

*This document is meant to provide answers to common questions about the upcoming judicial inquiry into the Red Hill Valley Parkway (RHVP) asphalt matter.*

### **What is a Judicial Inquiry?**

Under section 274 of the Ontario *Municipal Act, 2001*, a City can pass a resolution requesting that a judge of the Superior Court be appointed to conduct an investigation on a number of different matters, including with respect to the proper governance of the municipality. This kind of investigation is referred to as a judicial investigation or judicial inquiry. Once a judge is appointed to the judicial inquiry, he or she is referred to as the “commissioner”.

After he or she is appointed, a commissioner establishes the process and procedure to investigate the issues identified by the municipality. A commissioner's powers are provided for in section 33 of the Ontario *Public Inquiries Act*.

### **What is the Red Hill Valley Parkway Judicial Inquiry about?**

On March 20, 2019, the Hamilton City Council passed a motion to initiate a judicial inquiry pursuant to section 274 of the Ontario *Municipal Act, 2001* to investigate matters relating to the Red Hill Valley Parkway. Specifically, the Inquiry is to investigate the questions listed in the Terms of Reference.

### **What happens in a Judicial Inquiry?**

There are generally six stages to a judicial inquiry:

- 1) Logistics and Staff;
- 2) Collecting Documents;
- 3) Interviewing Witnesses;
- 4) Standing;
- 5) the Hearing and,
- 6) the Report.

#### Logistics and Staff

In the first stage of the Inquiry, 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.

### Collection of Documents

In the second stage of an inquiry, the commissioner will work with counsel to the municipality to obtain copies of all documents that are in its possession and may be relevant to the work of the inquiry. The commissioner may also request relevant documents from third parties, such as former employees of the municipality.

### Witness Interviews

In the third stage of the Inquiry, the commissioner and his or her lawyer will interview witnesses that may have knowledge or information relevant to the work of the inquiry. These may include current employees of the municipality, third parties engaged by the municipality or current and former members of City Council.

### Standing

In the fourth stage of an inquiry, the commissioner will seek applications from members of the public who may wish to participate in the inquiry. By giving an individual (or a group of individuals) the right to participate in the inquiry, the commissioner is said to have granted “standing” to that party. Parties can have different levels of standing. For example, some parties may be given the right to access and review documents collected by the commissioner, while others may be given the right to examine witnesses and make submissions at the hearing. The commissioner will publicize the process for applying for standing in relevant media outlets once the process has been established.

### Public Hearing

In the fifth stage of the inquiry, the commissioner will hold a public hearing where key witnesses will be examined.

### The Report

In the sixth stage of an inquiry, the commissioner will draft the inquiry report, which will include a description of the evidence and his or her findings and conclusions.

### **Who is the Commissioner appointed to oversee the RHVP Judicial Inquiry?**

The Honourable Justice Wilton-Siegel has been appointed as the Commissioner of the Red Hill Valley Parkway Judicial Inquiry. Justice Wilton-Siegel was appointed as a Justice of the Superior Court of Ontario in 2002. His Honour 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, Managing Partner of the law firm of Paliare Roland Rosenberg Rothstein LLP to represent him in the Commission. The Commissioner's lawyers are often referred to as "Commission Counsel".

Commission Counsel will work with the City's lawyers to collect documents and interview City employees. Commission Counsel will not communicate directly with City employees. All communication will flow through counsel to the City.

### **Who are the City's lawyers in the Judicial Inquiry and what is their role?**

The City has retained Eli Lederman and Delna Contractor, lawyers at Lenczner Slaght LLP ("Lenczner Slaght") to represent it in the Judicial Inquiry.

The City has instructed Lenczner Slaght to fully cooperate with the Commissioner and his Counsel to ensure that they have all the information they require from the City and its employees to conduct the work of the Inquiry. Specifically, Lenczner Slaght will do the following:

- liaise with the Commissioner and his Counsel;
- speak with City employees that may have relevant information to understand their involvement in the matter;
- work with City employees to collect all relevant data (documents, emails, files, notes etc.);
- processing and reviewing the data and transferring it to Commission Counsel into the appropriate electronic format;
- accompany City employees to interview meetings with Commission Counsel; and
- represent the City during the Hearing.

### **What can I expect going forward?**

You may be asked to speak with Lenczner Slaght and Nicole Auty, the City Solicitor to determine if you have any information that may be relevant to the Inquiry and to understand your role in the matter.

You may also receive a copy of a legal hold notice (described below) and be asked to give copies of any relevant documents you may have to Lenczner Slaght so it may be processed, reviewed and provided to Commission Counsel in the appropriate electronic format.

### **What is a hold notice?**

Current and former employees may receive a legal hold notice. The purpose of the hold notice is to ask the recipients of the notice to preserve any data (documents, emails, text messages etc...) that may be relevant to the Judicial Inquiry or any other legal proceeding that the City is involved in. The hold notice does not require you to take any steps to send or transmit the relevant data to anyone. It simply requires you to ensure that any data that may be important to the inquiry or the legal proceedings is not destroyed, deleted, altered or disposed of.

**What kind of options do I have to help with stress or for emotional support during the inquiry?**

The Employee and Family Assistance Program (EFAP) is available to all permanent full-time and part-time employees and their dependents. This free service is confidential and connects you to a variety of professionals who are available to help you 24 hours a day, 7 days a week.

Your assistance program provides short-term counselling when you need it along with health and wellness services. Learn more by visiting the Health, Safety & Wellness section on Howi , under “How can I?” Online or phone services are available 24/7. [www.homeweb.ca](http://www.homeweb.ca) or 1-800-663-1142.

**Participating in the judicial inquiry is going to take me away from my regular work – how will management sort out my workload and ensure business continuity?**

At this time, we anticipate some groups may require additional resources during the inquiry in order to back-fill positions for those who will be required to participate. We’re still working on a plan for this but are currently in the process of adding some additional resources in both Public Works and Legal Services. Our management teams will help staff to prioritize workloads and flag areas that require additional resources on a case-by-case basis so that all staff are able to commit the required time to participating in the inquiry as necessary.

**Do I have to cooperate with the Commissioner?**

The Commissioner can issue a summons compelling you to: (1) attend an interview meeting with the Commissioner under oath; (2) give the Commissioner documents in your possession; and (3) give evidence at the public hearing under oath.

A summons is a legal document that orders a person to participate in a legal proceeding in some capacity. If you fail to comply with the summons, the Commissioner can apply to the Court for an Order against you. The Court can order you to comply with the summons, pay a fine, or, in very extreme cases, order a term of imprisonment that is just in the circumstances.

**Do I have to cooperate with the Commissioner if I no longer work for the City?**

Yes. The Commissioner can issue a summons to anyone that may have information or documents relevant to the issues.

**Who do I speak to if I have questions about the Inquiry?**

You can address any questions with respect to the judicial inquiry to the following:

- Nicole Auty, City Solicitor by email at [Nicole.Auty@hamilton.ca](mailto:Nicole.Auty@hamilton.ca) or by phone at 905.546.2424 ext. 4636; or
- Eli Lederman of Lenczner Slaght LLP, lawyers for the City by email at [elederman@litigate.com](mailto:elederman@litigate.com) or by phone at 416-865-3555.