:19,22	quite
64:8,18	136:19	185:14	196:7	43:18
65:17	140:3	putting	213:24	117:24
160:22	146:2	35:11	229:19,21	163:9
212:15	147:3	37:10	239:5	166:23
213:12	151:18	77:5 78:3	253:15	208:12
245:8			259:20	228:24
			266:12,19	242:11

243:21	ratepayers	143:21	226:4	15 56:16
254:6	8:23 9:18	154:12,19	238:10	60:8,11
268:24	10:2,18	266:1	264:19	61:18,23
271:6	186:10	realistica	271:15	65:21,25
Quote	192:5	lly	reasonable	67:17
194:7	rates 63:7	243:21	147:12	68:6
quoting	133:18,19	reality	238:15	70:16
201:18	,22 134:1	159:23	240:15	71:8,20,2
219:22	191:19,20	262:12	242:21	3 72:9
	rather	realized	243:5,7	73:10,16
<hr/> R <hr/>	19:19	92:4	245:20	75:12
rained	91:6	really	247:19	82:11
59:18	99:25	20:10,15	251:16	83:14,20,
raise	118:18	26:3	254:7	22 93:2
90:18	126:17	58:18	258:13	98:7,15
92:17	133:9	84:19	260:17	100:17
150:20	224:20	88:8 89:2	263:22	101:16,24
162:16,19	263:5	113:4	264:11	102:2,6,1
163:1	264:11	126:24	reasoning	5
raised	267:16	131:18	21:13,14	104:1,8,2
138:15	272:12	132:19	24:5	5 105:23
162:8,16,	ratio	147:1	reasons	106:2
18,22,23	6:15,23	155:1,8	25:6,8	108:14,17
261:17	reach 57:4	157:7	76:8	,20
raises	150:3	159:24	93:16	118:15
149:17	174:7,17	168:11	152:24	119:14,25
150:10,16	reached	175:11	168:18	120:9
Ralph	59:23	188:11	183:7,8	121:18
149:13	reaching	193:11	241:22	122:11,18
163:4,5,1	172:1	197:19,20	recalibrat	123:13
2	219:8	201:6	ion 7:21	125:8
ran 60:7	reacted	203:9	recall	142:1,5
198:21	157:15	242:25	13:11	148:7
range 8:16	reacting	246:21	14:9	158:3
220:11	60:24	257:6	15:2,9	163:14
222:25	readily	266:15	23:21	171:21
260:25	29:14	reason	25:19	173:4,7
ranked	reading	6:21	26:1,13,2	190:25
205:6	38:22	20:4,13	3 27:7	194:12
rarely	46:25	22:3 24:8	31:11	205:16,19
240:24	219:8	25:4	33:2,5,20	,20,21
rate 15:8	272:13	34:10	35:1	241:2
113:13	reads 58:6	36:5,21,2	38:20	250:24
191:16	75:18	5 108:8	44:22	251:3,13
ratepayer	real 11:14	142:25	48:16	receipts
49:18,24	54:11	152:1	50:11	118:2
		162:1	51:5,9,13	receive
		176:19	52:3,5,21	31:5
		212:21	53:1,5,8,	36:22
				120:19

272:21	g 49:7	166:18	157:19	regarded
273:4	257:11	267:14	referencin	169:8,9
received	recollect	recover	g 77:15	regarding
34:7	99:14	123:3	referred	226:7
44:20	recollecti	recoverabl	15:11	265:1
47:19	on 43:5	e 123:12	40:17	regards
86:4	44:2	recovered	83:13	12:4
115:25	53:23	17:23	85:24	17:21
116:2	56:10	123:9,18	139:23	19:1
122:15	60:16	recovery	153:22	87:25
124:3	61:15	123:15	218:11	112:22
157:10	68:23	reduce	referring	139:21
208:5	69:4,7	23:12	9:7 67:22	170:6
receiving	71:5	24:10,21,	69:1	227:25
7:11 9:19	78:24	25	77:21	264:15
31:13	82:7 93:6	50:14,24	79:10	region
67:18	94:3	96:13	88:22	238:1
68:6	98:24	181:13	158:21	regional
104:6	100:7	273:3	177:23	181:5,7,8
122:18	105:4	reduced	230:8	242:9
recessing	107:24	117:24	252:12	regular
81:17	116:7	182:16	reflect	42:21
137:13	132:12	200:25	137:4	233:12
recipient	139:20	reducing	269:23	regularly
210:10,18	158:16	198:6	reflected	118:11
211:3,5,2	172:18	reduction	260:1	175:5
4 212:5	185:9	23:6	reflecting	regulator
216:21	188:20	reductions	79:16	113:11
217:2	189:22	24:21	256:20	reign
recipient'	265:3	re-	reflection	237:2
s 210:19	recollecti	examinati	245:23	related
reckonings	ons 61:2	on 270:8	reflexion	59:10
209:17	recommenda	refer	34:16	68:3 79:7
recognize	tion	225:9	refresh	113:10
21:16	104:22	237:11	192:10	244:4
23:14	recommenda	246:2	refusal	249:23
135:2	tions	reference	64:8,17	250:1
145:15	90:24	85:23	65:16	255:12
160:12	recommende	143:1	99:11	259:6
247:13	d 91:2	158:14	100:8	262:9
248:4	149:9	227:21	102:21	263:13
262:3	recommendi	246:5	regard	relates
271:24	ng 130:12	249:6	132:5	77:1
recognized	reconvened	referenced	177:6	238:18
15:10	42:21	108:15	178:6	240:9
29:20	record	references	247:8,11	246:24
88:2	137:3			relation
recognizin				

