

**MINUTES OF THE COUNCIL
OF THE
CITY OF TORONTO
SPECIAL MEETING**

MONDAY, FEBRUARY 2, 1998

City Council met at 2:12 p.m., in the Council Chamber, Metro Hall, Toronto.

Mayor Lastman took the Chair and called the Members to order.

68 Members present at the first session of this Special Meeting:

Mayor: Lastman.

Councillors: Adams, Altobello, Ashton, Augimeri, Balkissoon, Berardinetti, Berger, Bossons, Brown, Bussin, Cho, Chong, Chow, Davis, Disero, Faubert, Filion, Flint, Fotinos, Gardner, Giansante, Holyday, Jakobek, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Layton, Lindsay Luby, Li Preti, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Nunziata, O'Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Sgro, Shaw, Shiner, Silva, Sinclair, Walker - 52.

69 At this point in the proceedings, Mayor Lastman, with the permission of Council, introduced Mr. Risto Penov, Mayor of the Capital City of Skopje, his wife Mrs. Penov, and Mr. Rade Stoykovski, advisor to the Mayor, present at this Special Meeting.

70 Mayor Lastman read the following Notice of this Special Meeting:

“In accordance with the direction of Council arising from its meeting held on January 2, 6, 8 and 9, 1998, and pursuant to legislative requirements, a Special Meeting of Council will be held on Monday, February 2, 1998, at 2:00 p.m., in the Metro Hall Council Chamber, 55 John Street, Toronto, for the following purposes:

- (a) to give consideration to requests for recounts of votes cast for any office, or on any question, in the 1997 municipal election, filed on or before February 2, 1998; and
- (b) to consider and enact a bill to confirm the proceedings of this Special Meeting.”

- 71 Council had before it the following communications:
- (a) from the City Clerk and the Lead Solicitor (January 28, 1998) relating to procedures for Council-directed recounts and recommending that Council pass a resolution directing that a recount be held of the votes in the Toronto High Park liquor question;
 - (b) from the City Clerk, City of Scarborough (December 4, 1997) forwarding a copy of a letter from Ms. Edith Montgomery, Councillor, Ward 14, City of Scarborough, requesting a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 18, Scarborough-Malvern, in accordance with Section 57 of the Municipal Elections Act, 1996;
 - (c) from Mr. A.L.W. D'Silva, Fasken, Campbell, Godfrey, Barristers and Solicitors (January 2, 1998) on behalf of Ms. E. Montgomery, who is requesting a recount, seeking permission to make oral submissions on Ms. Montgomery's behalf;
 - (d) from Mr. A.L.W. D'Silva, Fasken, Campbell, Godfrey, Barristers and Solicitors (January 13, 1998) advising that his client, Ms. E. Montgomery, is proceeding with her recount application in the Ontario Court (General Division);
 - (e) from Mr. J. Miles, President, Preserving West End Neighbourhoods (P.W.E.N.):
 - (i) (December 1, 1997) addressed to the Minister of Municipal Affairs and Housing, expressing concerns regarding a number of incidents that happened during the 1997 municipal election; and
 - (ii) (December 1, 1997) requesting a recount of ballots to the plebiscite question, "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?", and attaching petitions and form letters on the same question;
 - (f) from Councillor B. Disero, City of Toronto, Ward 12 (December 4, 1997) forwarding the following letters:
 - (i) from Mr. G. Koutoumanos, representative for WET supporters in Ward 11 (December 1, 1997 and December 4, 1997) requesting a recount of ballots in the City of Toronto, Davenport Ward, regarding the plebiscite question "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?"; and
 - (ii) from Mr. J. Stone, Stone and Osborne, Barristers and Solicitors (December 12, 1997) on behalf of Mr. G. Koutoumanos, et al, requesting a recount of ballots on the same question;

- (g) from Mr. Tony Letra, Trustee, Ward 2, Metropolitan Separate School Board (November 14, 1997) requesting a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport;
- (h) from Mr. P. Tabuns, Toronto, Ontario (January 21, 1998) requesting a recount of the ballots cast for City Councillor for Ward 25, Don River;
- (i) from Ms. M. Lynett, President, Working for Equal Treatment (WET) (January 26, 1998) noting that an overwhelming majority of Ward 19 voters said "Yes" to licensed premises and urging Members of Council to reject the request for a recount;
- (j) from Mr. J. R. Purchard, Toronto, Ontario (January 19, 1998) submitting comments regarding the results of the votes regarding the liquor question;
- (k) from the Minister of Municipal Affairs and Housing (undated) forwarding, for information, a copy of a communication addressed to Mr. D. Shea, MPP, High Park - Swansea, acknowledging receipt of letters and petitions from residents seeking a recount concerning the liquor question on the municipal ballot in Ward 19 and attaching a copy of the response which is being sent to the residents to answer any questions they may have regarding the recount decision;
- (l) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (January 27, 1998) regarding the liquor plebiscite recount request, seeking permission, on behalf of their lawyer, to appear before Council and make oral submissions; and requesting clarification, in the event of approval of a request for recount, of the conduct of same, including the selection of scrutineers;
- (m) from Junction Gardens BIA (January 19, 1998) regarding the liquor plebiscite question and submitting an alternative solution in light of the recent controversy surrounding the plebiscite in the former Wards 1 and 11;
- (n) from Mr. R. Maxwell, Toronto, Ontario (January 30, 1998) urging Council to reject the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport;
- (o) from Mr. J. McBride, President, Junction Gardens BIA (January 22, 1998) regarding the liquor plebiscite question and requesting Council to reject the request for a recount;
- (p) from Cross Cultural Communication Centre and Women Working with Immigrant Women (January 22, 1998) regarding the liquor plebiscite question and requesting Council to reject the request for a recount;

