



**STAFF REPORT
ACTION REQUIRED**
with Confidential Attachment

**Court Decision – Harbourfront Fire Station – Claims by
M.J. Dixon Construction and Dean Construction**

Date:	March 6, 2012
To:	City Council
From:	City Solicitor
Wards:	20 - Trinity-Spadina
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions. This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report concerns a dispute over the construction costs of the Harbourfront Fire Station and the Court ordering the City to make additional payments to M.J. Dixon Construction and Dean Construction; and seeks instructions regarding the continuation of the litigation.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Attachment 1; and
2. the confidential recommendations and information contained in Attachment 1 remain confidential as it relates to litigation that affects the City and is subject to solicitor-client privilege.

Financial Impact

Following a trial on the merits of the dispute, the Court has ordered the City of Toronto as the defendant in the action, to make additional payments in respect of the construction of the Harbourfront Fire Station, in the amount of \$601,146.41 to Dean Construction Company Ltd., ("*Dean*"), inclusive of costs and interest; and a further amount of \$178,503.59, to M.J. Dixon Construction Ltd., ("*Dixon*"), plus interest accruing from the date of the orders.

The City has claimed over by Third Party Claims against the City's primary consultant and project architect, Paul Jurecka, ("*Jurecka*"), and against the City's structural engineering consultant and marine structural consultant, Halsall Associates Limited ("*Halsall*"), for contribution and indemnity for the amounts the City has been ordered to pay Dean and Dixon. The third party claims are scheduled for a month long trial starting in October, 2012. Any potential amounts from settlement of these Third Party Claims will partially offset any payments to Dean and Dixon.

Additional information on the financial impact is contained in the confidential attachment and is dependent on Council's instructions regarding the confidential recommendations.

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

DECISION HISTORY

At its meeting on March 2, 3 and 4, 1999, City Council adopted Clause No. 14 of the Corporate Services Committee Report No. 2, thereby awarding Tender No. 148-1998 for Project No. 88004FD, for the construction of the Harbourfront Fire Station at 339 Queens Quay West, to Dixon in the amount of \$3,647,625.00, including all taxes. The City entered into the agreement for construction of the Fire Station with Dixon on March 12, 1999. On March 16, 1999, Dixon sub-contracted to Dean the construction of the caissons, (the foundation for the Fire Station), and specified dock work. The construction commenced in April, 1999 and was completed later than scheduled on May 9, 2000.

A number of issues arose during the course of construction that eventually wound up being litigated. The City Solicitor's Confidential Report to City Council of May 16, 2005 details the nature of the litigation and settlement proposals then made regarding the same. The matters did not settle, but proceeded on to trial.

<http://www.toronto.ca/legdocs/1999/agendas/council/cc/cc990302/cs2rpt/cl014.htm>

ISSUE BACKGROUND

Dean sued the City for \$1,351,052.09 and Dixon's claim was based on a percentage of Dean's recovery respecting the construction of Harbourfront Fire Station. While the hearing of the trial concluded in November of 2005, the Court did not render its decision

until July 29, 2011, and not until August 28, 2011 as to legal costs and interest, a delay of nearly six years.

The court found substantially in favour of the plaintiff Dean on its claim related to the caisson work, the rehabilitation of an existing sea wall, and the construction of a new pier opposite to and connected to the rehabilitated sea wall. While the original subcontract price was assessed by the Court at \$70,560.75 for the caisson work and \$578,355.00 for dock work, inclusive of taxes, Dean sued the City to try to recover in excess of a further \$1,351,000.00, plus GST. That claim was for extra services and materials provided, alleged to have been incurred due to unexpected or changed site conditions on the project, and in particular, soil conditions.

While the City has managed to persuade the Court to deny Dean more than half of its claim, they have been successful and have also been awarded legal costs and interest as described above.

Dixon, the general contractor on the construction project, claimed against the City for markup for profit and management, on any amount recovered by Dean at trial, as well as legal costs and interest. The City challenged Dixon's claim based on the language of the contract.

Despite its loss at trial to Dean and Dixon, the City still has outstanding third party claims against the Third Parties Jurecka and Halsall.

COMMENTS

The balance of the information relating to this matter is confidential as it relates to litigation that affects the City and is subject to solicitor-client privilege.

Additional information and confidential recommendations are contained in Attachment 1 to this report.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENT

Confidential Staff Report re Harbourfront Fire Station

Staff report on Court Decision – Harbourfront Fire Station – Claims by M.J. Dixon Construction and Dean Construction.