

# **NO TIME TO WASTE**

Investigation into Toronto Water and Technical  
Services Handling of a Resident's Sewage Problems

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Ombudsman



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## 1.0 The Complaint

1. On March 31, 2009, prior to my office opening, Ms Q complained that after moving into her new home in June 2002, she experienced repeated sewer backups resulting in sewage and flooding in her basement. In December 2007, the City's Toronto Water Division installed a sanitary holding tank as a temporary solution. She was told that a permanent solution would be found. To date, no permanent solution has been implemented.
2. Sewer backups continued throughout 2008 and 2009. Ms Q complained that the holding tank was ineffective and that Toronto Water had taken too long to find a permanent solution.
3. A chronology of key events is set out at Appendix A.

## 2.0 The Investigation

4. I issued the City Manager a notice of intent to conduct a formal investigation on June 18, 2009, referring to the sewage backups reported by Ms Q; her complaint that it had been over 16 months since the temporary holding tank was installed; and the unsatisfactory effort of Toronto Water to find a permanent solution to the ongoing problem.
5. My investigators interviewed Ms Q. They reviewed her correspondence with the City and visited her home. My office retained an independent expert to assist with the technical aspects of this matter.
6. Over the course of time, several City divisions became involved in Ms Q's matter: Toronto Water, Technical Services, Corporate Finance (Insurance and Risk Management) and Toronto Building. For the purpose of my investigation, interviews were conducted with over 20 current and former employees of Toronto Water, Technical Services and Toronto Building. My investigators obtained and reviewed City documents and records. The specific Toronto Water sections and units involved were:
  - District Operations (DOps)
    - Operations and Maintenance, North York District (O&M)
    - Operations Co-ordination (OC)
    - District Contract Services (DCS)
  - Water Infrastructure Management (WIM)
    - Sewer Asset Planning (SAP)
7. For ease of reference, a chart outlining the key City players is set out at Appendix B.

### 3.0 The Issues

8. Ms Q's complaint raises the issue of whether the City fairly handled her problems of sewage backups, including whether there was unreasonable delay by the City in finding a permanent solution.
9. In relation to the matters falling within the scope of my mandate, this investigation focused on events post-November 2007 when the City assumed the responsibility of finding a permanent solution for Ms Q. However, this investigation does consider facts prior to November 2007, as they provide a necessary and crucial context for my review of the issues.
10. In March 2009, Ms Q filed an action in the Superior Court of Justice against the City of Toronto and X Construction, a private company contracted by the City to perform work on her home in December 2007.
11. Ms Q alleged that X Construction was negligent while working on her home's storm and sanitary sewers causing a sinkhole, water seepage into her home and damage to her home leading her to vacate her residence. She has claimed damages of \$400,000 for negligence and \$100,000 in punitive damages, against the City and X Construction. The action is pending in Court.
12. This investigation does not deal with the civil liability issue of negligence alleged in the legal action, as they do not fall within my mandate. I am however considering whether the facts reveal any administrative unfairness by City staff in their actions with respect to Ms Q's sewage issues and their attempts to find a permanent solution.

### 4.0 The Facts

#### 4.1 2002 to 2004 – Sewer Backups

13. In June 2002, Ms Q moved into her newly constructed "dream home" in North York (the property). In July, a sewer backup flooded her basement. She contacted the Toronto Water emergency line and after an inspection, she was told that because the manhole adjacent to her property was dry, the flooding was her problem and not that of the City.
14. In August 2003, another sewer backup flooded her basement.
15. In July 2004, the sewer backed up again. When she called Toronto Water, she was told that the problem was being fixed because her neighbour had also complained. Later, she saw work being done on the street adjacent to

her property. When she called Toronto Water, she was told that the problem was fixed and not to call again.

16. Because Toronto Water had told Ms Q it was her problem, she incurred the costs of cleanup and repairs after each of these incidents.
17. Toronto Water could not find records of the calls from Ms Q but informed my investigator that its emergency line/dispatch system and electronic database had changed over the years, and it could not definitively state that she had not called the emergency line.

#### **4.2 June 2005 – Sewage Backup and Identification of Cross Connection**

18. Following a storm on June 8, 2005, sewage backed up into Ms Q's basement, coming up through the kitchen sink and washroom. She contacted Toronto Water who told her to call her builder and insurance company to deal with the problem.
19. Ms Q believed that Toronto Water was responsible for the sewer backups. She called Supervisor, Operations and Maintenance, North York (Supervisor O&M). When she did not get a response, she called the Mayor.
20. On June 15, 2005, the office of the Director, District Operations (Director DOps) requested that O&M visit the property regarding Ms Q's complaint of severe and frequent basement flooding.
21. Toronto Water records show that on June 16, 2005, Operations Co-ordination conducted a dye test of the internal and external drains at the property. The test found that all internal drains from the toilets and sinks of the home flowed into the storm sewer as a result of a "cross connection." Further, an open excavation on June 25, 2005 found the sewer was "cross connected as per the report from dye testing," that the "sanitary runs into storm and the storm runs into sanitary sewer" and that "follow up required to repair ASAP."
22. A letter dated June 21, 2005 from Director DOps' office signed by a Manager, Operations Co-ordination (Manager OC) and Civil Engineering Technologist A, Operations Co-ordination (Engineering Technologist A), advised Ms Q of the results of the dye test. The letter stated that sanitary sewage was discharging into the municipal storm sewer system in contravention of City bylaw; and that if it rains heavily enough, a mixture of sewage and rainwater could quickly backup into her property and cause flooding. They requested that the sanitary sewage discharge "be discontinued forthwith."