- (q) from Mr. S. Solnik, Solnik and Solnik, Barristers and Solicitors (January 28, 1998) urging Council to reject the request for a recount regarding the liquor plebiscite question for Ward 19;
- (r) from Mr. B. Lowe, Chair, Weston BIA, addressed to Working for Equal Treatment (WET) (January 29, 1998) advising that the Weston BIA Board of Management supports the efforts of WET to have the results of the November 10, 1997, plebiscite question stand;
- (s) from Mr. A.L.W. D'Silva, Fasken, Campbell Godfrey, Barristers and Solicitors (January 30, 1998) advising that the Ontario Court (General Division) has rendered a decision with respect to Edith Montgomery's recount application before the Court; that in light of the appeal that has been launched with respect to the decision of the Court, Ms. Montgomery will proceed with her request for a recount to City Council; and enclosing a copy of the written submissions of Ms. Montgomery for the Court proceedings;
- (t) from Ms. M. Lynett, President, Working for Equal Treatment (WET) (February 2, 1998) attaching a list of individuals to stand as scrutineers in the event of a recount for Ward 19;
- (u) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (February 2, 1998) attaching a list of individuals to stand as scrutineers for the "No" side in the event of a recount for Ward 19 and/or Ward 21;
- (v) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (February 2, 1998) requesting confirmation that in the event of a recount regarding the liquor plebiscite question in Ward 19 and/or Ward 21, Mr. W. Roberts be permitted to be present as a solicitor/agent on behalf of P.W.E.N.;
- (w) news release (February 1, 1998) issued by Working for Equal Treatment (WET), regarding the issue of a recount concerning the liquor question on the municipal ballot in Ward 19; and
- (x) confidential report (February 2, 1998) from the Lead Solicitor, entitled "Appeal of the Court decision respecting the Application of Edith Montgomery for a recount under s.58 of the Municipal Elections Act," and recommending that the Lead Solicitor be authorized to appeal on behalf of the City of Toronto, the decision of the Court dated January 26, 1998, ordering a recount by the City Clerk of ballots cast in Ward 18 (Scarborough Malvern) to the Court of Appeal for Ontario, and that all steps taken by the Lead Solicitor to protect the legal interests of the City of Toronto be confirmed.

The Mayor requested Members of Council to indicate whether they had an interest in the matters before Council, together with the nature of the interest.

Councillor Balkissoon declared his interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 18, Scarborough-Malvern, in that he is a City Councillor for Ward 18.

Councillor Cho declared his interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 18, Scarborough-Malvern, in that he is a City Councillor for Ward 18.

Councillor Chow declared her interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 25, Don River, in that she is the spouse of a City Councillor for Ward 25.

Councillor Disero declared her interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport, in that she is a City Councillor for Ward 21.

Councillor Fotinos declared his interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport, in that he is a City Councillor for Ward 21.

Councillor Layton declared his interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 25, Don River, in that he is a City Councillor for Ward 25.

Councillor McConnell declared her interest in those portions of the foregoing reports and communications pertaining to the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 25, Don River, in that she is a City Councillor for Ward 25.

At this point in the proceedings, Councillor Prue, seconded by Councillor Mahood, moved that Council now resolve itself into Committee of the Whole for the purpose of hearing depositions from the public regarding the liquor plebiscite in the Toronto High Park area, and the request for recount for City Councillor for Ward 18, Scarborough-Malvern, which was carried.

At this point in the proceedings, Council resolved itself into Committee of the Whole.

Mayor Lastman took the Chair.

72 Members present in Committee of the Whole:

Mayor: Lastman.

Councillors: Adams, Altobello, Ashton, Augimeri, Balkissoon, Berardinetti, Berger, Bossons, Brown, Bussin, Cho, Chong, Chow, Davis, Disero, Faubert, Filion, Flint, Fotinos, Gardner, Giansante, Holyday, Jakobek, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Layton, Lindsay Luby, Li Preti, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Nunziata, O'Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Sgro, Shaw, Shiner, Silva, Sinclair, Walker - 52.

73 The following persons appeared in deputation regarding the request for recount for City Councillor Ward 18, Scarborough-Malvern:

- Mr. A.L.W. D'Silva, Fasken, Campbell, Godfrey, Barristers and Solicitors, on behalf of Ms. E. Montgomery, and submitted a Factum of the Respondent, Edith Montgomery; and
- Ms. Edith Montgomery.

The following persons appeared in deputation regarding the liquor plebiscite in the Toronto High Park area:

- Mr. Gus Koutoumanos;
- Mr. William H. Roberts, Barrister and Solicitor, representing Preserving West End Neighbourhoods (P.W.E.N.), and submitted a communication dated February 2, 1998, in connection with the foregoing matter;
- Ms. Maureen Lynett, President, Working for Equal Treatment (WET);
- Ms. Santa Cuda, Member, Malta Village;
- Ms. Piera Pugliese, Treasurer, Junction Business Improvement Area;
- Mr. John McBride, Chairperson, Junction Business Improvement Area;
- Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.);
- Ms. Anne Leonard, Co-ordinator, Junction Business Improvement Area; and
- Mr. Bill Martin, Treasurer, Malta Village.