140:9	69:9	142:10	112:12	167:14
relationsh	75:11	report	128:11,12	169:7
ip	93:12	8:15 34:7	129:23	170:9
55:5,18	96:10,17	225:20	171:17	171:7,8
56:1	97:4,8,18	reporter	260:14	173:6,12
122:7	98:23	194:20	requiremen	174:25
155:7	99:9	reporting	t 187:17	175:13
237:5,22	100:23	34:17	requiremen	176:11,16
238:12	101:3,7,1	105:10	ts 260:11	180:14
256:17	9,20	223:14	reservatio	183:15,23
257:3,7,2	103:4	reports	ns 134:17	187:19
2,23	104:5	223:22	138:22	201:17
258:9,15,	119:11,16	reposition	residential	204:9
17 259:7	120:21	95:12	l 117:5	247:21
relationsh	121:9,15	representa	residents	Respectful
ips	125:6,14,	tion	23:14	ly 239:24
237:24	22 144:12	64:1,15	resinate	respond
238:4	145:23	65:4	34:14	68:2
258:19	161:16	representa	resolution	111:7,23
relative	163:12	tives	226:11	159:12
151:24	180:16,19	46:22	246:25	respondent
relativity	183:23	represente	resource	s 103:25
85:20	184:3,8	d 256:9	29:13	104:3
95:11	190:5	representi	46:21	responding
103:9	192:1	ng 248:21	47:5 48:7	29:19
relief	193:23	request	51:19	31:12
144:18	194:1	29:19	169:8	66:17
rely 85:19	196:4	30:8 31:1	170:5	111:15,16
remain	199:15	71:4	185:9	respons
138:11	201:20	117:2	228:4	22:7
remaining	205:13	118:17	resources	response
17:20	207:11,16	requesting	29:24	16:12
150:3	218:1,10,	116:24	63:16	30:19
remains	19 219:1	requests	133:10	70:25
201:7	rememory	66:17,24	193:8	74:14
remarks	126:20	67:9,18	206:5	75:17
270:21	rent	68:1,3	227:14	76:13,15,
remember	238:25	72:11	respect	17 77:2
13:12	239:10	270:3	29:10	108:2,5
15:14,18	240:5,18,	require	32:15	152:13
24:23	19	111:8,10	51:14	168:16
31:10,19	Rents	168:20	119:5	184:4
35:6	239:21	required	142:7	196:7
45:24	repeat	18:17	160:23	responses
56:17,23	95:22	49:8	165:1,12	30:7 31:1
61:7	rephrase		166:4,6	47:19
68:10	251:9			48:15
	rephrased			71:4,5,21

72:3,10,1 3,18 73:17 82:1,4,10 83:25 86:4 97:19 98:6,9 99:1,13 101:15,17 ,21 102:1 105:12,19 ,24 106:4 129:24 responsibi lities 134:10 156:13 269:3 responsibi lity 11:8 23:5 120:17 248:3 266:8,11 269:13 responsibl e 10:20 28:10 67:6 148:15 rest 152:4 236:25 restart 70:23 restricted 170:8,14 restrictio ns 187:14 restrictiv e 110:8,15 111:13 130:6 161:9 restructur ing 6:6	81:7 260:4 result 23:2 60:20 72:7 125:5 172:1 174:17 178:6,8,1 0,11 259:23 resulted 8:22 resulting 16:15 results 82:9 97:5 105:10 resuming 81:18 137:14 retain 128:12 retained 29:8 51:14 retired 269:16 retirement 145:6,20 268:2 return 13:21 returned 144:16 returning 11:17 revenue 18:1 review 8:11 16:11 19:1 25:21 33:24	38:8 72:18 97:13 145:14 reviewed 14:17 17:14 38:12 143:15 reviewing 25:13 71:5 72:20 177:17 192:9 reviews 11:6 revised 14:19,20 RFP 47:19 48:14 51:6,15 57:13,19, 21 60:6 61:3 66:3,15 68:19 70:25 71:22 78:2,4,10 ,12,18 79:17 80:5,6 82:1 86:3 89:3,10,1 8 91:10,22 92:1,4,14 ,20 93:13 99:25 101:8,15 105:11 108:2,10 134:18 146:19 189:21 190:23 191:6 201:17,18	,24 203:7 222:16 227:25 RFPs 236:2 Rick 93:24 94:7 138:5 157:4 rights 99:11,12 rigorous 177:6 risk 114:13 117:24 217:15 229:9 riskier 163:2 risky 161:10 Rockx 31:11 Roger 154:15 role 10:23 29:10 46:19 47:5 48:17 51:18 60:5 66:12,13 73:24 131:19 169:3 185:7 221:16 roles 132:5 roof 225:16 room 66:17,23 67:7 68:3 112:2	150:2 171:20 209:21 246:1 rose 42:20 rough 219:14 roughly 144:4 routine 167:2 row 103:22 105:21,22 RP 227:22 RPF 227:22 rule 132:24 rules 167:1 ruling 145:22 run 64:21 123:3 229:9 running 95:11 114:13 123:8,17 137:9,17 173:23 runs 221:18 rushing 112:5 Ryan 2:19 <hr/> S sake 251:1 sale 10:8 14:7,25 16:16 19:10 20:6,11 28:12,13, 19 34:15
---	--	---	---	---

37:5,12	233:12	81:25	64:6	265:5
39:13,19	scenario	82:9	71:15	seems
40:5,16,2	241:5	95:14	98:4 99:7	100:8
1,24	242:2,22,	172:10,11	103:15	132:18
76:10	24 247:23	173:6	105:21	135:8
79:7	267:16	205:4	115:17	138:6,19
80:2,10	schedule	227:25	123:15	158:4
86:1,3	116:17	235:23	138:10	206:21
87:6,16,2	117:13	248:13,21	155:5	238:14,17
5 88:14	212:23	,23	178:14	seen
90:14	246:23	249:2,14	193:6	30:14,22
94:1,8	scheduled	250:10,13	194:19	32:24
106:5	116:22	,17	210:2	54:11
134:8	scheduling	251:25	225:14	76:16
139:22	84:10	253:2	251:2,12,	85:23
152:4	scope 26:8	255:17	18 252:8	135:9,11
157:10	score	262:9	seconded	138:2
196:2,13	72:2,19	scrambling	42:14	143:1
197:8	101:21	167:11	section	155:23
199:10,18	102:3,15	screen	26:20	156:2
,20	103:5	250:24	212:24	158:10
200:19	249:7	scroll	247:24	182:16
201:5	251:22,24	13:4,16	269:12	193:4
245:19	252:8,12,	42:8 54:6	sector	198:5,8
255:12	17,22	62:9	238:7	207:12,19
268:6	scored	63:4,24	security	213:4
sales 44:8	83:24	75:7,16,1	117:4	240:25
120:6	97:19	7 81:8	118:19,23	241:14
199:13	102:4	83:11	seeing	268:24
263:5	209:20	97:22	13:12	selected
Sandra	235:18,20	99:5	38:22	45:25
2:12	,25	104:15,18	104:1	52:15
198:20	249:2,17,	,19	160:19	73:20
satisfacto	21,25	105:17	163:14	112:17
ry 177:11	250:25	138:1	229:13	113:6
Save 92:10	251:1,5	156:25	241:2	selection
savings	252:9	193:5	seek 144:1	69:14
95:18	scores	219:23	seeking	86:5
96:1	71:6	246:3	88:23	sell 41:14
saw 11:21	72:5,7	249:3	seem 135:7	64:7
25:14	73:7,11,1	scrolling	243:5	96:18
32:18	2 101:25	151:22	247:19	109:12
33:3	103:20	155:5	264:11	129:17
52:18	104:2,7	220:2	seemed	153:10
62:16,25	252:10	seat	94:23	190:10,15
110:11	scoring	257:15,21	131:5	197:21
160:21	47:6	second	159:19	209:25
189:3,9	72:21	26:19	183:1	210:6,12,
		63:24		14,19

