



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**North York Academy of Golf and Practice Range Inc. –
Resolution of Claim**

Date:	November 3, 2009
To:	Government Management Committee
From:	City Solicitor
Wards:	Ward 12 York South-Weston
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards and commissions..
Reference Number:	

SUMMARY

This report seeks approval of the attached agreement with North York Academy of Golf and Practice Range Inc. (“the Academy”). The agreement is to resolve a lawsuit commenced by the Academy concerning its leasing of certain lands adjacent to the City’s Ingram Transfer Station (“the City Lands”) for the operation of a golf driving range.

RECOMMENDATIONS

It is recommended that:

1. City Council adopt the confidential recommendations in Attachment 1;
2. City Council authorize the public release of the confidential recommendations and the settlement agreement attached if adopted by Council.

Financial Impact

Financial implications arising from the adoption of the recommendations are discussed in the confidential Attachment 1 to this report.

DECISION HISTORY

Council at its meeting of May 26 and 27, 2008 adopted the recommendations in a confidential report from the City Solicitor, which dealt, in part, with the litigation commenced by the Academy against the City <http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-13093.pdf>. The recommendations that were made public at that time included that the City Solicitor continue to defend that claim, and report back to Government Management Committee in the event any subsequent offer of settlement was received. The parties have recently participated in a mediation with a Justice of the Ontario Superior Court, which has resulted in a settlement agreement, subject to City Council approval.

ISSUE BACKGROUND

The City leased the City Lands to the Academy from November 1997 until October 2003. The Academy had an option to renew for a further four years. The Academy has asserted in its litigation that it exercised its option to renew. The City has denied this. The Academy was evicted from the premises in May of 2004.

From May 2004 until early 2006, the Academy and the City engaged in negotiations concerning a possible new lease. Those negotiations proved unsuccessful.

In July 2007 the City was served with a Statement of Claim by the Academy. In it, the Academy seeks damages of \$5 million each under four separate headings, including negligence, negligent misrepresentation, harm to economic interests and punitive damages. As well, the plaintiff claimed damages for mental shock, stress and emotional harm in the sum of \$500,000.00 as well as special damages “in an amount not yet fully ascertained”, interest and legal costs.

The plaintiff had also been seeking a certificate of pending litigation (preventing the City from dealing with the City Lands until the lawsuit was resolved) and specific performance of the Lease. My staff brought a motion to strike the claim in the fall of 2008. The Court struck out the claim for specific performance and a certificate of pending litigation, as well as a claim for damages for mental shock, stress and emotional harm. The balance of the claim was not struck out and remains outstanding.

The Superior Court Judge who heard the City’s motion to strike kindly offered to meet with the parties with a view to mediating a resolution. That mediation resulted in the attached agreement, which is subject to Council approval.

The Executive Director of Facilities & Real Estate concurs with this report and its recommendations.

CONTACT

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

1. Confidential Information
2. Proposed Minutes of Settlement