At this point in the proceedings, Councillor Miller moved that, at the conclusion of the speakers on all the issues before Council, Council recess and reconvene in Committee Room "A", that Council resolve itself into Committee of Whole, and then recess to meet

privately to consider the confidential report dated February 2, 1998, from the Lead Solicitor, in accordance with subsection 55(7) of the Municipal Act; which was carried.

3:05 P.M.

The Committee of the Whole rose.

Mayor Lastman took the Chair and called the Members to order.

74 Members present at the second session of this Special meeting:

Mayor: Lastman.

Councillors: Altobello, Ashton, Balkissoon, Berardinetti, Berger, Bossons, Brown, Bussin, Davis, Disero, Faubert, Filion, Flint, Fotinos, Gardner, Giansante, Holyday, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Lindsay Luby, Li Preti, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Nunziata, Ootes, Pantalone, Prue, Rae, Saundercook, Shaw, Shiner, Silva, Sinclair, Walker - 43.

Mayor Lastman gave the Chair to Deputy Mayor Ootes, and vacated the Chair.

75 **Joint report dated January 28, 1998, from the City Clerk and the Lead Solicitor entitled "Requests for Recounts"**. (See Attachment)

Council also had before it, during consideration of the foregoing joint report, the following communications:

- (a) from Mr. J. Miles, President, Preserving West End Neighbourhoods (P.W.E.N.):
 - (i) (December 1, 1997) addressed to the Minister of Municipal Affairs and Housing, expressing concerns regarding a number of incidents that happened during the 1997 municipal election; and
 - (ii) (December 1, 1997) requesting a recount of ballots to the plebiscite question, "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?", and attaching petitions and form letters on the same question;
- (b) from Councillor B. Disero, City of Toronto, Ward 12 (December 4, 1997) forwarding the following letters:

- (i) from Mr. G. Koutoumanos, representative for WET supporters in Ward 11 (December 1, 1997 and December 4, 1997) requesting a recount of ballots in the City of Toronto, Davenport Ward, regarding the plebiscite question “Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?”; and
- (ii) from Mr. J. Stone, Stone and Osborne, Barristers and Solicitors (December 12, 1997) on behalf of Mr. G. Koutoumanos, et al, requesting a recount of ballots on the same question;
- (c) from Mr. Tony Letra, Trustee, Ward 2, Metropolitan Separate School Board (November 14, 1997) requesting a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport;
- (d) from Mr. P. Tabuns, Toronto, Ontario (January 21, 1998) requesting a recount of the ballots cast for City Councillor for Ward 25, Don River;
- (e) from Ms. M. Lynett, President, Working for Equal Treatment (WET) (January 26, 1998) noting that an overwhelming majority of Ward 19 voters said “Yes” to licensed premises and urging Members of Council to reject the request for a recount;
- (f) from Mr. J. R. Purchard, Toronto, Ontario (January 19, 1998) submitting comments regarding the results of the votes regarding the liquor question;
- (g) from the Minister of Municipal Affairs and Housing (undated) forwarding, for information, a copy of a communication addressed to Mr. D. Shea, MPP, High Park - Swansea, acknowledging receipt of letters and petitions from residents seeking a recount concerning the liquor question on the municipal ballot in Ward 19 and attaching a copy of the response which is being sent to the residents to answer any questions they may have regarding the recount decision;
- (h) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (January 27, 1998) regarding the liquor plebiscite recount request, seeking permission, on behalf of their lawyer, to appear before Council and make oral submissions; and requesting clarification, in the event of approval of a request for recount, of the conduct of same, including the selection of scrutineers;
- (i) from Junction Gardens BIA (January 19, 1998) regarding the liquor plebiscite question and submitting an alternative solution in light of the recent controversy surrounding the plebiscite in the former Wards 1 and 11;
- (j) from Mr. R. Maxwell, Toronto, Ontario (January 30, 1998) urging Council to reject the request for a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 21, Toronto-Davenport;

- (k) from Mr. J. McBride, President, Junction Gardens BIA (January 22, 1998) regarding the liquor plebiscite question and requesting Council to reject the request for a recount;
- (l) from Cross Cultural Communication Centre and Women Working with Immigrant Women (January 22, 1998) regarding the liquor plebiscite question and requesting Council to reject the request for a recount;
- (m) from Mr. S. Solnik, Solnik and Solnik, Barristers and Solicitors (January 28, 1998) urging Council to reject the request for a recount regarding the liquor plebiscite question for Ward 19;
- (n) from Mr. B. Lowe, Chair, Weston BIA, addressed to Working for Equal Treatment (WET) (January 29, 1998) advising that the Weston BIA Board of Management supports the efforts of WET to have the results of the November 10, 1997, plebiscite question stand;
- (o) from Mr. A.L.W. D'Silva, Fasken, Campbell Godfrey, Barristers and Solicitors (January 30, 1998) advising that the Ontario Court (General Division) has rendered a decision with respect to Edith Montgomery's recount application before the Court; that in light of the appeal that has been launched with respect to the decision of the Court, Ms. Montgomery will proceed with her request for a recount to City Council; and enclosing a copy of the written submissions of Ms. Montgomery for the Court proceedings;
- (p) from Ms. M. Lynett, President, Working for Equal Treatment (WET) (February 2, 1998) attaching a list of individuals to stand as scrutineers in the event of a recount for Ward 19;
- (q) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (February 2, 1998) attaching a list of individuals to stand as scrutineers for the "No" side in the event of a recount for Ward 19 and/or Ward 21;
- (r) from Ms. J. Miles, Preserving West End Neighbourhoods (P.W.E.N.) (February 2, 1998) requesting confirmation that in the event of a recount regarding the liquor plebiscite question in Ward 19 and/or Ward 21, Mr. W. Roberts be permitted to be present as a solicitor/agent on behalf of P.W.E.N.; and
- (s) news release (February 1, 1998) issued by Working for Equal Treatment (WET), regarding the issue of a recount concerning the liquor question on the municipal ballot in Ward 19.

