

January 9, 2020

STATEMENT BY THE COMMISSIONER

**To open the community meeting
(Check against delivery)**

**Mr. Justice Herman J. Wilton-Siegel
Commissioner**

1. Good evening and welcome to this community meeting being conducted by the Red Hill Valley Parkway Inquiry.
2. As Mr. Centa said my name is Herman Wilton-Siegel and I am a judge of the Superior Court of Justice of Ontario. I am the person who will head up this inquiry as the Commissioner.
3. We have arranged for this public meeting for several reasons. First, we want to describe the nature of a public inquiry and the mandate of this Inquiry in particular. Second, we want to give you an overview of the process and anticipated timing of the Inquiry. Third, we want to explain how interested parties can interact with the Inquiry. Lastly, we want to give you the public an opportunity to ask any questions or give us any comments you might have regarding the Inquiry at this stage in the process.
4. I want to say at the outset that, as a public inquiry, we consider transparency to be a very important value. Currently, Commission counsel is conducting an investigation, collecting documents, and assembling information. This work will last a number of

months. After that, the Inquiry will examine the evidence in public hearings and the conclusions of the Inquiry will be set out in a report which will be made public. At all times, members of the public who wish to provide information or comments are encouraged to do so by contacting Commission counsel, Mr. Centa.

5. The first matter I want to address is the nature of a public inquiry in general and the mandate of this public inquiry in particular. A public inquiry is a public examination of a matter of controversy or concern to the public. The task of a public inquiry in general terms is to find out how and why the problem, if there was one, arose and how similar problems can be avoided in the future.

6. A public inquiry is called when a governmental entity such as a city council like the Hamilton City Council passes a resolution asking for an inquiry into a certain matter. That is what happened here. When a resolution like that is passed by a municipal authority, a judge of the Superior Court of Justice must conduct an inquiry. Also, under the law, the cost of the inquiry must be paid by the municipal authority that requested it.

7. This Inquiry was requested by members of City Council at its meeting on March 20, 2019. The fact that the City had requested the Inquiry was formally brought to the attention of the Chief Justice of the Superior Court on April 5, 2019. I was subsequently appointed the Commissioner by the Chief Justice on May 3, 2019.

8. The governmental entity that calls an inquiry also determines the scope of the Inquiry. In this case, the City Council set out the scope of the inquiry in its Terms of Reference which were also passed by resolution at a meeting of the City Council held on

April 24, 2019. The context that led to the Inquiry is described in the preamble to the resolution.

9. The Terms of Reference are on the Inquiry's website. The website address is www.rhvpi.ca

10. The Inquiry's mandate is divided into two stages. First, the Inquiry is to determine the facts relating to 24 questions posed by City Council which fall into five general categories:

- (a) Issues around the friction testing conducted in late 2013 on the Red Hill Valley Parkway and the Lincoln M. Alexander Parkway and the subsequent report based on it, including who was involved in or received the report, why it was not provided to City Council or the public, the circumstances surrounding its coming to light in 2018, the steps taken at that time, and the ramifications if any arising from the report not having been disclosed.
- (b) Issues around the Ontario Ministry of Transportation friction testing on the RHVP in 2007, including whether the testing supported or rebutted the 2013 friction test results, who received the results, why the results were not provided to City Council or made available to the public, and the ramifications if any arising from the Ministry testing not having been disclosed.

- (c) Whether the City or the Ministry of Transportation conducted any other friction tests, asphalt assessments, or general road safety reviews or assessments of the RHVP, and whether these supported or rebutted the 2007 and 2013 friction testing results.
- (d) What are the standards in Ontario, if any, respecting acceptable friction levels and how do the test results conducted on the RHVP compare with those standards.
- (e) To what extent do factors other than friction, including driver behaviour, lighting and weather conditions, contribute to motor vehicle accidents on the RHVP as compared to the impact of friction levels.

11. The second part of the Inquiry's mandate is to make recommendations regarding the matters I just mentioned that appear to be in the public interest and, in particular, in the interests of good government of the City of Hamilton and in the interests of road safety, particularly insofar as it relates to the Red Hill Valley Parkway.

12. It is important to state that a public inquiry is not a trial. No one is charged with criminal activity; no one is being sued. For the same reason, the role of an inquiry is not to find anyone criminally responsible or liable for damages under civil law, but rather to establish the relevant facts. The Inquiry Report will however be available to all interested parties who may wish to consider further proceedings.

13. Similarly, any recommendations which the Inquiry makes are not binding on the City or the Province of Ontario. However, recommendations made after a public inquiry may and often do influence law, policy and action by governments both local and provincial. For example, the Walkerton Inquiry had a significant impact on water management in the province. The Toronto Computer Leasing Inquiry led to major changes on how business is done at Toronto City Hall.

