

Remarks of the Commissioner on the Release of the Report

November 29, 2023

Good Morning.

Before I begin my brief remarks, I want to acknowledge that the City of Hamilton is situated upon the traditional territories of the Erie, Neutral, Huron-Wendat, Haudenosaunee and Mississaugas. This land is covered by the Dish With One Spoon Wampum Belt Covenant, which was an agreement between the Haudenosaunee and Anishinaabek to share and care for the resources around the Great Lakes. This land is also covered by the Between the Lakes Purchase, 1792, between the Crown and the Mississaugas of the Credit First Nation.

The City of Toronto, where some of the participants who appeared in the course of this Inquiry are located, is situated on the traditional territory of many nations including the Mississaugas of the Credit, the Anishnabeg, the Chippewa, the Haudenosaunee and the Wendat peoples and is covered by Treaty 13 signed with the Mississaugas of the Credit.

Hamilton and Toronto are also home to many diverse First Nations, Inuit and Metis people. I am grateful to live and work on this land.

Turning to the purpose of this morning's statement, in May 2019, I was appointed as the commissioner of the Red Hill Valley Parkway Inquiry after the Council of the City of Hamilton initiated this Inquiry and established the Terms of Reference of the Inquiry pursuant to provisions of the *Municipal Act, 2001*. Today I am pleased to say that I am delivering the Inquiry Report to the City and releasing it to the public. The full Report will be posted on the Inquiry's website today in PDF form and is being made available in hard copy to the participants.

The Terms of Reference of the Inquiry consisted of 24 questions. My mandate as Commissioner was strictly defined by those Terms of Reference and the questions that Council requested that I address. These questions can be distilled into five broad categories:

- 1) Why was the Tradewind Report, which set out the results of testing of friction levels on the Red Hill Valley Parkway conducted in 2013 and was received by the then Director of Engineering Services for the City in 2014, not shared amongst City staff, Council, and the public prior to its discovery in the fall of 2018?

- 2) Were appropriate steps taken to disclose the Tradewind Report to Council and the public after its discovery in the fall of 2018?
- 3) Why was the City not made aware of the prior friction testing of the Red Hill Valley Parkway conducted by the Ontario Ministry of Transportation in 2007?
- 4) What effect, if any, did the lack of awareness of the Tradewind Report and the MTO friction testing in 2007 on the part of City staff, Council, and the public, and the lack of prompt implementation of the recommendations contained in the Tradewind Report, have on the safety of the Parkway? Were drivers on the Parkway put at risk as a result of the non-disclosure? Did friction levels contribute to motor vehicle accidents and fatalities on the Parkway, and what other factors, including driver behaviour, lighting, and weather conditions, contributed to such accidents?
- 5) What changes should the City make as a result of the answers to the questions above?

Steeping back a moment, public inquiries serve a variety of important functions. As the name suggests, they are inquisitorial in nature, with a fact-finding mission, are held in public, and are run by an independent non-partisan commissioner. They aim to bring clarity about the precipitating event(s) to the entity that has called the inquiry and to the public, which in this case, includes those who have been personally affected by accidents on the Parkway, including 6 fatalities prior to 2019, or who have questioned the safety of the Parkway since its opening in 2007.

It is also important to state that a judicial inquiry cannot make findings of civil or criminal liability, nor conclusions that any individual has breached any legal standard that would entail civil or criminal liability or professional discipline. Determining conclusions of civil or criminal liability is a matter for the courts in the context of specific civil or criminal proceedings. Although I have made findings in the Report, including findings of misconduct, the purpose of those findings is ultimately to answer the Terms of Reference and provide the Recommendations set out in Chapter 12 of the Report.

To answer the 24 questions set out in the Terms of Reference, the Inquiry proceeded in several phases: first, an investigation phase involving the gathering and reviewing of over 130,000 documents, the conducting of over 100 interviews, and the preparation of ten extensive Overview Documents; next, a public hearings phase over 80 days in two stages, and finally the preparation of this Report. Appendix S to the Report provides a summary of the Inquiry's statistics.

