



**STAFF REPORT
ACTION REQUIRED
Confidential Attachment**

**Court Decision Regarding Municipal Code Chapter 771,
Third Party Sign Tax**

Date:	March 21, 2011
To:	Planning and Growth Management Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	<ol style="list-style-type: none">1. This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.2. This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

This report summarizes the decision of the Superior Court of Justice released on March 3, 2011 in two Court applications regarding Municipal Code Chapter 771, Third Party Sign Tax. The confidential portion of this report (Attachment 1) provides confidential information and recommendations regarding this decision.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in Attachment 1;
2. City Council authorize the public release of Confidential Recommendations 1 and 2 in Attachment 1 if those recommendations are adopted by Council and, on recommendation 2, if the action referred to in that recommendation is taken, and the remaining recommendations remain confidential;

3. The appropriate City staff be authorized and directed to take the necessary action to give effect thereto.

Financial Impact

If the court decision stands, it is estimated that the total gross revenues under Chapter 771 will be approximately \$800,000 for 2010 and approximately \$1.0 million for 2011. Accordingly, it is estimated that the potential reduction in the gross revenues to the City is \$8.6 million for 2010 and is forecast to be \$9.3 million in 2011. These figures are based on preliminary estimates of the number, class, date of erection and lawfulness of the signs. These preliminary estimates are subject to further review and revision as further information becomes available.

A contingency has already been established in the 2010 year-end Financial Statements to address the potential reduction of recognized revenues under Chapter 771.

Additional financial impacts are identified in Attachment 1.

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

DECISION HISTORY

Chapter 771 was added to the Municipal Code by the enactment of By-law No. 197-2010 on February 23, 2010 following the adoption by City Council on November 30, December 1, 2, 4 and 7, 2009 of Planning and Growth Management Committee Item 33.10, entitled "New Sign Regulation and Revenue Strategy for the City of Toronto", as amended.

<http://www.toronto.ca/legdocs/mmis/2009/pg/reports/2009-11-04-pg33-cr.htm#PG33.10>

COMMENTS

This Court decision is on two separate but related proceedings, one by the Out-of-Home Marketing Association ("OMAC") and the other by Pattison Outdoor Advertising LP and Pattison Sign Group (the "Pattison Companies"). Both proceedings challenged the constitutional and jurisdictional validity of Chapter 771 (the "by-law"). In addition, OMAC sought a declaration regarding the application of section 110(1) of the *City of Toronto Act, 2006* ("COTA"). The Pattison Companies did not raise or rely on this COTA issue.

In its reasons for decision released on March 3, 2011, the Court found the by-law to be valid, but granted OMAC the declaration regarding COTA. Accordingly, the Pattison Companies' application was dismissed and the OMAC application was granted in part. The declaration sought by OMAC and granted by the Court was that, by reason of section

110(1) of COTA, the by-law does not apply to signs lawfully erected on the date the by-law came into force.

The Court decision is available online at

<http://www.canlii.org/en/on/onsc/doc/2011/2011onsc537/2011onsc537.html>

The Chief Building Official and Executive Director, Toronto Building, and the Deputy City Manager and Chief Financial Officer have been consulted in the preparation of this report.

CONTACT

Ansuya Pachai, Solicitor, tel: 416-392-9074, fax: 416-397-1765, e-mail: apachai@toronto.ca

SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

1. Confidential Attachment