

THE HONOURABLE HEATHER FORSTER SMITH
CHIEF JUSTICE OF THE SUPERIOR COURT OF JUSTICE



L'HONORABLE HEATHER FORSTER SMITH
JUGE EN CHEF DE LA COUR SUPÉRIEURE DE JUSTICE

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Our Reference #:JUD-076

May 3, 2019

Mr. Eli S. Lederman
Lenczner Slaght
130 Adelaide St. W.
Toronto, ON M5H 3P5

Dear Mr. Lederman:

I am responding to your letter, dated April 5, 2019. In your letter, you advise that you serve as counsel to the Corporation of the City of Hamilton, and that the Council of the City of Hamilton passed a resolution on March 20, 2019 requesting a judge of the Superior Court investigate matters relating to the disclosure of a draft report, dated November 20, 2013 from Tradewind Scientific Ltd., with respect to the friction levels on the Red Hill Valley Parkway in the City of Hamilton.

Since receiving your letter, I understand that you and the City Solicitor, Ms. Nicole Auty, have spoken with my Executive Legal Officer, Mr. Mohan Sharma, on April 10, 2019 to outline the scope of the requested investigation. You indicated that the more specific Terms of Reference for the investigation were to be issued by the City of Hamilton, which were received by my office on April 25, 2019. These Terms of Reference were approved by the City of Hamilton on April 24, 2019.

Pursuant to s. 274 of the *Municipal Act, 2001*, SO 2001, c. 25, if a municipality requests by resolution an investigation, a judge of the Superior Court of Justice shall be appointed to investigate a matter. Accordingly, I am hereby appointing the Honourable Mr. Justice Herman Wilton-Siegel to investigate pursuant to the resolution passed by Council of the City of Hamilton on March 20, 2019. The scope of the inquiry will be as set out in the Terms of Reference, issued on April 24, 2019, subject to any adjustment that Justice Wilton-Siegel may address with the City.

S. 274(6) of the *Municipal Act, 2001* states:

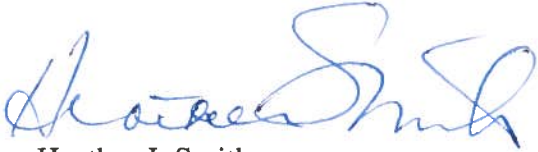
The judge may engage counsel and other persons to assist in the investigation or inquiry and the costs of engaging those persons and any incidental expenses shall be paid by the municipality.

The administrative costs of conducting an investigation can be significant and ought to be appreciated by the City of Hamilton. I understand Mr. Sharma discussed these potential costs with you during

your telephone conversation on April 10, 2019. I enclose, as an example, a Corporate Report, dated October 13, 2009, from the City Solicitor for the City of Mississauga that sets out the types of costs and estimated costs for the Mississauga Judicial Inquiry heard by former Associate Chief Justice Douglas Cunningham. A judge appointed to an investigation can be requested to engage processes that make the cost of an investigation proportionate to the amounts and interests at issue. However, certain costs will be unavoidable and can be significant.

I ask that you please contact Mr. Sharma to arrange an initial meeting with Justice Wilton-Siegel.

Sincerely,



Heather J. Smith,
Chief Justice.

Encl.

C: Regional Senior Justice Geoff Morawetz, Toronto region
Mr. Justice Herman Wilton-Siegel
Mr. Mohan Sharma, Executive Legal Officer
Ms. Nicole Auty, City Solicitor, City of Hamilton