Upon the question of the adoption of the foregoing joint report, without amendment:

- (a) Councillor Walker moved that Council adopt the following recommendations:

“It is recommended that City Council:

- (1) approve the recount of votes cast in the election of Councillor for Scarborough-Malvern, on November 10, 1997; that such recount be by means of the same electronic or mechanical counting device or machine used at the material time; and, further, that scrutineers be permitted to attend until the vote tabulation machines are turned off and the re-marking process ceases;
- (2) request Mr. Bailie, the Returning Officer for the last Municipal Election, to request the Lieutenant-Governor in Council to obtain a legal determination from the Court of Appeal; and
- (3) request the Provincial government to amend the Municipal Elections Act to provide for specific procedures for automated voting.”

Mayor Lastman resumed the Chair.

At this point in the proceedings, Mayor Lastman, having regard to the nature of the following portion of Part (1) of the foregoing motion (a) by Councillor Walker, declared such portion out of order:

“and, further, that scrutineers be permitted to attend until the vote tabulation machines are turned off and the re-marking process ceases;”.

- (b) Councillor Fotinos moved that Council adopt the following recommendations:

“It is recommended that:

- (1) the recommendations embodied in the joint report dated January 28, 1998, from the City Clerk and the Lead Solicitor, entitled ‘Requests for Recounts’, pertaining to the liquor plebiscite, be received;
- (2) the Provincial government be requested to review the need to maintain Section 53(4) of the Liquor Licence Act versus adopting a simple majority rule; and
- (3) City Council, in one year’s time, consider conducting a plebiscite in the affected area of Davenport Ward on the matter of maintaining the area dry, in the event that the Province of Ontario does not change the legislation.”

- (c) Councillor Korwin-Kuczynski moved that Council adopt the following recommendation:

“It is recommended that the joint report dated January 28, 1998, from the City Clerk and the Lead Solicitor, entitled ‘Requests for Recounts’, be received, and that no further action be taken in this regard.”

- (d) Councillor Disero, in amendment, moved that Part (2) of the foregoing motion (b) by Councillor Fotinos be amended to read as follows:

“It is recommended that the Provincial Government be requested to amend the appropriate legislation to permit liquor licensing in Wards High Park and Davenport.”;

and that such amendment be adopted by Council.

Upon the question of the adoption of the foregoing motion (c) by Councillor Korwin-Kuczynski, it was carried.

At this point in the proceedings, Mayor Lastman, having regard to the foregoing decision of Council, declared Part (1) of the foregoing motion (b) by Councillor Fotinos, redundant.

Upon the question of the adoption of the foregoing motion (d) by Councillor Disero, the vote was taken as follows:

Yeas: Mayor: Lastman.
Councillors: Balkissoon, Berger, Bossons, Bussin, Cho, Disero, Filion, Fotinos, Giansante, Holyday, Jakobek, Jones, Kelly, King, Lindsay Luby, Li Preti, Mahood, Minnan-Wong, Moeser, Moscoe, Nunziata, O’Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Shaw, Silva, Sinclair - 31.

Nays: Councillors: Ashton, Davis, Flint, Korwin-Kuczynski, Mammoliti, McConnell, Miller, Walker - 8.

Decided in the affirmative by a majority of 23.

At this point in the proceedings, Mayor Lastman, having regard to the foregoing decision of Council, declared Part (2) of the foregoing motion (b) by Councillor Fotinos, redundant.

Upon the question of the adoption of Part (3) of the foregoing motion (b) by Councillor Fotinos, the vote was taken as follows:

Yeas: Mayor: Lastman.
Councillors: Ashton, Balkissoon, Bossons, Cho, Davis, Disero, Fotinos, Holyday, Jakobek, Kelly, King, Nunziata, O’Brien, Ootes, Rae, Saundercook, Shaw, Silva, Sinclair - 20.

Nays: Councillors: Berger, Brown, Bussin, Filion, Flint, Giansante, Jones, Korwin-Kuczynski, Lindsay Luby, Li Preti, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Pantalone, Prue, Walker - 20.

Decided in the negative, there being an equality of votes.

At this point in the proceedings, Councillor Walker, with the permission of Council, withdrew Part (2) of his foregoing motion (a).

Mayor Lastman, having regard to the nature of Parts (1) and (3) of the foregoing motion (a) by Councillor Walker, proposed that Council defer further consideration of such motion until later in the meeting.

Council concurred in the foregoing proposal. (See Minute No. 78.)

In summary, Council adopted the following recommendations:

“It is recommended that:

- (1) the joint report dated January 28, 1998, from the City Clerk and the Lead Solicitor, entitled ‘Requests for Election Recounts’, be received, and that no further action be taken in this regard; and
- (2) the Provincial government be requested to amend the appropriate legislation to permit liquor licensing in Wards High Park and Davenport.”

