

## **Litigation Arising from the Rehabilitation of Section 1 of the F.G. Gardiner Expressway (Jarvis Street to Cherry Street)**

**Date:** March 24, 2025

**To:** General Government Committee

**From:** City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services

**Wards:** All

### **REASON FOR CONFIDENTIAL INFORMATION**

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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**

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The City hired WSP Canada Inc. ("WSP" which is inclusive of a predecessor company subsequently amalgamated with WSP) to provide professional consulting services, including preliminary design and detailed design services, for the Rehabilitation of Section 1 of the F.G. Gardiner Expressway (the "Gardiner") from Jarvis Street to Cherry Street (the "Project").

The City alleges that WSP's design was erroneous, incomplete or insufficient in important respects that were discovered during construction (the "Design Errors"). Although these Design Errors were fully addressed during construction for purposes of completing the Project, the City incurred additional costs to rectify the errors and additional costs to accelerate the Project (to avoid, amongst other things, extended lane closures on the Gardiner) because the Design Errors contributed to delays.

Therefore, the City commenced a legal action against WSP to recover the costs it alleges were incurred due to the Design Errors. The City claims that WSP was negligent or breached its contract with the City in its: (a) design of the Project; and/or (b) delivery of engineering services during the Project.

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

## **RECOMMENDATIONS**

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The City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services recommend 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**

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The financial implications are discussed in Confidential Attachment 1.

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

## **DECISION HISTORY**

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

## **COMMENTS**

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### **Background**

#### **Strategic Rehabilitation Plan and Section 1 Rehabilitation Commencement**

The City established the F.G. Gardiner Expressway Strategic Rehabilitation Plan to rehabilitate this ageing infrastructure and to ensure its usefulness into the future. This Plan contemplates the rehabilitation of the Gardiner in six sections:

- Section 1. Jarvis Street to Cherry Street (Complete)
- Section 2. Dufferin Street to Strachan Avenue (In Progress)
- Section 3. Highway 427 to the Humber River
- Section 4. Grand Magazine Street to the Don Valley Parkway
- Section 5. Cherry Street to the Don Valley Parkway

## Section 6. Humber River to Dufferin Street

The Project, Section 1 of the Rehabilitation Plan, consisted of work to rehabilitate the westbound off-ramp to Yonge, Bay and York Streets, replacement of the entire concrete deck and steel girders of the Gardiner between Jarvis Street and Cherry Street, and replacement of the entire concrete deck and steel girders of the westbound off-ramp at Sherbourne Street and the eastbound on-ramp at Jarvis Street.

WSP provided professional consulting and design services in respect of the Project pursuant to two agreements with the City (the "Agreements"). The first agreement, entered into in October 2012 with a company that subsequently amalgamated with WSP, provided for early Project professional consulting services. The second agreement, entered into in July 2017 with WSP, was for preliminary design and detailed design services for the Project, as well as certain professional services during construction.

Pursuant to these agreements, WSP prepared: (a) designs, drawings, and specifications provided to potential bidders when the City tendered the Project work; and (b) finalized designs, drawings, and specifications for the construction of the Project (all together the "WSP Design").

The City entered into a construction contract with Aecon Construction and Materials ("Aecon") to carry out the Project in accordance with the WSP Design.

Based on the WSP Design, the construction contract provided that construction of the Project was to begin in October 2018 and achieve Substantial Performance in or around September 2020. The construction contract further provided that Aecon was not to perform superstructure replacement activities during winter months.

### **Design Errors by WSP Are Discovered**

The City alleges that it discovered the Design Errors during construction and, as a result, was required to issue numerous change orders and directives to the construction contractor. These change orders included:

- Changes to the WSP Design to add necessary lapping distance for the horizontal section of vertical reinforcement of bearing pedestals, as well as necessary anchor pockets in masonry plates;
- Changes to the WSP Design resulting in additional shear studs at end diaphragms and additional 25M stainless steel bars at flexible slabs, made after the Contractor had already commenced steel girder fabrication;
- Changes to the WSP Design to increase the fillet welds from 8mm to 10mm for the installation of new bearing pedestals associated with the rehabilitation of several steel bents; and

- Changes to the WSP Design resulting in the fabrication and installation of intermediate steel diaphragms in longitudinal joint strips, until WSP subsequently further revised its design; that revised design indicated that the intermediate steel diaphragms were no longer needed, requiring the City to issue a revised change directive to stop all engineering, fabrication, and installation associated with these additional components.

Although all of these Design Errors were fully addressed for the purposes of completing the Project during construction, the Design Errors caused the City to incur additional costs, including direct costs to change the details or scope of the work during the Project. The City asserts that these costs would have been avoided had the errors or omissions not occurred or been identified and resolved during the design phase of the Project.

In addition, the City alleges the WSP Design errors caused delays to the Project that the City concluded was likely to significantly extend the duration of the Project. As a result, to mitigate the deleterious effects of prolonged lane closures on the Gardiner and disruption to surrounding neighbourhoods, the City incurred additional cost for Aecon to carry out work during the winter months of 2019-2020 and 2020-2021 that it was not otherwise scheduled to perform. Among other things, these measures included:

- Accelerating panel prefabrication, including by erecting separated fabrication tents to allow for fabrication activities to occur in parallel;
- Accelerating panel fabrication and superstructure replacement;
- Incorporation of superstructure replacement activities during winter months; and
- Increasing daytime and nighttime working windows for the Project.

Ultimately, even with these efforts to mitigate the delay, the Project was only sufficiently complete to allow the City to open the Gardiner to traffic on or about April 12, 2021. The Project achieved Substantial Performance on or about June 18, 2021, over 8 months late.

## **Litigation Commenced in January 2025**

Until January 2025, the City and WSP had agreed to suspend the running of the limitation period to permit discussions between WSP and the City and the City's ongoing investigation of the issues. When that agreement ended, the City commenced its action against WSP by issuing a Notice of Action and, subsequently, a Statement of Claim. The City's claim has been served on WSP.

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

## **CONTACT**

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Michele A. Wright, Director, Litigation, Legal Services Division,  
Telephone: 416.397.5342, Email: Michele.A.Wright@toronto.ca

Tim Carre, Solicitor, Litigation, Legal Services Division  
Telephone: 416.392.8044, Email: timothy.carre@toronto.ca

Jodie Atkins, P.Eng. Director, Design and Construction, Engineering and Construction Services, Telephone: 416.392.9183, Email: jodie.atkins@toronto.ca

## **SIGNATURE**

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Wendy Walberg  
City Solicitor

Jennifer Graham Harkness  
Chief Engineer and Executive Director, Engineering and Construction Services

## **ATTACHMENTS**

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Confidential Attachment 1 - Confidential Instructions to Staff