

PUBLIC INQUIRY – OUTLINE OF OPTIONS AVAILABLE

Recommendation

The City Manager recommends that this information report be received.

Economic Impact

Not applicable

Communications Plan

This information report will be made publicly available in advance of the March 26, 2007 meeting.

Purpose

Pursuant to Council direction of March 19, 2007, the following report is prepared on the basis of the legal opinion received by Council from the City's external legal counsel, Mr. George Rust-D'Eye; it outlines all possible courses of action available to the City of Vaughan, including, but not limited to:

- a) a review by staff;
- b) a Council review;
- c) a police investigation;
- d) a judicial inquiry or investigation;
- e) a ministerial inquiry or audit, or
- f) any combination of the above.

Background - Analysis and Options

This report provides information with respect to the City's possible response to requests or suggestions that a public inquiry be held relating to one or more specified or as yet unspecified issues involving the management or affairs of the City.

This report addresses the issue in general terms, not referring specifically to any particular matters or allegations which have been raised or may be raised in support of any request for such an inquiry to be held.

This report is structured on the basis of the assumption that Council may decide that it wishes to obtain information concerning one or more aspects of the City's past or current affairs. Should it decide in the affirmative, it will then be in a position to decide whether or not, and how, to do so. One possible course of action would be to authorize and proceed with a comprehensive public process, for the purpose of addressing and attaining the City's proper municipal objectives, possibly involving future decision-making and actions to be taken by the City arising out of the results of whatever process is pursued.

Accordingly, this report will commence with an outline of the alternate means by which Council might give consideration to and address such investigation and objectives, followed by a discussion of factors involved in proceeding with each alternative approach.

It is emphasized that the following discussion proceeds on the basis of the very generalized issues referred to above, not addressing or dependent upon any specific issues of fact or allegation that may have raised or alleged either by one or more members of Council or the public.

One or more of the following alternative courses of action might or might not prove to be appropriate in addressing any particular fact situation or allegations which the Council might decide to address. Further discussion and evaluation of alternatives could be undertaken in response to any decision by Council with respect to the potential subject-matter of review, the objectives to be sought in pursuing any particular alternative, and the manner and form in which Council might wish any particular method of inquiry to proceed.

ALTERNATIVE COURSES OF ACTION

In general terms, the following would appear to be possible courses of action which might be pursued by the Council or other parties for the purpose of inquiring into one or more matters involving the City's past or ongoing business, interests or the conduct of its affairs.

- (1) Take no action;
- (2) Request for review by staff;
- (3) Council review;
- (4) Police Investigation;
- (5) Judicial inquiry or investigation;
- (6) Other available mechanisms;
- (7) Any combination of the above.

It is emphasized that the following discussion is a very general one, not based upon or relating to any particular subject-matter. The series of alternatives are set out in ascending order of magnitude and cost, not involving recommendation or preference suggesting any particularly useful approach, since any such conclusion would have to await further consideration of the precise subject-matter(s) of any particular inquiry or other course of action, a balancing of the pro's and con's, including costs, of proceeding with any particular approach, and a determination by the Council of its immediate and ultimate objectives to be sought through proceeding with any particular course of action:

(1) **TAKE NO ACTION**

Depending on the nature of the request or allegation to be dealt with by the Council, in the absence of a court order, ministerial direction or statutory mandate, the fact that one or more parties may request or demand the establishment of a public inquiry does not mean that the Council has to grant such request.

Except in extreme cases of allegations of specific wrongdoing, generally, the Provincial Legislature has left it up to the discretion and judgment of the elected City Council to decide whether or not a public inquiry or other course of action is warranted in all of the circumstances, and to balance the costs of proceeding with such an inquiry or other alternative(s) against the municipal objectives which may realistically be obtained through doing so.

Certainly the Council should impose upon any party requesting or demanding any particular course of action, the onus of first making full disclosure and production of all information and documents relevant to the Council's decision-making, so that the Council may review and weigh the credibility and significance of whatever grounds are being put forward in support of the request being made.

The Council should not entertain or proceed with any such request unless and until it has received such disclosure, information and records, and had the opportunity to review and consider its desired course of action in the particular circumstances relevant to whatever request or proposal is presented for its consideration.

