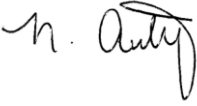




Hamilton

INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	December 9, 2020
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(c)) City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Nicole Auty 905-546-2424 ext. 4636 Delna Contractor, Lenczner Slaght LLP
SUBMITTED BY:	Nicole Auty City Solicitor Corporate Services
SIGNATURE:	

COUNCIL DIRECTION

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.

INFORMATION

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, other expenses including Deloitte services for data hosting, reviewing and producing and associated, including digitizing paper files, and website hosting. These expenses are being funded from the Tax Stabilization reserve.

Date: To November 15, 2020	
City Expenses (Internal)	\$97,001.39
City Outside legal	\$1,740,631.44
Commissioner Legal	\$2,228,181.54
Other expenses	\$735,316.68
Total	\$4,801,131.05

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

Document Production and Review

The City completed its document production process on July 13, 2020, subject to requests for additional documents by Commission Counsel (discussed below). The City produced a total of 56,549 documents responsive to the Terms of Reference and the Commissioner's request for information, which consists of nearly 50 categories of documents. At the time, we understand that the City was the only Participant to have completed its productions.

Since July 2020, Commission Counsel received the complete productions of all of the other Participants to the Inquiry, except for the Province of Ontario (the "**Province**").

On November 18, 2020 Commission Counsel gave the Participants access to a database consisting of the majority of the documents that were provided to Commission Counsel (the "**Inquiry Database**"). We understand that documents that have been produced but not yet reviewed by Commission Counsel have not been included in the Inquiry Database.

To date, the Inquiry Database contains approximately 92,500 documents, which include just over 36,000 documents from the other Participants and 56,549 documents from the City.

We understand that Commission Counsel is in the process of reviewing approximately 10,000 documents from the Province and will receive additional tranches of documents from the Province. We do not have a timeline from Commission Counsel on when the Province expects to complete their productions. However, we understand that they expect to receive a tranche of approximately 7,000 documents from the Province in the next few weeks.

On November 19, 2020, Commission Counsel provided Lenczner Slaght with a request for additional documents (the "**First Additional Document Request**"), which consists of over 32 requests. In general, the First Additional Document Request asks the City's external counsel to:

- 1) produce relevant documents from an additional 12 custodians (the "**Additional Custodians**") that were not previously identified by Commission Counsel..
- 2) identify specific documents or information within the 56,549 documents that the City has already produced in relation to certain matters contained in the Terms of Reference.

- 3) to obtain specific information about the issues in the Terms of Reference and the City's policies and processes.
- 4) to confirm whether the City has produced all available data on a particular issue and, if not, to produce these documents.

Commission Counsel has confirmed that it intends to make further requests for additional documents and information. We do not yet have a time frame for these further requests from Commission Counsel.

We expect that the City will need to devote significant resources to:

- 1) respond to the First Additional Document Request. This process involves the City's external counsel coordinating with City staff members to obtain additional information and documents. Specifically, gathering data from the Additional Custodians will require external counsel to interview the Additional Custodians, collect and process their mailboxes and drives, review the data for relevant documents and produce all relevant data in the agreed upon format. Given the ongoing pandemic and the approaching holiday season, it may take some time to respond to the First Additional Document Request.
- 2) respond to the subsequent requests for information and documents from Commission Counsel, once these requests are received; and
- 3) review the approximately 37,000 documents in the Inquiry Database produced from the other Participants. We expect this number to increase as the Province completes its productions and the other Participants disclose additional documents, subject to requests for additional documents by Commission Counsel.

The City's external counsel will continue to utilize Deloitte's services to assist with document review and production. However, at this time, counsel is not in a position to provide an estimate of Deloitte's fees as they do not know: (1) how many more documents the other Participants, particularly the Province, intends to produce; and (2) the nature and scope of Commission Counsel's requests for further documents and information.

Interviews Conducted by Commission Counsel

After document production is complete, the next step in the Inquiry is for Commission Counsel to interview individuals that may have information relevant to the issues raised in the Terms of Reference.

On October 23, 2020, Commission Counsel provided the City's external counsel with a list of 36 current and former City employees that Commission Counsel wishes to interview.

The interviews will be scheduled for a time after the document production process is complete and once the City's external counsel has an opportunity to review the productions from the other Participants.

Timing of Inquiry & Cost Implications

It is difficult to estimate when the Hearing portion of the Inquiry will commence as the Participants have yet to complete the document production process. As detailed above, at this time, we do not know when the document production process will be completed. This will largely depend on when the Province will complete its productions and once the City's external counsel receives and responds to Commission Counsel's request for further documents and information. Given the progress of the Inquiry to date, we estimate that the Hearing may commence later in the spring of 2021.

Based on the fees incurred to date, our projection of future costs, and the delays resulting from the document production process, it is unlikely that the cost of the Inquiry will be under \$7 M. External counsel will be in a position to provide updated cost projections once the document production process is complete and a time frame is established for the commencement of the Inquiry Hearing.