

## Appendix A

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To the Mayor and Members of the General Issues Committee

**RE: Update re: Judicial Inquiry**  
**Our File No.: 51555**

We write to provide you with an update on the key developments in the Judicial Inquiry regarding the Red Hill Valley Parkway (“**RHVP**”).

### **A. Overview of the Judicial Inquiry Process**

There are six overlapping stages to a judicial inquiry:

- 1) **Logistics and Staff:** the Commissioner hires staff necessary to conduct the inquiry, including lawyers, a communications officer and a chief administration officer, and obtains office space from which to conduct the inquiry.
- 2) **Collecting Documents:** Counsel to the City obtains and reviews data (documents, emails, reports, etc.) that are in the City’s possession and may be relevant to the work of the inquiry. The relevant data is processed and provided to Commission Counsel in an agreed upon electronic format.
- 3) **Interviewing Witnesses:** individuals that may have knowledge or information relevant to the work of the inquiry will be interviewed first by Counsel to the City and then by the Commissioner and his Counsel.
- 4) **Standing:** the Commissioner will establish a process through which members of the public can apply to participate in the inquiry (known as having “standing”) and invite members of the public to apply.

- 5) **The Hearing:** the Commissioner will hold a public hearing where key witnesses will be examined.
- 6) **The Report:** the Commissioner will draft a report at the conclusion of the public hearing, which will include a description of the evidence and the Commissioner's findings and conclusions.

As detailed further below, we are well underway in the first and second stage (logistics and document collection) and entering the third stage (interviewing witnesses and standing). We note that the first three stages above are taking place in tandem with the litigation, in which the City is represented by Gowling WLG.

## **B. Appointment of Commissioner & Commission Counsel**

The Honourable Justice Herman Wilton-Siegel was appointed as the Commissioner of the Inquiry. Justice Wilton-Siegel was appointed as a Justice of the Superior Court of Ontario in 2002. The Commissioner became a supernumerary judge effective June, 2017. Justice Wilton-Siegel was educated at the University of Toronto, Oxford University, Dalhousie Law School and Harvard Law School.

The Commissioner has retained Robert Centa of Paliare Roland Rosenberg Rothstein LLP to act as counsel to the Commission (referred to as "Commission Counsel").

We had a meeting with the Commissioner and Mr. Centa immediately following his appointment in which we discussed the stages of the Inquiry, logistics and timelines. The Commissioner stated that he understood that the City was bearing the costs of the Inquiry and was sensitive to this issue. The Commissioner also expressed that it was too early to provide cost or timeline projections.

We hold weekly meetings with Mr. Centa and his team at our offices to ensure that we have an open line of communication with the Commissioner and are responsive to his requests.

### **C. Venue Search**

The City has identified a number of potential locations for the public hearing that meets the needs of the Commission.

Specifically, we have conducted site visits with the Commissioner and Commission Counsel to view the space available at 119 King Street East, the Hamilton Convention Centre, the David Braley Health Sciences Centre, McMaster University, 100 Main St W, Hamilton and Stoney Creek Municipal Center. We also viewed rooms at the Hamilton City Hall Municipal Centre.

We will make a recommendation as to where the public hearing should be held once we have a better understanding of the timing and availability of the venues identified above and any additional venues the Commissioner may consider.

### **D. Commissioner Staffing**

The Commissioner has hired Wendy McCann as the Commission's Communications Director. We understand that at this point, the Commissioner is not searching for a Chief Administrative Officer as a full time position.

### **E. Communication with City Employees**

We have assisted the City in preparing a Q & A style informational bulletin for City employees to give them a better understanding as to what a judicial inquiry is and what they can expect going forward. A copy of the Q & A is attached at **Appendix B**.

### **F. Document Collection**

We are working with City staff to complete the document collection process. In general, the document collection process for electronic data (emails, calendar invites, word and pdf documents etc.) involves the following steps:

- identifying the individuals who are in possession or control of relevant data (referred to as "custodians");

- conducting custodian interviews to understand where the custodians store or save data;
- extracting the custodians' data from sources they identify during interviews. In the case of emails, in particular, we will take copies of the custodians' mailboxes;
- locating non-custodial sources of data, including departmental drives or specialized document databases, and exporting relevant data from these sources;
- placing all electronic data into evidence management software;
- conducting searches within the electronic data using tools offered by the evidence management software to identify and review the emails and documents relevant to the Inquiry;
- withholding or redacting any information that is protected by legal privilege;
- producing the relevant and non-privileged data and documents to the Commission Counsel for uploading to their database; and
- providing Commission Counsel with a list of any documents that were redacted for privilege.

The document collection process for hard copy documents involves scanning the documentation, coding key information about the document, such as the name and date of the document, into the evidence management software and reviewing for relevancy and privilege.

### **G. Applications for Standing and Funding**

The Commissioner will establish a process through which members of the public can apply to participate in the Inquiry (known as having “standing”) and invite members of the public to apply. The Commissioner is in the process of finalizing the rules for members of the public to apply for standing and expects this process to be completed by the end of December, 2019.

Where individuals with standing require financial assistance to obtain legal representation, they may apply to the Commissioner to recommend that the City grant funding for legal fees.

The Commissioner can not order the City to provide funding. However, in order to ensure that all parties are treated in a fair and unbiased manner, it is standard practice for municipalities to grant funding for legal fees to individuals with standing in judicial inquiries.

We recommend that City Council delegate its decision-making authority to grant funding to individuals with standing in the Inquiry to the City Manager in accordance with the guidelines attached at **Appendix C**.

#### **H. Next Steps**

We will continue to focus on the document collection process and will work towards finalizing a timeline and venue for the public hearing.

We would be pleased to provide further details on any of the information provided above.

Yours very truly,



Eli S. Lederman

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