211:15,23	118:16	19 10:2	32:13	183:22
212:4,5,8	152:5	12:5	35:12	191:25
,10,15	separate	13:19	133:19	192:4,14
214:3,5,2	239:19	14:4,11,1	settle	193:21
5	240:9,17	8,21	21:20	194:9
215:6,9,1	262:12	15:22	settled	264:10,18
1,17,18	September	16:14	7:6 21:18	269:3,18
216:13,18	52:7	17:1,3,6	seven 7:4	shareholde
217:14	53:21	18:6,8,13	several	r 6:9
selling	54:8 56:6	,17	140:9	50:1
40:13	145:21	19:8,19	242:9	87:10,11
64:20	230:8,9	20:2,12,2	259:4	109:11,13
65:19	232:6	5	share 10:8	,19
75:24	233:17	21:7,10,2	16:16	161:1,2,6
78:8,9	235:25	2,24	40:16	186:1
119:20	257:13	43:15	44:8	197:16
132:20	series	49:10,16	73:23	210:3
133:2	159:9	68:14	87:16,25	212:15,20
134:20	246:12	78:5	88:14	,21
188:5	serious	113:12	94:1,8	214:13
191:14	5:18	154:10,11	109:14	238:25
211:6	37:13	,22	113:19	244:9,10,
232:3	seriously	155:2,6	199:18	13 270:4
send 57:5	37:6,10	167:25	214:25	shareholde
58:3	served	168:24	229:7	rs 64:7
sending	149:13,14	169:4	240:16	65:11
57:22	service	183:22	255:11	88:2
senior	9:25 11:9	186:9	263:5	106:19,23
237:11	12:15,20	192:1,4,1	264:4	109:8
256:11,13	13:7	4,18	shared	176:16
,21,25	14:16	193:21	7:15,23	214:12,18
sense 20:6	23:8	194:9	8:21	246:7
24:14	74:17	195:6	9:1,19,25	shareholde
47:7	91:7	247:14	10:12	r's 64:16
50:10	112:22,25	261:20	11:9 13:7	Shareholde
63:14	113:15	262:4	14:7,16,2	rs 107:10
84:14,19	127:10,17	264:1	5 16:14	111:19
90:11	128:4	session	17:1,2	113:17
117:18	167:22	37:16	18:17	shareholdi
169:9	168:7	42:21	19:8,23	ng 200:14
171:25	174:12	46:2	20:12,18	shares
237:17	182:8	50:20	21:22	39:24
sent 57:11	263:25	87:24	91:5	40:16
201:18,24	264:10	104:19	113:12	43:11
sentence	services	161:18	154:10,11	52:2
26:20	7:15,23	sessions	,22	74:18
59:1	8:7,21	48:3	155:2,6	75:14,25
75:21	9:1,8,17,	93:18	167:22,25	76:20
		sets 108:1	169:4	77:25
		setting		

78:8,9	103:3	shut 143:9	217:6,18	144:4
79:12	107:24	Shuttlewor	229:8	175:1
80:1,4,10	108:3,21	th 10:22	233:7	sixty
,14,17	109:4,16,	11:15	246:21	144:22
101:24	23	113:25	254:20	sixty-five
103:23	110:1,4,1	168:8	269:4	144:22
109:8,12,	8	255:23	272:12	size 6:12
13 110:20	112:9,13	256:6	273:2	50:4
114:22	114:9	sic 76:1	single	204:10
153:10	128:10,11	139:7	77:9	245:24,25
160:13	,21	145:18	sir 17:4	skip 220:6
197:8,22	130:12	186:12	18:7	slide
199:11,14	131:9	227:7	270:20	32:12
201:6	132:8	signed	sit 5:19	38:1,4,13
210:7,13,	146:1	13:9	84:12,15	,19,23
15,19	150:11	16:11	100:21	105:9,16
211:5,6,2	159:10,11	213:15	sitting	106:8
4 212:5	,13,16,18	significan	32:21,24	107:19,25
215:4,6	,25	t	84:22	slightly
216:17,18	160:5,16,	125:11,18	100:20	41:3
217:16	22 161:22	196:24	situation	slow
239:14	162:13,21	197:23	10:22	136:10,12
240:1,10	163:24	235:15	44:8	slowly
244:11	164:22	271:23	46:21	135:9
245:19	165:12,20	272:23	63:1 77:5	small
265:11,24	166:5,6	273:11	87:25	17:25
267:3	209:25	signing	100:4,25	125:13
sharing	210:4,10,	129:17	111:3,5,6	181:9
229:15	17 211:15	similar	117:11	200:13,18
sheet	212:8,14	21:4	121:10	204:5,8
103:18	213:5	23:8,11	145:13	smaller
104:1	215:17	24:6,8	156:11	128:24
219:13	217:14	63:15	159:18	129:1,5
shop 93:25	240:23	68:1	161:10	185:12
94:2	241:9,15,	73:11	163:2	246:15
short 59:2	20 244:21	150:12	171:2	snapping
190:16	263:3,4	170:2	173:19	243:12
shortly	showed	204:10	181:5,7	so-called
222:21	17:16,17	268:25	221:21	184:23
shortness	251:5,10	similarly	222:4	207:25
161:22	showing	212:4	229:13	social
shotgun	97:2	simply	235:13	55:5,18
64:8,17	226:4	19:25	241:21	56:1 59:8
65:17	shown 82:8	145:16	242:25	233:7
99:12,15,	97:4	152:15	244:17	237:22
17	254:12	153:19	245:17	solar
100:3,12	shows	165:18	258:22	
101:13,17	152:10	166:3	six 22:8	
	207:19			

