

THE HAMILTON SPECTATOR

April 7, 2022

To whom it may concern,

The Hamilton Spectator is strongly opposed to the City of Hamilton's motion to claim legal privilege over documents that may be relevant to the work of the Red Hill Valley Parkway Inquiry. The Spectator also opposes a total *in camera* hearing for the motion to determine privilege.

The Spectator investigated community concerns about perceived dangerous, slippery conditions on the Red Hill Valley Parkway for several years – and was repeatedly denied information by the City – before the existence of a buried report on roadway friction was publicly admitted.

The City's top engineering official went so far as to publicly declare there were “no concerns” about parkway safety based on roadway testing – even as families of crash victims tearfully appealed for action. Over the period that the report was buried, more than 200 collisions with injuries occurred on the parkway, including several high-profile fatalities.

That is why The Spectator believes it is in the public interest to release all relevant documents that could shed light on the issues before the Inquiry. Without unfettered access to all relevant documents, resident questions about how and why this happened – and who was aware – will not be publicly answered.

Even the appearance that the City is hiding potentially relevant information will erode public trust and confidence in the Inquiry's process and outcome. As the Supreme Court has repeatedly affirmed, “the administration of justice thrives on exposure to light – and withers under a cloud of secrecy” (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, at para 1).

The Spectator supports the inquiry counsel's assertion that the city waived privilege when it requested a judicial inquiry in the first place. At that time, city council directed the commissioner to obtain "all documents necessary" to answer questions related to the Red Hill Valley Parkway set out in the terms of reference.

Allowing the city to withhold relevant documents on the basis of privilege undermines the stated rationale for a judicial inquiry – as opposed to a less expensive option for taxpayers – which was to ensure the most comprehensive and transparent investigation possible.

As a surrogate of the public interest, the Spectator respectfully urges the Commissioner (or their designate) to reject the City’s request to withhold documents on the basis of privilege.

The Spectator also opposes a total *in camera* hearing for the motion, and proposes that only those portions of the motion where potentially privileged documents are actually being discussed be held *in camera*. Section 2(b) of the *Charter* requires that, when considering restrictions on openness, the least restrictive measure be selected (*Sherman Estate v Donovan*, 2021 SCC 25). Further, any written materials, and any decisions, should be released to the public subject only to minimal redactions that may be justified under the *Sherman Estate* test.

Respectfully,

Cheryl Stepan

Local News Editor
Hamilton Spectator
cstepan@thespec.com