At this point in the proceedings, and in accordance with the previous decision of Council, Council recessed at 4:15 p.m. to reconvene in Committee Room “A”.

4:20 P.M.

Council reconvened in Committee Room “A”.

Mayor Lastman took the Chair and called the Members to order.

76 Members present at the third session of this Special Meeting:

Mayor: Lastman.

Councillors: Altobello, Ashton, Berardinetti, Berger, Bussin, Chong, Davis, Disero, Faubert, Filion, Flint, Gardner, Giansante, Holyday, Jakobek, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Lindsay Luby, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Nunziata, O’Brien, Ootes, Pantalone, Prue, Saundercook, Shaw, Shiner, Silva, Sinclair, Walker - 40.

At this point in the proceedings, Council resolved itself in Committee of the Whole.

The Committee of the Whole recessed at 4:30 p.m. to meet privately to consider the confidential report dated February 2, 1998, from the Lead Solicitor, in accordance with subsection 55(7) of the Municipal Act.

5:11 P.M.

The Committee of the Whole reconvened in the Council Chamber.

The Committee of the Whole rose.

Mayor Lastman took the Chair and called the Members to order.

77 Members present at the fourth session of this Special meeting:

Mayor: Lastman.

Councillors: Altobello, Ashton, Balkissoon, Berardinetti, Berger, Bossons, Brown, Bussin, Chong, Chow, Davis, Disero, Faubert, Flint, Fotinos, Gardner, Giansante, Holyday, Jakobek, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Lindsay Luby, Li Preti, Mahood, Mammoliti, McConnell, Miller, Minnan-Wong, Moeser, Moscoe, Nunziata, O'Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Shaw, Shiner, Silva, Sinclair, Walker - 46.

78 **Confidential report dated February 2, 1998, from the Lead Solicitor, entitled "Appeal of the Court Decision Respecting the Application of Edith Montgomery for a Recount under s.58 of the Municipal Elections Act (the 'Act')".**

Council also had before it, during consideration of the foregoing confidential report, the following communications:

- (i) from the City Clerk, City of Scarborough (December 4, 1997) forwarding a copy of a letter from Ms. Edith Montgomery, Councillor, Ward 14, City of Scarborough, requesting a recount with regard to the municipal election held on November 10, 1997, for City Councillor for Ward 18, Scarborough-Malvern, in accordance with Section 57 of the Municipal Elections Act, 1996;
- (ii) from Mr. A.L.W. D'Silva, Fasken, Campbell, Godfrey, Barristers and Solicitors (January 2, 1998) on behalf of Ms. E. Montgomery, who is requesting a recount, seeking permission to make oral submissions on Ms. Montgomery's behalf;
- (iii) from Mr. A.L.W. D'Silva, Fasken, Campbell, Godfrey, Barristers and Solicitors (January 13, 1998) advising that his client, Ms. E. Montgomery, is proceeding with her recount application in the Ontario Court (General Division); and

- (iv) from Mr. A.L.W. D'Silva, Fasken, Campbell Godfrey, Barristers and Solicitors (January 30, 1998) advising that the Ontario Court (General Division) has rendered a decision with respect to Edith Montgomery's recount application before the Court; that in light of the appeal that has been launched with respect to the decision of the Court, Ms. Montgomery will proceed with her request for a recount to City Council; and enclosing a copy of the written submissions of Ms. Montgomery for the Court proceedings.

Upon the question of the adoption of the foregoing confidential report, without amendment, Mayor Lastman, in accordance with subsections 55(8) and (9) of the Municipal Act, reported that the following motion had been moved in Committee of the Whole:

Moved by Councillor Berardinetti:

"That Council adopt the following recommendations:

'It is recommended that:

- (1) the confidential report dated February 2, 1998, from the Lead Solicitor, entitled "Appeal of the Court Decision Respecting the Application of Edith Montgomery for a Recount under s.58 of the Municipal Elections Act (the 'Act')", embodying the following recommendation, be adopted:

"It is recommended that I be authorized to appeal on behalf of the City of Toronto, the decision of the Court dated January 26, 1998, ordering a recount by the City Clerk of ballots cast in Ward 18 (Scarborough Malvern) to the Court of Appeal for Ontario, and that all steps taken by the Lead Solicitor to protect the legal interests of the City of Toronto be confirmed."; and

- (2) the Lead Solicitor be requested to expedite the appeal process.' "

Mayor Lastman, having regard to the previous decision of Council (see Minute No. 75), brought forward, for consideration with the foregoing confidential report, the following motion:

Moved by Councillor Walker:

"That Council adopt the following recommendations:

'It is recommended that City Council:

- (1) approve the recount of votes cast in the election of Councillor for Scarborough-Malvern, on November 10, 1997, and that such recount

be by means of the same electronic or mechanical counting device or machine used at the material time; and

- (2) request the Provincial government to amend the Municipal Elections Act to provide for specific procedures for automated voting.’ ”

At this point in the proceedings, Mayor Lastman called upon additional motions in respect to this matter.

Councillor Silva moved that Council adopt the following recommendation:

“It is recommended that the City Clerk be requested to submit a report directly to Council with respect to the election proceedings in the Davenport Ward, and all candidates be provided with a copy of such report.”