69:22	114:22	13:10	98:11,24	spend
119:9,12,	231:24	28:23	100:11	240:21
21 120:24	233:12	39:13	103:2	spending
123:10	238:11	82:3	107:24	22:24
155:19,25	243:13	100:5	specifically	24:19
225:16	252:9	127:20	14:11	spent
264:22	267:18	146:6	61:17	221:23
265:1,17	somewhat	234:5	79:7 84:2	split
sold 41:21	118:1	245:25	89:5	15:25
65:13	145:11	256:9	91:22	17:18
74:18	190:16	267:16	93:3,10	150:16
75:14	242:9	sorted	96:14	spoke 6:14
76:20	sor 225:10	21:14	101:24	19:2
77:25	sorry 9:10	sought	102:2,6	139:7
79:12	32:22	228:7	108:12	145:5
80:14,17	35:9	sounds	119:25	261:25
96:24	62:17	44:25	125:7	264:25
110:3	64:22	222:2	161:15	spoken
153:11	73:10	source	193:24	219:13
199:21,22	74:23	194:20	203:9	spokespers
217:16	75:17	speak	218:5	on 157:7
228:25	99:21	10:24	260:6	158:15,19
sole	102:13	30:6,23	263:13	,20,21
268:20	103:11	43:14	specificity	spring
solid	106:11	87:15	155:9	195:23
173:14	109:24	93:19	specifics	197:6,15
174:22	114:4	139:21,25	30:1	SPTT 205:5
177:16	122:1	150:24	50:18	207:14,21
solution	145:1	175:11	53:9	208:16
56:12	172:7,22	194:25	261:9	209:3,16
76:1	180:4	246:1	specified	stability
88:16	182:2,5	256:16	216:12	146:7
solutions	186:17	speaking	speculate	staff
8:7 17:21	201:9,13	57:15	190:1	36:19
18:2,4,8	210:11	112:1	265:20	67:22
19:20	219:14,16	158:14	speculating	94:1,16
79:19	,22	239:7	31:9	256:19,21
81:6	220:15	spec 29:21	34:5	stage 29:2
87:19	222:20	specialize	200:2,8	34:18
92:11	224:5	d 63:16	speculation	57:19,21
104:14	229:20	193:8	n 120:3	270:10
185:17	232:20	206:5	speculative	stages
somebody	244:20	specific	172:21,24	28:2,24
21:11	245:8	29:22	173:1	stand
25:9	251:22	31:12	speed	190:3
43:11,13	255:24	61:1	268:16	230:18
44:8	256:3	65:22		
86:10	257:19	71:5 84:3		
107:12	272:8			
	sort 11:21			

standalone 185:15	254:7,16 266:6	140:11	115:1 127:18	260:18 262:9
standard 100:9	statements 19:14 33:17	stopping 78:7	149:3 158:18	263:20 264:10
standards 242:15	151:1,10, 11 224:11	straightfo rward 235:10	165:5 174:7	structured 152:23
standpoint 6:11 26:4 63:12 79:15 80:19,21 81:3 143:17	states 226:4	strange 264:8	176:25 192:13,18 193:8 202:8	structurin g 109:19
start 37:19 85:12 120:11 142:19 205:15 263:2	stating 253:12	strategic 33:3 36:2 38:18,21, 23 43:1,8,20 45:21 46:19 47:18 48:2,5,14 ,19,21,24 49:1,22 50:3,16,1 9,24 51:7,9 52:1,7 53:2,12,2 0 54:18 57:17 59:10,12, 23 60:5,18,2 1 63:16,20 65:1,24 66:12 68:13 70:13,17 73:19,25 83:15 87:13 88:24 93:9,22 96:2,11,1 2 97:12 98:8 99:1,11 100:19 101:16 104:3,21, 24 105:11 112:11	206:4 226:19 227:19 231:4 255:1,2,1 6 262:8,19 263:14	STT 92:3 169:7,20 170:9,19 171:6,25 174:15 175:25
started 55:9 61:1 118:13 159:17	status 115:23			stuff 219:5
starting 218:8 221:10	stay 91:6 144:25 145:2 146:12 268:8		strategy 99:6 102:21 241:11	sub 214:10
starts 212:22	stayed 7:3 17:21		Street 1:19	subject 78:10 127:9 131:9 145:25 147:11 214:11
state 12:12 19:21 77:12 154:19 260:17	step 78:7		strengths 173:18	subjective 128:8
stated 108:9 115:24 116:20	stepping 16:18 66:13 76:17		stretched 263:19	submission 270:25 271:9,17
statement 8:5 45:7 116:8 118:17 157:24 158:1 194:24 224:20	steps 232:7 246:13		strong 257:7	submission s 270:17
	Stern 81:11 152:16 153:22		strongly 79:18 87:8 181:17	submit 237:15 245:14 250:5
	stick 255:22		structure 7:6 19:23 20:3 64:6,16 75:19 76:8 77:6 81:8 91:4,8 106:20 133:23 134:2 150:4 173:25 186:20	subparagra ph 14:15 214:11
	sticking 268:9			subsidiary 76:2
	stipulate 134:14			substantia l 167:13 174:3
	stock 244:12			successful 69:15
	stood 25:14			
	stop 97:24			

73:19	79:25	86:14	system	95:17,25
91:8	summarized	89:6	19:3	101:23
112:17	49:21	127:24	195:11	119:2
successful	summarizin	130:18	259:18	132:21
ly 87:9	g 9:16	133:7		184:2,6
112:17	summary	136:6	<hr/> T <hr/>	221:21
succession	98:5	137:10	Ta 255:2	222:24
268:14	summoning	139:15	tab 206:6	265:17
succession	208:12	140:24	table 3:1	268:18
s 12:9	sunshine	149:5	17:13	talking
suddenly	260:7,11	164:3,4	62:9	12:18
233:16	supplement	167:21	73:3,6	27:2
sufficient	127:25	194:7	90:3	30:12
111:22	supplement	197:3	100:21	72:17
suggest	ary 13:6	199:19	taking	76:24
29:25	supplied	207:6	6:15	89:13
85:25	14:4 18:6	211:15	10:22	102:5
139:18	support	236:11	30:15	104:6
155:24	42:25	239:4	67:2,7	118:4,10
218:18	226:12	247:7	78:6	139:16
233:15	supporting	258:8	92:18	151:24
253:1	63:17	265:23	124:6,7	155:13
suggested	supports	268:16	131:19	157:10
60:16	43:2	271:8	168:7	184:9
61:8	suppose	surmised	168:7	187:16,17
109:16	129:16	86:9	185:25	193:12
110:1	215:17	surprise	213:21	194:3
142:1	supposed	88:9	229:4	199:10
suggesting	58:19	139:23	237:3	263:2
116:4	157:6	197:9,15	talk 55:23	talks
165:18	158:14	204:13	89:25	150:23
166:3	205:15	227:17	139:4	tally
suggestion	suppositio	surprised	155:13	228:11
159:25	n	11:19,23	157:2	tardy
165:19	220:19,21	12:1	159:17	30:24
205:3	224:19	145:11	172:15	31:1
241:9	sure 16:5	168:14	203:15	136:15
suggestion	26:3 33:6	surroundin	209:14,24	target
s 142:3	56:7 57:8	g 154:21	210:1	150:24
suggests	58:14	swearing	243:17	151:15
98:20	62:17	84:11	253:23	task 33:4
146:5	64:23	85:4	263:6	45:21
156:3	67:6	switch	talked	46:3,6,10
suitors	72:16	85:17	14:11	,19
203:16	85:8,9	Sworn 3:5	20:15	47:5,18
summarize		5:9	33:19	48:2,5,14
		symmetry	36:14	,19
		162:20	43:25	51:7,10,2
			50:14,18	2 52:7
			57:7 61:6	