(2) REQUEST FOR REVIEW BY STAFF

The discussion herein relating to the alternatives open to the Council proceeds on the basis and assumption that, as discussed above, the Council is not required by law to take action or pursue any particular course of action in addressing any request or proposal that a public inquiry be held.

In such circumstances, it is at all times open to the Council to decide to refer to its staff whatever information, submissions or records which it receives, with a request that the staff review and investigate such matters and report back to the Council as to the results of such review, together with any recommendations which the staff may have to make based on the circumstances and information available to it at that time.

The form of any such request, and the nature and extent of staff review sought by the Council, may vary significantly, based upon the subject-matter of the request, the nature and form of available evidence, the magnitude of its implications for the City Corporation, and the complexity and comprehensiveness of whatever review and report may be sought by the Council in the particular circumstances of the case.

Any such request for staff action may or may not specify particular terms of reference, subject-matters to be considered, results to be obtained, recommendations which may be requested, or any specific directions to staff involving the subject-matter of the review and the form and nature of the staff response which the Council may see fit to require.

It is open to the Council, for instance, to simply refer the requests and information to the staff for report, together with any possible time period within which staff response might be directed.

At the other end of the spectrum, the Council could direct a formal communication to one or more specific officials on its staff, requesting and authorizing a specific review to be conducted, either by one or more designated City staff or any designated outside professional or consultant, or a combination of the two, to produce a report or other manner of response as could be specified by the Council in the decision and direction that it should decide to adopt.

Pro's and Con's of Staff and/or Retained Professional or Consultant Review

PRO'S	CON'S
<p>Expense: An investigation by staff could cost the City nothing by way of additional costs. Expense to the City would, of course, increase through the retainer of one or more outside professional or consultant persons to conduct or assist in the conduct of the review. For a public inquiry, there would be possibly significant additional costs relating to the inquiry, all of which are likely to be borne by the City in full, involving not only the engagement of inquiry counsel, but that counsel's co-counsel and assistants and counsel for other parties, other non-legal staff, investigators, court reports, transcript costs, clerical staff and hearing</p>	<p>Issues dependent upon the subject-matter: Should the proposal involve allegations which may implicate or raise issues relating to the Council or its members or conduct of one or more specific members of the City's staff, it may not be appropriate to have the review conducted in-house, involving such staff, or employees of the City generally.</p> <p>At the same time, the fact that allegations may be made against one or more staff or, for that matter, past or present members of Council, does not mean that the Council is precluded from requesting</p>

PRO'S	CON'S
facilities.	one or more officials or members of staff to conduct a review of the matter, and respond, upon such terms as may be delineated by the Council in its direction. In any event, any such issue might be addressed and dealt with through retaining outside professional assistance with respect to any such matter.
<p><u>Thoroughness of review:</u></p> <p>Expert staff may be in the best position to review and report to Council with respect to the proposal. Staff, with or without the assistance of one or more outside professionals, are in a position, with the co-operation of those involved in the matter, to produce a very thorough investigation and report. However, staff are not in a position to require other individuals who may resent "being investigated" to talk to or provide information to the investigators. Council may, of course, give lawful directions to its employees.</p>	<p><u>Public Process:</u> Depending upon the nature and seriousness of specific allegations involved in the proposal, the Council might consider it undesirable to have the review conducted by staff, which presumably would not involve a process conducted in a public manner (although steps could be taken to address issues of the public interest to be attained through a staff review). Council could, of course, in directing any staff or outside professional review, make such directions as it may see fit to bring about public disclosure and information relating to the subject-matter of the review, or its results.</p>
<p><u>Expertise:</u> Typically the City's professional and administrative staff would be in a good position, and would probably be most knowledgeable, to respond efficiently and in a comprehensive manner to the Council's need for information and recommendations.</p>	<p><u>Powers to compel disclosure:</u> A staff review would not, of course, necessarily empower the staff or outside professional to require any person or persons to respond to requests for information or produce documentation to assist in the review. No power of search or seizure or to compel the giving of evidence under oath, would be available in such a process.</p>
<p><u>Timing:</u> The staff would probably be in the best position to respond immediately and expeditiously to the Council's request.</p>	<p><u>Public Confidence:</u> Depending on the specificity, seriousness and other nature of the information provided to the Council in support of the proposal for an inquiry, such might be of a sufficiently serious nature as to virtually demand a neutral public process, in order to ensure a comprehensive, fair and open fact-finding process, shining the public spotlight on the circumstances of the case, in a manner justifying the expense and ensuring all available legal steps, powers and protections in the process, which a staff review simply could not do.</p>
<p><u>Flexibility:</u> The staff is in a position to give consideration to the various alternatives available to the City in dealing with the proposal, and to report back in response to council requests, and as to what further or alternative course(s) of action by the Council might be available and/or warranted.</p>	
<p><u>Process:</u> The City's staff is available and would be immediately responsive to Council's decision.</p>	

PRO'S	CON'S
<p>Presumably the staff could review the matter with little in the way of procedural complexity or formality and report back to Council in a specific and issue-directed manner.</p> <p>As an alternative, Council could instruct staff to retain outside professional or consultant assistance in conducting the review, and/or could decide directly to retain one or more outside professionals or consultants to conduct the review, and instruct staff to co-operate fully and provide full information to the outside professional, as may be appropriate or deemed appropriate by that person.</p> <p>This latter sub-alternative would presumably involve an increase in expense to the City, and might or might not involve pro's and con's of its own, but it would also be open to the Council and, if authorized, its staff, to take all steps necessary to minimize additional delay, complexity and expense in producing a report responsive to and useful in addressing the attainment of Council objectives.</p>	

(3) **COUNCIL REVIEW**

It is open to the Council to simply decide to deal with the matters through one or more meetings of the Council, one of its standing committees or a special committee or other fact-finding process, to be established by the Council itself and conducted through one or a series of meetings or other process, with such assistance of staff or outside professional or consultant as might be required to ensure the effectiveness of the process. Presumably such meetings would be held in public, but in the discretion of Council, could be held in camera in respect of any subject-matters in respect of which in camera meetings are authorized by law.

Pro's and Con's of a Council Review

PRO'S	CON'S
<p><u>Expense:</u> Generally, the expense of a council-conducted inquiry should not be substantially more than that involving a review by staff and/or outside professional, referred to above. One additional expense might be the need to retain outside legal counsel to assist the Council in conducting the review.</p>	<p><u>Timing:</u> Dependent upon whether or not the Council conducts the inquiry itself or delegates it to some other body, proceeding in such a manner may or may not involve issues of timing and the time period within which the matter is ultimately concluded.</p>
<p><u>Thoroughness:</u> Council's review, dependent on a number of factors, may or may not be more or less thorough than would be a review by staff alone.</p>	<p><u>Flexibility:</u> The availability of Council members, meeting rooms and co-ordination with other Council meetings and responsibilities could pose problems of flexibility in ensuring the effective and time-effective conduct of the inquiry by the Council. However, delegation to a committee would address</p>

PRO'S	CON'S
	this problem to a considerable extent.
<p>Expertise: While members of Council may not have the scope and specific types of expertise required to conduct the inquiry, presumably the availability of staff and/or outside professional assistance would enable such an inquiry to be carried on effectively and thoroughly.</p>	<p>Process: It is unusual, although not unknown, for a council to conduct its own fact-finding inquiry into a particular matter. Councils may, for instance, from time to time become involved in conducting a quasi-judicial hearing, or be required to provide natural justice in a particular matter involving, for instance, proposed dismissal of a public officer. Generally, the conduct of a public inquiry by the full council would probably raise serious issues of logistics and appropriateness. On the other hand, the establishment of a committee for such purpose, dependent upon such issues as the experience of the particular members of the committee, the extent to which the committee could call upon staff or outside professionals and/or counsel to assist, and other such issues, could render the council inquiry more effective and likely to accomplish the council's objectives.</p>
<p>Review in Public: The inquiry could be in the open, at least to the extent that Council directed it to be so, subject to Council consideration of such issues as legal solicitor-and-client and/or litigation privilege, the need to protect confidentiality of one or more staff or other individuals, potential for litigation, or issues of confidentiality arising out of factors set out in section 239 of the <i>Municipal Act, 2001</i>, the <i>Municipal Freedom of Information and Protection of Privacy Act</i>, and other statutory and practical subject-matters of concern.</p>	<p>Specific Subject-Matter: The actual or potential effectiveness of a council-conducted or directed public inquiry might or might not be more effective and thorough, and desirable in the public interest, dependent upon the specific subject-matter of the inquiry, and the extent to which, for instance, individual members of council might have a potential conflict of interest in dealing with such a matter.</p>
<p>Public Confidence: Presumably, a full and fair public inquiry conducted by the Council itself, which provides full public disclosure of all of the information and evidence relevant to the subject-matter of the inquiry, may support public objectives and enhance public confidence in the results.</p>	<p>No Powers: Aside from Council's authority with respect to its own officers and employees, the Council itself would have no special powers to require the attendance or testimony of individuals, or discovery of information through legal search and seizure.</p>