Upon the question of the adoption of the foregoing motion by Councillor Walker, the vote was taken as follows:

Yeas: Councillors: Bossons, Bussin, Davis, Faubert, Flint, Johnston, Jones, Miller, Minnan-Wong, Moscoe, Prue, Shaw, Silva, Walker - 14.

Nays: Mayor: Lastman.
Councillors: Altobello, Ashton, Berardinetti, Berger, Brown, Chong, Disero, Fotinos, Gardner, Holyday, Jakobek, Kelly, King, Korwin-Kuczynski, Lindsay Luby, McConnell, Moeser, Nunziata, O'Brien, Ootes, Pantalone, Rae, Saundercook, Shiner, Sinclair - 26.

Decided in the negative by a majority of 12.

Upon the question of the adoption of the foregoing motion by Councillor Berardinetti, the vote was taken as follows:

Yeas: Mayor: Lastman.
Councillors: Altobello, Ashton, Berardinetti, Berger, Brown, Chong, Davis, Disero, Fotinos, Gardner, Giansante, Holyday, Jakobek, Kelly, King, Korwin-Kuczynski, Lindsay Luby, Li Preti, McConnell, Moeser, Nunziata, O'Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Shiner, Sinclair - 30.

Nays: Councillors: Bossons, Bussin, Faubert, Flint, Johnston, Jones, Miller, Minnan-Wong, Moscoe, Shaw, Silva, Walker - 12.

Decided in the affirmative by a majority of 18.

Upon the question of the adoption of the foregoing motion by Councillor Silva, it was carried.

In summary, Council adopted the following recommendations:

“It is recommended that:

- (1) the confidential report dated February 2, 1998, from the Lead Solicitor, entitled ‘Appeal of the Court Decision Respecting the Application of Edith Montgomery for a Recount under s.58 of the Municipal Elections Act (the “Act”)', embodying the following recommendation, be adopted:

‘It is recommended that I be authorized to appeal on behalf of the City of Toronto, the decision of the Court dated January 26, 1998, ordering a recount by the City Clerk of ballots cast in Ward 18 (Scarborough Malvern) to the Court of Appeal for Ontario, and that all steps taken by the Lead Solicitor to protect the legal interests of the City of Toronto be confirmed.’;

- (2) the Lead Solicitor be requested to expedite the appeal process; and
- (3) the City Clerk be requested to submit a report directly to Council with respect to the election for the office of Councillor in the Davenport Ward, and provide a copy of the report to all candidates.”

79 Councillor Berger, seconded by Councillor Li Preti, moved that the absence of Councillors Duguid, Feldman, Kinahan, Mihevc and Tzekas be excused from this Special meeting of Council, which was carried.

80 Councillor King, seconded by Councillor Flint, moved that leave be granted to introduce:

“Bill No. 20 To confirm the proceedings of Council at its Special Meeting held on the 2nd day of February, 1998.”,

which was carried.

Upon the question, “Shall this Bill, prepared for this Special meeting of Council, be passed and hereby declared as a By-law?”, as follows:

“By-law No. 20-1998 To confirm the proceedings of Council at its Special Meeting held on the 2nd day of February, 1998.”,

the vote upon which was taken as follows:

Yeas: Mayor: Lastman.
Councillors: Altobello, Ashton, Berardinetti, Berger, Bossons, Brown, Bussin, Chong, Davis, Faubert, Fotinos, Gardner, Giansante, Holyday, Jakobek, Johnston, Jones, Kelly, King, Korwin-Kuczynski, Lindsay Luby, Li Preti, McConnell, Miller, Minnan-Wong, Moeser, Nunziata, O'Brien, Ootes, Pantalone, Prue, Rae, Saundercook, Shaw, Shiner, Sinclair - 37.

Nays: Councillors: Flint, Moscoe, Silva Walker - 4.

Decided in the affirmative by a majority of 33.

Council adjourned at 5:24 p.m.

MEL LASTMAN,
Mayor

NOVINA WONG,
City Clerk

(Joint report dated January 28, 1998, from the City Clerk and the Lead Solicitor, entitled "Requests for Election Recounts")

Purpose:

To review five requests for election recounts and identify Council's options.

Funding Sources:

Specific funds have not been budgeted for the purpose of conducting recounts. If Council resolves to require one or more recounts the estimated cost will have to be provided from the corporate contingency account.

Recommendations:

It is recommended that:

- (1) Council pass a resolution directing the City Clerk to conduct a recount of the votes for the Toronto High Park - Ward 19 - Liquor Plebiscite, Question 2, "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?";
- (2) Council consider appointing equal numbers of scrutineers on the "yes" and "no" sides for any recount involving a question on the ballot; and
- (3) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

City Council at its meeting on January 2, 6, 8 and 9, 1998 adopted a report dated January 5, 1998 from the City Clerk and directed that a special meeting of Council be held on Monday, February 2, 1998, at 2:00 p.m., in the Council Chamber, Metro Hall, for the purpose of considering all applications for recounts which are filed with the Clerk by that time. Council directed the Clerk to provide notice of the special meeting to all candidates for the particular office. In addition, Council adopted a joint report dated January 7, 1998, from the Functional Lead, Legal Department, and the Implementation Task Force Member with respect to a Court application by Ms. Edith Montgomery.

The following is a summary of the requests for recounts received by the City Clerk before the date of this report:

Requests for Recounts:

A. Office of Councillor

(1) Councillor - Scarborough Malvern

By letter dated November 21, 1997, Edith Montgomery, then Councillor for Ward 14 in the City of Scarborough, filed a request for a recount of the vote for the office of Councillor - Scarborough Malvern.