53:2,13,2	264:15	255:23	145:17	251:7
1 54:18	269:25	256:10,18	testimony	that'd
59:11,23	team 33:4	269:9	126:12	141:6,7
60:5	45:21,25	telephone	247:4	142:16
61:18	46:4,6,10	222:20	271:6	theirs
66:12	,19	ten 28:10	thank	114:24
68:13	47:5,18	71:12	22:10	thereabout
70:13,17	48:2,5,7,	143:10	42:2	s 253:25
73:19,25	8,14,19	147:22,25	107:14	thereafter
83:15	51:7,10,2	245:2	115:6	222:21
87:13	2 52:7	tenant	125:24	there'd
93:22	53:2,13,2	239:7,25	156:18	12:20
96:11	1 54:18	term 43:20	159:2,4	145:12
97:13	59:11,23	154:15	161:15	146:6
98:8	60:5	159:20	163:3,16	therefor
99:1,11	61:18	190:16	165:18	209:8
100:19	66:13	213:8,11	166:16	therefore
101:16	68:13	terming	167:16	188:25
104:3,21	70:13,17	43:19	169:5	198:15
112:11,15	71:25	terms	174:2,14	200:23
115:2	73:19,25	18:16	175:22	208:12,15
127:18	74:1	25:17	178:2,22,	209:2,8
149:3	83:15	26:7	23 179:3	217:5
158:18	87:14	67:20	217:24	224:18
165:5	93:22	97:4	219:17	260:13
169:13	96:12	113:17	220:8	there's
170:6,10	97:13	131:9	226:16	26:9
173:21	98:8	134:19	234:18	30:15
226:20	99:1,11	162:11	236:5,9,2	33:25
227:19	100:19	165:6	3 241:19	72:13
228:8	101:16	210:2	242:1	76:22
231:5	104:3,21	243:15	243:4	82:25
255:3,16	112:11,15	245:22	247:3	83:18
tasked	115:2	247:15,22	248:18	92:7
29:21	127:18	256:17	253:5,14	98:5,16
67:5	146:11	258:14	254:10	128:21
tasks	149:3,9	259:5	255:20	129:8
167:2	158:18	260:23	257:20	152:12
tax	165:5	263:23	261:10	156:4
76:22,25	169:7,14,	264:9	270:5,7	209:21
77:25	21	268:9	273:13	213:23
78:8,14,1	170:6,10,	terrible	thanking	222:22
5,17,20,2	19,20	103:13	53:8	233:16
1	171:6,7,1	terribly	thanks	241:4
79:3,6,15	0,25	138:6	53:13	245:23
80:3,9,13	173:21	213:23	85:6	246:10,11
,18	174:15	219:16	137:11	,12
149:10,14	226:20	test	225:3	254:12
152:5,24	227:19		246:20	
153:2	228:8			
	231:5			

270:15	7:11	32:2,17,2	19,24	105:1,6,1
271:2,19,	118:6	2	68:5,9,16	5
25	195:15	33:1,5,21	,22	106:1,7,1
they're	throughout	34:4	69:2,7,12	8 107:2,8
5:16 44:9	175:24	35:1,9,19	,17,21	108:16,19
63:10	254:5	36:4,13,2	70:8,10,1	,23
65:8 84:9	255:1,21	4 37:8,15	5,20	109:17,24
86:20	thrown	38:5,10,1	71:1,7,23	110:7,17
91:2	221:24	5,20	72:4,8,12	111:18,24
110:21	thumb	39:5,12	,20,25	112:14,20
164:6	132:24	40:4,14,1	73:8,14,2	113:14,18
243:9,11	thunderbol	9	1	,21,24
they've	t 197:9	41:1,6,16	74:2,5,14	114:7,11,
111:1	Thursday	,22	,20,23	18,23
third 6:21	230:13	43:9,24	75:9,15	115:3,20
25:11	thus	44:3,7,18	76:21	116:10,15
83:6	207:19	,23	78:3,13,2	117:3
133:9	211:7	45:6,15,2	0,23	119:6,13,
197:24	Tim 5:7,13	3	79:9,14	16
third-	6:3,6	46:1,7,11	80:6,11,1	120:16,21
party	7:10	,16,20	5,20,25	121:2,7,1
51:19	8:1,4,24	47:20	81:4,23	3,18,25
264:5	9:3,22	48:1,9,16	82:6,11	122:14,19
thirty	10:4,10,1	,20	83:20	123:11,20
54:22,25	9 11:13	49:3,19,2	84:1 86:6	124:2,11,
55:4	12:3,19	3 50:7,17	87:4,7,17	15,25
83:15,23	13:11,25	51:1,8,16	88:15,23	125:3,6,1
180:9	14:9	,19	89:14,17,	0,21
183:17	15:2,9,17	52:3,9,13	23	126:14,19
205:9,10,	,21	,24	90:11,19	127:3,11,
11 237:6	16:9,12,1	53:5,15,2	91:18,20	15,22
250:7	7	2	92:5,9,15	128:7,15,
251:19,23	17:4,7,10	54:15,20	,21,25	19,23
252:2	18:7,19,2	55:2,7,22	93:4,8,15	129:1,4,1
253:24	3 19:11	56:3,7,25	94:5,9,12	3,20
255:21	20:8,23	57:6,14,2	,16,22	130:2,5,1
256:1	21:23	3 58:5	95:15,22	5,21,24
Thornbury	22:6	59:7,14,1	96:5,14,2	131:5,11,
6:19	23:20,24	7,21,25	0,25	17,25
184:8,15	24:3,12	60:2,8,13	97:7,10,1	132:4,10,
185:24	25:2,19	61:4,11,1	5,20	13,21
186:4,8	26:1,13,2	6,21	98:3,11,1	133:1,6,1
187:2	3	62:1,11,1	6	3,20,24
188:5,12	27:7,19,2	7 63:3	99:2,8,14	134:3,11,
191:10	4 28:6,21	64:3,10,2	,23	22,25
thoughts	29:6,12,1	1	100:14,17	135:7,8,1
108:4	8 30:9,14	65:2,8,14	101:10,19	1,15,20,2
thousand	31:3,8,23	,20,25	102:2,16,	4 136:14
		66:10,20,	23	138:3,8,1
		24	103:6,11,	1,16,24
		67:11,16,	16 104:5	139:4,6,1

