

In the matter of the Public Inquiries Act, 2009, S.O. 2009, c 33, Sch 6

And in the matter of the Resolution of the Council of the City of Hamilton dated April 24, 2019, establishing the Red Hill Valley Parkway Inquiry pursuant to section 274 of the Municipal Act, 2001, S.O. 2001, c 25

REPLY OF THE OFFICE OF THE CITY AUDITOR

September 1, 2022

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REPLY OF THE OFFICE OF THE CITY AUDITOR

1. The Office of the City Auditor (the "OCA") repeats and relies on its moving submissions. This reply only addresses those matters that are responsive to matters raised by Commission Counsel.
2. Commission Counsel has not addressed the main argument of the OCA that the summons is beyond the jurisdiction of the Commission.
3. Contrary to Commission Counsel's assertion in paragraph 23, the information sought is not relevant to the inquiry. The report to City Council prepared by the OCA and filed with the Commission is completely dispositive of all matters that touch upon the involvement of the OCA and a judicial inquiry appointed by a municipal council should not look behind the OCAs work.
4. In paragraphs 33 - 35, Commission Counsel addresses the two decisions of Commissioner Goudge concerning statutory confidentiality provisions. The OCAs submissions are intended to identify the jurisdictional problem associated with relying on the Goudge Inquiry decisions and specifically the problem with a Council ordering an inquiry into a person who is independent from the City. Each inquiry decision referenced by Commission Counsel arose from an inquiry ordered by the Lieutenant Governor. There was no question that the inquiry commissioner had the jurisdiction to consider the request. Conversely, this judicial inquiry is not statutorily superior to the OCA, and therefore, one has no jurisdiction over the other.
5. With respect to paragraphs 36, 37, and 38, while the statutory secrecy provisions in section 223.22(2) of the *Municipal Act, 2001* and section 80 of the *Police Services Act* may be similar, the source of authority for is not. It is not appropriate to characterize the

conclusions that the OCA asks this judicial inquiry to draw as putting the duty of secrecy above the *Public Inquires Act* as suggested by Commission Counsel. Rather, this should be viewed through the lens of two council-approved investigative bodies each of whom have the right to rely on section 33 of the *Public Inquires Act* as the tool to obtain information in their statutory role.

6. What cannot be lost in this consideration is the fact that a judicial inquiry is ordered by a municipal council and can only review matters as directed by a municipal council. The statutory secrecy provisions of the *Municipal Act, 2001* applicable to the OCA are intended to keep investigated matters secret from a council and to give the OCAs investigators the freedom to investigate independently. If a council is permitted to order a judicial inquiry into that which it cannot know directly, it results in an end run around the secrecy provisions and damages the ability of an OCA to remain independent from City Council. This will jeopardize the OCA's independence as any work it undertakes will always be in the shadow of a risk that its work will be subject to the loss of control, and therefore the OCAs independence.
7. In response to paragraph 46, the OCA agrees that the judicial inquiry is entirely independent from the City of Hamilton, and that is exactly how it is supposed to operate. However, so is the OCA. The argument set out in Commission Counsel's submissions at paragraph 46 succinctly explain why a judge cannot order the investigation of the OCA, just as the OCA could not investigate a judicial inquiry. It would destroy the independence of each of the independent processes.
8. While Commission Counsel has submitted that no provision exists in the *Municipal Act, 2001* to prevent the Auditor General from being compelled to testify before a public inquiry, the OCA submits this is not necessary. There is no need to protect the OCA from a

municipally initiated judicial inquiry under section 223.23 of the *Municipal Act, 2001* because it is unreasonable to interpret the powers of a municipality in a way that permit it to review the OCA because of its independence.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of September, 2022.



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**REPLY OF THE OFFICE OF THE CITY AUDITOR FOR THE
CITY OF HAMILTON**

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