The official results declared by the district returning officer were as follows:

Cho, Raymond	11,190
Balkissoon, Bas	10,745
Montgomery, Edith	10,659
Mackay, Jim	2,621
Singh, Terry	1,812
Chelliah, Sinna	1,165
Singh, Jasmine	871
Lewis, Arianna	666
Singh, George B.	339

The difference in votes between Edith Montgomery and the second-place finisher is 86.

This matter was also the subject of a Court application by Ms. Montgomery. The Court heard the arguments of both sides on January 22, 1998 and January 23, 1998. The decision of the Court, released on January 27, 1998, directs a recount "by means of the same electronic or mechanical counting device or machine" used in the original count. Under the legislation, the recount would have to be conducted by February 6, 1998. A separate report will be forthcoming with respect to the Court decision.

(2) Councillor - Davenport (Toronto)

By letter dated November 14, 1997, Mr. Tony Letra filed for a recount of the vote for Councillor - Davenport.

The official results declared by the district returning officer were as follows:

Disero, Betty	10,747
Fotinos, Dennis	7,587
Maxwell, Rob	6,858
Doherty, John	5,096
Letra, Tony	4,788
Ritch, Dale	1,111
Bauer, Jennifer	1,049

The difference in votes between Mr. Tony Letra and the second-place finisher is 2,799.

(3) Councillor - Don River (Toronto)

By letter dated January 21, 1998, Mr. Peter Tabuns filed a request for a recount of the vote for Councillor - Don River.

The official results declared by the district returning officer were as follows:

Layton, Jack	15,045
McConnell, Pam	8,359
Tabuns, Peter	8,141
Wong, Soo	7,212
Papathanasakis, Spiros	6,590
Brackett, Terry	1,546
Armstrong, Mike	1,429
Forrest, Wendy	947
Tabin, Larry	939

The difference in votes between Mr. Tabuns and the second-place finisher was 218.

B. Liquor Plebiscite

(1) Liquor Plebiscite, Question 2 - High Park (Toronto)

By two letters dated December 1, 1997, the President, Preserving West End Neighbourhood (PWEN) submitted a petition and form letters from a number of eligible electors asking for a recount of ballots in the High Park - Liquor Plebiscite on the question "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?"

The number of ballots cast on this question was 10,638. The Liquor Licence Act requires 60 percent of the ballots cast in support of the "Yes" option for the plebiscite to pass. This would be 6,383 votes. The final result from the November 10, 1997 election was Yes - 6,384 and No - 4,254. The "Yes" option carried by one vote.

(2) Liquor Plebiscite, Question 2 - Davenport (Toronto)

By letters dated December 1, 1997 and December 4, 1997, Mr. Gus Koutoumanos, representative for WET Supporters in old Ward 11, filed a request for a recount of ballots in the Davenport - Liquor Plebiscite on the question "Are you in favour of the sale of spirits, beer and wine for consumption in licensed premises?"

The number of ballots cast on this question was 1,697. The Liquor Licence Act requires 60% of the ballots cast in support of the “Yes” option for the plebiscite to pass. This would be 1,019 votes. The final result from the November 10, 1997 election was Yes - 995 and No - 702. The “No” option carried by 24 votes.

Recounts Under the Municipal Elections Act:

There are four ways by which a recount may be required under the Municipal Elections Act.

- (1) A municipal clerk is required to hold a recount if two or more candidates receive the same number of votes and both, or all, cannot be elected to office or if the affirmative and negative on a question are equal. (Section 56)
- (2) Under section 57, Council may pass a resolution requiring a recount of the votes cast:
 - “(i) for all or specified candidates for an office on the Council;
 - (ii) for all or specified answers to a question submitted by the Council”.

On November 27, 1997, the Minister of Municipal Affairs and Housing filed Regulation 423/97, authorizing the Council of the new City of Toronto to pass a resolution on or before February 2, 1998 requiring a recount of votes cast in the 1997 regular election. Any recount must be held within ten days of Council’s decision.

- (3) A person who is entitled to vote in an election and has reasonable grounds for believing the election results to be in doubt may apply to the Ontario Court (General Division) for an order that the clerk hold a recount. The application, in respect of the 1997 municipal election must be commenced by February 2, 1998. (Section 58)
- (4) Under section 63, the court itself may conduct a recount (a “judicial recount”) limited to disputed ballots. Applications under this provision are limited to certified candidates, applicants under section 58 and, in the case of a municipal question, a municipal council.

In addition, under section 83, headed “Controverted Elections”, a person may apply to the Court to determine if the election or a person’s election to an office is valid, and if not, whether a by-election should be held.

Manner of Recount:

Recounts conducted by the municipal clerk are required to be conducted in the same manner as the original count, whether manually or by vote counting equipment, except where a judge who orders a recount under section 58 is of the opinion that the manner in which the original count was conducted contributed to the doubtful result. In this case the Court may order the recount be done in a different manner from the original count. A further exception to the rule that the recount be conducted in the same manner as the original count is provided under O.Reg. 101/97 whereby the

recount may be conducted by the clerk “by adding the votes from the statement of the results prepared by the deputy returning officer” if all interested persons agree.