23. Manager OC informed my investigators that the correspondence was a standard form letter sent to residents whose pipes were improperly discharging into the public mains.
24. In an e-mail of June 27, 2005, Civil Engineering Technologist B, Operations-Coordination (Engineering Technologist B), stated that the dye testing at the property:
- ...confirmed that the City contractor installed the sanitary sewer service line to the storm sewer main and the storm sewer service line was connected to the sanitary sewer main. I have been informed that the services to this location were installed in 2000.
- This office is in [sic] the opinion that the cross connections must be rectified by the City contractor that originally installed the connections... ASAP.
25. Engineering Technologist B explained the e-mail to my investigators. He said the City hires private contractors to lay the public portions of the sanitary and storm sewer laterals<sup>1</sup> from the public mains to the private property boundary. Each line is colour-coded to enable the private builder to identify and connect the sanitary and storm lines. Engineering Technologist B explained that the error occurred when the sanitary sewer lateral on the public side was connected to the storm sewer main rather than the sanitary sewer main. This error was in a section that was covered which the builder would not have been able to see.
26. Toronto Water records indicate that the cross connection was fixed by X Construction on June 30, 2005.
27. Ms Q said that Engineering Technologist A came to her home on July 13, 2005 and assured her that her expenses would be taken care of. She asked that the June 21 letter (which had requested she discontinue the sanitary discharge into the storm sewer) be retracted.
28. Ms Q subsequently received a letter dated July 13, 2005 from Director DOps' office signed by Engineering Technologist A, which asked her to disregard the June 21 letter "as the problems have been rectified." Manager OC, co-signer of the June 21 letter, told my investigator that the retraction was based on the new evidence his staff had received from Operations and Maintenance staff.

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<sup>1</sup>The sanitary and storm sewer pipes which run from a house to the public mains.

29. Despite the retraction of the June 21 letter, my investigators were told by two Toronto Water employees that the cross connection was the private builder's fault and not that of the City.
30. Supervisor O&M said the builder had hooked up the cross-connection incorrectly. He believed that Ms Q's repeated flooding was related to the construction of her home; that her basement was dug too deep and did not have enough fall; and that gravity alone was not enough to move the water.
31. Director DOPs asserted that the June 21 letter was correct and should not have been retracted. Had he been aware of the cross connection, he would not have advised his staff to repair it. It was the private builder's responsibility and it was his understanding that the builder had connected the lines incorrectly. He did not remember who had provided him with this information. As the problem did not originate with Toronto Water, the onus was on the homeowner to have her builder rectify the problem.
32. Director DOPs told my investigators to ask the City's Building Inspector why he did not identify the cross connection error. The Building Inspector who completed the residential inspection in November 2000, during the construction of the home, told my investigators that he had completed a visual inspection to ensure that the pipes on the private side were at the proper elevation and were laid according to *Building Code* specifications.

#### **4.3 2006 to 2007 – Sewer Backups**

33. Sewer backups and flooding in Ms Q's basement continued through 2006 and 2007: once in July 2006, and eight times in 2007, in April, May, July, August, September, October, November and December. The December backup occurred during the City's installation of a holding tank.
34. Toronto Water recorded Ms Q's calls about sewer backups in July 2006, and October and December 2007.
35. Toronto Water "snaked" the pipes after the July 2006 incident. Ms Q was so frustrated after this she called Toronto Water Emergency, her Councillor's office, the Manager of Insurance & Risk Management and wrote to the Mayor. The Councillor's staff tried to assist but told her that Toronto Water was "not telling them anything."
36. Supervisor O&M, at this time Acting Manager, said that he visited Ms Q three or four times between August and December 2007 but did not record the visits or keep a file. He said he tried to help her and discussed the option of installing a pump in her basement, but she declined.

#### **4.4 October 2007 – Complainant's Counsel Contacts Toronto Water**

37. By letter of October 24, 2007, Ms Q's legal counsel notified Toronto Water of the repeated sewage backups causing unsanitary living conditions and ongoing aggravation for Ms Q, and of the rudeness of City employees. The letter demanded that Toronto Water correct the problem and compensate her for the damages incurred. It asked for a response by October 31 failing which Ms Q's claim would proceed to Court.
38. In October 2007, Supervisor O&M asked a Supervisor, Operations Co-ordination (Supervisor OC), to install a flow monitor in the sanitary manhole downstream from the property to measure the flow levels. In late October, they both conducted a field investigation. They found that water pumped from a nearby Toronto Transit Commission (TTC) yard led to the property's sewer connection being covered with water. The connection was the first one downstream from the TTC yard. Supervisor O&M advised, "that's why [Ms Q's property] was getting backed up."
39. My office was not provided with a report about the field investigation, but an e-mail from Supervisor OC dated October 10, 2008, a year later, noted that the sanitary holding tank in the TTC Yard pumps about every 15 minutes into the same sanitary sewer main that the property is connected to, and that the sewage level inside the sanitary manhole where the property's lateral sewer connection is located, rises periodically and covers the sewer connection.

#### **4.5 November to December 2007 – Installation of Holding Tank**

40. By November 2007, following the field investigation, a decision was made to install a holding tank as a temporary solution. There were no Toronto Water documents or records on who made the decision to install the holding tank or the rationale for that decision. Supervisor O&M said the idea of a holding tank involved discussion between himself, Manager OC, and other managers in Toronto Water.
41. Sewer Asset Planning (SAP), a sub-unit of Water Infrastructure Management (WIM) was contacted about providing the dimensions of the tank. My investigators interviewed SAP staff, Manager (Manager SAP) and Senior Engineer (Engineer SAP). Manager SAP said that his unit was not involved in the decision to install the holding tank and he had no knowledge of who did. SAP was responsible for planning the size of the tank and for developing a permanent solution for the property. Manager SAP assigned Engineer SAP as the lead for the unit on this project.
42. On November 5, 2007, Engineer SAP requested information on the property from Supervisor O&M and Supervisor OC. On November 16,



2007, Supervisor OC provided the information including data regarding the laterals on the City and private sides. He noted:

Both laterals are fairly flat. The lateral for [the property] connects to the main sewer at the very bottom of the channel in the manhole. It was observed that every time the flow in the sewer increases because of the TTC pumping (approx every 15 mins) the sewer connection is completely underwater.

