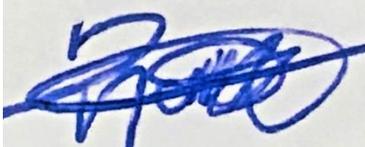




CITY OF HAMILTON

CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division
and
City Manager's Office
Communications & Strategic Initiatives

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	December 8, 2021
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(g)) City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	S. Spracklin (905) 546-2424 Ext. 4636 Lenczner Slaght LLP
SUBMITTED BY:	Stephen Spracklin City Solicitor Legal and Risk Management Services
SIGNATURE:	
SUBMITTED BY:	Matthew Grant Director Communications & Strategic Initiatives
SIGNATURE:	

RECOMMENDATIONS

(a) That the City Solicitor be authorized to approve for payment external counsel invoices for services rendered in support of the Red Hill Valley Parkway Judicial Inquiry for amounts up to \$500,000, and that the City Manager be authorized to approve for payment external counsel invoices for services rendered in support of the Red Hill Valley Parkway Judicial Inquiry for amounts over \$500,00, but less than \$1,000,000:

(b) That Council approve the revised estimated total cost of the Red Hill Valley Parkway Judicial Inquiry of up to \$20,000,000, to be funded through the Tax Stabilization Reserve (110046); and

(c) That one (1) temporary FTE be approved effective January 2022 for a 12 month period, namely a RHVP Communications Officer, and that the annual compensation costs totalling \$115,000 to be funded from the Tax Stabilization Reserve (110046);

EXECUTIVE SUMMARY

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.

To date, the City has incurred approximately \$11.11 million in costs associated with the Inquiry, and based on the estimate of costs provided by Commission Counsel and the City's external counsel, the City expects to incur an additional \$6.66 million to \$6.92 million in costs between November 2021 and August 2022, resulting in a total estimated cost to the City for the Inquiry of between \$18 and \$20 million.

The City, through its external counsel, is currently working with Commission Counsel to finalize the document collection and interviewing witness stages of the judicial inquiry. It is anticipated that these stages should be completed prior to the end of the first quarter of 2022. As a result, it is anticipated that the hearing stage of the judicial inquiry should be able to commence during the second quarter of 2022, with the report stage potentially concluding prior to the end of the calendar year 2022.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The costs associated with the advancement of the RHVP Judicial Inquiry through the document collection and interviewing witness stages, through to the hearing stage and ultimately the report stage, are estimated to be in the range of \$18 and \$20 million.

These costs are based upon current status, anticipated effort required and the current forecasted schedule, which are subject to change based upon the availability of individuals, documents and procedural decisions which may be outside the control of the City.

These costs will be recovered from the Tax Stabilization Fund.

Staffing: The addition of an additional Communications Officer to effectively support the ongoing communications requirements arising from the RHVP Judicial Inquiry. The total annual cost of the recommended FTE is \$115,000. The staffing will begin in 2022 for a 12-month period and will be allocated to Tax Stabilization Reserve.

Legal: As outlined in this Report.

HISTORICAL BACKGROUND

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.

To date, the City has incurred approximately \$11.11 million in costs associated with the Inquiry, and based on the estimate of costs provided by Commission Counsel and the City's external counsel, the City expects to incur an additional \$6.66 million to \$6.92 million in costs between November 2021 and August 2022, resulting in a total estimated cost to the City for the Inquiry of between \$18 and \$20 million.

The City, through its external counsel, is currently working with Commission Counsel to finalize the document collection and interviewing witness stages of the judicial inquiry. It is anticipated that these stages should be completed prior to the end of the first quarter of 2022. As a result, it is anticipated that the hearing stage of the judicial inquiry should be able to commence during the second quarter of 2022, with the report stage potentially concluding prior to the end of the calendar year 2022.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

As outlined in this Report.

RELEVANT CONSULTATION

- Mike Zegarac – General Manager Corporate Services Department
- Matthew Grant – Director Communications and Strategic Initiatives
- Delna Contractor and Eli Lederman - Lenczner Slaght LLP

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Costs of Inquiry to Date

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 November 30, 2021	
City's Expenses (e.g. data collection)	\$210,470.33
City's External Legal Counsel	\$3,265,470.52
Commission Counsel	\$6,517,747.22
Other Expenses (e.g. consultants)	\$1,119,830.27
Total	\$11,113,518.34

Timing of Inquiry

We do not yet know precisely when the Public Hearing of the Inquiry will commence. In light of the estimated timeline for completion of the remaining witness interviews during the early part of the first quarter of 2022, and the anticipated effort required to finalize the City's document disclosure requirements, it is not anticipated that the Public Hearing will start until sometime during the second quarter of 2022. We understand that Commission Counsel will be announcing the start date of the Public Hearing once the witness interviews and document disclosure phases of the Inquiry conclude.

Cost Implications

As detailed below, based on the updated estimate of costs provided by Commission Counsel and the City's external counsel, coupled with the fees incurred to date, we currently expect that the total cost of the Inquiry will be between \$18 to 20 million.

