



Hamilton

INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	April 21, 2021
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(d)) City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Lenczner Slaght LLP
SUBMITTED BY:	Michael Kyne Acting City Solicitor
SIGNATURE:	

COUNCIL DIRECTION

On April 24, 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 LLP 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, including Deloitte services for data hosting, reviewing and producing documents and other associated expenses, including digitizing paper files, and website hosting. These expenses are being funded from the Tax Stabilization reserve.

To March 31, 2021	
City's Expenses (e.g. data collection)	\$97,001.39
City's External Legal Counsel	\$1,964,308.02
Commission Counsel	\$3,689,464.14
Other Expenses (e.g. consultants)	\$891,681.58
Total	\$6,642,455.13

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 LLP to act as counsel to the City in the Inquiry.

There are six overlapping stages to this 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

Interviews Conducted by Commission Counsel

As detailed below, Commission Counsel has identified 65 current and former City employees to be interviewed by June 28, 2021 as part of the investigation process. The City's external counsel will be present at each interview to ensure that Commission Counsel's questions are fair and reasonable. Prior to each interview, external counsel will meet with each City witness to ensure that they are prepared for the interview.

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. On January 15, 2021, Commission Counsel provided the City's external counsel with a revised interview list consisting of 64 current and former City employees.

On March 1, 2021, Commission Counsel identified the first group of 14 City Witnesses to be interviewed in the last two weeks of March. On March 17, 2021, Commission Counsel identified the second group of 37 City Witnesses to be interviewed between April 21 and May 31, 2021. The timeline to complete the second group of interviews was subsequently extended to June 28, 2021.

Additional Document Production & Inquiry Database

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.

On November 19, 2020, Commission Counsel provided the City's external counsel with a request for additional documents (the "**First Additional Document Request**"), which consists of over 32 requests, including the production of documents from additional custodians and made a subsequent request on March 8, 2021 (the "**Second Additional Document Request**"). The City has responded to the majority of the requests in the First and Second Additional Document Requests and expects to complete this process shortly. The City's external counsel will continue to utilize Deloitte's services to assist with the document review and production of documents from the additional custodians.

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**") and have since updated the Inquiry Database to include additional documents. To date, the Inquiry Database contains approximately 114,786 documents, which include 53,323 documents produced by the City. It is expected that additional documents will be included in the Inquiry Database.

Overview Document

Based upon the documents obtained from the participants to the Inquiry, Commission Counsel has prepared a draft Overview Document, which will ultimately be used at the Public Hearing as a guiding document. It contains a summary of the documents relevant to the issues in the Inquiry, as determined by Commission Counsel.

Commission Counsel has provided the City's external legal counsel with a draft copy of the first eight chapters of the Overview Document, which span from the design and construction of the Red Hill Valley Parkway to April 2018. We expect to receive additional chapters of the Overview Document that summarize the relevant documents up to 2019.

Timing of Inquiry

We do not yet know precisely when the Public Hearing of the Inquiry will commence. Commission Counsel had tentatively proposed that the Public Hearing commence during the week of June 28, 2021. However, given the number of witness interviews and the time frame within which Commission Counsel wished to conduct these interviews, Commission Counsel and the City's external counsel discussed reducing the number of witness interviews or moving the start date to later in July or the beginning of the Fall. We understand that Commission Counsel will be announcing the start date of the Public Hearing in the next few weeks.

Cost Implications

As detailed below, based on the estimate of costs provided by Commission Counsel and the City's external counsel and the fees incurred to date, we currently expect that the total cost of the Inquiry will be between \$10 to 12 million.

To date, the City has incurred approximately \$6.65 million in costs associated with the Inquiry.

Based on the estimate of costs provided by Commission Counsel and the City's external counsel, the City expects to incur an additional \$3.6 million to \$4.6 million in costs between April 2021 and February 2022. A breakdown of these costs and the assumptions underlying the estimates are provided below. These estimates may change as we approach the public hearing portion of the Inquiry.

Estimated Fees and Expenses from April 2021 to February 2022		
Category	Low Range	High Range
Legal Fees + disbursements - Commission Counsel	\$3,682,000	\$3,682,000
Legal Fees + disbursements - City's External Counsel	\$2,855,046	\$3,675,300
Expert Fees- Commission Counsel	\$200,000	\$200,000
Expert Fees - City's External Counsel	\$150,000	\$200,000
Document management services - Commission Counsel	\$120,000	\$120,000
Document management services - City's External Counsel	\$75,000	\$200,000
Communications - professional fees	\$33,000	\$33,000
Communications - misc expenses	\$5,700	\$5,700
Website hosting & maintenance	\$16,800	\$16,800
Administration - Exec Director fees	\$12,000	\$12,000
Hearing Tech Costs - Reporter, Registrar & Transcription	\$180,900	\$180,900
Total	\$3,648,446	\$4,626,633

Assumptions:

- 1) The estimates do not include HST.
- 2) The public hearing will take no more than 4 months.
- 3) Hearing cost per day: \$2,700 [assumes Reporter: \$500, Registrar: \$525, Transcription \$1,575 (\$5.25 X 300 pages) + \$125/day contingency]. Note, this does not include costs associated with live streaming and management software. Commission Counsel is in the process of obtaining cost estimates for these services.
- 4) No further document production requests from Commission Counsel.
- 5) No more than 66 witness interviews.

APPENDICES AND SCHEDULES ATTACHED

None