43. In a memorandum of November 23, 2007, Engineer SAP provided Supervisor O&M with the recommended storage size for the holding tank based on six occupants in the residence. The memorandum stated in part that:

Field investigation by [sic] your staff revealed that the basement flooding at [the property] was caused by the discharges from the TTC site.

It noted that either the TTC flow discharge point or the house connection needed to be diverted to eliminate the flooding. It referred to District Operations' plan to install a holding tank for the property pending a permanent solution.

44. A supervisor, District Contract Services, was assigned to have the temporary holding tank installed. Between December 10 and 12, 2007, the City's contractor installed a below ground sanitary holding tank between the front of Ms Q's house and the public sanitary sewer main. The holding tank is accessible by a manhole located on the street.
45. According to the supervisor, the tank has a capacity of ten days and has a check-valve that blocks back-flow from the sanitary sewer. He recommended the tank be monitored weekly for three months or until an accurate maintenance program could be established.
46. Ms Q found out about the installation of the holding tank when she saw work being done in front of her house in December 2007. She later asked Supervisor O&M, who was not on site, about the work. She said he told her that they were installing a sanitary holding tank for "a couple of months" until a permanent solution could be developed. Supervisor O&M recalled telling Ms Q that the tank was a temporary solution and that a permanent solution would be developed but said he did not tell her how long it would take to find a permanent solution.

47. Once the holding tank was installed, the Operations and Maintenance unit became responsible for maintaining and pumping the sanitary holding tank weekly. Toronto Water records show that in some months the holding tank was pumped less frequently than once a week in some months more often.

#### **4.6 December 2007 to May 2009 – Process to Find a Permanent Solution**

48. Engineer SAP turned her mind to the development of a permanent solution after providing Supervisor O&M with the recommended holding tank size. On December 18, 2007, she contacted Technical Services, a City division that provides in-house technical professional engineering services to client groups seeking engineering solutions.
49. Engineer SAP called the Manager, Design and Construction - Linear Infrastructure, Technical Services (Manager TS) and sent him a memorandum dated December 18, 2007 to request that his staff coordinate a meeting with the TTC. The memo provided Manager TS with information on the situation at the property and advised that:

As a long term solution, we recommend to divert the TTC flow discharge point further downstream of the sanitary sewer system... this project is an emergency request from the councillor and Toronto Water and must be implemented in 2008 capital work.

50. Engineer SAP explained that she sought the assistance of Technical Services because of its TTC contacts and because it would be involved as part of the team tasked to develop a permanent solution.
51. Manager TS also understood that Technical Services would be responsible for designing and building the project for Toronto Water. Its role was to work with Sewer Asset Planning to meet with the TTC and develop an option. He said this project was not on the Technical Services project list. It was not a designated capital works project, which constitutes most of Technical Services' work.
52. When she got no response, Engineer SAP followed up with Manager TS on January 9, 2008 by noting that:

...It comes to an urgent situation now since the temporary tank fills up very fast and needs to be pumped out every three days. We need to construct a diversion sewer for the TTC flow ASAP.
53. On January 9, 2008, Manager TS delegated the task to a Senior Project Engineer (Engineer TS) with the expectation that he would work with

Toronto Water and provide full support, technical design and construction. He instructed Engineer TS as follows:

...please discuss this situation further with TW [Toronto Water] and TTC to determine the project scope. Once the project scope and the level of involvement from others is clear/identified please advise and we will discuss the feasibility of this project to be included in the 2008 and/or a priority 2009 CWP [Capital Works Project] with TW.

54. Engineer TS made several attempts to contact the TTC. He considered he was “doing a favour” for Engineer SAP. He made the calls in an “informal manner” and did not note the dates of the calls or the persons he called. He was given a few contacts but received no response from them, and did not pursue the matter further. He described it as the kind of “job that is at the corner of your desk, but it never gets formalized.” He did not create a project file because it was not a capital works project.
55. Engineer TS informed Engineer SAP in late 2008 or early 2009, about 12 months after her initial request, that he was unsuccessful in finding a contact at the TTC.
56. Manager TS stated that he did not consider Toronto Water's request to be a “favour” but noted that he neither opened a file on the property nor kept track of his request to Engineer TS. He recalls asking Engineer TS to write a letter to the TTC but this was not done. Manager TS did not contact the TTC himself as he relied on Engineer TS. He felt that it would not have made a difference if he had called.
57. Engineer SAP did not contact Manager TS or Engineer TS to discuss the project. She could not remember how many times or when, but she made a few oral inquiries whenever she saw Engineer TS on other projects. He told her that he was not able to find the right contact. In May 2009, when Engineer TS told her that there was no progress, she decided to find a TTC contact herself. This was 17 months after her initial contact with Technical Services.
58. Engineer SAP said that while she had identified the property as urgent initially, there was a temporary solution which she understood was working. She was dealing with other floods in the summer of 2008 and from prior years, along with infrastructure projects. This project was unusual for Sewer Asset Planning and was her first project that only involved one house. My investigators were informed that generally SAP deals with systemic issues and handles larger projects dealing with neighbourhoods or streets.

