

CITY OF HAMILTON

MOTION

Committee Date: January 15/17, 2014

MOVED BY COUNCILLOR B. McHATTIE.....

SECONDED BY COUNCILLOR

City of Hamilton Lawsuit against the Federal Government respecting the Red Hill Valley Parkway

Whereas the City of Hamilton has been pursuing a lawsuit against the Canadian federal government since 2003 in relation to their actions in the Red Hill Parkway project;

And Whereas it is estimated that the City has spent in excess of \$2 million on the lawsuit, with no concrete results;

And Whereas a recent court decision by Superior Court Justice P.B. Hambly found the City of Hamilton's case to be unfounded.

Therefore Be It Resolved:

That the City of Hamilton immediately drop the lawsuit against the Federal government in the Red Hill Parkway case.

Introduced as a Notice of Motion
at November 20, 2013 GIC Meeting
Deferred at December 4, 2013
GIC Meeting

CATCH News – November 19, 2013

Lawsuit spends ‘inexhaustible resources’ of city

A judge has described it as a waste of Hamilton’s money, but the city’s [lawsuit](#) against the federal government is now into its tenth year with no end in sight and local bills already appearing to be well in excess of \$2 million. That includes \$310,000 that the city was forced to pay in federal legal costs for pursuing motions that [were](#) “contrary to fundamental fairness and the system of justice in this country” according to the judge who made the [ruling](#) after three and a half years of failed preliminary motions by the city’s outside lawyers.

In his decision, Superior Court Justice P B Hambly was brutal in his [assessment](#) of the performance of the city’s legal team: “Counsel for the city has acted as if it had a client with inexhaustible resources to finance endless experimental litigation and that it could conduct litigation against the federal government with impunity.”

The judge calculated the federal lawyers would have been justified in asking for \$446,000 to cover their costs and agreed with them that the city’s own legal bill in the [failed](#) three and a half years of preliminary jousting almost certainly was even higher.

After [losing](#) the court battle but prior to the judgment on legal costs, the city’s outside lawyer David Estrin had [claimed](#) the preliminary motions were helpful despite their complete rejection by the courts and would lead to a conclusion of the lawsuit by the end of 2012.

“It’s had the advantage of getting out the underbrush before the trial,” he [told](#) the *Spectator* in December 2011. “The result of this motion would be to shorten any trial that would have to be held.”

The [judge’s view](#) was quite different. In his cost award decision, Justice Hambly stated he “agrees entirely” with the federal government’s characterization of the case:

“The city was entirely unsuccessful. No findings were made by the court that the defendants had not already conceded or admitted in their statement of defence filed in 2006. In the end, 3-1/2 years of legal work by both parties, which could have been spent advancing the action, were entirely wasted.”

While the city refuses to reveal its on-going legal costs, these had already exceeded \$1,335,000 at the last accounting provided to the public two years ago. The legal action [alleges](#) that a conspiracy of four federal cabinet ministers and more than 60 civil servants had delayed construction of the Red Hill Valley Parkway. The list of accused federal staff has now been [reduced](#) to 46 and the preliminary motions only cited a handful of alleged conspirators.

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Council was [convinced](#) by Estrin in November 2004 to launch the \$75 million lawsuit after he won an earlier ruling to stop a federal environmental assessment of the controversial roadway project. While the city was awarded its costs in that 2001 hearing and Estrin [assured](#) council the current lawsuit was 95 percent certain to be successful, the burden faced by the city is substantial, according to the definitive precedent [cited](#) by Justice Hambly:

“At its core, the tort targets officials who act dishonestly or in bad faith. ... ublic officials who deliberately engage in conduct that they know to be inconsistent with the obligations of their office risk liability for the tort. Conversely, public officials who honestly believe their acts are lawful, and do not intend to cause harm or know that harm would likely result from their actions, fall outside the ambit of misfeasance in public office. In this way, the required mental element achieves a balance between curbing unlawful, dishonest behavior and enabling public officials to do their jobs free from claims by those adversely affected by their decisions.”

In its preliminary motions, the city tried to get the court to agree that because the assessment had been stopped, the federal officials must have known they were acting illegally. Hambly [ruled](#) that was not the conclusion of Justice Dawson in stopping the assessment and that the city’s attempt to get such a decision “and that would find them guilty without giving the individuals any opportunity to defend themselves.

For the first few years after the lawsuit began, regular reports were released on its costs, but in March 2008 city council [voted](#) 10-6 to stop doing that. The same margin [rejected](#) former mayor Eisenberger promise to end the lawsuit.

A 2011 [court ruling](#) on the right of taxpayers to know how municipal dollars are spent convinced council to make a one-time release of the accumulated cost figure. The resolution was [approved](#) 14-2 with Ferguson and Pasuta opposed. Council occasionally gets updates on the case in secret session, the most recent [occurring](#) last February, when again no information was released.

CATCH (Citizens at City Hall) updates use transcripts and/or public documents to highlight information about Hamilton civic affairs that is not generally available in the mass media. Detailed reports of City Hall meetings can be reviewed at hamiltoncatch.org. You can receive all CATCH free updates by sending an email to <http://hamiltoncatch.org/newsletter/?p=subscribe>. Sharing links are available on the hamiltoncatch.org.