



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

Ontario Water Resource Act Prosecution by the Ministry of the Environment (Brule Gardens)

Date:	January 31, 2007
To:	General Government Committee
From:	City Solicitor
Wards:	Ward 13 – Parkdale-High Park
Reason for Confidential Information:	This report is about litigation that affects the City and contains advice that is subject to litigation privilege.
Reference Number:	

SUMMARY

This report is to advise of a prosecution initiated by the Ministry of the Environment against the City and to seek authority respecting the defence of the prosecution. Details related to the conduct of the defence and specific recommendations are contained in the confidential attachment.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions and recommendations contained in Attachment 1.
2. Council authorize the public release of the confidential information and recommendations in Attachment 1 when the prosecution and any appeals that may arise therefrom have been completed.
3. The appropriate City staff be authorized and directed to take the necessary action to give effect to these recommendations.

FINANCIAL IMPACT

The recommendations in this report including the confidential attachment recommendations will have no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

On April 20, 2005, a private citizen reported a water leak at the intersection of Brule Gardens and Riverside Trail. Staff attended shortly thereafter and identified the leak as a watermain leak. The leak was to be fixed the following day. The following morning, repair staff concluded that the source of the leak was, in fact, a sewer forcemain, which was immediately shut off and repaired. Repairs were completed on April 22, 2005. On April 22, on checking whether the MOE had been notified of the discharge, staff learned that they had not, and immediately contacted the MOE, who attended the site that day.

The water discharge during April 20 and April 21, 2005 flowed into a storm sewer, which discharged into a catchment area, which in turn, discharged into a shallow pond connected to the Humber River. No evidence was found of any sewage substances at the time and there were no odours detected.

On December 4, 2006, the Ministry of the Environment commenced a prosecution for discharging material which may impair the quality of any waters, contrary to s. 30(1) of the *Ontario Water Resources Act* (OWRA) and for failing to report the discharge forthwith, contrary to s.30(2) of the OWRA.

Legal staff made a first attendance at the Ontario Court of Justice in December and the matter was adjourned to March 15, 2007 at which time a trial date will likely be set. A trial would not be expected to take place until late 2007.

COMMENTS

Comments are discussed in the confidential attachment. This report was prepared in consultation with the General Manager of Toronto Water.

CONTACT

Graham Rempe, Solicitor, Legal Services Division, Tel: 416-392-2887,
Fax: 416-397-1765, E-mail: grempe@toronto.ca

SIGNATURE

Anna Kinasowski
City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Recommendations and Discussion