A municipal council’s authority to require a recount is limited to requiring a recount of the votes cast. It has no jurisdiction to direct that the manner of conducting the recount be any different from the manner in which the original count was conducted even if it believes that the manner in which the original count was conducted caused the doubtful result.

Discussion:

Section 57 provides no explicit directions or criteria to assist Council in exercising its authority under it.

Council’s authority is, however, more limited than that of the Courts. Under the Act requests for recounts related to voting and vote-counting equipment must go to Court. Likewise, all questions relating to the validity of an election must go to Court.

Prior to the enactment of the present section, which came into force on December 19, 1996, the legislation provided that Council could require a recount if it considered such a course “to be in the public interest”. Although this language is no longer in the section, a municipal council is clearly elected to serve the public interest. One could reasonably infer that it is this role that the legislature had in mind in providing that Council could require a recount. Council could order a recount under this provision if it was of the view that a recount would preserve or restore public confidence in the integrity of the election result by ensuring that the ballots were counted properly and the result certain and reflective of the public will.

Although a municipal council is not expected to behave like a court in determining whether or not to require a recount, it is obligated to extend procedural fairness to candidates and their representatives, electors and other persons who may wish to make depositions, orally or in writing, on the matter before reaching its conclusions. Moreover, a municipal council should not act arbitrarily in coming to a decision. Although a council may not be required to be satisfied, based upon “relevant” evidence that the election result is in doubt, it should be persuaded, whatever the degree or sufficiency of such persuasion, that there is some basis to doubt the correctness of the result of the vote. The basis for this doubt must be in the count. Moreover, even if the doubt arises because of the count it must not arise because of the manner (e.g. manual vs. automated) in which the count was conducted because only a court may order that a recount be held in a manner different from the original count.

A close vote and a narrow margin of victory may, without more, suggest that Council should direct that a recount be held to assure the electorate that the result is certain, clear, fair and accurate.

How close is close? Once again, the legislation does not say. Interestingly, for comparison purposes, the previous Municipal Elections Act contained a mathematical formula for an automatic close vote recount.

	Maximum Difference for Automatic Recount <u>Under Old Formula</u>	<u>Actual Difference</u>
Montgomery	16	86
Letra	22	2,799
High Park Liquor	14	1
Davenport Liquor	10	24
Tabuns	36	218

Using this formula simply as a guideline, there would have been an automatic recount only in the High Park liquor question. All others would have greatly exceeded the automatic recount threshold.

In summary, to require a recount under section 57 of the Act, Council should be persuaded that the result is in doubt because of defects or mistakes in the count which are not caused by the manner in which the count was made. Moreover, Council should act in a manner which is procedurally fair in coming to this conclusion.

Estimated Costs:

Although costs of a recount are not a relevant factor in deciding whether or not a recount should be required, in the event that Council decides to order a recount, the costs associated with such recounts are estimated to be as follows:

Recount costs include rental of facilities, printing of forms and seals, moving of ballots to and from the location, security for the ballots and payment of personnel to support the recount. Costs would be reduced if Council or the affected candidates, as the case may be, authorize the conduct of the recounts simply by adding the votes from the deputy returning officers' statements.

(1) Councillor - Scarborough Malvern

Three central vote counters would be used. The estimated cost would be \$14,900.00.

(2) Councillor - Davenport (Toronto)

Forty-six recount stations would be used. Each station would be staffed with a Deputy Returning Officer and a Poll Clerk. The estimated cost would be \$16,300.00.

(3) Councillor - Don River (Toronto)

Seventy-four recount stations would be used. Each station would be staffed by a Deputy Returning Officer and a Poll Clerk. The estimated cost would be \$23,250.00.

(4) High Park (Toronto) - Liquor Plebiscite, Question 2

Thirty-one recount stations would be used. Each station would be staffed with a Deputy Returning Officer and a Poll Clerk. The estimated cost would be \$7,850.00.

(5) Davenport (Toronto) - Liquor Plebiscite, Question 2

Six recount stations would be used. Each station would be staffed with a Deputy Returning Officer and a Poll Clerk. The estimated cost would be \$3,950.00.

Scrutineers:

Every candidate for the office being recounted is entitled to attend the recount. Each candidate is also entitled to a lawyer and also to one scrutineer for each recount station established by the clerk.

If Council approves a recount of a liquor question, it will need to determine whether it will appoint scrutineers. Only scrutineers appointed by the municipality may be present at any recount of a liquor question. If appointed, equal numbers of scrutineers are to be appointed for both the "Yes" and "No" sides. One scrutineer for each of the "Yes" and "No" sides may be present for each recount station.

In the High Park liquor plebiscite each side is entitled to up to 31 scrutineers appointed by Council.

In the Davenport liquor plebiscite each side is entitled to up to 6 scrutineers appointed by Council.

Conclusion:

This report outlines the legislative provisions relating to applications for Council-directed recounts. The legislation contains no criteria in this regard. Council should consider exercising its discretion where the result of the election is in doubt due to possible defects in the counting of votes. The legislation specifies, however, that any requests for recounts due to irregularities and problems relating to voting and vote-counting equipment must be made to the Court. Council, in coming to its decision, may consider matters such as the closeness of the vote and the need for public confidence in the outcome of the vote. We are recommending that Council direct a recount where there is a one-vote difference out of 10,638 votes.

Contact Names:

Denis Kelly, Interim Lead, Elections and Legislative Services, 392-8019;
Jack Horsley, Solicitor, 392-8736; and
George Monteith, Solicitor, 392-8062.