To date, the City has incurred approximately \$11.11 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 \$6.68 million to \$6.93 million in costs between November 2021 and August 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.

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Estimated Fees and Expenses from November 2021 to August 2022		
Category	Low Range	High Range
Legal Fees + disbursements - City's Commission Counsel	\$3,215,000	\$3,220,000
Legal Fees + disbursements - Inquiry Counsel	\$2,240,000	\$2,320,000
Expert Fees - City's Commission Counsel	\$75,178	\$75,178
Expert Fees- Inquiry Counsel	\$200,000	\$200,000
Document management services - City's Commission Counsel	\$75,000	\$200,000
Document management services - Inquiry Counsel	\$75,000	\$120,000
Communications - professional fees - Inquiry Counsel	\$33,000	\$33,000
Communications - misc. expenses - Inquiry Counsel	\$5,700	\$5,700
Website hosting & maintenance - Inquiry Counsel	\$16,800	\$16,800
Administration - Executive Director fees - Inquiry Counsel	\$12,000	\$12,000
Virtual hearing expenses - Arbitration Place (Note 5)	\$432,400	\$432,400
Hearing Tech Costs - Reporter, Registrar & Transcription	\$180,900	\$180,900
Communications Officer (Note 8)	\$115,000	\$115,000
Grand Total	\$6,675,978	\$6,930,978

Assumptions:

- 1) Inquiry Counsel's activities re document preparation, witness interviews and hearing preparation continue through December 2021. Hearing phase: January 2022 to May 2022. Report-writing phase: June 2022 to August 2022.
- 2) Commission Counsel will incur an average of \$400,000/ month until Jan 1, 2022, then will incur an average of \$350,000/ month until June 1, 2022 after which they estimate \$200,000 / month.
- 3) From October 2021 through to the end of May 2022 (end of Hearing phase), Inquiry Counsel's work is expected to continue at the same level of intensity, on average, as the period January 2021 to September 2021. Thereafter, the intensity of work is expected to be at a reduced level for the Report-writing phase of June 2022 to August 2022.
- 4) The hearing stage of the inquiry will be completed by June 1, 2022
- 5) Virtual Hearings costs based on Arbitration Place quoted rates for Concierge Package and computed as \$5,405/day. Includes Virtual Case Manager (aka Registrar), Online Streaming Specialist (for video recording and livestream), Court Reporter/Transcription, all software and streaming (Zoom, OnCue, YouTube). Assume virtual hearings will run 4 days/week for the 5-

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month period January 2022 to end of May 2022. Total 80 days (16/days per month for 5 months) at \$5,405/day.

- 6) Equipment purchased by PRRR to access the virtual hearing (e.g. extra monitors, webcams) will not be charged to the Inquiry under the assumption that PRRR will retain ownership of the equipment.
- 7) No further document production requests from Commission Counsel.
- 8) Significant incremental communications support is anticipated as we progress through the public hearing phase of the judicial inquiry, thereby necessitating the inclusion of an additional Communications Officer to support the City's ongoing disclosure obligations throughout the process.
- 9) All amounts exclude HST

As the Inquiry progresses through the document collection and interviewing witness stages, and moves into the hearing stage, it is anticipated that the costs associated with engaging the City's external counsel and supporting Commission Counsel will increase significantly to reflect the increased effort required to support the hearing of this matter. As a result, it is anticipated that regular invoicing amounts will exceed existing internal approval thresholds, and in order to assist with the timely processing of all outstanding invoices, a temporary increase of the approval thresholds for both the City Solicitor and the City Manager is warranted, until such time as the Inquiry has concluded.

In addition, advancement to the hearing stage of the Inquiry will also result in additional demands from a communication perspective to ensure that the City is providing timely and relevant information to both internal and external stakeholders. Current staffing levels are not capable of supporting this incremental demand, which requires that additional staffing be approved to support the City's ongoing disclosure obligations.

Summary/Conclusion

In light of the incremental demands the hearing stage of the Inquiry will place upon not only the City's external legal advisors and the Commission Counsel, but also upon our Communications staff, it is recommended that Council authorize and approve:

- 1) that the City Solicitor be authorized to approve for payment external counsel invoices for services rendered in support of the Red Hill Valley Parkway Judicial Inquiry for amounts up to \$500,000, and that the City Manager be authorized to approve for payment external counsel invoices for services rendered in support of the Red Hill Valley Parkway Judicial Inquiry for amounts over \$500,00, but less than \$1,000,000, provided that such invoices are in accordance with the revised estimated total cost of the Red Hill Valley Parkway Judicial Inquiry of between \$18,000,000 and \$20,000,000; and
- 2) one (1) temporary FTE be approved effective January 2022, for a 12 month period, and added to the 2022 Communications and Strategic Initiatives complement, namely a RHVP Communications Officer, and that the annual compensation costs totalling \$115,000 be cost recovered from the City Tax Stabilization Reserve.

ALTERNATIVES FOR CONSIDERATION

Not Applicable.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Not Applicable.