2,20	,23	17,23	218:3,13,	246:17
140:12,17	170:1,11,	195:5,9,1	21	247:1,12,
,21,23,25	16,21,25	8,25	219:2,20	17
141:3,6,1	171:11,16	196:3,8,1	220:14,17	248:1,6,2
0,18,22	,22	5,20,24	,22	5
143:3,7,1	172:3,8,1	197:3,12,	221:12	249:5,9,1
5,25	8,24	14,24	222:6,15,	2,15,19,2
144:3,8,1	173:2,9,1	198:2,9,1	18	4
1,20	6,21,24	3,18,25	223:5,8,1	250:3,7,1
145:1,5,1	174:4,9,1	199:3,7,1	2,22	1,15,18,2
0,21	2,18	6,23	224:4,9,1	1
146:3,8,1	175:3,9,1	200:1,5,1	6,22	251:4,13,
3,16,24	6,20	6,21	225:23	19,23
147:15,24	176:1,8,1	201:3,8,1	226:2,8,1	252:2,6,1
148:4,7,1	4,18	1,14,21,2	4,21	1,14,20,2
3,19,22	177:1,4,7	5	227:4,9,2	4
149:1,5,2	,14	202:4,11,	3	253:4,10,
2	178:1,3,9	15,18,22,	228:9,13,	12
150:1,7,1	179:12,20	25	15,18	254:1,8,1
3,18,22	,24	203:3,8,1	229:8,16,	7,23
151:7,21	180:2,7,1	7,22	20,23	255:5,13,
152:1,9,1	1,17,20,2	204:2,7,1	230:1,10,	19,25
5,25	3	0,17	15,19,22	256:4,11,
153:12,18	181:3,10,	205:14,22	231:1,6,1	15
154:8,14,	14,24	,25	0,16,19,2	257:1,9,1
24	182:2,5,1	206:8,11,	2	3,17,25
155:10,15	1,18,22	15,19,23	232:10,13	258:3,16,
,22	183:4,11,	207:3,16,	,16,20,23	24
156:2,9,1	18,25	22	233:3,6,1	259:8,17,
2,17	184:4,9,1	208:2,7,1	3,19,21	22,24
157:12,18	2,16,19,2	0,14,18,2	234:1,6,8	260:2,8,1
,23 158:2	5	1	,12	0,21
159:14	185:5,8,2	209:1,6,1	235:17,21	261:9,13,
160:2,10,	2	0,19	236:2	24
17,25	186:6,11,	210:8,16,	237:8,13,	262:2,6,1
161:7,13,	16,23	21	21	0,13,20
17,25	187:4,7,1	211:1,7,1	238:2,5,8	263:8,17
162:10,13	1,21	2,18,21	,13	264:2,6,1
,25	188:1,6,1	212:1,7,1	239:4,8,1	4
163:9,14,	5,21	2,17	1,16,20,2	265:3,8,1
21	189:3,7,1	213:6,9,1	3	4,19
164:1,8,2	0,13,16,1	3	240:3,7,1	266:7
3	9,22	214:15,19	2,20	267:19
165:4,15,	190:21,25	,22	241:8,17,	268:5,11,
24	191:5,9,1	215:1,7,1	24	17
166:9,15,	1,15,18	2,19,23	242:4,7,1	269:5,10
21	192:2,6,1	216:2,6,9	2,16,19	270:2,12,
167:3,7,1	1,15,20	,14,19,23	243:1,6,1	19
5	193:10,13	217:3,8,1	4	271:4,22
168:5,22	,17,24	2,17,20,2	244:1,16	272:7,18,
169:11,16	194:5,11,	3	245:21	22

273:7,10	249:22	50:15,25	69:20	141:25
time's	Toronto	53:19	74:16	142:4
83:7	84:11	64:24	75:22	true 29:17
Timothy	total 16:4	74:18	76:5	100:25
2:14 3:5	35:22	95:18	145:8	135:14
5:9	206:13	96:1,7,13	146:12	Trump
title	249:3	,18,23	152:22	136:9
179:25	251:5	106:4,14	182:15	trust
titles	totalled	109:6	187:13	154:16,18
261:20	207:25	111:10,12	197:21	,23 155:1
TOC 114:2	totally	,16,19,22	transactio	trusted
TOC0518041	29:2	112:12	ns 10:23	148:21
4:4	totals	114:16	189:23	262:23
TOC0521817	103:18,24	128:11,12	190:3	try 7:22
4:5	207:11	129:2	200:24	24:25
TOC518041	250:19	131:16,23	transcript	29:23
54:2	tough	134:13	3:20	50:14
TOC521817	168:14	141:17	142:14	79:24
75:3	Tow 48:25	142:3	218:6,7	179:14,15
TOC67989	towards	149:19,24	271:10	181:22
156:20	39:14	153:9	272:10	183:9
TOC70115	67:13	154:13	transfer	245:6
136:19	86:15	159:2	18:25	258:4
137:21	127:25	174:6,11,	78:20	268:21
today	134:8	16 176:7	153:2	271:7
32:21,24	135:1,24	185:3,11	268:15	trying
83:9	155:5	188:9	transfere	18:16
115:25	town	190:5,9	d 76:3	60:14
250:24	1:2,17	192:5,13	treasurer	98:21
254:4	2:18 5:25	198:7	54:21	111:11
261:18	6:2	214:20	179:22	157:23
265:2	7:9,25	215:17	180:5	164:8
tomorrow	8:3	216:7,11,	treat	183:2
271:14,16	9:2,5,6,8	17,18,25	127:14	198:22
272:6	,19	217:4,10,	treated	204:13
273:13	10:2,18	13 221:17	52:23	211:10
tonight	13:19	222:11	tried	243:10,24
272:10	14:5,12	256:19,21	125:6	246:20
top	18:6,11,1	Town's	trigger	247:23
102:15,18	2,14	24:11	109:9	253:18
103:23	21:15	traded	146:2	264:8
203:25	24:22,25	240:1	triggered	267:1,11,
205:6,9,1	26:2	transactio	215:17	13
6 208:8	32:14	n 10:8	triple	268:15,19
244:21	40:12	11:10	225:10	Tuesday
	41:14	12:2	trouble	230:14
	45:12	13:24		turn 22:14
	48:25	14:8 15:1		29:17
		16:16		
		22:5,9		