(4) **POLICE INVESTIGATION**

Dependent upon the seriousness of whatever allegations are made and the specificity and nature of whatever information may be available to the Council, Council may consider that the most appropriate response would be to refer the matter to the York Region Police Services, with a request that the matter be investigated by the police.

This is not a matter appropriate to discuss under Pro's and Con's, as an alternative to a public inquiry, but depends on the nature of the allegations made and the Council conclusion as to

whether or not any inquiry or investigation should, at least at the outset, be handled as a police matter, pending which it may be most appropriate that the Council take no other action whatsoever.

At the same time, the fact of a police investigation does not necessarily preclude the Council, either immediately or at some time in the future, from pursuing the matter itself, dependent upon the circumstances existing at the time, and dependent upon legal issues involving the relationship between criminal and civil proceedings and inquiries.

(5) **JUDICIAL INQUIRY OR INVESTIGATION PURSUANT TO THE MUNICIPAL ACT, 2001, S. 274**

Section 274 of the Municipal Act, 2001 provides as follows:

274. (1) If a municipality so requests by resolution, a judge of the Superior Court of Justice shall,

(a) investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality;

(b) inquire into any matter connected with the good government of the municipality; or

(c) inquire into the conduct of any part of the public business of the municipality, including business conducted by a commission appointed by the council or elected by the electors.

(2) In making the investigation or inquiry, the judge has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the investigation or inquiry as if it were an inquiry under that Act.

(3) The judge shall report the results of the investigation or inquiry to the council as soon as practicable.

(4) The council may hire counsel to represent the municipality and pay fees for witnesses who are summoned to give evidence at the investigation or inquiry.

(5) Any person whose conduct is called into question in the investigation or inquiry may be represented by counsel.

(6) The judge may engage counsel and other persons to assist in the investigation or inquiry and the costs of engaging those persons and any

incidental expenses shall be paid by the municipality.

This provision, formerly section 100 of the previous *Municipal Act*, has existed substantially in its present form in Ontario municipal legislation since Confederation.

The principles which form the basis for this provision produce a form of inquiry somewhat analogous in law to public inquiries under the *Public Inquiries Act* (such as the Blood Inquiry a few years ago) and inquests under the *Coroners Act*.

Section 274 and its predecessor provisions of the *Municipal Act* have formed the basis for a number of judicial inquiries initiated by municipal councils in Ontario over the years.

Some of the best known of the recent judicial inquiries were:

1. the "Risdon Inquiry", established by the City of Toronto arising out of allegations of misconduct involving the City's Chief Plumbing Inspector (late 1970's);
2. the "Sarnia Inquiry", an inquiry established by the City of Sarnia concerning a series of land transactions in the former Town of Clearwater, which took place in late 1989 and early 1990. Litigation seeking to prohibit the inquiry from proceeding resulted in the inquiry not being held until 1998;
3. the "Toronto - MFP Inquiry", a review by the City of Toronto of its computer leasing contract with MFP Financial Services. In December, 2001, City Council requested the City Solicitor to submit a report to the Council on whether a public inquiry should be instituted pursuant to section 100 of the *Municipal Act*. Ultimately, the City proceeded with the inquiry (actually two separate inquiries into related issues), of which the second phase ended in 2005; and
4. the "RIM" Inquiry, concerning financial agreements between the City of Waterloo and MFP, the same company involved in the City of Toronto Inquiry. The RIM Inquiry commenced in 2002 and finished in 2003, following an extensive investigation undertaken by KPMG.

