

Distributed at the request  
of councillor McConnell (GM 11.6.2)

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The Architectural Conservancy of Ontario Inc.  
Suite 403, 10 Adelaide Street East  
TORONTO, Ontario  
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Attention: Susan Ratcliffe, President

Dear Susan Ratcliffe, President

Re: The dissolution of Walks and Gardens Trust by the City of Toronto

February 7, 2012 Report from the Chief Corporate Officer and City Solicitor concerning the Walks and Gardens Trust – Repeal of legislation.

I have had an opportunity to review the February 7, 2012 Report from the Chief Corporate Officer and City Solicitor concerning the Walks and Gardens Trust – Repeal of legislation.

I note that there is an acknowledgment of the trust on page 2 and that the trust is ongoing. I agree with the City Solicitor's position that the City has been in breach since 1916. I do not concur with the City Solicitor's position that there has been no loss because monies spent on parks have exceeded the sum in the Walks and Gardens Trust. There is the matter of accounting for trust monies. I do not concur that trust has ceased to serve any purpose.

1857 Toronto Esplanade Amendment Act, 20 Vict. c. 80

The 1857 Toronto Esplanade Amendment Act, 20 Vict. c. 80 amended the original act. Section VI directs that the Mayor and Council may use the income from rent or sale of the esplanade lands to acquire other lands to be held on the similar trusts as the original land.

While the original lands except for Union Station lands were sold off or leased those monies would have been applied to purchase other lands and those lands in turn would be held in trust on the same terms as the original lands. The purpose of the legislation was to ensure that

parkland would be replaced by parkland and for the upkeep of such parkland both original and substituted would continue into the future as parkland.

Thus if the City intends to sell off a piece of parkland that was acquired by Walks and Gardens funds then the monies from the sale of that replacement park would have to be applied to upkeep another piece of the Walks and Gardens lands whether original or substituted, or to acquire another piece of land for the purpose of being a park within the trust.

The trust therefore continues to serve a purpose of ensuring parkland is replaced with parkland and not lost to the general community.

The purpose is ongoing and has not ceased to be valid object.

#### Walks and Gardens' Working Group

This Group, which included staff and citizens, was created in 25 April, 2000 by City Council to report to the City. As such, it cannot be described as a citizens' group. It was to review the City Solicitor's report and other legal opinions.

It is my understanding that the Working Group after completing its report, continued to exist and it should have received the most recent report and have been given an opportunity to comment on the same given the Staff's position in this regard.

#### The Dissolution of a Trust

If it is the intention of the City to dissolve the trust, I believe that as the collective trustee, there are an obligation on Council to notify the beneficiaries of the intention to dissolve it. Since the beneficiaries are the citizens of Toronto, then before City Council considers the report, notice should be given to the citizens, so that they can respond to the request to dissolve the trust.

#### Duties of Trustees

City Council as the collective trustee has a fiduciary duty to the beneficiaries to not act contrary to the trusts. Trustees must account for where the trust monies have gone. Even if the trust is a small amount of the total expended, the trust monies remain subject to the equitable principle of accounting which is to say Council must show where and how the monies were spent. This remains a requirement even where the trust monies are only a portion of the total expenditures.

By analogy a scholarship trust is a small expenditure within a University's total expenditures but if the monies were used to upgrade buildings and not for the trusts they were set up for the University would none the less be accountable for the use of the trust monies.

## Steps to Dissolve

In Equity there is the doctrine of “clean hands” which is to say those who seek relief must come forward having taken all necessary steps and not done anything untoward. Seeking to dissolve the trust without notice is not appropriate.

Ignoring the requirement to account is not appropriate.

It would be open to any citizen to challenge the resolution of the City.

The Public Guardian and Trustee did not absolve the City but required that the City account for the monies received and specifically indicated the steps to be taken. The City before moving to seek a dissolution of the trust should advise the Public Guardian and Trustee of its intent.

It is my belief that the actions of the City before it seeks to dissolve the trust must meet certain standards.

1. It should account to the best of its ability for the monies received.
2. It should notify the Walks and Gardens Working Group and provide the group with an opportunity to respond.
3. It should provide public notice of its intention to dissolve the trust, and provide the public with an opportunity to speak on the matter, since the ending of the trust will allow the City to not only avoid providing an accounting but the sell lands which have a trust imposed on them that prevents the sale of such parkland unless other parkland is acquired with the funds or other lands which are held in trust are improved with those monies.
4. It should notify the Public Guardian and Trustee of its intention.

Yours truly,

**William H. Roberts**

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