

Update on the Court Application to Challenge the Constitutionality of the Community Care and Recovery Act, 2024

Date: January 17, 2025

To: Board of Health

From: City Solicitor

Wards: All Wards

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege and information about litigation or potential litigation that affects the Board of Health.

SUMMARY

The *Community Care and Recovery Act, 2024* (the “CCRA”) received Royal Assent on December 4, 2024. On December 9, 2024, a [Notice of Application](#) was issued in the Ontario Superior Court of Justice which challenges the constitutionality of the CCRA (the “TNG Application”).

A supplementary report to Item [HL21.6](#) was submitted by the City Solicitor on legal issues related to the CCRA and TNG Application on January 7, 2025. This second supplementary report provides an update on the TNG Application and seeks instructions from the Board of Health regarding participating as an intervenor.

RECOMMENDATIONS

The City Solicitor recommends that:

1. The Board of Health consider the confidential recommendations in Confidential Attachment 1 from the City Solicitor and instruct staff accordingly.
2. The Board of Health 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 in its entirety as it contains advice which is subject to solicitor-client privilege and information about litigation or potential litigation that affects the Board of Health.

FINANCIAL IMPACT

The financial impacts are identified in Confidential Attachment 1.

DECISION HISTORY

At its meeting on November 18, 2024, the Board of Health requested the Medical Officer of Health, in consultation with the City Solicitor, to provide a summary for the January 20, 2025, meeting of the Board of Health of any legal issues related to the Provincial decision to close supervised consumption sites in Toronto.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.HL18.2>

At its special meeting of December 19, 2024, the Board of Health requested the Medical Officer of Health, or Acting Medical Officer of Health, to provide evidence in support of the Superior Court Application bearing Court File No. CV-24-00732861-0000 if requested by the Applicants and as determined appropriate by the City Solicitor.

At the same December 19, 2024 special meeting, the Board of Health requested the City Solicitor to advise the parties to the TNG Application of the Board of Health's potential intention to intervene in the TNG Application by January 10, 2025.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.HL20.1>

COMMENTS

Updates on the Court Application to Challenge the Constitutionality of the CCRA

On December 20, 2024, the City Solicitor's office advised the parties to the TNG Application of the Board's potential intention to intervene.

On December 20, 2024, legal counsel for the Applicants wrote to the City Solicitor's Office, requesting evidence from the Acting Medical Officer of Health for use in the TNG Application.

On December 24, 2024, and in consultation with the Acting Medical Officer of Health, representatives from the City Solicitor's Office provided Applicants' counsel with Toronto

Public Health records, reports, and data sources that were responsive to their December 20, 2024, request. All the evidence provided was already publicly available.

On January 10, 2025, the Applicants served and filed their Application Record, which the City Solicitor's office has now reviewed. The Application Record contains nine (9) affidavits and supporting exhibits. Attached to the affidavit of Lauren Costoff, a legal assistant at Stockwoods LLP (one of the Applicants' law firms), is the letter from the City Solicitor's Office, enclosing the public records, reports and data sources from Toronto Public Health.

January 15, 2025 Case Conference

On January 15, 2025, representatives from the City Solicitor's office attended a case conference before the Honourable Justice Callaghan on behalf of the Toronto Board of Health. The purpose of the case conference was to determine the process that will be applied to determine intervenor status.

Also in attendance at the case conference was counsel for the Applicants, counsel for the Respondent and counsel for multiple other parties who have expressed an interest in seeking intervenor status in the TNG Application.

Following submissions from counsel, His Honour ordered that those wishing to intervene in the TNG Application serve and file written submissions of no more than ten (10) pages by January 24, 2025, setting out the proposed nature of their intervention (i.e., written, oral or both), why they believe they should be granted intervenor status and on what issue(s). The Applicants and Respondent have until January 31, 2025 to respond.

CONTACT

Fred Fischer, Director, Legal Services, Telephone: 416-392-7224, Email: fred.fischer@toronto.ca

Cara Davies, Solicitor, Legal Services, Telephone: 416-397-7715, Email: cara.davies@toronto.ca

Persia Etemadi, Solicitor, Legal Services, Telephone: 416-392-8028, Email: persia.etemadi@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential information from the City Solicitor