

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: December 14, 2011

SUBJECT: CLASS ACTION UPDATE

ACTION ITEM

REASON FOR CONFIDENTIAL INFORMATION:

This report contains advice or communications that are subject to solicitor-client (litigation) privilege.

RECOMMENDATION

It is recommended that the Commission:

1. Approve the recommendation as set out in the attached Confidential Attachment;
2. The information in the Confidential Attachment remains confidential until the conclusion of the current litigation.

BACKGROUND

In May 2010, the plaintiff, Curactive Organic Skin Care Ltd., commenced a proposed class action against the Toronto Transit Commission, the City of Toronto and Her Majesty the Queen in Right of Ontario claiming damages arising out of the construction of the St. Clair Avenue roadway and the Streetcar Right-of-Way. The action as against Her Majesty the Queen in Right of Ontario has been discontinued.

Prior to the certification motion of the proposed class action, the TTC and the City of Toronto raised, as a preliminary matter, the issue of whether the claims raised in the plaintiff's statement of claim were within the Court's jurisdiction or whether the claims were within the exclusive jurisdiction of the Ontario Municipal Board. The Court agreed to address the issue prior to the certification motion and the matter was heard on March 30, 2011.

On April 6, 2011, Justice Perell issued his decision and dismissed the plaintiff's claim as against both the TTC and the City of Toronto. The plaintiff has appealed the decision of Justice Perell and the appeal will be heard by the Ontario Court of Appeal at the end of January 2012.

November 21, 2011
45-5-5