59. Engineer SAP could not remember whether she discussed the property with Manager SAP, but if she did, it would have been very brief. Manager SAP indicated that he followed up with Engineer SAP a few times and was aware that Engineer TS was trying to contact the TTC. He explained that it was a priority for Engineer SAP to complete the work. He noted that there was no tracking system or guidelines/directives on how to manage a non-capital works project.
60. Manager SAP told my investigators that the “delay is unacceptable” and agreed that there should have been more follow-up between December 2007 and May 2009. He agreed that this was “too long a time line” and said that the project was not pushed hard enough. He indicated that had the work only required cooperation between District Operations, Sewer Asset Planning and Technical Services, the project would have been completed sooner. It was the involvement of a "third party," the TTC, that made the project harder to complete.
61. During this period, Operations and Maintenance (O&M) staff continued to pump the tank routinely. O&M staff would tell Engineer SAP about the continuing pumping of the tank but she did not consider the possible impact of this on the homeowner.
62. According to Engineer SAP, O&M staff never informed her of ongoing sewer backup problems even though they would see her on other projects and were aware that her unit was responsible for developing a long-term solution. She said that had she been informed, she would have told Manager SAP and Engineer TS.

#### **4.7 February to April 2008 – Sewer Backups and Sinkhole**

63. Ms Q reported further sewer backups between February 24 and April 8. During the April backups, the interlocking bricks leading to her front steps collapsed creating a sinkhole.
64. Supervisor O&M and his staff conducted an inspection of Ms Q's pipes on April 7, 2008. The Inspector's Daily Report indicated that a camera showed that the storm sewer connection was plugged up. An excavation found that the storm pipe had come off at the joint.
65. Ms Q alleges that during this inspection, Toronto Water staff caused further damage by unplugging the sump pump, which caused flooding into weeping tiles and the walls of her house.<sup>2</sup>

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<sup>2</sup> The sinkhole and water seepage are the subject of Ms Q's legal action, referenced earlier in this report. As stated earlier, this investigation does not review the issues of civil liability currently before the Court.

66. By April 14, 2008, District Contract Services had X Construction repair the pipes at no cost to Ms Q.
67. Ms Q told my investigators that an environmental consultant she hired to assess her home told her that she should not remain in the house because her health would be affected by the high mould content. She moved out on or about April 7, 2008 into a rented home, returning in July 2009 when she could no longer afford the rent.

#### **4.8 November 2008 – Meeting with Operations and Maintenance**

68. On November 14, 2008, at the request of Ms Q's Councillor, Toronto Water met with Ms Q and her neighbour. Ms Q was seeking reimbursement for damages caused by the sewer backups. City staff included the Manager, Operations and Maintenance (Manager O&M) and Director DOps. Sewer Asset Planning was not present at the meeting.
69. No notes were taken of the meeting. Manager O&M was not aware of the issues because he was new to the unit. Director DOps said that Ms Q was told to contact Insurance and Risk Management regarding her insurance claim for basement flooding and that Toronto Water would find a permanent solution.
70. Director DOps could not explain why a representative from Sewer Asset Planning was not at the meeting, even though he knew the unit was working on the solution. Neither Manager O&M nor Director DOps followed up with Sewer Asset Planning after the meeting.

#### **4.9 March 2009 – Lawsuit and Sewer Backup**

71. In March 2009, Ms Q filed her legal action against the City and its contractor in the Superior Court of Justice.
72. On March 31, 2009, Ms Q experienced another sewer backup. She reported the incident to Toronto Water who pumped the holding tank.
73. Ms Q contacted Civil Engineering Technologist C, Operations and Co-ordination (Engineering Technologist C) several times between March and April 2009. She said that Engineering Technologist C had previously assisted her with respect to the April 2008 incident. She told my investigator that after the March 31 incident, he was the only person from Toronto Water who would respond.

#### **4.10 October 2009 – Sewer Backup**

74. On October 12, 2009, there was another sewer backup. Ms Q called Toronto 311 to report the incident. Toronto Water vacuumed the holding tank, reporting it was full to capacity.
75. The supervisor responsible for maintaining the tank reported that since this incident, his crew had been checking the holding tank more frequently and had been pumping out the contents twice weekly.

#### **4.11 May 2009 to May 2010 – Process to Find a Permanent Solution**

76. On May 6, 2009, Engineering Technologist C requested an update from Engineer SAP on the timing and status of the permanent solution. Manager O&M had asked him to follow up. The tank was filling up more than normal, being pumped twice a week and inspected more frequently.
77. On May 21, 2009, Engineer SAP began her attempts to contact the TTC and e-mails were exchanged for five months between Sewer Asset Planning staff and the TTC. Engineer SAP informed my investigators in May 2010 that she has ceased pursuing a meeting with the TTC because other options are being considered.
78. On June 18, 2009, I issued my notice of intent to investigate this matter.
79. As a result of a request for follow up from the Deputy City Manager's office to the Manager, District Contract Services (Manager DCS), District Contract Services became involved in the efforts to find a permanent solution in mid-2009. Manager DCS assigned a Senior Engineer (Senior Engineer DCS), to follow up and work with Water Infrastructure Management.
80. Director DOps informed the Director, Water Infrastructure Management (Director WIM), of which Sewer Asset Planning is a sub-unit, about the Ombudsman's investigation. This was when Director WIM first learned of Ms Q's issue.
81. On August 24, 2009, Director WIM wrote to Manager SAP with a "heads up" about Ms Q's complaint to the Ombudsman's office, that she:

...claims that while we promised we would advance a permanent fix and that the existing fix was simply for the short term!