Some of the 24 questions I was appointed to answer were straightforward factual questions. However, most of the questions posed in the Terms of Reference were

complex, involved a broad timeframe, and required significant factual evidence as well as an understanding of highly technical evidence regarding the construction of highways, traffic safety principles, and the role of friction as a potential contributor to accidents. In addition, the question of why the Tradewind Report was not disclosed to Council until 2019 was not simply the result of one person's actions but had much to do with a culture within Public Works that did not require collaboration among its divisions in respect of traffic safety on the Red Hill Valley Parkway. The Inquiry therefore dealt not only with the conduct of particular individuals but also with issues of interpersonal dynamics, workplace culture, and systemic gaps regarding the division of responsibility within Public Works as it related to traffic safety on the Parkway, and between Public Works and Legal Services following the discovery of the Tradewind Report in 2018.

My report is in two volumes, over 13 chapters. I encourage readers interested in the issues that gave rise to the Inquiry to review the full Report which is structured as follows:

The first four chapters set out important background information. Chapter 1 sets out a basic introduction to a number of technical topics, including the surface course used on the Parkway, the science of pavement-tire friction and how it is measured on highways in Ontario including by the Ministry of Transportation, and certain traffic safety concepts and highway design considerations relevant to traffic safety on the Parkway. This background was necessary given the breadth of the Terms of Reference regarding the factors that cause collisions. Chapter 2 addresses the design and construction of the Parkway. It provides an overview of the design and geometric features of the Parkway mainline that are significant for traffic safety purposes and why sections of the Parkway are challenging to drive. Chapter 3 describes the friction testing that the Ministry of Transportation conducted on the Parkway in 2007, which is the subject of several questions in the Terms of Reference, and between 2008 and 2014. Chapter 4 provides an overview of the City's governance structure and operational organization and identifies the departments, divisions, sections, key staff and external consultants retained by the City who had a role in managing and maintaining the Parkway or who were otherwise the subject of this Inquiry's mandate.

Chapters 5 through 10 then review, in chronological order, the actions from 2007 to 2018 taken by City staff, principally members of the Traffic group and the Engineering Services division, regarding Red Hill Valley Parkway-related matters, including in particular, Public Works' retainers of Golder Associates to assess the pavement condition and of CIMA+ to address traffic safety, as well as discussions within Engineering Services regarding the rehabilitation and resurfacing of the Parkway which ultimately occurred in 2019. Chapters 9 and 10 also describe the circumstances under which the Tradewind Report was located by Engineering Services. Chapter 11 then describes the subsequent actions of staff from

Public Works, Legal Services, and Communications to bring the Tradewind Report and other Parkway-related matters to Council in January and February 2019.

Chapter 12 sets out findings and my overall conclusions relevant for the Terms of Reference. That chapter also includes my answers to the specific questions posed in the Terms of Reference and my Recommendations. Chapter 13 concludes the Report with an overview of the Inquiry process.

In order to address the Terms of Reference, the Inquiry process was lengthy and detailed, as is therefore my Report. That said, to assist the public, I have also provided an Executive Summary which summarizes my principal findings and Recommendations.

The City, Golder Associates, Dufferin Construction Company, and the Ministry of Transportation had formal participation status in the Inquiry. I want to thank the participants and their counsel for their engagement and professionalism throughout. I also encouraged non-participants, including those affected by collisions on the Parkway, to be involved in other ways. I am grateful for their contributions. I am also particularly grateful for Commission Counsel and the other members of the Commission Counsel team who provided invaluable assistance in all phases of the Inquiry.

In conclusion, it is my hope that the technical and expert evidence and my overall findings in the Inquiry Report will contribute to a better understanding of the design, construction, and operating history of the Red Hill Valley Parkway and thereby provide some clarity to the City, to those who have been personally affected by accidents on the Parkway, and to the Hamilton public generally.

Thank you for your interest in this Report.