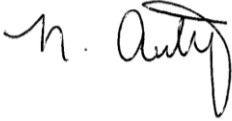




CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	July 6, 2020
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(b)) (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
SIGNATURE:	

Discussion of Confidential Appendix “A” to this report in Closed Session, would be pursuant to Section 8.1, Sub-sections (e) and (f) of the City's Procedural By-law 18-270, as amended, and Section 239(2), Sub-sections (e) and (f) of the *Ontario Municipal Act, 2001*, as amended, as the subject matter pertains to litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board; and, advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

RECOMMENDATION(S)

- (a) That Report LS19036(b), respecting the Red Hill Valley Parkway Inquiry Update, be received;
- (b) That the direction provided in Confidential Appendix “A” to Report LS19036(a), be approved; and,
- (c) That the entirety of Confidential Appendix “A” to Report LS19036(a), respecting the Red Hill Valley Parkway Inquiry Update, remain confidential.

EXECUTIVE SUMMARY

On April 24th, 2019 Council directed staff to provide regular updates on the costs to date of the Judicial Inquiry, to be paid from the Tax Stabilization Reserve.

This report provides both an update on the status of the Inquiry from the City's legal representatives at Lenczner Slaght Royce Smith Griffin LLP ("Lenczner Slaght") and the costs to date of the Inquiry.

Alternatives for Consideration – N/A

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The costs of the Inquiry to date are outlined in the following chart, representing external legal fees for the Commissioner, external legal fees for the City, including Deloitte services for data hosting, reviewing and producing and associated Other expenses, including digitizing paper files, and website hosting. These expenses are being funded from the Tax Stabilization reserve.

Date: To June 15, 2020

City	\$1,093,239.55
Commissioner	1,457,277.49
Other expenses	563,874.56
Total	\$3,114,391.60

Staffing: A temporary contract staff position has been added to the Legal Services Department to support staff as the Inquiry preparations are on-going. This position is funded from the Tax Stabilization reserve.

Legal: The legal implications are outlined in the attached appendix "A" from external legal counsel.

HISTORICAL BACKGROUND

In early 2019, the City of Hamilton received information regarding a 2013 friction report related to the Red Hill Valley Parkway.

On April 24, 2019, the City passed a resolution pursuant to s. 274 of the *Municipal Act, 2001* requesting the Chief Justice of Ontario to appoint a Superior Court judge to investigate matters related to the disclosure of the friction report.

The Honourable Mr. Justice Herman J. Wilton-Siegel was appointed to preside over the inquiry in May 2019. The Commissioner has retained Robert Centa of Paliare Roland Rosenberg Rothstein LLP to act as counsel to the Commission. The City has retained Eli Lederman and Delna Contractor of Lenczner Slaght to act as counsel to the City in the Inquiry.

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 established a process through which members of the public applied to participate in the inquiry and to receive funding from the City. The Commissioner issued a decision with respect to standing and funding on February 12, 2020.
- 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.

STATUS OF THE INQUIRY

With respect to the first stage of the Inquiry, we have identified potential locations to host the hearing stage of the Inquiry and are in the process of gathering pricing information. We are also working with Commission Counsel to explore options to host the hearing virtually in light of the COVID-19 pandemic, while still ensuring that the hearing is accessible to the public.

With respect to the second stage of the Inquiry, the City has spent considerable resources to collect, review and produce documents relevant to the Inquiry since the issuance of the Terms of the Inquiry in April 2019.

The scope of the document collection process has been directed by the Commissioner's request for information, which consists of nearly 50 categories of documents.

To date, the City has collected over 3 million documents from the City's network drives, hardcopy documents and the mailboxes of over 100 former and current City employees (the "Custodians"). These documents were narrowed through the application of search terms (and other processes) and reviewed to identify the documents relevant to the Commissioner's request for information.

The City has submitted approximately 37,000 relevant documents to Commission Counsel and will produce an additional 13,500 documents by June 30, 2020.

At all times, Commission Counsel has been kept apprised of the status of the City's document collection process through weekly meetings between counsel, including any technical or logistical challenges in the collection and review process.

The City's document collection efforts include:

- conducting interviews and corresponding with the majority of the Custodians to understand whether they have documents responsive to the Commissioner's request for information and where these documents are stored;
- extracting and processing data from a number of different sources, including Custodians' mailboxes, City network drives, ProjectWise (the document management system used in the Public Works department) and hardcopy documents. Processing includes de-duplicating the documents to achieve efficiencies in the review process;
- applying search criteria to identify potentially relevant data; and
- utilizing the services of Deloitte LLP ("Deloitte") – the City's e-discovery vendor – to: (1) host the documents in an electronic database; (2) review the potentially relevant data to identify documents that are responsive to the Commissioner's request for information; and (3) produce the relevant documents in the specified format.

The last portion of the City's document collection process is to produce relevant data from ProjectWise.

The City initially collected the ProjectWise data in February 2020. However, due to the limitations of the ProjectWise system, the data could not be produced in a format which would be helpful for the purposes of the Inquiry. The City subsequently retained Bentley Canada Inc. (the third-party ProjectWise provider) to develop a program that would enable the ProjectWise data to be extracted and produced in a format useful to the Commissioner.

The City has now collected the ProjectWise data and expects to produce all relevant documents by July 13, 2020 at the latest.

Although the document production process has taken longer than expected, the timing of the City's productions is reasonable when considering the number of custodians, the City's document management systems, the large volume of documents, the breadth and timing of the request for documents and the logistical issues presented by the COVID-19 pandemic.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Not applicable.

RELEVANT CONSULTATION

Not applicable.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

The analysis for the recommendations is set out in the appendix from external legal counsel.

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.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report LS19036(b) – Report to Council from Lenczner Slaght - Confidential (including Schedules "A" and "B")