In general terms, the establishment of a section 274 judicial inquiry would involve the following:

- City Council receiving information of sufficient specificity and seriousness as to consider warranting a judicial inquiry, culminating in a decision to that effect;
- collection of information and potential evidence, possible investigation by staff and/or outside professional(s) or consultant(s), development of a list of witnesses and other preliminary matters relevant to the proposed inquiry;
- at the same time, review and consideration of terms of reference meeting the requirements of the Act and generally of law, determining the nature of the proposed inquiry, which of the grounds and procedures referred to in section 274 should be pursued, and what form or subject-matter might be the basis of the ultimate judge's report;
- the hiring of legal counsel to represent the municipality and to provide advice to it with respect to its role in the inquiry;

- the establishment of a list of potential witnesses and areas of evidence to be pursued in the inquiry, and the issuance of summonses under Part II of the *Public Inquiries Act* requiring persons to attend to give evidence on oath or affirmation at the inquiry, and to produce in evidence at the inquiry such documents and things as the Commission may specify relevant to the subject-matter of the inquiry and admissible in evidence;
- contact by the City with the Superior Court of Justice to seek a judge, followed by engagement of the particular judge to whom the council's request is to be addressed;
- engagement by the judge of counsel and other persons to assist in the investigation or inquiry, with the costs of engaging those persons and any incidental expenses, to be paid for by the municipality, pursuant to section 274(6) of the *Municipal Act, 2001*;
- establishment of the council chambers, court room or other appropriate physical location for the inquiry to be conducted, together with the hiring or allocation of staff, the taking of security and other measures appropriate to enable the inquiry to proceed, and a large number of other steps necessary to commence and proceed with the inquiry and the performance of the judge's mandate under the Act, and in response to the request by City Council;
- persons affected by the inquest whose character or conduct may be the subject-matter of evidence, or who may be affected by the inquiry and/or its outcome, may seek standing as parties at the inquest, a matter which will have to be dealt with by the judge in accordance with law. The right to any person whose conduct is called into question at the inquiry to be represented by counsel, may also lead to requests to the City that it pay for such representation and other possible costs.

The nature of an inquiry under the authority of section 274 of the *Municipal Act*, is that, once the City has decided upon the nature of its request, in terms of one or more of the provisions of section 274(1) of the Act and has issued its request to the judge, from that point of time on, the judge is empowered to conduct the inquiry, and required to report the results to the Council as soon as practicable. The City Council has no further necessary role in the matter, other than, if it decides to do so, participating as a party at the inquiry, and responding to any litigation which may result surrounding the inquiry and the manner in which it is conducted.

This also means that, once the decision to proceed with the inquiry has been made by the Council, the City may well end up bearing substantial costs, involving every aspect of the conduct of the inquiry, while having no control over the inquiry, or any ability to curtail or otherwise limit the scope of the inquiry and its length, other than through the specific terms of reference created at the outset and provided to the judge. Essentially once such an inquiry is commenced, the City has no longer any control over its carriage or its costs.

Ultimately, the municipality may be called upon to pay counsel fees and other costs of a number of witnesses, including staff, appearing before the inquiry. The experience of some of the municipalities referred to above, would support a conclusion that almost inevitably, public inquiries under section 274 are significantly longer and more expensive than initially estimated by staff and Council, even on the best available information prior to embarking upon the inquiry.

This is not necessarily anyone's fault, simply that a public inquiry of this kind, once commenced, will run its course, and it is impossible prior to its commencement, except in the simplest of circumstances, to predict with any certainty where the terms of reference may take the inquiry, and what new issues and witnesses may come forward during the inquiry in circumstances which could not have been predicted before its commencement.

The nature of a judicial inquiry, the extensive powers granted to a judge, and the wide-ranging potential terms of reference, lead to the conclusion that such an inquiry may be appropriate and necessary to address extremely serious matters of public interest, allegations of serious misconduct, or issues of serious importance to the municipality, and should be based upon extremely specific and credible information and potential threat to the public interest, to warrant the expense, and the exercise of extreme powers made available to a judge conducting such an inquiry at the request of a municipality.

