



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Lease Dispute Between City and Queen St. Patrick Market Inc. Regarding 238 Queen Street West Property

Date:	July 8, 2008
To:	City Council
From:	City Solicitor
Wards:	20 – Trinity Spadina
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City and contains advice that is subject to solicitor-client privilege.
Reference Number:	

SUMMARY

The St. Patrick Market (the “Market Building”) at 238 Queen St. W., has been leased by the City to Queen-St. Patrick Market Inc. (“Market Inc.”) for a 50 year term, ending in 2039. Market Inc. leases space on the ground floor of the Market Building to approximately 10 fast food operators, who sell take out food from their stalls.

The purpose of this report and the confidential attachment is to evaluate the provisions in the lease dated June 15, 1989 (the “Lease”) between the City and Market Inc. and advise whether the Market Building is being operated in accordance with the Lease and what, if any, steps can be taken if it is not.

A court application has already been commenced by the City to collect arrears of rent owed by Market Inc. for the years ending October 31, 2001 to the present.

The City sub-leases the basement of the Market Building and it is occupied by non-profit organizations. Market Inc. has commenced a legal action against the City alleging that the City has failed to pay its proportion of the shared expenses associated with its occupancy of the basement of the Market Building as required by the sub-lease dated June 16, 1989 (the “Sub-Lease”). This is disputed by the City.

A court hearing in respect of these issues is scheduled to be heard November 24, 2008.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the confidential instructions to staff in Attachment 1.
2. City Council authorize the public release of the confidential recommendations in Attachment 1 if adopted by Council and the balance of the report to remain confidential.

FINANCIAL IMPACT

The financial impact is discussed in the confidential attachment 1 of this report.

ISSUE BACKGROUND

History of the Market Building

The Market Building is a one storey heritage brick building located on the north side of Queen Street West, near the intersection of John Street.

For many years in the 1900s, the Market Building was used as a chicken slaughterhouse; a use that ceased in approximately February, 1988.

1988-1989: Plans to Develop a Food Market in the Market Building

In February, 1988, the City issued a call for proposals to identify potential uses of the Market Building that was intended to, among other things, permit the renovation of the historic building, facilitate its development as a food market, and prevent its use as a fast food or restaurant venue.

The proposal submitted by Market Inc. to the City in April, 1988 set out a plan to develop the Market Building as an “exciting retail mini food market” and the proposal described plans for a green grocer, butcher, cheese monger, and bakery, among other uses.

Market Inc.’s proposal was considered by the Executive Committee of the City at meetings in 1988 and 1989, and approved by Council at its meeting on May 4 and 5, 1989.

Multiple factors were considered by the City in evaluating the proposals received by it for the Market Building, but a significant factor for the City in selecting Market Inc.’s proposal, as articulated in the minutes of the Executive Committee, was that the City understood that Market Inc. was proposing the creation of a market with an “ambience similar to the St. Lawrence Market.”

Lease Between The City and Market Inc.

Pursuant to authority granted by Council by the adoption of Clause 54 of Executive Committee Report No. 15, as amended, at its meeting on May 4 and 5, 1989, the City entered into the Lease with Market Inc. on June 15, 1989.

The key terms of the Lease are as follows.

1. It is for a 50 year term, commencing October 1, 1989 and terminating September 30, 2039.
2. Base rent of only \$1 per year was payable for the first 10 years, which reflected the fact that significant renovations were required and paid for by Market Inc. in order to bring the Market Building to appropriate standards.
3. Base rent of \$51,145.55 per year is currently payable, and a formula in the Lease is applied to increase the Base Rent every five years in accordance with increases in the Consumer Price Index, All Items Canada.
4. Percentage Rent equal to 10% of the “net operating profit” is payable to the City each year.
5. Market Building is to be used for a bakery, meat and seafood store, fruit and vegetable stand, and the sale of prepared foods (cooked or uncooked), among other things.

Sub-lease Between Market Inc. and the City for the Basement of the Market Building

The City sub-leases the basement of the Market Building pursuant to a lease dated June 16, 1989 (the Sub-Lease”). The basement is to be used by non-profit organizations.

The key terms of the Sub-Lease are as follows.

1. It is for a 47 year term, commencing March 1, 1991 and terminating September 29, 2039.
2. Base Rent of \$1 per year is payable by the City for the duration of the Sub-lease.
3. The City is required to pay Additional Rent, which is defined as its share of utilities and services used for the basement and is to be calculated in accordance with a specific provision in the Lease.

Current Use of the Market Building

Facilities and Real Estate advises that the main floor of the Market Building has been divided to allow for 13 food locations and all of the current users are take out food businesses. Four of the locations within the Market Building are currently empty and three locations are advertised as being for rent.

Legal Application Already Commenced to Collect Arrears of Rent Owed by Market Inc.

Pursuant to authority granted by Council by the adoption of Clause 11 of Report 19 of the Corporate Services Committee at its meeting on December 16 and 17, 1998, the City Solicitor has standing authority to enforce leases to collect rental arrears. Pursuant to that authority, the City commenced a court application against Market Inc. in November, 2007. In its court application, the City is seeking to enforce compliance with provisions of the Lease that require Market Inc. to:

1. provide audited financial statements to the City;
2. pay arrears of Percentage Rent calculated to be owing to the City based on the audited financial statements required to be provided; and
3. pay unpaid Base Rent and accounting fees incurred by the City in connection with its efforts to enforce the terms of the Lease.

The court application is scheduled to be heard by the Superior Court of Justice on November 24, 2008.

Earlier in 2008, after the commencement of the court application, Market Inc. did provide audited financial statements as required by the Lease and certain other financial records. Having now been provided with some of the financial disclosure to which it is entitled under the Lease, the City is able to calculate the amount of Percentage Rent arrears owing for the period ending October 31, 2006. However, no financial disclosure has yet been provided for the year ending October 31, 2007. Details with respect to the City's calculations are set out in the confidential attachment.

To the date of this report, Market Inc. has taken no steps to pay any of the amounts owed to the City as Percentage Rent or otherwise as claimed by the City in the City's court application.

In November, 2007, Market Inc. also commenced a court action against the City that alleges the City has failed to pay Additional Rent owing in respect of the basement premises that the City leases pursuant to the Sub-Lease. Market Inc. is seeking summary judgment against the City for \$594,242.

The City has defended this claim. In the meantime, the City has not paid the amount claimed by Market Inc.

Market Inc.'s motion for summary judgment of its claim is also scheduled to be heard on November 24, 2008.

COMMENTS

The City's existing court application is limited to issues related to rental arrears owing to the City. The City's existing court application does not deal with any issues relating to the current use of the Market Building.

The Confidential Attachment provides legal advice regarding the Lease terms and the current use of the Market Building by Market Inc. and the City's application for payment of rental arrears and other monies it claims are owing to it.

The Facilities and Real Estate Division has been consulted in the preparation of this report, and concurs with the recommendation being made by the City Solicitor.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 – Confidential Information: Lease Dispute Between City and Queen St. Patrick Market Inc. Regarding 238 Queen Street West Property