

DIRECTIONS

Mr. Justice Herman J. Wilton-Siegel
Commissioner

1. The City of Hamilton seeks directions:
 - (a) appointing a Designate to determine the City's claim for privilege with respect to the Documents Under Review as defined in the Notice of Motion;
 - (b) directing that the hearing before the Designate be held in camera; and any motion materials be filed with redactions to protect information that may be subject to legal privilege pending a determination by the Designate; and
 - (c) directing that the Designate's decision be made public subject to redactions necessary to protect any privileged information as deemed necessary by the Designate.

2. The Inquiry Rules of Procedure provide the authority to delegate the determination of the City's claim of privilege to a designate under Rule 15. The motion is supported by Commission Counsel and is not opposed by any of the Participants. Given that the documentation at issue should only be made available to the Commissioner after a determination is made, it is necessary and appropriate to delegate this function to a designated party and I so direct. Counsel for Golder has indicated that Golder wishes to make written submissions to the Designate on the issue which is not opposed by Commission Counsel or any of the other participants. Such permission is also granted.

3. With respect to the second matter, as I have indicated on other occasions, transparency is an important principle for the Inquiry. I am therefore sympathetic to the general principle articulated by the Hamilton Spectator, in its letter to the Inquiry dated April 7, 2022, that the Inquiry should be given access to "all documents necessary" to answer the questions set out in the Inquiry Terms of Reference.

4. The Hamilton Spectator also opposes a total *in camera* hearing for the motion before the Designate. Commission Counsel and counsel for the City of Hamilton have both advised that they will work cooperatively to ensure that written submissions are redacted for privileged information and posted on the Inquiry website. That procedure should be followed by all parties making submissions in order that the public can

understand the issues of principle involved. The issue of the hearing before the Designate involves a practical question rather than a matter of principle – whether it is possible to conduct the hearing in a manner which fully informs the Designate without an *in camera* hearing. As I have no knowledge of the content of the specific documents at issue, I am not in a position to give specific directions on this question. The parties to the motion and the Designate should determine the appropriate procedure to be followed.

5. Subject to the foregoing, the directions sought by the City of Hamilton as set out above are ordered.

FURTHER DIRECTION

6. Subsequent to communicating to Commission Counsel and the City of Hamilton that the above Directions should be ordered, these parties indicated that they had agreed upon, and recommended, the appointment of the Honourable Frank Marrocco as the Designate. In view of Mr. Marrocco's considerable experience in this area as well as his extensive judicial experience, he is appointed as the Commissioner's Designate pursuant to the provisions of Rules 4 and 15(c) of the Inquiry Rules of Procedure.



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

April 25, 2022