32:7 33:7 37:21 41:7 54:1 62:3 74:6 83:1 95:12 102:10 103:7 104:10 105:7 107:18 108:24 114:1 115:11 118:13 156:20 190:14	252:15 two-year 146:1,6 type 13:10 27:25 89:24 130:16 types 12:10 43:17 190:2 263:20 typical 263:12 typically 20:25 263:1 <hr/> U <hr/> ultimate 47:13 86:4 125:19 ultimately 43:7 59:15 76:20 79:11 80:17 86:20 119:4 211:4 unanimous 106:19 107:9 109:19 111:18 176:16 unanimousl y 42:24 uncertaint y 154:21 155:13 unconditio nal 215:3,5	underneath 152:3 understand 5:6 7:8 8:21 9:1 17:2 20:13 21:13 24:9 25:16,24 26:21 27:5 28:4 34:24 35:5 40:3,12 46:19 48:24 50:15,23 51:18 53:12 60:17 63:1 66:1 72:17 77:14,24 89:10 91:13,23 94:25 95:10 96:22 97:3 100:11 103:8 110:14 112:8 121:16 122:11 131:21 132:20 157:23 159:10,23 167:21,24 173:13 179:11 181:19 195:2 203:11 226:17 228:3,21 241:16 256:3 257:12	270:19 understand able 29:3 understand ing 10:7 24:12,23 27:16,22 28:5 30:2 36:1,6 40:6 41:3,13 45:1,3,7, 13 46:14,17 51:25 52:11 62:13,23 73:4 79:5 80:9 97:1 103:18 123:7,16, 25 146:4 190:13 229:16 250:13 understood 35:5 39:2 57:14 63:1 64:23,24 76:7 80:1 95:19 96:17 110:2 127:1 165:15 174:18 183:8 247:6 267:8 268:3 undertake 104:22 119:18 undertaken 134:23 135:4 undertakin	g 27:14 undertook 120:11 174:16 unfolded 241:21 258:15 270:1 unfortunat ely 117:25 141:9 188:21 258:18 unique 117:11 unit 122:20,25 123:2 225:16,17 units 122:3 124:6 unless 186:19 unlinked 239:3 unreasonab le 147:13,16 unsure 158:9 unworkable 242:25 258:22 upcoming 112:22 updated 35:24 upfront 120:8 upon 5:1 7:6 21:18,20 42:14
--	--	---	--	--

81:17,18	96:19	22 195:22	119:12	130:15
85:20	106:5	197:14,19	123:10,19	133:7
137:13,14	111:3	199:5	155:19	visiting
169:1	114:6,10,	valuation'	265:17	237:17
273:16	17 117:25	s 34:13	verbal	vivid
upwards	128:14	value 14:3	62:2	100:18
39:14	134:20	18:16	68:24	voice
40:2,9,11	135:16	28:8	verbally	92:22
182:9	148:16	31:25	93:20	233:24
USA 165:6	149:20	35:23	Veridian	voiced
useful	162:2	49:13,23	204:16	93:13
77:22	165:14	50:1 95:1	237:25	voicing
174:3,16	180:14	133:4	versus	93:3
175:19,23	181:5,7	197:17	78:9	vote 105:5
177:6	183:16	206:13	245:25	171:19
usual	185:10,15	212:9	viable	227:1,25
34:17	186:5,17,	218:20	87:8	228:12
84:16	25 188:8	220:20	view 20:25	voted
ut 186:16	189:24	222:24	25:12	42:24
utilities	197:17	223:1	29:3	173:5
2:7 7:1	199:20	224:7	36:17	227:20
11:1	226:6	251:5	49:25	228:12
18:10	254:15	254:22	62:21	voter
19:24	256:12	variety	63:18	198:11
54:22	utilize	167:1	86:2	votes 47:2
55:16	12:7 73:2	various	90:18	104:20
87:1	<hr/>	12:9	92:17	207:14
88:25	valuation	28:24	108:18	voting
91:6	19:8	56:8	114:5	46:25
117:3,11	22:16	73:18	115:5	47:3,11
180:5	23:23	126:11	145:10	169:10,12
185:12	24:9,15,2	182:25	153:14	170:4
186:19,24	4,25	198:16	173:13	171:14
187:2,6,9	25:4,7,16	205:4	174:2	227:10
244:2	,25 26:21	206:6	176:2,23	<hr/>
256:18	27:5,18,2	207:11	177:3	w
269:1	2	246:5,11	229:9	wage
utility	28:14,18	vast	viewed	260:5,19
6:12	29:4,9,10	200:23,24	62:24	261:7
18:10	30:6	vent	64:2,8	wait
24:16	31:6,21	119:9,21	views	144:14
46:11	33:23	120:24	85:25	waiting
49:4	34:1,2,7,	155:25	87:16	61:9,19
55:10	9,24	264:22	91:14,15,	62:21
74:17	35:7,13,1	ventilatio	23	63:2
75:20	6,20,23	n 225:16	93:3,13,2	91:25
78:5	36:2 37:4	vents	5 94:8	
91:16	129:18	69:22	108:11,14	
	132:7,19,			

