

Litigation Due to Contaminated Laneway Located Near Queen Street East and Coxwell Avenue

Date: December 8, 2021

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City of Toronto.

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and litigation privilege.

SUMMARY

Contaminated soil and groundwater may be present in a laneway (the "Laneway") owned by the City and may also be present on Queen Street, Coxwell Avenue, and Eastern Avenue. The contamination may be as a result of operations carried on by businesses located on Queen Street East, immediately adjacent to the Laneway.

Toronto Community Housing Corporation ("TCHC") owns 1555 and 1575 Queen Street East (the "TCHC Property"). Part of the TCHC Property borders the south side of the Laneway. TCHC commenced legal action against existing and former adjacent property owners whose activities, it alleges, are the source of contamination on the TCHC Property.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding the litigation.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, at the discretion of the City Solicitor, but that the remainder of Confidential Attachment 1 remain confidential as it contains advice which is subject to solicitor-client and litigation privilege.

FINANCIAL IMPACT

The financial implications of the litigation are discussed in Confidential Attachment 1.

The General Manager, Transportation Services, General Manager, Toronto Water, and Chief Engineer and Executive Director, Engineering and Construction Services will report as necessary when precise information on the remediation and related infrastructure costs is available.

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

DECISION HISTORY

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

Background

The Laneway, described as Ln S Queen W Coxwell, is approximately 6 m (20 feet) wide and 58 m (200 feet) long. It runs east-west immediately behind businesses that front on Queen Street East and is accessed from Coxwell Avenue.

Below, the photograph shows the TCHC Property, delineated in orange. The Laneway runs along the north boundary of the Parking Lot Lands. The second photograph is a picture of the Laneway and the rear of the Queen Street East properties, as viewed from Coxwell Avenue. The left side of the second photograph shows part of the TCHC Property (the Parking Lot Lands).



Photograph 1



Photograph 2

Litigation by TCHC Against Current and Former Adjacent Property Owners

TCHC commenced litigation against a number of current and former property owners in 2015. It alleged, among other things, that the TCHC Property had been contaminated as a result of the improper handling, disposal and deposit of contaminants at 1595, 1597, and 1603 Queen Street East. TCHC sought a mandatory order requiring the investigation, remediation and clean-up of contaminants on these properties to prevent the migration of contaminants onto TCHC property, and an order for the clean-up of contaminants on the TCHC Property or \$5 million in damages.

All of the defendants deny taking any action to create or contribute to contamination on the TCHC Property, and so deny any liability. Various defendants also crossclaim against other defendants on the basis that, if they are liable for creating or contributing to any contamination, those other defendants should also be required to contribute. Some defendants also plead that the expiry of applicable limitation periods precludes TCHC from being able to recover against them.

There has been no resolution of this litigation to date.

Next Steps

The City Solicitor has consulted with Transportation Services, Toronto Water, and Engineering and Construction Services in the preparation of this report.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff