



## STAFF REPORT ACTION REQUIRED

### Authority for City Solicitor to Recover Damages Incurred Due to Improper Construction

<b>Date:</b>	January 31, 2008
<b>To:</b>	Government Management Committee
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

#### SUMMARY

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This report is to obtain ratification of all steps taken to date to initiate litigation against Advice Contracting Limited (“Advice”) and its bonding company, The Sovereign General Insurance Company (“Sovereign”), to recover costs incurred by the City to repair damage to infrastructure caused by the improper installation of a watermain by Advice (the “Costs”), in the amount of \$22,573.13, plus interest and costs.

#### RECOMMENDATIONS

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The City Solicitor recommends that:

1. Council ratify all steps taken to date in the litigation commenced against Advice and Sovereign to recover the Costs totalling \$22,573.13, and to grant authority to continue the litigation, to appeal any decision where warranted, to discontinue or to settle the action or claim where it is concluded that it is reasonable to do so (including authority to effect a write off of any amounts as necessary), and to execute any documents in furtherance hereto, all in consultation with the Executive Director, Technical Services, or his designate; and
2. the appropriate City Officials be authorized and directed to take the necessary action to give effect hereto.

## **FINANCIAL IMPACT**

The Recommendations will have no financial impact beyond what has already been approved in the current year's budget.

## **ISSUE BACKGROUND**

The City entered into Contract 02D3-24RD (the "Contract") with Advice with respect to, among other things, the installation of watermains, storm and sanitary sewers for the Doris Avenue Extension from Norton Avenue to Byng Avenue. Sovereign supplied a performance bond (the "Bond") for the Contract. On or about October 18, 2004, a watermain pipe installed by Advice failed, causing leaks and damage to the municipal infrastructure and private properties in the area. Advice refuses to pay for the cost to make repairs to the infrastructure or the damages to the private properties. The City called on the Bond and Sovereign also refuses to pay. As a result, damages in the total amount of \$22,573.13 remain outstanding.

An action was commenced against Advice and Sovereign on October 12, 2006 due to an impending limitation period. To date, attempts at negotiation have been unsuccessful. It is recommended that Council ratify the commencement of the action and the steps taken to date, and grant authority to take such further steps as are considered necessary in the interests of the City with respect to this claim.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor