



The Marrocco-Collingwood inquiry (Part 1)

Judicial inquiry reads like a Shakespearean tragedy



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Public inquiries enjoy a rich history in Canadian social and political development. They are unique mechanisms through which we can uncover the truth ... At the start of a public inquiry, the commissioner tries to put together a jigsaw puzzle, not knowing what the final picture will be. The commissioner cannot leave out a puzzle piece, or the image will be incomplete. Assembling the puzzle requires attention to detail, a fair process, and a small dedicated team committed to completing the puzzle. I trust we have met all these criteria in the Collingwood Judicial Inquiry.¹

Collingwood has a great reputation with Ontario's skiers, boaters, and fans of its annual Elvis festival. Unfortunately, the town is now also known for an extensive judicial inquiry conducted by esteemed Associate Chief Justice Frank N. Marrocco, as inquiry commissioner. His report was released in November 2020 after two years of testimony and research. It contains a long list of recommendations – to the Ontario government and the town council – for repairing the damage done to public trust in municipal government and in local electricity distributors by the events in Collingwood.

The inquiry report should be a “must read” for municipal officials, policymakers, and students of local government in Canada. But at nearly 1,000 pages, it's a daunting task. This series of articles highlights the report's findings, the potential impact of its recommendations, and what it means for city management as a profession in Canada.

Setting the Scene

With the trappings of a Shakespearean tragedy, Justice Marrocco's narrative begins with a cast of characters:

- **The Mayor** – The mayor was elected as mayor for the first time in 2010 on a fiscal-prudence and debt-reduction platform, but she had previously served as deputy mayor and councillor.
- **The Deputy Mayor** – The deputy mayor, who had an admitted predisposition to “micromanaging,” was elected to that position for the first time in 2010, but had served as a councillor for many years.

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¹ Associate Chief Justice Frank N. Marrocco, Commissioner, “Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry,” Vol. IV, p. 115 (Town of Collingwood, 2020), www.collingwood-inquiry.ca.

- **The Lobbyist** – A lobbyist – the mayor’s brother – who had served on town council and as the local MP.
- **The Key Municipal Staff Official** – A key municipal staff official whose ill-defined duties ranged from acting CAO to public works director to utilities CEO, sometimes all at the same time.

There were three CAOs during this time. The first was hired in 2009 and was forced out in 2012 for asking inconvenient questions² and failing to do council’s bidding.³ She was replaced by the municipal staff official, who added “Acting CAO” to his other duties from 2012 to 2013. He was replaced in 2013 by a new, experienced acting CAO who asked the questions that caused the whole house of cards to collapse.

In addition to an \$8-million bill for the inquiry, the legacy of town council would be two interlocked transactions:

- the sale of a 50 percent share in the town’s electrical utility; and
- awarding the construction of an arena and pool facilities, funded in part from the sale of the utility.

The Sale of the Town’s Electrical Utility

With provincial government encouragement, many smaller Ontario municipal electricity utilities were being merged with larger electricity distribution companies. As a result, in February 2011, the CEO of Collingwood’s power utility hired a national consulting firm to place a value on the utility and to outline options for full or partial sale of this municipal asset.

Four months later, the full town council first learned of these plans from the utility’s CEO during a closed meeting. Crucially, the CEO implied that the consultant’s “preferred” option was a 50 percent sale to a larger power company, although the consultants were never asked to consider this option.

Marrocco records that throughout the process of selling one of the town’s most valuable assets, there was little mention of the role of the town’s CAO. It seems that the mayor and deputy mayor decided that their friend, the utility CEO who was also public works director, could represent the interests of the town. The CAO was essentially frozen out.

Of course, the utility CEO’s interests were divided. While he held a municipal position, the inquiry commissioner concluded that he gave priority to his role with the utility.

In parallel (and in secret), the utility’s CEO was discussing the partial sale with a potential bidder. The bidder, in turn, engaged a lobbyist to improve its chances. That engagement would pay the lobbyist regular fees, plus a “success fee” of three-quarters of a million dollars if things went in the bidder’s favour.

Although it was not technically a conflict of interest under Ontario municipal law, the bidder suggested to the consultant that he disclose his lobbying engagement to his sister, the mayor, and other town officials. According to Marrocco, he evidently did not.

While journalists may occasionally describe “lobbyists” in pejorative terms, firms offering “government relations” services generally succeed when they formulate and expedite good outcomes for their clients by proposing improvements to public policy or more acceptable program results. Justice Marrocco acknowledges this.

Most major government relations firms subscribe to a code of professional conduct that discourages so-called “success fees,” as not being in the public interest, which is why such contingency fees are legally prohibited when lobbying the governments of Ontario and Canada. The Collingwood lobbyist was evidently blind to those ethical concerns.

The future course for the power utility was finalized by town council on January 23, 2012, the first occasion on which the sale concept was disclosed to the public. The CAO’s growing discomfort with the process was noted, and she was terminated in early April. With the former CAO out of the way, the mayor and deputy mayor thought it would be great if their friend, the utility’s CEO, also became acting CAO. The CEO agreed to do the job at no additional pay, provided he could continue to serve as full-time CEO of the utility. With no real interest in the CAO’s job beyond the public works function, and working from his office at the utility, the CEO declined to become involved in municipal management matters “from an operational perspective.”⁴ In fact, the new CAO was not actually an employee of the town.

