



**STAFF REPORT  
ACTION REQUIRED  
Confidential Attachment**

***Occupational Health and Safety Act Charge against the  
City of Toronto***

<b>Date:</b>	February 9, 2007
<b>To:</b>	Employee & Labour Relations Committee
<b>From:</b>	City Solicitor and Acting Chief Building Official / Executive Director
<b>Wards:</b>	All
<b>Reason for Confidential Information:</b>	The purpose of this report is to obtain instructions respecting legal proceedings against the City under the Occupational Health and Safety Act, and contains advice or communications that are subject to solicitor-client privilege
<b>Reference Number:</b>	

**SUMMARY**

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The City Solicitor seeks instructions with respect to an *Occupational Health and Safety Act* (“OHSA”) charge brought against the City following the fatal fall of a City Building Inspector in September 2003, which will be before the Court on May 17, 2007.

Confidential Information and Recommendations are found in Attachment 1.

**RECOMMENDATIONS**

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The City Solicitor and Acting Chief Building Official / Executive Director recommends:

1. that Council adopt the confidential instructions to staff in Attachment 1; and
2. that Council release the recommendations embodied in the confidential attachment following the decision of the Ontario Court of Justice (Provincial Offences Division).

**IMPLEMENTATION POINTS**

The City Solicitor will implement Council’s instructions in Court on May 17, 2007.

## **FINANCIAL IMPACT**

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Funding, as identified in the confidential attachment, for the costs relating to the potential fine against the City are available in the 2006 (Accrued) Toronto Building's Approved Operating Budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

### **Background Information**

On September 24, 2003, a City Building Inspector inspecting a home under construction climbed down a ladder from the second floor to the first floor, fell through an unguarded stairway opening onto the concrete basement floor below, and died.

On September 17, 2004, the City was charged under OHSA section 25(2)(a) with failing as an employer to provide information, instructions, and supervision to protect the health and safety of the worker, and in particular, with respect to floor openings without guardrails, ladders, and the option of withdrawing from the premises, pursuant to the OHSA Construction Regulation (213/91).

Legal Services attended Court in response to a Summons served upon the City Clerk, and the City Solicitor has continued to represent the City in Court, at a pre-trial, and in discussions with the Crown. The next Court appearance is May 17, 2007. The matter is set for trial. Specific instructions for Court are now required.

The contractor building the home, D/C Contracting, was charged with four OHSA offences related to ladders and guardrails around floor openings. On October 23, 2006, D/C Contracting pleaded guilty to one count of failing as a constructor to ensure that the measures prescribed by Regulation under the OHSA were carried out (floor openings), contrary to section 23(1)(a) of OHSA. On a joint submission, the company was fined

\$100,000 plus the 25% Victim Fine Surcharge. A two-year probation Order was also imposed.

## **CONTACTS**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

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Jim Laughlin  
Acting Chief Building Official /  
Executive Director

## **ATTACHMENTS**

Attachment 1 – Confidential Report re charge against the City under the Occupational Health and Safety Act.