



STAFF REPORT ACTION REQUIRED

City of Toronto Intervention at Supreme Court of Canada in *City of Montreal v Montreal Port Authority et al*

Date:	September 22, 2009
To:	City Council
From:	City Solicitor and Acting Treasurer
Wards:	All wards
Reference Number:	

SUMMARY

This report seeks instructions on continuing the City of Toronto's intervention in two Supreme Court of Canada ("Supreme Court") appeals by the City of Montreal in a dispute related to payments in lieu of taxes ("PILTs") made to it by the Montreal Port Authority ("MPA") and the Canadian Broadcasting Corporation ("CBC").

RECOMMENDATIONS

The City Solicitor recommends that:

1. the City Solicitor be authorized to continue the City's intervention at the Supreme Court of Canada in the matters *City of Montreal v Montreal Port Authority* (court file no. 32881) and *City of Montreal v Canadian Broadcasting Corporation* (court file no. 32882) ("City of Montreal appeals"); and
2. City staff be given authority to take all steps necessary to give effect hereto.

Financial Impact

On September 4, 2009, the Supreme Court made an Order granting the City intervener status in the City of Montreal appeals. The Order requires the City to pay the appellant (the City of Montreal) and respondents (the MPA and the CBC) any additional disbursements made by them arising from the City's intervention. The costs of such disbursements, if any, are expected to be relatively minor. The submissions of the parties and the other intervener are in French. The City

will incur some costs for the translation of certain materials into English. In accordance with the Rules of the Supreme Court of Canada, an intervener is required to use a legal agent in Ottawa primarily for administrative purposes. The City Solicitor estimates the costs for its agent in Ottawa to be in the \$2,000 to \$3,000 range. If the City is granted the right to make oral argument at the appeal in Ottawa, there will be some minor travel expenses for legal counsel to attend the hearing. There are funds available in the Non-Program Assessment Function 2009 Operating Budget account to fund the above expenditures.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

This is the first staff report addressing the City's intervention in the City of Montreal appeals.

ISSUE BACKGROUND

The City of Montreal appeals arise from a Supreme Court Order dated April 2, 2009 granting the City of Montreal leave to appeal a decision of the Federal Court of Appeal. These appeals relate to disputes the City of Montreal has with the MPA and the CBC over their respective PILTs that were made to the City for 2003 to 2007. On July 21, 2009 the City of Montreal filed its appeal materials with the Court. Parties interested in intervening in the appeal then had four weeks to bring a motion to intervene. The Legal Division in consultation with Revenue Services prepared materials and filed the City's motion seeking leave to intervene on the appeals. The City requested that it be permitted to file written submissions and make oral argument when the appeal is heard. On September 4, 2009, the Supreme Court granted the City the right to file written submissions. In the Order, the Court deferred the City's request to make oral argument following receipt and consideration of the City's written submissions (and those of the parties and the other intervener).

As a result, the City Solicitor and Acting Treasurer seek authority to continue the City's intervention in the City of Montreal appeals.

COMMENTS

Legal context

Pursuant to the federal *Payments in Lieu of Taxes Act* R.S., 1985, c. M-13 and the *Crown Corporation Payments Regulations* SOR 81/1030 ("the Federal PILTs legislation"), the City of Montreal requested PILTs for 2003 to 2007 from the MPA and the CBC for the properties they own in Montreal. In response, both the MPA and CBC made PILTs, but deducted from the amounts requested an amount equivalent to a business occupancy tax ("BOT"). The MPA and CBC take the position that they may reduce their PILTs in this manner based on their status as Schedule III corporations under the Federal PILTs legislation as well as their argument that PILTs are discretionary.

At the Federal Court (trial) level, the City of Montreal succeeded in having decisions of the MPA and CBC to reduce their PILTs overturned. The MPA and CBC appealed to the Federal Court of Appeal and they succeeded in having the Federal Court's decision quashed. Accordingly, the City of Montreal sought leave to appeal to the Supreme Court of Canada from the Federal Court of Appeal decision.

This is an important case for the City of Toronto, as well as for other municipalities. The City has similar disputes with other federal crown corporations respecting their PILTs, including the CBC's PILTs for its downtown property on Front Street. This will be the first time that the Supreme Court is considering the Federal PILT legislation. It is likely that the court's decision will have an impact on the City of Toronto.

Intervening at the Supreme Court of Canada

The Supreme Court may grant a right to intervene in an appeal before it if the applicant can show it has an interest in the appeal, and, that its intervention will provide the court with a perspective on the issues being considered that is different from the other parties. The City Solicitor filed materials in support of the request to intervene indicating the City supported the position taken by the City of Montreal but could also add a different perspective in terms of the inter-connection between Ontario's assessment and taxation scheme with the Federal PILT legislation.

The City of Montreal and the Attorney General of Canada, an intervener at the Federal Court and Federal Court of Appeal, filed a response not opposing the City's motion to intervene. On August 28, 2009, the City was served with responses to its motion to intervene by the MPA and CBC. Both parties opposed the City's motion. The City filed separate replies to the MPA and CBC and on September 4, 2009 was granted leave to intervene. The Federation of Canadian Municipalities ("FCM") has also been granted leave to intervene in the City of Montreal appeals.

Having been granted intervener status, the City is required to file its 10 page factum by October 30, 2009. The Supreme Court's decision on whether the City can make oral argument at the appeal is expected by late November, 2009. The appeal is scheduled to be heard in Ottawa on December 16, 2009.

CONCLUSION

Both the City Solicitor and Acting Treasurer are of the view that it is important for the City of Toronto to participate in the City of Montreal appeals. It is therefore recommended that City Council authorize the City Solicitor to continue with the intervention in these appeals.

CONTACT

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SIGNATURE

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