



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Court Applications by Toronto Port Authority and Porter Airlines

Date:	February 17, 2009
To:	City Council
From:	City Solicitor
Wards:	Trinity – Spadina, Ward 20
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege
Reference Number:	

SUMMARY

This is a report seeking instructions regarding the Court Applications brought by the Toronto Port Authority (“TPA”) and Porter Airlines Inc. in respect of issues concerning lands that are leased by the City of Toronto to the TPA.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations in Attachment 1; and
2. The confidential attachment remain confidential as it contains information subject to solicitor/client and litigation privilege.

FINANCIAL IMPACT

The relevant financial information is addressed in the confidential attachment.

DECISION HISTORY

At its meeting of July 16 and 19, 2007, City Council considered a report from the City Solicitor on the Court Applications in this matter. (Reference New Business – cc11.4). To view this report on line, please follow the hyperlink:

<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc11.4.pdf>

ISSUE BACKGROUND

The City leases certain lands to the west of Eireann Quay (formerly Bathurst Street) to the TPA which the TPA uses in connection with the Toronto City Centre Airport (“TCCA”). A dispute arose between the City and the TPA as to the TPA’s proposed use of the leased lands and the City’s refusal to approve a request from the TPA to remove five parking curbs to provide access to the leased lands. The TPA wishes to use the leased lands for taxi queuing to service passengers using the TCCA. The TPA and Porter Airlines brought court applications against the City seeking certain relief relating to the leased lands. The relief sought included a declaration that the City was in breach of the 1983 Tripartite Agreement (between the City, the TPA and the Federal Minister of Transport) that relates to the TCCA and in breach of the City’s obligations under the lease agreement. The TPA and Porter Airlines were also challenging the City’s actions in directing that a sidewalk be built between the leased lands and the traffic lane on Eireann Quay.

COMMENTS

The City Solicitor retained Charles Campbell of Iler Campbell to respond to the court applications brought by the TPA and Porter Airlines. The court applications were heard in September of 2008 before Justice D. A. Wilson of the Superior Court. At the end of 2008, the Court issued its decision in this matter finding in favour of the Toronto Port Authority and Porter Airlines.

The Court’s decision relies heavily on the factual background involved in this dispute. The Court noted that for some time City staff had been dealing with the TPA on its proposed changes to the leased lands. The court also noted that the City staff that had reviewed the proposal were supportive of the TPA’s design for the leased lands from a safety perspective. The court noted that the TPA’s expert, Dillon Consulting, submitted evidence that there would not be any safety concerns for pedestrians or vehicles as a result of the changes sought by the TPA.

The Dillon Consulting report supported the TPA's design of having three lanes on the leased lands for vehicles, buses and taxis to queue. Access to the leased lands would be provided at the north end and vehicles would exit at the south end. In addition, a sidewalk on the west side of the leased lands was suggested for pedestrians.

The City responded to the court applications with evidence from the local councillor and others. Concerns were raised with the TPA's design and the increase in traffic in this area. The City asserted that under the lease the lands were to be used for parking not as queuing lanes.

In her reasons for decision, Justice Wilson relied upon a clause in the Tripartite Agreement that provides that the City will not interfere with the "safe use and operation of the Island Airport". The Court found that the refusal of the City to approve the work submitted by the TPA, constituted a breach of the negative covenant set out in the Tripartite Agreement not to interfere with the safe use and operation of the TCCA. The Court also found that the City's actions were a breach of its obligations to the TPA pursuant to the lease agreement to not unreasonably withhold its consent to the work requested by the TPA. As a result, the Court directed the City to approve the TPA's application to perform certain work on the leased lands, in particular, the removal of five curb stones.

The Confidential Attachment provides further comments on the Court's decision and seeks instructions in relation to it.

CONTACT

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SIGNATURE

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ATTACHMENTS

Confidential Attachment 1