



**STAFF REPORT  
ACTION REQUIRED**

**City of Toronto Intervention at Supreme Court of Canada  
in *Antrim Truck Centre Ltd. v. Her Majesty the Queen***

<b>Date:</b>	March 14, 2012
<b>To:</b>	Government Management Committee
<b>From:</b>	City Solicitor
<b>Wards:</b>	All wards
<b>Reference Number:</b>	

**SUMMARY**

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This report seeks instruction for the City Solicitor to bring a motion to the Supreme Court of Canada ("Supreme Court") requesting that the City be authorized to intervene in an appeal by Antrim Truck Centre Ltd. ("Antrim") in a dispute relating to an expropriation claim by Antrim against the Ministry of Transportation ("Ministry").

**RECOMMENDATIONS**

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**The City Solicitor recommends that:**

1. the City Solicitor be authorized to seek leave to intervene before the Supreme Court of Canada in the matter of *Antrim Truck Centre Ltd. v. Her Majesty the Queen in right of the Province of Ontario, as represented by the Minister of Transportation* (Court File No. 34413);
2. the Association of Municipalities of Ontario and the Federation of Canadian Municipalities be advised of and consulted on the City's proposed intervention; and
3. City staff be authorized to take all steps necessary to give effect thereto.

**Financial Impact**

An intervener at the Supreme Court is required to use a legal agent in Ottawa for administrative tasks relating to an appeal. The estimated cost for an agent is \$5,000.00. If the City is granted intervener status at the appeal, there will be travel expenses for counsel to attend the hearing. These expenses are estimated at \$2500.00. The City may

also have to pay the appellant and respondent any additional disbursements arising from the intervention. These costs, if any, are typically low.

The total costs to intervene are estimated at \$25,000.00. The Toronto Transit Commission has agreed to fund a portion of the costs required to advance the City's intervention of an amount up to \$20,000.00. The balance of \$5,000.00 will be funded from the Arbitration and Legal Awards Reserve Fund XQ1709.

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 Antrim appeal.

## **ISSUE BACKGROUND**

In 2004, the Ministry realigned a portion of Highway 17 in Eastern Ontario where Antrim operated a truck stop business. No lands were actually expropriated from Antrim by the Ministry for this project. Due to the realignment, however, Antrim's business became further removed from the new highway. Pursuant to the *Expropriations Act*, Antrim initiated a claim against the Ministry for injurious affection where no lands were taken. Antrim's claim is based on its position that it suffered businesses losses, and that its' property suffered a reduction in market value, as a result of the less favourable location relative to the highway.

Antrim was awarded damages as outlined below. On appeal, however, the Ontario Court of Appeal dismissed Antrim's claims.

The Court of Appeal's decision is important to the City, which regularly defends claims for injurious affection where no lands are taken. Depending on the nature of the project, the type of construction used, and the number and variety of businesses/properties impacted, claims against the City can range from thousands of dollars to hundreds of thousands of dollars, and even millions of dollars. In other words, the City may be exposed to significant additional liability in the hundreds of millions of dollars if the approach advocated by Antrim (and rejected by the Court of Appeal) prevails at the Supreme Court of Canada. Such a decision would have a chilling impact on municipal decision-making.

The Supreme Court granted Antrim leave to appeal in February.

The City will file its motion to intervene after Antrim has filed its legal arguments. The appeal itself is tentatively scheduled for November 16, 2012.

## **COMMENTS**

### **Legal context**

Antrim advanced claims under the *Expropriations Act* against the Ministry for damages, including injurious affection, arising from the Ministry's realignment of a portion of Highway 17 in Eastern Ontario. The Ministry did not expropriate any property from Antrim. Antrim's claim for injurious affection is one where no lands were taken and, therefore, is restricted by the Act to damages caused by the construction, and not the use, of the Ministry's works.

After dismissing its other claims, the Ontario Municipal Board (the "Board") awarded Antrim \$393,000.00 for injurious affection (specifically, \$58,000.00 for business losses and \$335,000.00 for loss in market value of its property). On appeal, the Board's decision and its award were upheld by the Ontario Divisional Court.

On further appeal, the Ontario Court of Appeal concluded that, in order to establish injurious affection where no lands were taken, Antrim must show that the Ministry's actions met the test for a nuisance. In its analysis of nuisance, the Court of Appeal balanced the competing interests of the parties by applying a reasonableness test. The Court of Appeal gave much weight to the utility of the Ministry's project, ultimately concluding that it was reasonable to deny compensation to Antrim. The Court of Appeal set aside the decisions of the Board and the Divisional Court, and dismissed Antrim's claims.

The Court of Appeal decision is important for expropriating authorities, particularly Toronto, as the City regularly defends claims like the Antrim claim from property and business owners for injurious affection where no lands are taken. The City conducts some of the most complex and costly expropriations in Canada. The application of a reasonableness test, and the weighing of public utility, is of critical importance in the evaluation of such claims and the potential liability to the City that may result.

### **Intervening at the Supreme Court of Canada**

The Supreme Court may grant intervener status to a non-party, generally, where the non-party demonstrates that it has an interest in the matter and can assist the Court.

Upon Council approval, the City Solicitor will bring its motion to intervene and the City's position will be in support of the Ministry.

While the City intervention would be in support of the position advanced by the Ministry, the City brings a different perspective from that of the Ministry, which will assist the Supreme Court. The City will emphasize how the Supreme Court's decision can potentially impact municipal planning and decision-making in urban settings. The City will highlight how current and future infrastructure expansion may lead to a multitude of

claims like the Antrim claim, which, in turn make it much harder to undertake infrastructure upgrades based on liability concerns.

The test endorsed by the Court of Appeal recognizes that competing interests, in an increasingly dense and complex society, need to be balanced against each other. In the City, complex expropriations of easements, leaseholds and fee simple requirements – above and below ground – occur in built-up and densely-populated areas. These types of expropriations have an impact on a greater number of properties and businesses than those normally undertaken by the Ministry. They involve activities with complex and sometimes competing aspects of public utility, such as the restriction of vehicular access to accommodate rapid transit infrastructure, the provision of safety access points at existing subway stations, the construction of new subway stations in densely populated areas, or the disruption of City traffic to install and retrieve major equipment such as tunnel-boring machines from the earth. The balancing of competing interests – and the application of a reasonableness test that gives appropriate weight to the utility of the project – is nowhere more important than in Toronto. This unique perspective will be different from that of the Ministry and useful to the Supreme Court.

The City's intervention is advanced with the support and cooperation of the TTC. The City is also seeking the endorsement of Metrolinx, the Association of Municipalities of Ontario and the Federation of Canadian Municipalities.

Ultimately, the decision on whether the City will be permitted to intervene is in the discretion of the Supreme Court.

## **CONCLUSION**

It is important for the City of Toronto to participate in the Antrim appeal. The City's unique perspective on the effect of the test for compensation will assist the Court in considering the effect of its decision in a dense urban context. It is therefore recommended that City Council authorize intervention in this appeal.

## **CONTACTS**

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## **SIGNATURE**

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