The Drafting of the Terms of Reference

One of the most important steps that must be taken at the beginning of the process is the drafting of the Terms of Reference upon which the judicial inquiry is to proceed.

In the litigation involving the Sarnia Inquiry, the Supreme Court of Canada stated as follows:

"The municipal council resolution contemplated by [section 274] must, to be sure, be intelligible. It must convey to the Commissioner and every other interested person the subject matter of the inquiry, and it must connect the subject matter to one or more of the matters referred to section 100 of the Municipal Act. It must provide those who appear before the Commissioner with a reasonable understanding of the scope, as well as the limits of the inquiry, so as to avoid the possibility, however remote, that an overly enthusiastic Commissioner or Commission counsel could, in effect, draw their own terms of reference. The [section 274] resolution must provide specific particularity to satisfy these legislative requirements."

One of the first duties of the judge (frequently referred to as the "Commissioner" - referable to references to a "commission" by the *Public Inquiries Act*, Part II of which applies to the judicial inquiry) is to decide, upon the application of persons claiming to have a substantial and direct interest in the subject-matter of the inquiry, whether or not one or more such persons should be given standing, i.e. an opportunity during the inquiry to give evidence and to call and examine or cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.

Although technically it is only Part II of the *Public Inquiries Act* which is made specifically applicable to a municipal judicial inquiry, effectively, the provisions of Part I applicable to a commission appointed to conduct an inquiry under that Act, also will generally be followed.

Such provisions deal with when hearings must or need not be open to the public, what parties should be accorded rights of standing, and the general establishment of the principle that no finding of misconduct on the part of any person shall be made against the person in the inquiry report unless that person has had reasonable notice of the substance of the alleged misconduct and has been allowed full opportunity during the inquiry to be heard in person or by counsel.

The Scope And Length Of Municipal Judicial Inquiries

While the specific terms of reference and, to some extent, the scope, of a judicial inquiry can be determined by the Council at the outset and embodied in the terms of reference, the actual scope of the inquiry as it develops, and the length of time which it takes to be completed, are virtually impossible to predict beforehand. A few examples in this regard may be of assistance to the City

Council, (including information contained in a report, dated January 30, 2002, addressed to the Audit Committee, from the City Solicitor, City of Toronto).

Risdon Inquiry

The Risdon Inquiry, which took place in the late 1970's, concerned allegations of misconduct involving the Chief Plumbing inspector for the City of Toronto. The Risdon Inquiry involved 29 hearing days, 69 witnesses and 326 exhibits.

Sarnia Judicial Inquiry

The Sarnia Inquiry took place in 1998, concerning a series of land transactions in the former Town of Clearwater. The inquiry involved 33 hearing days, 38 witnesses and 326 exhibits. The total cost of the inquiry was \$600,000, plus approximately \$400,000 in costs associated with related legal challenges which went all the way to the Supreme Court of Canada.

Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry ("MFP" Inquiry)

The MFP Inquiry was really two separate inquiries into related issues, that took place consecutively. The first phase of the MFP Inquiry commenced in 2002 and ended in 2004. The second phase commenced in 2004 and ended in 2005. The MFP Inquiry involved 156 witnesses and cost approximately \$19.2 million.

Interestingly, in a Report to the Audit Committee in 2002, the City Solicitor had estimated that the cost of an inquiry itself, relating only to the MFP transactions would be \$1 million to \$2 million, based on an estimated cost per hearing day of \$10,500 and an estimate of 40 hearing days. The City Solicitor also estimated that the report of the inquiry would be submitted within one year of the resolution requesting the inquiry.

City of Waterloo RIM Park Financing Inquiry ("RIM Inquiry")

The RIM Inquiry concerned financing agreements between the City of Waterloo and MFP. The RIM Inquiry commenced in 2002 and finished in 2003. The total cost of the RIM Inquiry was \$3,767,761.00. Of that amount, the City's legal fees and expenses were \$1,292,639, the cost of Commission counsel and offices was \$2,410,267, the fees for parties with standing at the inquiry were \$41,863.41, the cost of the website was \$27,000 and the budget for responding to the inquiry recommendations was \$23,000.