82. On August 27, 2009, Manager SAP wrote to Manager TS asking for an update as Engineer SAP was away. Manager TS responded that Engineer SAP had been trying to schedule a meeting with the TTC and was to inform Technical Services when their involvement was required.
83. Between October 22, 2009 and February 24, 2010, staff from Sewer Asset Planning, District Contract Services and Technical Services held four meetings to review and discuss options and recommend a permanent solution. The meetings were initiated by Senior Engineer DCS.
84. The options discussed and evaluated during meetings on October 22, 28 and November 18, 2009 included:
- An interim option with a filler piece and overflow
  - A pump option involving the installation of a pump in the holding tank which would act as a pumping station, powered by a hydro source, requiring periodic maintenance, with an estimated cost of \$50,000 to \$60,000
  - A sewer option requiring the installation of a second sanitary sewer servicing four homes, with an estimated cost of \$400,000
85. My office was informed on November 19, 2009 by an engineer from Water Infrastructure Management that District Operations would coordinate the isolation of the holding tank from the TTC's pumped sewage by plugging the downstream connection to the sanitary sewer, and in the long-term, there would be investigation of the feasibility of a second sanitary sewer. The tank was isolated on January 20, 2010.
86. On February 11, 2010, Director WIM asked Manager SAP to have his staff follow up with Manager DCS in order to further pursue the idea of installing a small waste water pump for the property to help ease the current operational burden on District Operations, and which could provide a cheaper permanent fix.
87. A meeting was held to discuss this option on February 24, 2010, attended by Sewer Asset Planning and District Contract Services staff. Two options were discussed:
- Option A: installation of new sanitary pipe along the street with a cost of approximately \$500,000
  - Option B: installation of a small waste water pump in the holding tank with an approximate cost of \$50,000 to \$100,000



It was agreed to pursue Option B further. If implemented, this option would be monitored to determine if it could be a long-term solution for Ms Q.

88. My investigators were informed by Manager DCS and Manager SAP that the final decision would be made by three directors: Director DOPs, Director WIM and the Director, Operational Support, Toronto Water.
89. Director DOPs did not agree that a decision about the permanent solution would be made by the three directors, but thought that a recommendation would be made by SAP. He could not remember anything about the meetings between October 2009 and February 2010 but was involved in discussions about finding a permanent solution for the property from time to time with his staff and individuals from Water Infrastructure Management. He had a discussion with Director WIM towards the end of March 2010 about Options A and B, suggesting it would make more sense to explore Option B, the cheaper one. He did not recall commenting on the merits of either option.
90. In May 2010, my investigators were informed by Director WIM that there was an additional option being considered, namely, an Option C which resulted from discussions with his staff. This is a variation of Option B that involves the installation of a wastewater injection pump in Ms Q's basement into a new lateral. This option entails sewage being pumped up into the new lateral, which would be more elevated and have greater slope towards the city sewer system. The lateral would be connected to the "spring line" or the middle of the city sewer pipe, as opposed to where it is now at the bottom of the sewer pipe. Director WIM advised that if Ms Q was agreeable, Option "C" was Toronto Water's preferred solution.
91. Director WIM told my office that while Toronto Water had taken responsibility for finding a permanent solution, it had erred in installing the holding tank because her issue was strictly a private property matter. He referred to a house across the street from Ms Q which had installed a waste water ejection pump solving a similar issue.
92. At the time of issuing this report, the City has not made a final decision on the permanent solution.
93. Throughout the process of seeking a permanent solution, Toronto Water neither consulted Ms Q nor sought her input.

#### **4.12 Impact on the Complainant**

94. Ms Q reported that she has been significantly affected by the numerous sewer backups in her basement since 2002. Specifically, the delay in finding a permanent solution has caused major problems for her and her family.



95. Ms Q said between 2002 and 2006, six family members lived in her house. Each time an incident occurred they had to leave because the smell was so awful. She described the stench of sewage throughout her house whenever a sewer backup occurred. Due to the smell, which would linger after cleanup, she and her family had to move out of her home for periods ranging from a couple of days, to a month, to 15 months after the April 2008 incident, all of which caused enormous disruption to their lives.
96. Ms Q reported that she sometimes feels like she is going to have a “nervous breakdown” due to the worry and stress from the holding tank and the incidents of sewer backups. She said:
- I think, ‘all these people I am talking to and nobody wants to help me.’ I am going to block this street off, I am going to run out there [pointing to the middle of the street], let something run me over, then maybe I will get some answers. Can you imagine ... at any time, I cannot live in peace. If I go away on holidays, I come back and wondering what am I going to meet, what is going to happen when I come back? How fair is this to me when I work so hard?
97. Ms Q said the pumping of the holding tank has been disruptive to her home life. During an interview at her home, Ms Q showed my investigators the manhole entrance to the holding tank located on the public street in front of her kitchen and dining room windows. She reported that whenever the tank is pumped, it “stinks” and the smell of sewage is so offensive that she would have to vacate the kitchen and dining areas.
98. Family functions are disrupted by the smell and vibration of the house caused by the vacuuming of the tank. She was not able to plan her activities around the pumping because she was not informed of the pumping schedule by Toronto Water.
99. Ms Q informed my office that she became extremely frustrated with the lack of cooperation from Toronto Water and the way she was treated regarding the repeated sewer backups and pumping of the holding tank. She complained that Toronto Water employees were very rude whenever she contacted them.
100. Over the years, Ms Q has called her Councillor, the Mayor and the Director, District Operations’ office, along with various Toronto Water front line staff. She said eventually they would tell her that she was “too hostile” when she called and not to call back anymore. She said her Councillor tried to help but got nowhere. She felt like she was being treated as

“nothing.” She complained that Toronto Water never wrote to her to tell her what was happening.

101. Ms Q said Toronto Water staff refused to acknowledge the problems she was experiencing. On the March 31, 2009 incident, Toronto Water work crew refused to view the damage to her basement. With the October 2009 incident, she had to insist that the City worker look at the damage to her basement.
102. Ms Q incurred costs for the cleanup and repair of her basement. For example, she reported that following the June 2005 incident, her expenses for several cleanups of the “shit and smell” in the basement were \$2,000 and the damage to her trees and plants was \$950. In 2007, when she had eight sewer backups, she had to pay for the cost of cleaning her basement after each incident. She submitted insurance claims to the City seeking reimbursement for damages and clean-up costs. Of the five claims she submitted for the incidents in 2007, she only received payment for one, the August 24 incident.
103. Ms Q advised that after June 2008, her insurance company refused coverage and she had to obtain property insurance coverage from another company. As she is now considered high-risk case, her annual premium increased from \$1,000 to over \$4,000.

