



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Occupational Health and Safety Act Charge against the City of Toronto

Date:	March 1, 2012
To:	Executive Committee
From:	City Solicitor and Executive Director, Facilities Management Division
Wards:	All
Reason for Confidential Information:	The purpose for 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 and litigation.
Reference Number:	

SUMMARY

The City Solicitor seeks instructions with respect to *Occupational Health and Safety Act* ("OHSA") charges brought against the City arising out of a construction project carried out during 2010 and 2011, which will be before the Court on April 26, 2012.

RECOMMENDATIONS

The City Solicitor and Executive Director recommend that:

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

Financial Impact

Funding, as identified in the confidential attachment, for the costs relating to the potential fine against the City will be absorbed within the Facilities Management Division's 2012 Approved Operating Budget.

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

COMMENTS

On May 16, 2011, the City was charged with two offences under the *Occupational Health and Safety Act (OHS)*.

The charges arise out of a construction project involving the renovation, upgrade and redesign, during 2010 and 2011, of EMS Station No. 40 located at 58 Richmond Street East in Toronto (the "Project").

Facilities Management (the "Division") was tasked with executing the project for the Emergency Medical Services (EMS) division. In doing so, the Division engaged Aecom, a consultant, to develop the design, contract specifications and to perform contract administration.

Orion Construction was selected, through a competitive tender process, as the Project's general contractor and constructor for the City on the project.

At or about the completion of the project, on April 1, 2011, a Ministry of Labour inspector attended at the project site and began an investigation. In the course of that investigation, the Inspector ultimately laid the following two charges against the City:

1. failing, as an owner, to comply with subsection 30(3) of the *OHS*; and
2. failing, as an owner, to comply with section 10(5) of the Ontario Regulation 278/05, as amended, (the "Asbestos Regulation") with respect to a project located at 58 Richmond Street, East, Toronto.

The above charges are provincial regulatory offences. Each charge against the City carries a maximum fine of \$500,000, plus a 25% victim fine surcharge.

The next court appearance in this matter is April 26, 2012. Specific instructions are now required from Council.

CONTACTS

Darragh Meagher
Director, Employment Law
Tel.: (416) 392-8948
Fax: (416) 392-3848

Richard Coveduck
Director, Design Construct & Asset Preservation
Tel.: (416) 338-2737
Fax: (416) 392- 4828

SIGNATURE

Anna Kinastowski
City Solicitor

Chuck Donohue
Executive Director, Facilities Management

ATTACHMENTS

Attachment 1 – Confidential report *Occupational Health and Safety Act* Charge against the City of Toronto