Commission counsel for the RIM Inquiry advised us that a large part of the legal costs to the City were related to the investigation undertaken by KPMG, which cost was approximately \$750,000.00. There were five or six parties with standing at the Inquiry, which contributed to its length, since each party had the opportunity to examine each witness. The RIM Inquiry involved 42 days of hearing and heard from approximately 40 witnesses.

Difficulties in Getting the Inquiry Started

It is difficult to predict what difficulties may arise during the course of a judicial inquiry. Quite frequently, persons potentially affected by them commence litigation at the outset to attack the validity or the procedures followed in respect of the inquiry.

In the case of the Sarnia Inquiry, legal proceedings for that purpose were heard by the Divisional Court (twice), the Ontario Court of Appeal (twice), and the Supreme Court of Canada. While the City was ultimately successful in establishing the Inquiry and its legal validity, it meant that by the time of the commencement of the Inquiry, approximately seven years after the facts which gave rise to it, the effectiveness of the Inquiry may have been diminished by the passage of time

(although, as in the case of other inquiries, it does appear that the actual inquiry itself fulfilled the objectives and terms of reference established by the City Council which led to its creation).

Pro's and Con's of a Judicial Inquiry

PRO'S	CON'S
<p><u>Public Confidence:</u> In the face of serious allegations possibly involving potentially incriminating factual assertions and documentation, where a municipal council decides that it is essential for one or more of the purposes set out under s. 274, to initiate a judicial inquiry, and where such is done effectively, an inquiry of this kind serves the public interest in having a full and fair inquiry presided over by a respected, trusted, knowledgeable and objective judicial officer, responding to requests by the municipality for his or her professional and judicial assistance. This approach could pose the most effective municipal response, albeit an expensive one, toward satisfying public concerns and ensuring that a full, appropriate and legal light is shed upon conduct or events which have raised them.</p>	<p><u>Flexibility:</u> Section 274 of the Municipal Act, 2001 provides by far the most effective means of investigating and inquiring into a difficult matter of extreme seriousness to the municipality and to the public interest, ascertaining the factual circumstances which led to the emergence of those issues, satisfying the public that no stone has been left unturned in shedding light upon the conduct or facts in question, and ensuring that the public interest has been or will be served. At the same time, where less serious issues, which may or may not involve allegations of misconduct or wrongdoing, have arisen, it may be more useful for the Council to consider, at the outset, approaching the matter through one of the other means set out above, without committing the City to the full-scale procedure, commitment, complexity and cost of a full-scale judicial inquiry where such is not necessarily required by the circumstances in question. Once the inquiry is commissioned, as set out above, the City would have no flexibility at all with respect to its conduct, other than to appear before it as a party.</p>
<p><u>Powers:</u> As will be seen from s. 274, and the provisions of the Public Inquiries Act, a judicial investigation or inquiry under those provisions would provide the Inquiry with a high degree of investigative powers, including the power to require by summons the attendance of witnesses and the production of documents, the power of the judge to state a case to the Divisional Court for contempt for failure to attend, the protection of employees who, acting in good faith, make representations as a party or disclose information to the judge or the inquiry, the power of the inquiry to admit evidence not given under oath or affirmation, and the protection of witnesses giving testimony at the inquiry.</p>	<p><u>Expense:</u> As mentioned above, should the City decide to embark upon a s. 274 inquiry, it would also commit itself to paying the costs of the inquiry as well as its own participation. In the case of a relatively short inquiry, these costs may be predictable and relatively subject to some degree of limitation. However, in a major inquiry into complex and comprehensive issues and facts, the ultimate costs to the City may be very high indeed, probably unrecoverable from any other source. Such costs would include paying for the services of the judge, counsel to the inquiry and to the City (if outside counsel is retained), expert professional consultants, advisors and witnesses, possible counsel fees for lawyers for parties with standing in the inquest, salaries of court and other staff involved in the conduct of the inquiry, the provision or rental of accommodation for the inquiry over the period of time that it takes to complete, and administrative, photocopying, interpreter, transcript, court reporter and any other costs associated with the conduct of the inquiry, none of which are likely to be subject to control or limitation on behalf of the</p>