## 5.0 Ombudsman Findings

104. This complaint involves an examination of the manner in which the Toronto Public Service (TPS) provided or omitted to provide service to Ms Q.
105. The issue in this complaint is whether the TPS' actions or omissions in handling Ms Q's sewage backup problems complied with principles of administrative fairness and due process. I have also considered whether they were in accordance with generally accepted expectations of public service accountability including transparency and timeliness.
106. Procedural fairness is central to my considerations in this matter. That includes the duty of fairness. In a complaint such as this, at a minimum, procedural fairness would include an obligation to communicate clearly; opportunity for the member of the public to present their case; clear reasons for decisions; timeliness; and proper records.

107. Toronto Municipal Code Chapter 3, § 3-36, provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
- a. Contrary to law;
  - b. Unreasonable, unjust, oppressive or improperly discriminatory;
  - c. Based wholly or partly on a mistake of law or fact;
  - d. Based on the improper exercise of a discretionary power; or
  - e. Wrong.
108. There are generally accepted definitions of the above noted terms in both case law and the ombudsman field. I have considered those definitions in reaching my findings.
109. While the focus of my investigation covers the period following November 2007 when the City undertook to seek a permanent solution, I have taken into consideration the context of the five years prior, during which Ms Q experienced numerous sewer backups.
110. Based on the facts obtained through my investigation, I find that Toronto Water and Technical Services failed to act fairly in dealing with Ms Q. The City's actions and omissions, pursuant to my governing legislation, were both unreasonable and unjust.
111. Specifically, I have reached the following findings.

## **5.1 Unreasonable Delay**

112. Public services must be delivered within reasonable timeframes. An action or omission is unreasonable when service to the public is delayed for an improper, inadequate, irrelevant reason, or worse, for no reason at all.
113. There was an unreasonable delay of at least 18 months between the installation of the temporary holding tank in December 2007 and June 2009 when I issued my notice of intent to investigate.
114. The initiation of my investigation galvanized some action resulting in the involvement of District Contract Services and renewed efforts by Toronto Water to find a permanent solution in mid-2009.
115. Toronto Water installed the holding tank as a temporary measure pending a permanent solution. Sewer Asset Planning, a unit of Toronto Water, was tasked with finding a permanent solution in November 2007.
116. Shortly thereafter, the Technical Services Division became involved.

117. Other than some calls and e-mails to the TTC, no efforts were made by Technical Services or Sewer Asset Planning to find a permanent solution until October 2009, when various Toronto Water employees met to discuss options.
118. When asked about the delay, Technical Services and Sewer Asset Planning informed my investigators that they needed information from the TTC but were unsuccessful in obtaining a TTC contact for this purpose.
119. The idea that it would take more than 22 months for Toronto Water and Technical Services to find the correct person in another City organization defies comprehension. By a Toronto Water manager's own admission, the delay was "unacceptable."
120. Ms Q experienced serious disruption to her home life during this time. Between February and April 2008 and again in March 2009, she had four sewer backups. Each time she and her family had to move out of their home because of the smell. In one instance, she was out of her home for about 15 months in 2008 and 2009 because of health risks associated with high mould content. She lived with continuing disruption and uncertainty from the weekly pumping of the tank, along with the ongoing stench of sewage and the associated stress.
121. I find no reason to doubt that the failure of the City to communicate with Ms Q exacerbated her stress.
122. My investigation showed inertia, incompetence and a complete failure on the part of many public servants to take responsibility for their work.
123. The Technical Services engineer tasked with assisting Sewer Asset Planning did not do his job. He did not take the assignment seriously. While his manager provided the Technical Services engineer with the parameters of his assignment and instructions, he thought he was doing a "favour."
124. There was little or no oversight by management. After the project was assigned to staff, there were no oversight mechanisms in place, no tracking system, no regular follow up and no project timelines. Neither manager kept records or a file on the matter.
125. Technical Services and Sewer Asset Planning staff and their managers showed little or no inclination to problem solve until the filing of the lawsuit and the initiation of my investigation. When the Technical Services employee could not find a TTC contact for the project after 17 months, Sewer Asset Planning took over and got nowhere either after a further five months.

126. Neither manager in Technical Services or Sewer Asset Planning took action or gave directions when told by staff of their inability to contact the TTC, even after they became aware of the passage of time.
127. My investigators were informed that as a non-capital works project or a "smaller" project, Ms Q's matter was atypical of the work that Sewer Asset Planning and Technical Services would normally have responsibility for.
128. There were no guidelines or procedures on how to handle non-capital works projects. In this context, where the system is not geared to "smaller" projects, Ms Q's matter simply fell through the cracks.
129. The handling of Ms Q's matter suffered from the lack of a coordinating project lead with the appropriate management authority. Several divisions and units became involved, but the assigned staff leads were only responsible for their own area of responsibility.
130. There was an absence of management coordination or direction in the overall process. It was only after the commencement of my investigation in June 2009 that the Director of Water Infrastructure Management became involved. A senior engineer in District Contract Services was assigned and charged with coordinating the project by his manager. This resulted in options for a permanent solution being formulated and meetings between the various units being convened to discuss those options. This was a process that could and should have been initiated shortly after the installation of the holding tank in December 2007 and not 18 months later.

