



Hamilton

INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	August 19, 2022
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(p)) City Wide)
WARD(S) AFFECTED:	City Wide
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SIGNATURE:	

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 (“Commission Counsel”). The City has retained Eli Lederman and Delna Contractor of Lenczner Slaght LLP to act as counsel to the City in the Inquiry (“Litigation Counsel”).

In April 2022, at the commencement of the hearing phase of the Inquiry, Litigation Counsel, acting under the direction of City Council, sought and received direction from the Commissioner to appoint a designate to determine the City’s claim for privilege with respect to 64 documents that the Commission had requested production of and that the City had disputed on the grounds they were privileged. The parties agreed to the appointment of the Honourable Frank Marrocco as the Designate.

PRIVILEGE MOTION DECISION

On August 9, 2022 an *in camera* hearing took place before the Designate on this privilege issue. The Hon. Frank Marrocco issued his decision on August 15, 2022. The

Designate found that, by calling the Inquiry the City waived privilege over documents that are highly relevant to the Inquiry's Terms of Reference. The Designate has directed the City to produce, in whole or in part, the majority 51 of the 64 documents at issue, including those most significant to the Inquiry's work. The Designate concluded that the release of the documents is necessary to ensure fairness and consistency to all that may be affected by the Inquiry's final report and to avoid factual inconsistencies, erroneous findings of misconduct and unsuitable recommendations.

The Designate's decision has been posted on the Inquiry website under Legal Information. The Designate's decision included a 10-page chart in which he provided his reasons on the admissibility of each individual document. As this chart describes the documents at issue, it will not be posted until the privilege dispute, including any judicial review or appeal, is resolved.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report LS19036 (p) – Order on Application by the City of Hamilton for Privilege by the Honourable Frank Marrocco, dated August 15, 2022 (excluding chart)

Reference Material: Red Hill Valley Inquiry Updates (LS19036(f)) – September 8, 2021