In June 2012, with the utility CEO as acting CAO, town council decided to proceed with a competitive sale of a partial interest in the utility, under the guidance of a “Strategic Partnership Task Team,” including the utility’s CEO.⁵ While price was a consideration, the task team’s selection criteria gave greater weight to a highly subjective criterion: “strategic opportunities” for the utility.

Throughout, most members of the task team and the town council were unaware of the favoured treatment given to one of the bidders. After evaluating four bids, the “favoured” bidder was successful, despite offering \$3.85 million less than the highest bidder (but triggering the \$750,000 payday for the lobbyist).

As Marrocco pointed out, the choice may have been beneficial to the town’s utility, but it did not do much for the town’s desire to reduce municipal debt.

The Recreational Facilities

In March 2012, a steering committee appointed by town council recommended construction of a multi-purpose recreational facility containing a swimming pool, an ice rink, and other facilities. Council approved the report in principle but balked at going ahead with construction when the price tag was put at \$35 million.

In June 2012, the deputy mayor attended a conference where he met representatives from a company that produced structures made from fabric membrane stretched across aluminium arches. These were cheaper and could be erected more quickly than bricks-and-mortar buildings. He thought it might be the solution for the town’s costly proposed recreation facilities.

Returning to Collingwood, the deputy mayor asked the acting CAO to obtain pricing and other information. This led to a presentation by the supplier, attended by the mayor, deputy mayor, the acting CAO, and some staff members. Thus, one of the potential candidates for providing the recreational facilities was well-known to some key decision makers before other councillors were even vaguely aware of what was happening.

2 Marrocco, Vol. II, p. 103.

3 Marrocco, Vol. II, p. 13.

4 Marrocco, Vol. III, p. 22.

5 Marrocco, Vol. II, p. 126.

Not surprisingly, the mayor's brother reappeared as the provider's lobbyist, after negotiating yet another "success fee." As Justice Marrocco wrote, there is nothing wrong with lobbying. However, this lobbyist took several measures to disguise the fact that he was being paid for his efforts. The judge found this lack of transparency inappropriate.⁶

It took some time for town council to determine what facilities it wanted, but eventually it decided on two separate buildings. It would construct a new ice rink and cover its existing outdoor pool to make it a year-round facility.

Almost everyone involved assumed that there would be a normal competitive process involving a request for proposals (RFP), as required by the town's procurement policy. Senior staff drafted a report to council on this basis.

After the draft staff report was reviewed and revised by the acting CAO (with advice from the deputy mayor⁷), it was miraculously transformed into a recommendation to move forward on a sole-source basis. It was claimed that the provider had a unique product and that there had been a form of quasi-competition at various stages of the process. On later investigation, neither rationale was accurate, but town council's aggressive timetable precluded any deeper research at the time.

Some town staff allegedly felt uncomfortable with the whole process, but their only practical recourse seemed to be appealing to those "leading the charge." Given the experience of the previous CAO, no staff objections were heard by town council.

Council approved the construction of both facilities at a combined cost that would ultimately exceed \$13 million. Work on the ice rink went very well. Construction of the structure over the existing swimming pool was more challenging because of problems with the pre-existing structure, but the work was finished by 2013. The contractor was paid from the utility sale proceeds, the lobbyist received his success fee, and the residents of Collingwood had their facilities.

The Aftermath

The entire house of cards started to collapse almost immediately when residents began asking questions about the decision to sole-source the recreation facilities and the role that the lobbyist had played in the process. In March 2013, CBC reported that residents had asked the Ontario Provincial Police to investigate. In April 2013, the utility CEO resigned as acting CAO, but he remained president and CEO of the utility until his retirement in 2016.

The flame was fed more oxygen when a new acting CAO was hired in July 2013. Being an experienced CAO, he wanted to follow the paper trail concerning the various decisions, but he discovered that there was no such trail. That ignited a long, smouldering controversy in the community and the media, ultimately producing a large turnover on town council and an increasing volume of public demands for explanations. After several years of complaints and allegations, the 2014-2018 town council relented.

On February 26, 2018, Collingwood town council requested a judicial inquiry under section 274 of the *Municipal Act, 2001* resulting in the appointment of Associate Chief Justice Frank Marrocco. The inquiry was important in clearing the air in Collingwood, and it has made a significant contribution to ongoing discussions about improving governance in the municipal system.

Collingwood did the right thing in requesting this inquiry. Unfortunately for the taxpayers of Collingwood, they were stuck with paying the entire bill for the inquiry, even though some of the benefits flowing from the inquiry will spill over to the benefit of the entire municipal system.

Justice Marrocco should have the last word:

*Undisclosed conflicts, unfair procurements, and lack of transparency stained both transactions, leading to fair and troubling concerns from the public. The evidence I heard and the conclusions I have drawn show that those concerns were well-founded. When the answers to legitimate questions are dismissive, spun, or obfuscated, public trust further erodes. When trust is lost, the relationship between the public and its municipal government may never be the same. The road back is arduous. Repairing the relationship requires self-reflection and a commitment to change.*⁸

Next month – A discussion on the impact that Justice Marrocco's findings should have on municipal governance. **MW**

6 Marrocco, Vol. III, p. 182.

7 Marrocco, Vol. III, pp. 132-134.

8 Marrocco, Vol. IV, p. 14.

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