PRO'S	CON'S
	<p>City. As mentioned above, costs of recent major judicial inquiries involved \$600,000.00 for the City of Sarnia (extending over 33 hearing days), \$3.8 million for the Waterloo RIM Inquiry (42 days), and \$19.2 million for the City of Toronto MFP Inquiry (which involved thousands of hours of investigation, 214 days of hearings, 124,000 pages of documents, 156 witnesses, 22 parties with standing and over 60 lawyers). The Toronto Computer Leasing Inquiry, presided over by The Honourable Madame Justice Denise E. Bellamy produced a 4-volume report, comprising 1,146 pages.</p>
<p>Review in Public: The legislative provisions and applicable jurisprudence both support the proposition that a judicial inquiry will, either entirely or to the extent permitted by law, be held in public. Typically, such inquiries are closely covered by the press and may, in fact, be televised and/or available on-line. All witnesses who may have evidence relevant to the subject-matter of the inquiry can be called, their evidence compelled to be given under oath or affirmation, and, as is frequently the case, the inquiry will seek out witnesses and sources of evidence which may arise or be disclosed during the course of the inquiry and may be considered relevant to its purposes. Often, the objectives of the inquiry are satisfied simply by its being held, and its shining a light on a series of transactions or conduct which explain why and how certain events have taken place, whether or not the inquiry produces recommendations or actions to be taken pursuant to its findings.</p>	<p>Specific Subject-matter: It is unclear on the basis of the information available to me at the present time exactly what is the nature of any subject-matter intended to form the basis for a public inquiry. Once again, should there be allegations of serious misconduct, or suspicious fact situations, posing substantial concern to the public interest and to the financial or other health of the City, such may be considered by the City Council to warrant consideration by a judicial inquiry and the incurring of the cost of such an exercise at public taxpayer expense. However, should the allegations be less serious, non-specific or ambiguous in nature, some of the other approaches to the problem referred to above, might be preferable and far less prejudicial to the City in terms of cost-effectiveness.</p>
<p>Thoroughness: The public inquiry under s. 274 is likely to be the most thorough, depending upon the scope of the terms of reference, of any of alternative courses of action available to the Council discussed herein.</p>	
<p>Expertise: The utilization of a Superior Court Justice as the inquiry commissioner, the availability to the inquiry of a professional and expert counsel, expertise and information, and the nature of the process, including the potential participation by the municipality in the inquiry, ensure that the highest level of expertise and professional assistance will be available to the inquiry.</p>	
<p>Process: The process to be followed, developed through over 150 years of legislative history, together with all of the powers and safeguards</p>	

PRO'S	CON'S
associated with a hearing of this kind, provide a fair and public process, with full protections to those who may become involved.	

(6) **OTHER AVAILABLE MECHANISMS**

Other than the three principal approaches referred to above, and the possibility of a police investigation, at this point it may not be useful for the City to be giving consideration to possible other alternative means of addressing the issue.

Such further and other types of proceedings, which would apply only in the case of an extremely serious financial threat to the municipality, would include a Ministerial inquiry under section 3(h) of the *Municipal Affairs Act*, a Ministerial audit of the financial affairs of the municipality under section 9 of the *Municipal Affairs Act*, a Ministerial inquiry into the affairs of a municipality under section 10 of the *Municipal Affairs Act*, and an inquiry by the Ontario Municipal Board under Part III of the *Municipal Affairs Act* or section 54 of the *Ontario Municipal Board Act*.

(7) **ANY COMBINATION OF THE ABOVE**

It should also be noted, in passing, the possibility of combining one or more of the various potential approaches, such as requesting staff to conduct its own investigations while at the same time reporting the matter to the police, if such be the nature of the subject-matter of the proposals for a public inquiry.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council.

Regional Implications

Not applicable

Conclusion

This information report provides a framework within which Council can assess whether or not, and if so, in what manner, Council may inquire into allegations involving the management or affairs of the City.

Attachments

None

Report prepared by:

Janice Atwood-Petkovski

Respectfully submitted,

Michael DeAngelis, City Manager