## **5.2 Institutional Silos and Bureaucratic Mindsets**

131. My investigation revealed bureaucratic silos within Toronto Water and between the divisions of Toronto Water and Technical Services. Each operated in a compartmentalized way within the confines of their specific responsibilities and resulted in poor to no communication between the various units and divisions.
132. Within Toronto Water, Operations and Maintenance did not inform Sewer Asset Planning staff about the continuing sewer backups even though it was responding to them.
133. Sewer Asset Planning staff responsible for finding a solution were unaware that Ms Q was continuing to experience sewage backups. While aware of the ongoing pumping of the tank, the senior engineer did not consider whether this might affect the homeowner or efforts to find a permanent solution.
134. Management in Operations and Maintenance did not contact Sewer Asset Planning before or after the meeting with Ms Q and her Councillor even

though they were aware that Sewer Asset Planning was working on the permanent solution and tasked with the responsibility.

135. These silos created an attitude and mindset of “not my job.” They impacted on the efficiency of the overall process, created a barrier to finding a permanent solution and undoubtedly contributed to delay and poor communications.
136. Management’s mindset demonstrated a resistance towards the City’s responsibility to deal with Ms Q’s problem.
137. One Director continued to maintain that the private builder was responsible for the cross connection, despite Toronto Water’s own finding that it was the City contractor’s fault. Another stated that Toronto Water erred by installing the holding tank in the first instance, despite its acceptance of responsibility in November 2007 to find a permanent solution.
138. In my view, having taken responsibility and conveyed this to Ms Q, The City became accountable. Both the assumption of responsibility and the communication to Ms Q created a legitimate expectation on her part. The City has an obligation to take action and to do so in a timely manner.
139. Ms Q’s situation is indicative of a broader systemic problem entailing a lack of collaboration within City divisions and units, which impeded the efficiency and effectiveness of the provision of services.
140. In the 30 months since the installation of the holding tank in December 2007 while a permanent solution continues to be sought, Operations and Maintenance has been pumping out the tank at least once a week. This can hardly be considered an efficient use of public resources.
141. I am compelled to further comment on the efficiency of the process. In May 2010, the Director of Water Infrastructure Management informed my investigators that the preferred option involves installing a waste water injection pump in Ms Q’s basement into a new lateral. This option resulted from a series of meetings and discussion which began in October 2009. In effect, the City spent some 22 months from the installation of the holding tank focused on one option, namely, a new sewer construction, only to come up with another completely different option, which appears to have been available at the outset.

### **5.3 Failure to Maintain Proper Records**

142. Throughout its handling of Ms Q’s matter, Toronto Water and Technical Services failed to maintain basic documentation, let alone sufficient or proper records.

143. Poor record keeping is detrimental to fairness. This is because a fair decision is one that is made on the basis of all the relevant facts and circumstances.
144. A decision that is made without the benefit of proper documentation is one that may not have considered the relevant information and is therefore flawed.
145. In Ms Q's situation, poor record keeping could ultimately affect the feasibility and effectiveness of the permanent solution being considered.
146. Examples of unacceptable record keeping in this complaint include but are not limited to:
  - No records of who made the decision, the basis or rationale, or the factors which were considered in installing the holding tank
  - No dedicated file kept by Operations and Maintenance
  - No records of visits to the residence
  - No report of the field investigation in October 2007
  - No files kept by Technical Services
  - No record kept or notes taken by Operations and Maintenance of the November 2008 meeting with Ms Q and her Councillor

#### **5.4 Failure to Communicate with the Complainant**

147. There has been a serious lack of communication between Toronto Water and Ms Q. A fair process is one that is open and transparent and allows an individual who is personally affected an opportunity to access, receive and provide information.
148. On several occasions, Ms Q received no response from Toronto Water when she made inquiries and at other times she would be told not to call back.
149. Ms Q was not informed about the installation of the holding tank and only found out when she saw work being done outside her home.
150. Ms Q was told not to contact City officials because she was "too hostile." In light of the facts, and the egregious delay on the part of the City, it is understandable that Ms Q became increasingly frustrated, angry and hostile in her dealings with the City. Most people in these circumstances would behave in ways that might otherwise be considered socially unacceptable.
151. I recognize that Ms Q's pending lawsuit may have limited the ability of City officials to communicate with her. However, this should only have affected



matters directly related to the lawsuit and not any new or emergency problems that Ms Q continued to experience. Further, it has always been open to the City to consult with Ms Q or her counsel on a without prejudice basis regarding the permanent solution.

## 6.0 Ombudsman Conclusions

152. In conclusion, my findings demonstrate the City's actions and omissions to be unreasonable and unjust pursuant to the Toronto Municipal Code Chapter 3, § 3-36.
153. Some 30 months have now elapsed since the installation of the temporary holding tank and the City's commitment to find a permanent solution. This delay is beyond any reasonable concept of timeliness.
154. This complaint represents a fundamental failure of good administration on the part of the Toronto Public Service. It demonstrates poor communications, absence of process, lack of leadership and bureaucratic malaise.

## 7.0 Ombudsman Recommendations

155. I have taken into account all the evidence garnered through this investigation in making my recommendations.
156. Recommendations 1 to 4 relate to the specific situation of Ms Q.
157. Recommendations 5 to 15 are made in the public interest to address the systemic issues evident in this complaint. They are meant to put in place the necessary structures and processes of sound administration and prevent situations such as this from occurring in the future.
158. I recommend:
  1. That Ms Q is provided with a written apology by July 16, 2010, from the City Manager, as the chief executive officer of the Toronto Public Service, for the actions and omissions noted in these investigation findings.
  2. That by July 9, 2010, my office is consulted on the draft of the above apology prior to its issuance to Ms Q.
  3. That the TPS forthwith find and implement a permanent solution.



