

Litigation Arising from the Replacement of the Watermain at the Kipling Avenue Bridge over the Humber River

Date: May 19 2026

To: General Government Committee

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

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

The City hired Parsons Inc. ("Parsons") to prepare a design and provide construction administration support services for the installation of a new 400mm watermain and associated support structure spanning the Humber River at the Kipling Avenue Bridge (the "Project").

The City alleges that the Design prepared by Parsons and/or the Construction Administration Support Services provided by Parsons for the project included errors (the "Errors") resulting in the inability to complete construction of the remaining components of the Project as designed. The alleged errors were discovered during construction of the Project by a contractor retained by the City for this purpose, interrupting the work. The Project was later finished at a greater cost to the City based on a re-design completed by Parsons.

Therefore, the City commenced a legal action against Parsons to recover the costs it alleges were due to the Errors. The City claims that Parsons' performance specific to this Project fell below the required standard and/or breached its contract with the City.

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

RECOMMENDATIONS

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

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

At its meeting on June 6, 2018, Bid Award Panel granted authority to award Tender Call No. 90-2018 and Contract Number 18ECS-TI-14MR, for Watermain Replacement, (including a structure to cross the Humber River) and Road Resurfacing on Kipling Avenue from Genthorn Avenue to Albion Road, to Grascan Construction Ltd.

<https://secure.toronto.ca/council/agenda-item.do?item=2018.BA80.12>

At its meeting on December 28, 2022, Bid Award Panel granted authority to award Ariba Document Number 3651567690 and Contract Number 21ECS-TI-21MR, for Kipling Avenue Watermain Crossing Over Humber River Bridge and Structure Modification, to Clearway Construction Inc.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.BA7.2#>

COMMENTS

Background

The Project to replace the existing watermain and construct a new support structure at the Kipling Bridge spanning the Humber River formed part of a broader project to replace the Kipling Avenue watermain and resurface the Kipling Avenue roadway from Genthorn Avenue to Albion Road.

The City hired Parsons to prepare the design and provide professional construction administration support services for the Project as a discrete portion of this broader project due to the unique engineering requirements for the installation of a watermain spanning the Humber River and associated ravine.

Parsons was hired following a September 2017 Request for Quotations ("RFQ") made to a roster of professional engineering firms established by the City. Prior to this RFQ Parsons had entered in to a Roster Agreement with the City so as to become one of the rostered firms. The City accepted Parsons' quotation in response to the RFQ on October 11, 2017 resulting in an Engineering Services Agreement for the Project.

Between October 2017 and April 2018 Parsons prepared a detailed design and specifications for the Project (the "Parsons Design"). The Parsons Design was included in Tender Call No. 90-2018 by the City, which resulted in the City hiring Grascan Construction Ltd. (the "Construction Contractor") to build the Project as part of the broader watermain replacement and roadway resurfacing project on Kipling Avenue.

Errors by Parsons are Discovered During Construction

During construction, it was determined that the insulated 400mm PVC watermain procured by the Construction Contractor based on the Parsons Design did not fit within the support structure constructed by the Construction Contractor in accordance with that same design (the "Watermain Fit Problem").

The City alleges that the Watermain Fit Problem resulted from Parsons' breach of contract, breach of duty and negligence, including because:

- Parsons failed to prepare an appropriate and complete design for the Project, as a result of which the Parsons Design did not account for issues such as the difference between the nominal, internal and external thickness of the watermain pipe and the dimensions of the required fittings required to join sections of the pipe;
- Parsons failed to fulfill its obligations with respect to contract administration support including by negligently reviewing shop drawings, failing to track shop drawings and failing to communicate required submittals.

As a result of the Watermain Fit Problem work on the Project was interrupted. The Project work was removed from the Construction Contractor's scope of work and costs

were incurred by the City for the Construction Contractor to make interim arrangements at the Project site.

Completion of the Project by a Different Construction Contractor

Parsons prepared a re-design solution for the Project to accommodate the insulated 400mm watermain, which was finalized and provided to the City in July 2022 (the "Re-Design Solution"). The City retained a new construction contractor to complete the Project based on the Re-Design Solution (the "Completion Contractor"). The Project was substantially completed on this basis as of August 1, 2023.

The City has incurred additional costs of \$1,890,273.55 exclusive of HST to complete the Project as a result of the Watermain Fit Problem, which it claims from Parsons. These additional costs include the cost to make interim arrangements for the Project site in 2018 and the additional cost paid to the Completion Contractor to implement the Re-Design Solution above the amount that would have been paid to the Construction Contractor.

Litigation Commenced

Until late 2024, the City and Parsons had agreed to suspend the running of the limitation period to focus their efforts on completion of the Project. When that agreement ended, the City commenced its action against Parsons by issuing a Notice of Action and, subsequently, a Statement of Claim. The City's claim has been served on Parsons.

Parsons has defended the City's claim by Statement of Defence denying liability to the City and asserted a counter-claim for its costs associated with the Re-Design Solution.

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

CONTACT

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

Eugene Chen, P.Eng. Director (A), Design and Construction, Engineering and Construction Services, Telephone: 416.338.1168, Email: eugene.chen@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

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

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff