



**STAFF REPORT
ACTION REQUIRED**

**City of Toronto Intervention at Supreme Court of Canada in
*Halifax Regional Municipality v Her Majesty the Queen, in
Right of Canada as represented by the Minister of Public
Works and Government Services***

Date:	June 7, 2011
To:	City Council
From:	City Solicitor and Treasurer
Wards:	All wards
Reference Number:	

SUMMARY

This report seeks instructions for the City of Toronto to bring a motion to the Supreme Court of Canada ("Supreme Court") requesting that the City be permitted to intervene in a Supreme Court appeal by the Halifax Regional Municipality ("Halifax") in a dispute related to payments in lieu of taxes ("PILTs") made to it by the federal Minister of Public Works and Government Services ("Minister of Public Works").

RECOMMENDATIONS

The City Solicitor and Treasurer recommend that:

1. the City Solicitor be authorized to bring a motion to intervene to the Supreme Court of Canada in the matter of *Halifax Regional Municipality v Her Majesty the Queen, in Right of Canada as represented by the Minister of Public Works and Government Services* (court file no. 33876) ("Halifax appeal"); and
2. City staff be given authority to take all steps necessary to give effect hereto.

Financial Impact

When the Supreme Court makes an Order granting intervener status, it is not unusual for the Order to require the intervener to pay the appellant and respondent any additional disbursements made by them arising from the intervention. The costs of such disbursements, if any, are

typically low. 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 \$5,000 to \$6,000 range. If the City is granted intervener status and the right to make oral submissions at the appeal in Ottawa, there will be some travel expenses for legal counsel to attend the hearing estimated at \$2,000. There are funds available in the City's 2011 Approved Operating Budget, Non Program 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 Halifax appeal.

ISSUE BACKGROUND

The Halifax appeal arises from a Supreme Court of Canada Order dated February 24, 2011 granting Halifax leave to appeal a decision of the Federal Court of Appeal. This appeal relates to disputes that Halifax has with the Minister of Public Works over its PILTs that were made to the City for the 1997 - 2005 tax years for the Halifax Citadel National Historic Site ("Halifax Citadel"). Halifax filed its appeal materials with the Court on June 3, 2011; parties interested in intervening in the appeal then have four weeks to bring a motion to intervene. The City's motion will request that the City be permitted to file written argument and make oral submissions when the appeal is heard.

COMMENTS

Legal context

Pursuant to the federal *Payments in Lieu of Taxes Act* R.S., 1985, c. M-13 ("*PILT Act*"), Halifax requested PILTs from the Minister of Public Works for the Halifax Citadel. For the tax years 1997 to 2005 Halifax disagreed with the value of the lands beneath the Halifax Citadel structures and improvements that the Minister of Public Works used to calculate PILTs. To resolve their disagreement, the parties went before the federal PILTs Dispute Advisory Panel ("Panel") in June 2007. Before the Panel (which considered the 2005 tax year only) Halifax argued that the value of the Citadel lands was \$19 million based on an appraisal by the provincial assessment authority; in contrast, the Minister of Public Works argued that the value of the land was \$286,000. In its decision, the Panel valued the Halifax Citadel lands at \$1.6 million. The Minister of Public Works subsequently adopted the Panel's decision.

Halifax brought an application for judicial review at the Federal Court of the Minister of Public Work's decision. Halifax was successful and the Federal Court quashed the decision finding that the Minister's discretion to determine a property value was constrained by the reasonableness of the provincial assessment authority's determination of value. The Minister of Public Works appealed to the Federal Court of Appeal and was successful in having the Federal Court's

decision quashed. Accordingly, Halifax sought leave to appeal to the Supreme Court of Canada from the Federal Court of Appeal decision.

Halifax's appeal is a similar case to the *City of Montreal v Montreal Port Authority* and the *City of Montreal v CBC* decisions. The City intervened in support of the City of Montreal in those appeals which were heard by the Supreme Court in December 2009. The issue was the discretion that federal Crown Corporations have in determining the effective (i.e. tax) rate they use in calculating PILTs (pursuant to a regulation of the PILT Act). The Supreme Court agreed with the City of Montreal (and Toronto) that the discretion federal bodies have in choosing an effective rate for PILTs must be exercised reasonably and within the statutory and regulatory property tax framework that exist at the time the PILTs are calculated.

Like the Montreal appeals, the Halifax appeal is an important case for the City of Toronto, as well as for other municipalities. The City has similar disputes with other federal bodies respecting the land values used for PILTs made to the City, including the Toronto Port Authority's properties along the waterfront, the CBC's property, and Parc Downsview Park's property. It is likely that the court's decision could have an impact on these disputes and consequently on the PILT amounts paid to 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.

Upon Council approval, the City Solicitor will bring its motion to intervene and the City's position will be in support of Halifax. The City has an interest in the Halifax appeal, given the large amount of PILTs that are made to the City by the approximately 180 federal properties in Toronto. The PILTs from these properties could potentially decrease if the federal bodies responsible for them were permitted to calculate PILTs by valuing their lands in the manner adopted by the Minister of Public Works for the Halifax Citadel. The City also has an interest because it is at varying stages of appeal before the federal Dispute Advisory Panel over disagreements the City has with the property values used by the Toronto Port Authority, the CBC, and Parc Downsview Park for their PILTs.

The City can also bring a different perspective that will be helpful to the Supreme Court. The issue in the Montreal appeals was whether the discretion the Montreal Port Authority and the CBC had in determining the effective rate they used to calculate their PILTs extended to deducting from their PILT an amount equal to the City of Montreal's former business occupancy tax. The Supreme Court found that the discretion did not extend that far; rather, the discretion in selecting an effective rate was constrained by the property tax scheme in force at the time the PILT is calculated. In our view, the City's intervention in the Montreal appeals was helpful. The issue in the Halifax appeal is the discretion the Minister of Public Works has to determine the value used to calculate PILTs. In this case, the Supreme Court will be interpreting the *PILT Act* in the context of the assessment regime in Nova Scotia, and because the *PILT Act* applies across Canada, in other provinces as well. Accordingly, an intervention by the City in the Halifax

appeal can be similarly helpful to the court by providing a perspective on the relationship between Ontario's assessment scheme and the *PILT Act* and the implications the court's decision will have for other municipalities.

The Federation of Canadian Municipalities was an intervener in the Montreal appeals and we are aware that it is also considering bringing a motion to intervene in the Halifax appeal.

Pending approval by Council, the intention is to file the City's motion by mid-June. It is possible that the Minister of Public Works will file a response. In that case, the City would have an opportunity to reply. This is expected to be completed by the first week of July if all these steps occur. Based on this schedule, a decision by the Supreme Court on whether to grant the City's motion to intervene is likely in September. If leave is granted, the City Solicitor will prepare the City's intervener materials that will be filed and served in November, 2011.

The appeal is tentatively scheduled to be heard in Ottawa on December 12, 2011.

CONCLUSION

Both the City Solicitor and Treasurer are of the view that it is important for the City of Toronto to participate in the Halifax appeal. It is therefore recommended that City Council authorize the City Solicitor to bring a motion to intervene in this appeal.

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SIGNATURE

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