14. The next topic I want to address is the process, staffing and anticipated timing of the Inquiry. Public inquiries typically involve four principal stages.

15. The first stage of the Inquiry will take place tomorrow when I hear requests for participation in the Inquiry. After hearing what people have to say tomorrow and examining their written materials, which have already been received and posted on the Inquiry website, I will decide if and to what extent those individuals will be permitted to participate in the Inquiry. Participation can involve some or all of the right to have witnesses called to testify, the right to cross-examine witnesses, the right to make written and oral submissions on matters which arise during the course of the Inquiry, and the right to make such submissions at the end of the hearings. Participation can be limited or be general. For example, a party may be permitted to cross-examine only a few witnesses or be limited to making written submissions only.

16. In deciding how people are going to participate I have to balance the need to understand a considerable volume of documentation and technical data concerning the construction of the Parkway and the friction testing that has been conducted on the Parkway as well as all communications within the City and all communications between

the City and its contractors and consultants relevant to the issues described above, the need for people who are affected by the Inquiry to be heard, and the need to conduct the Inquiry in a timely way.

17. The second stage of the Inquiry is the Inquiry's investigation stage. This involves the receipt and review of all relevant documentation from all of the parties who were involved in the construction, and testing of the Red Hill Valley Parkway. We anticipate receiving and reviewing hundreds of thousands documents that bear on these issues based upon advice that we have received from the City's lawyers. This work will be done by Commission counsel who I will describe further a little bit later. This work is already well underway. The Inquiry has received documents and information from a number of entities, including from the City. The Inquiry's timely progress depends on completion of the review of the City's documentation, which we anticipate will represent the largest body as well as the most relevant documentation.

18. In addition, as part of this process, Commission counsel will interview parties with knowledge of the relevant events and this documentation to assist in narrowing the issues to be addressed in the public hearings.

19. The third stage of the Inquiry will involve public hearings at which the relevant documentation will be presented and witnesses will be interviewed under oath regarding their knowledge of the relevant events. In addition, I expect there will be technical evidence regarding the significance and utility of friction level testing of roadways. At the present time, we anticipate that it should be possible to start the public hearings sometime during the autumn.

20. The public hearings will address two issues. First, the Inquiry will consider the factual issues relevant to the 24 questions set out in the Inquiry's mandate that I described I earlier. Second, the Inquiry will consider matters relating to recommendations of a policy nature that the Inquiry should make relating to those matters – broadly, good government and road safety, in particular insofar as it pertains to the Parkway.

21. The last stage of the Inquiry will involve preparation of a report that sets out both my factual findings based on the evidence at the public hearings and any policy recommendations that flow out of those findings.

22. In order to implement this process, the first thing I did as Commissioner was to appoint Commission counsel who in turn has identified a small team of lawyers under his direction. The role of counsel at an inquiry is to present all the evidence and oversee any inquiries we make of people for documents and information. Their role is not adversarial.

23. Commission counsel is Rob Centa of the firm of Paliare Roland in Toronto. Rob is a lawyer with a broad practice in both public law and business litigation. Significantly, in his almost 20-year career, he has been involved in seven public inquiries, including as counsel to the Commissioner.

24. Biographies of the other members of the Commission counsel team are on our website.

25. In addition, the Inquiry has an Executive Director and a Communications Director. The Executive Director is Margaret Foulds. She is charged with the responsibility for the

operation of the Inquiry's office which we expect will be located in Hamilton, for the creation of the facilities for the public hearings which we expect will also be held in Hamilton, and for ensuring an efficient operation of the Inquiry generally. We are currently discussing options for these facilities with the City.

26. The Communications Director is Wendy McCann. Wendy has an extensive journalism background.

27. The contact information for Margaret Foulds and Wendy McCann is listed on the website.

28. I want to conclude by emphasizing that all the hearings and decisions of the Commissioner will be public except if exceptional circumstances arise which are not currently anticipated. As mentioned, the first stage of our formal hearing starts tomorrow when I will consider requests from a number of parties for the right to participate in the Inquiry. This will take place in the City Council Chambers. Anyone who is interested is welcome to attend the hearings in person. In addition, Cable 14 will broadcast the proceedings live on their channel and will carry a webcast of the proceedings on their webpage. The participation hearings will also be transcribed and the transcript will be posted on our website within a few days. We will also arrange for future public hearings to be televised. We will post information regarding such arrangements on the Inquiry's website once they are finalized.

29. I am now happy to open up the floor to anyone who has a question, comment or a suggestion. I would ask that you use the microphone at the podium and that you give your name and your company or association if you are attending in a representative capacity.