



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	April 17, 2019
SUBJECT/REPORT NO:	Judicial Investigation Red Hill Valley Parkway (LS19017) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Nicole Auty (905) 546-2424 Ext. 4636
SUBMITTED BY:	Nicole Auty, City Solicitor Legal and Risk Management Services Corporate Services
SIGNATURE:	

RECOMMENDATION(S)

- (a) That the Terms of Reference for the Judicial Investigation attached as Appendix "A" be approved and that the Terms of Reference be forwarded to the Chief Justice of the Superior Court;
- (b) That the City Manager be authorized and directed to take such actions and to execute such documents in a form satisfactory to the City Solicitor as required to give effect to Council's decision to initiate a Judicial Investigation, including such actions required by the Justice presiding over the Investigation.
- (c) That the costs of the Judicial Investigation be paid from the Tax Stabilization Reserve (110046);
- (d) That staff provide regular status reports identifying the costs to date associated with the Judicial Investigation;
- (e) That the law firm of Lenczner Slight Royce Smith Griffin LLP be appointed as legal counsel for the City of Hamilton for the Judicial Investigation.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

EXECUTIVE SUMMARY

On March 20, 2019 Council passed a motion initiating a Judicial Investigation and referring a list of questions to external legal counsel for review and to report back.

The proposed Terms of Reference in Appendix “A” are the result of that review and are presented for Council’s consideration.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The *Municipal Act 2001*, requires the City to pay the costs of the Investigation. In order to ensure the Tax Stabilization Reserve (110046) not over committed, staff will commit \$7M as an initial allocation. This is not an indication of budget or detailed estimate of the overall cost of the Investigation. The proposed reports will provide Council with an ongoing account of the costs of the Investigation.

Staffing: As indicated in earlier reports, there will be impacts on internal staffing and resourcing as a result of the Judicial Investigation. The extent of the impact will not be known until the Commissioner is appointed and the process and scope of the investigation are confirmed.

Legal: The legal implications of a Judicial Investigation have been provided to Council in earlier reports. Due to the specialized nature and resources required to support Council in relation to the Investigation, it is recommended that external counsel be retained on behalf of the City.

HISTORICAL BACKGROUND

On January 23, 2019, and in greater detail on February 6, 2019, Council was provided information regarding a friction report relating to the Red Hill Valley Parkway.

Following review of that information, on March 20, 2019 Council decided to initiate a Judicial Investigation into the circumstances surrounding the matter. Council also directed external legal counsel to bring back Terms of Reference to provide to the Commissioner who will conduct the Investigation.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Section 274 of the *Municipal Act, 2001* sets out the legislative parameters for a Judicial Investigation.

RELEVANT CONSULTATION

Appendix “A” was reviewed and prepared by external counsel, Lenczner Slaght Royce Smith Griffin LLP.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The Terms of Reference are attached as Appendix “A” to Report LS19017 and are based on the questions submitted by Council at the March 20, 2019 Council meeting. Once approved by Council, the Terms of Reference will set the parameters of the Judicial Investigation, subject to approval from the Commissioner presiding over the Judicial Investigation.

Although the *Municipal Act, 2001* mandates that the Commissioner presiding over the Judicial Investigation shall investigate the matters requested by Council, in practice, commissioners of judicial inquiries often seek to vary the scope of the investigation and may refuse to investigate terms that it considers to be too broad or vague. In the event that the Commissioner appointed to the Judicial Investigation wishes to revise certain terms in the Terms of Reference, external counsel will work with the Commissioner and Council to refine the specified terms.

Pursuant to the legislation, the City may hire legal counsel to represent the City and the City is obligated to pay for the Commissioner to retain legal counsel and all other costs of the Investigation, including administrative and logistical costs.

It is unknown at this time what the costs of the Judicial Investigation will be and therefore staff recommend reporting back at regular intervals to identify the costs expended to date. It is also recommended that Council allocate an initial amount of \$7M from the Tax Stabilization Reserve to allow for proper management of this reserve.

ALTERNATIVES FOR CONSIDERATION

Not Applicable

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report LS19017 –
Terms of Reference re Judicial Inquiry