walk 237:3	17:20	199:1,4,8	,13,17,24	Wendy
walked	18:10	,22,24		273:23
248:19	19:4	200:3,11,	ways	
	186:24	12,20,22	153:23	we're
Wasaga		201:4,9,1	214:4	18:25
122:22	Watson 2:7	2,16,23	weather	24:18
204:3,5	3:10	202:1,5,1	58:18	34:6
wasn't	178:24,25	2,16,20,2	we'd 49:11	42:5,12
10:20	179:2,3,6	3	58:20	58:23
11:1,19,2	,7,8,13,2	203:1,4,1	100:2	71:15
2 18:12	1	1,18,23	118:24	77:18
20:1 22:7	180:1,4,8	204:4,8,1	186:15	85:20
28:12	,12,18,21	2,18,24		128:1
34:24	,24	205:18,23	week 58:20	134:19
37:9	181:6,11,	206:1,9,1	117:17	135:8
44:10	19,25	2,16,20	144:23	137:16
57:19,21,	182:3,6,1	207:1,5,1	weekly	139:2,3,1
24 58:13	3,19,23	8,23	116:1	6 145:25
79:20	183:6,13,	208:3,8,1	117:13,16	193:12
87:23	20	1,15,19,2	weeks	204:24
88:6,8	184:1,5,1	2	117:19	247:23
90:23	1,13,17,2	209:2,7,1	132:23	west
91:8 96:3	1	3,23	144:4	213:10
109:18,20	185:1,6,1	210:9,17,	weigh	Westario
112:7,14	8	23	135:20	199:20
120:4	186:3,7,1	211:2,9,1	weight	we've 5:24
131:18	4,21	3,19,22	60:18	15:23
136:1	187:1,5,8	212:3,13,	65:23	26:10
139:24	,15,22	18	weighted	33:19
141:4,5	188:2,10,	213:7,10	66:8 95:1	62:19,20
153:4	18,23	214:1,2,9	weighting	85:23
159:15	189:5,8,1	,16,20,23	60:10	91:24
162:10	1,14,17,2	215:2,8,1	63:15	93:23
167:14	0	3,20,25	66:6,7	101:22
168:10,11	190:18,22	216:4,7,1	welcome	103:19
,13	191:2,7,1	0,15,20,2	249:17	132:21,22
175:10	0,12,17,2	4	we'll	134:6
176:8	2	217:4,9,1	5:18,19	141:14
181:14,15	192:3,8,1	3,18,21,2	13:16	182:16
197:9,15	2,17,22	4	56:20	193:4
200:18	193:3,11,	218:4,14,	57:9	198:5
205:22,24	14,18	22	71:12,16	205:2
206:23	194:1,7,1	219:3,21	142:5	227:18
226:10	5,18	220:15,18	171:4	whatever
233:12	195:1,8,1	,24	199:9	155:16
234:1	4,20	221:13	236:17	183:7
253:18	196:1,4,9	222:7,16,	272:5,20	210:21
265:7	,17,21	19	273:4	241:22
water	197:1,5,1	223:6,9,1		whereas
9:4,8,11	3,18	3,18,24		118:22
	198:1,4,1	224:1,2,6		
	0,14,19			

217:9	248:19	,15,24	270:10	269:18
whereby	who's	145:3,9,1	witnesses	worked
210:5	107:12	9,24	62:20	20:10
229:6	125:24	146:5,10,	153:7	22:1 55:8
241:21	159:5	14,23,25	272:2	68:17
243:11	231:24	147:10,20	wonder	155:16
244:9	wild	148:1,6,1	58:8	171:6
whether	213:10	0,17,20,2	142:9	180:13
15:15	William	4	272:9	208:23
19:22	2:18 3:8	149:2,16,	Woodworth	215:9,14
35:6	77:20	23	273:23	220:5
52:22	85:2,6,11	150:5,10,	wording	238:20
53:2	125:25	15,19	24:6,8	243:16
61:24	126:4,9,1	151:6,17,	work	254:7
65:16,22	0,15,22	22	9:12,24	258:8
70:24	127:6,13,	152:8,14,	10:13,25	working
84:18	16	20	11:14	10:23
95:17	128:3,9,1	153:5,13	12:4	52:18
96:1	6,20,25	154:4,9,2	18:11	56:11
97:12,14	129:3,7,1	0	24:5 26:8	62:16
100:2	5,22	155:3,12,	30:5 33:3	68:13
101:8,18,	130:3,11,	18,23	35:18,20	69:5
21 117:5	18,22	156:5,10,	36:2,4,10	70:5,14,1
119:4	131:2,8,1	15,18,24	,12 37:5	9 86:15
130:9	4,20	157:16,20	53:13	112:7
135:25	132:2,6,1	,25 159:1	54:18	151:2,14
146:11	1,16,25	266:18	55:5,17,2	155:20
147:1	133:4,12,	267:5	0 56:1	181:1
154:1	16,21,25	272:8	59:3,10	183:15
172:3,4	134:5,12,	Wingrove	68:17	237:5
175:11	24	23:3	70:1,6,24	243:19
178:10	135:5,12,	142:3	81:25	247:9
185:23	19,23	171:1	82:3,9	257:3,7
203:13	136:7,18,	227:12,18	87:9	261:22
207:12	23	winner	106:17	262:24
220:7	137:3,10,	252:23	112:25	265:17
263:3,4	19,20,25	winning	120:14,20	268:20,25
266:21	138:4,9,1	232:8	122:6	workings
272:9,11	7	wisdom	131:6	257:23
whoever	139:1,9,1	84:20	144:16,20	workload
21:17	4	129:11	,22	25:10
whole 6:16	140:2,7,1	witness	148:16	29:15
13:5 47:8	8,22,24	165:2	149:14	144:19
79:2	141:2,4,8	178:21	167:5,13	works 9:10
80:22	,13,19,23	213:21,22	183:19	34:19
138:20	142:8,12,	223:16,25	214:4	145:15
167:1	13,21,22	258:12	243:22	211:11
212:7	143:5,13,	266:20	261:5	world
whoops	23	267:2,12	263:10	225:8
	144:1,6,9			

238:21	s 218:7	250:23		
239:18	yet 34:9	270:9		
261:12,19	35:24	271:18		
worth	57:19,21			
236:10	159:23			
would've	164:11			
25:7,21	186:13			
27:8,10	190:20			
39:13	221:3			
41:23	you'll 9:7			
45:16,18	271:20			
61:6	yours 9:25			
66:25	150:12			
67:5,12	163:25			
68:19	164:4			
69:25	269:4			
98:18	yourself			
99:18	27:4			
102:4	70:22,23			
105:1	169:8			
268:20	170:24			
271:9	183:7			
writing	226:24			
61:24	256:8			
148:2	270:11,18			
273:3,9	you've			
written	10:17			
148:8	27:23			
219:19	32:24			
wrong	36:16,20			
245:10	37:3			
256:7	40:23			
wrote	54:16			
107:9	62:24			
151:4	71:2			
194:2	76:13			
	129:9,10			
	133:3,8,1			
	5			
year's	134:8,12			
14:23	135:9			
yesterday	138:2,21,			
5:24 6:14	22 156:15			
17:15	181:20			
67:3	198:8			
218:2,6	203:15			
247:5	246:24			
Yesterday'	248:18,19			
	,23			