




INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	November 30, 2022
SUBJECT/REPORT NO:	Red Hill Valley Parkway Inquiry Update (LS19036(q)) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Lisa Shields, City Solicitor Legal and Risk Management Services
SIGNATURE:	

COUNCIL DIRECTION

On April 24, 2019, Council directed staff to provide regular updates on the costs to date of the Red Hill Valley Parkway (RHVP) 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 ("Lenczner Slaght") and the costs to date of the Inquiry.

INFORMATION

Costs

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

To September 30, 2022	
City's Expenses (e.g. data collection, hosting)	\$744,604.51
City's External Legal Counsel Fees and Disbursements	\$8,471,260.04
Commission Counsel Fees and Disbursements	\$10,262,853.60
Other Expenses (e.g. consultants, website hosting)	\$1,078,971.16
Total (exclusive of HST)	\$ 20,557,689.31

On August 8, 2022, Council approved a revised estimated total cost of the Inquiry of up to \$26 million, to be funded through the Tax Stabilization Reserve. The total costs were revised based on an updated estimate of Commission Counsel's legal fees from July 1, 2022 to the end of the inquiry (excluding taxes). This estimate did not include the costs associated with all of Commission Counsel's disbursements, including the cost of expert witnesses.

Subsequent efforts to better monitor the increasing costs of the Inquiry have also been implemented. The City receives detailed dockets from Inquiry Counsel which allows it to monitor and assess Counsel's fees. However, as Commission Counsel stands in a solicitor-client relationship with the Commissioner, the City has limited visibility into the breakdown of Commission Counsel's fees. In response to a request from the City, Commission Counsel began providing a breakdown of the hours and associated legal fees for specific tasks, in its September 2022 invoice.

The City also requested that Commission Counsel alert the City if they expected to exceed their estimated legal fees. No such notice of exceeding the estimated legal fees has been received to date from Commission Counsel.

Commission counsel also agreed to discount their legal fees from any duplication of work resulting from the appointment of the lead Commission Counsel to the judiciary in May 2022. The City received a credit of \$50,000 for Commission Counsel's fees on the May 2022 invoice.

Status of the Inquiry

There are six overlapping stages to a judicial inquiry:

- 1) Logistics and Staffing: the Commissioner engaged Commission Counsel and other staff necessary to conduct the inquiry, including a Communications Officer.
- 2) Document Collection & Production: the City collected a total of 4,434,930 documents from approximately 140 custodians and produced a total of 63,657 documents in response to Commission Counsel's request for documents.
- 3) Witness Interviews: Commission Counsel interviewed 46 current and former city employees. The City's external counsel met with each witness in advance of the interview to assist with their preparation.
- 4) Standing: the Commissioner granted standing to the following participants in addition to the City: Her Majesty the Queen in Right of Ontario; Dufferin Construction Company; and, Golder Associates Ltd.
- 5) The Hearing: the hearing stage can be broken into three stages: (1) phase one of the hearing focused on fact witnesses; (2) phase two will focus on expert witnesses; and (3) closing submissions. More information regarding the hearing stage is provided below.
- 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.

Phase One:

The Commissioner received evidence from 69 fact witnesses over the course of 78 days. Phase One was completed on November 3, 2022.

The following witnesses gave evidence during the Phase One Hearing:

No. of witnesses	Party	Description
2	Commission Counsel Expert witness	Dr. Gerardo Flintsch's and Russell Brownlee provided evidence regarding pavement design and friction.
40	Current and former City employees	The City witnesses gave evidence on their involvement on various topics related to the RHVP, including the design and construction, friction testing, safety reviews and the resurfacing of the RHVP.

No. of witnesses	Party	Description
11	Current and former employees of the Ministry of Transportation (MTO)	The MTO witnesses gave evidence on the friction testing completed on the RHVP between 2007 and 2014 and the Province's friction management practices and policies.
3	Dufferin Construction	Dufferin Construction was engaged to pave the mainline of the RHVP. These witnesses gave evidence regarding their involvement in the construction of the RHVP.
1	Highway 407 ETR	Craig White, the Vice President of Highway Operations for Highway 407 ETR, gave evidence regarding the friction management practises on Highway 407.
1	NorJohn Contracting	NorJohn Contracting, a consultant engaged during the resurfacing of the RHVP, gave evidence regarding their consultations with the City.
4	Golder & Associates Ltd	Golder & Associates Ltd, the paving consultant for the RHVP and the consultant engaged to conduct friction and other performance testing on the RHVP, gave evidence regarding the testing and their consultations with the City.
5	CIMA	CIMA, engaged by the City to conduct safety reviews of the RHVP, gave evidence regarding these safety reviews and their consultations with the City.
1	Tradewind Scientific Ltd	Tradewind Scientific Ltd, the subcontractor engaged to complete the friction testing on the RHVP in 2013, gave evidence regarding the friction testing and the subsequent report.
69	Total	

In addition to these witnesses, the Commissioner received affidavit evidence from 11 witnesses including witnesses from Golder, the MTO and the City.

The Commissioner received affidavit evidence regarding the asphalt test results for Stone Mastic Asphalt (SMA) and SP12.5 FC2 samples in 2007, Golder's handling of

Purchase Orders from the City, the roles and responsibilities of a Senior Aggregate Engineering Officer at the MTO, as well as the requirements for inclusion of an aggregate source on the Designated Sources of Materials (DSM) list at the MTO including the application and inclusion of the Demix Aggregates.

City witnesses also provided affidavit evidence on a wide range of topics, including regarding the City's Legal and Risk Management Services' groups involvement in claims arising from motor vehicle accidents on the RHVP, the way committee and sub-committee meetings and agendas are organized, the City's IT infrastructure and network drives and ProjectWise, the document management system used in Engineering Services.

Phase Two & Closings

Phase Two of the hearing focuses on expert evidence.

Commission Counsel has delivered expert reports from Dr. Gerardo Flintsch and Russell Brownlee regarding friction, pavement design and potential contributors to collisions on the RHVP. Commission Counsel expects to deliver a further expert report from Janice Baker regarding policy and good governance.

Participants can seek leave from the Commissioner to deliver responding expert reports.

After the exchange of reports (if any), there will be a short hearing during which the experts will give evidence on the issues detailed in their reports.

Commission Counsel has not yet confirmed the timeline for the exchange of expert reports or the dates for the phase two hearing. However, it is anticipated that phase two will be completed by the end of Q1 of 2023.

Outcomes of Inquiry: The Report

After the conclusion of Phase Two, the Commissioner will release his report in which he will summarize the evidence, make findings of fact and recommendations with regard to the questions in the Terms of Reference, for the City's consideration.

APPENDICES AND SCHEDULES ATTACHED

None