4. That Ms Q be consulted and communicated with regarding that solution.
5. That a Directive and set of procedures be established by Toronto Water and Technical Services to ensure managerial responsibility and accountability, which outlines a process, including responsibilities for handling non-capital works projects and issues similar to that raised by this matter. The Directive and procedures must include:
  - (i) establishment of clear lines of accountability;
  - (ii) identification of an overall Project Coordinator with sufficient authority to act as point person and who is accountable for addressing and resolving the matter;
  - (iii) identification of Project Leads from each relevant unit with clear reporting relationships to the Project Coordinator;
  - (iv) establishment of timelines with milestones and deliverables articulated in every case.
6. That the Directive and associated procedures be provided to my office no later than October 1, 2010.
7. That a tracking system be put in place by October 1, 2010 for non-capital works projects, to ensure proper monitoring and timely implementation.
8. That regular and appropriate reporting relationships be required, established and maintained by Toronto Water and Technical Services on non-capital works and issues similar to that raised by this matter.
9. That further to recommendation 8, standard templates, in addition to current templates for routine matters, be developed to capture such information.
10. That such templates with accompanying instructions be provided to my office no later than October 1, 2010.
11. That all employees be held accountable for all aspects of their duties and performance managed accordingly.

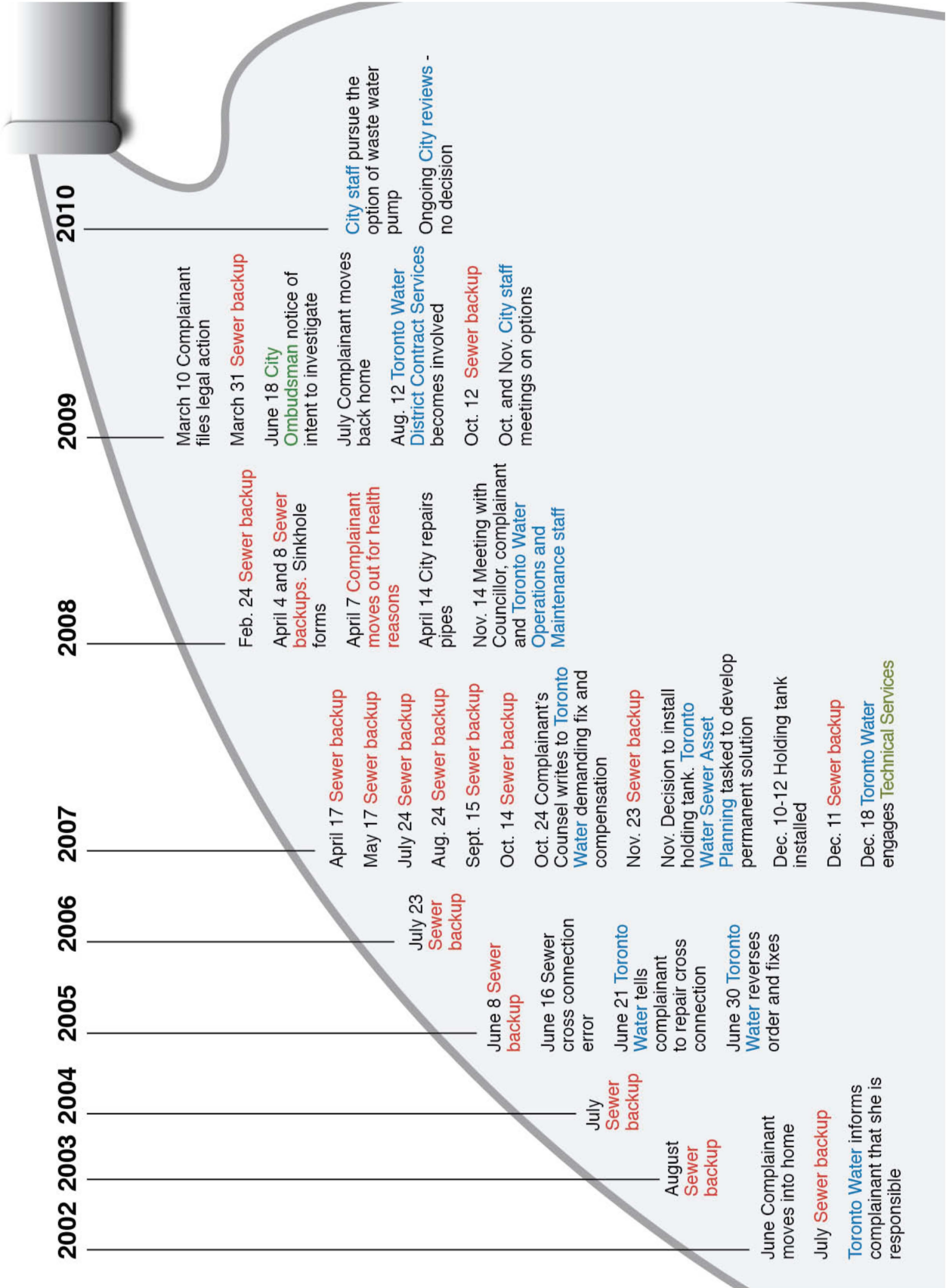
12. That proper record keeping is established and maintained by Toronto Water and Technical Services on all complaints, projects and issues raised by the public.
13. That a central file regarding the above be maintained in the Project Coordinator's office.
14. That a memorandum of instruction regarding recommendations 12 and 13 be sent to the field by the Division Head, in consultation with the Deputy City Manager, no later than October 1, 2010 and that a copy be provided to my office.
15. That regular and clear communications, both written and oral, as appropriate, occur with any member of the public dealing with the Toronto Public Service on complaints or projects.

*Original Signed*

Fiona Crean  
Ombudsman

June 25, 2010

# Appendix A: Chronology of Key Events



# Appendix B: The City Players

