

Red Hill Valley Parkway Judicial Inquiry

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# City of Hamilton – General Issues Committee Meeting

*April 5, 2023*



Location:

Hamilton, ON

Presented By:

Lenczner Slaght LLP

# Background

## The Tradewind Report

- Nov 2013:
- ▶ Golder engaged to conduct friction testing on the Red Hill and the LINC.
  - ▶ Golder subcontracts friction testing to Tradewind Scientific Ltd. (“Tradewind”).
  - ▶ Tradewind performed friction testing using the GripTester.
- Jan 2014:
- ▶ Mr. Moore received the Tradewind Report, appended to a draft report titled Performance Review after Six Years in Service, from Dr. Uzarowski of Golder.
  - ▶ Report never finalized.

## Background of Events Leading to the Judicial Inquiry

- Fall 2018:            ➤ Gord McGuire finds a draft friction report by Tradewind dated November 20, 2013, in ProjectWise.
  
- Nov 8, 2018:        ➤ Public Works receives FOI 18-189 – an FOI request from the Hamilton Spectator for all documents regarding Red Hill friction testing/results.
  
- Dec 18, 2018:      ➤ Mayor advised City Staff regarding presenting the Tradewind Report to Council
  
- Jan 23, 2019:      ➤ Closed session to advise Council of the Tradewind Report & FOI Request

## Background of Events Leading to Judicial Inquiry

Feb 6, 2019: Staff present Tradewind Report to Council and a chronology of events. Following the meeting:

- Speed limit on the Red Hill reduced
- Apology issued by City Staff to City Council and Public about “how this matter has come to their attention”

Report to Council also included a Memo from CIMA to Mayor commenting on the draft 2014 Golder Report, including the Tradewind analysis, confirming that the Tradewind Report would not have substantively changed its recommendations, and it stands by its opinions provided in its previous safety analysis.

# What is a Judicial Inquiry?



Promotes transparency and accountability and to improve policy in areas of public importance.



Does not give rise to criminal or civil liability.



Can lead to findings of misconduct that can result in significant reputational impacts.

# Terms of Reference

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Each term of reference poses specific questions that the Inquiry is tasked with investigating. The 24 questions can be grouped into 5 broad categories:



# Stages of the Inquiry

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*Six overlapping stages:*

**1** Organizing Logistics and Staffing

**4** Standing

**2** Document Collection and Production

**5** Public Hearing

**3** Witness Interviews

## Stage 2: Document Collection and Production

- ▶ City responded to Commissioner's Summons consisting of nearly 50 categories of documents involving a timeframe of nearly two decades
- ▶ City collected over 4.4 million documents from over 100 former and current City employees
- ▶ City responded to extensive requests for additional documents and information
- ▶ Over 72,000 relevant documents produced to Commission Counsel

## Stage 2: Document Collection and Production

### *Privilege Claims and Privilege Motion*

- The City initially withheld or produced in redacted form approximately 1,000 documents relevant to the Terms of Reference on the basis that they are privileged.
- September 8, 2021: Council instructed Inquiry Counsel to waive privilege over the majority of the privileged documents requested by Commission Counsel.
- 43 documents subject to a Privilege Motion on August 9, 2022
- Mr. Marrocco found the majority of the documents were protected by legal privilege, but that the City had waived privilege over the documents that are highly relevant to the Inquiry's Terms of Reference.

## Stage 3: Witness Interviews

- ▶ Commission Counsel conducted over 100 interviews
- ▶ 54 interviews of current and former City employees
- ▶ City witness interviews took over 100 hours

### *Before the interview:*

Inquiry Counsel met with City witnesses prior to the interviews to familiarize them with the documents and assist with their preparation.

### *Following each interview:*

Commission Counsel prepared an interview summary, which were reviewed, corrected, and confirmed by each witness with the assistance of Inquiry Counsel.

## Stage 5: Hearing

### *Phase One: Fact Witnesses*

- ▶ Focused on fact evidence
- ▶ April 2022 – November 2022
- ▶ Commissioner received evidence from 71 fact witnesses over the course of 85 hearing days

No. of Witnesses	Party
2	Commission Counsel Expert Witnesses
43	Current and former City employees
11	Current and former employees of the Ministry of Transportation (MTO)
3	Dufferin Construction
1	Highway 407 ETR
1	NorJohn Contracting
4	Golder & Associates Ltd
5	CIMA
1	Tradewind Scientific Ltd

## Stage 5: Hearing

### *Phase Two: Expert Witnesses*

- February 16– 23, 2023
- Focused on expert testimony on how friction and other factors contributed to motor vehicle accidents on the RHVP and policy and governance issues
- The City submitted reports from:
  - Mr. David Hein:
    - Expert on pavement friction
    - Only expert witness with expertise on Canadian friction management practices
  - Mr. Dewan Karim: Expert in transportation Safety

## Stage 5: Hearing

### *Phase Two: Expert Witnesses*

- City also submitted the affidavit of City Manager, Janette Smith, outlining changes to City policies and procedures that were implemented as part of the City's ongoing process improvement.
- Inquiry also received evidence from the following experts:
  - Dr. Gerardo Flintsch- Commission Counsel Expert, Pavement Friction
  - Mr. Russell Brownlee- Commission Counsel Expert, Roadway Design and Safety
  - Ms. Janice Baker- Commission Counsel Expert, Municipal Corporate Governance
  - Dr. Hassan Baaj- Golder Expert, Pavement Aggregates

## Stage 5: Hearing

### *Closing Submissions*

- The Commissioner heard closing submissions by:
  - The City
  - Golder
  - The Ministry of Transportation
  - Dufferin Construction
- The Commissioner is expected to release his report by Fall 2023.

# Summary of Key Evidence

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- 1 The safety of the Red Hill.
- 2 The steps taken by the City to improve and maintain the Red Hill between 2007 and 2019.
- 3 The various steps the City has taken since the commencement of this Inquiry in 2019 to improve its existing policies and procedures

### *The City's closing submissions:*

- Accepted that there was limited circulation of the Tradewind Report once it was received by the City in 2014.
- Put forward that the evidence, particularly from the safety consultants, indicated that it was unlikely that the Tradewind Report necessitated any additional remedial measures, other than what had already been implemented on the Red Hill.

# *The Safety of the Red Hill*

# The Safety of the Red Hill

## *Design and Construction*

- ▶ The Red Hill was designed in accordance with the 1985 MTO Design Guide.
- ▶ The Red Hill was constructed with a surface layer of Stone Mastic Asphalt, which was designed appropriately.
- ▶ The aggregate used had good technical properties and was suitable for use on the Red Hill.

# The Safety of the Red Hill

## *Friction Values*

- There was disagreement between the experts regarding the friction values:
  - **Mr. Hein:** friction values were appropriate and consistent with similar roads
  - **Dr. Flintsch:** friction values were relatively low under UK Guidelines
- The City was not advised of any safety concerns from the friction values taken by MTO.
- Golder advised the City of potential ways to improve friction but did not raise any safety concerns.

# The Safety of the Red Hill

## *Friction Demand*

- Friction is seldom the cause of collisions but can contribute to collisions in the face of other contributing factors, such as speeding or curvature.
- Less friction is needed at lower driving speeds. Countermeasures or speed enforcement which lower the demand for friction could avoid collisions or reduce the severity of collisions.
- Increasing friction is not always necessary because pavement improvements may not reduce the occurrence of collisions and are often associated with significant costs.

*The City Took Steps to Maintain and  
Improve the Red Hill*

# Safety Reviews and Studies by CIMA: The Safety Experts

## *2013 CIMA Report*

- CIMA concluded that the Study Area was operating safely and identified countermeasures to improve safety performance of the Red Hill, including segments that could benefit from improvement.
- City implemented CIMA's recommendations in a manner that was consistent with the urgency, timelines and prioritization of the countermeasures and investigations prescribed by CIMA.

# Safety Reviews and Studies by CIMA: The Safety Experts

## *The 2015 CIMA Report*

- ▶ The 2015 CIMA Safety Review included:
  - a detailed review of all available collision data on the Red Hill, with a focus on median related collisions;
  - a high-level review of the illumination of the roadway; and
  - an assessment of potential countermeasures that could reduce the overall collisions and median related collisions on the Red Hill.
- ▶ Key conclusion: a combination of high speeds and wet surface may be the primary contributing factors to collisions on the Red Hill, particularly where small-radius horizontal curves are present.

## Steps to Improve and Maintain the Red Hill

### *City's Focus on Combatting Speed*

- ▶ The City took immediate steps to combat high-speeds including working with Hamilton Police Services to implement a comprehensive speed enforcement
- ▶ Friction experts agree that increasing friction values **or** decreasing the demand for friction would avoid collisions or reduce the severity of collisions
- ▶ There are also practical realities from an effectiveness and cost-efficiency standpoint which suggest decreasing the demand for friction is more effective

## CIMA Would Not Have Changed its Recommendations

- Evidence confirms that the Tradewind Report would not have changed CIMA's:
  - Assessment of what was causing collisions on the Red Hill; or
  - Recommendations of potential remedial measures.
- CIMA may have recommended more aggressive speed enforcement on the Red Hill but would not have recommended pavement rehabilitation to improve friction.

*“The Tradewind Report is not the smoking gun of confirmation that pavement surface was the primary cause of collisions on the Red Hill.”*

# *The City Took Steps to Improve Policies and Procedures*

## Highlighting Key Policies and Procedures

- ▶ Sharing of Consultant Reports with Identified Imminent Risks to Health or Human Safety Policy
- ▶ Council-Staff Relationship Policy
- ▶ Public Works Quality Management System
- ▶ Project Management Manual
- ▶ Parkway Management Committee

*Janice Baker (Commission Counsel's municipal governance expert) confirmed that these improvements are consistent with best practices in municipal governance.*

# Thank You