



STAFF REPORT INFORMATION ONLY

Request for Reimbursement of Legal Expenses Incurred by Councillor Mammoliti in Relation to Compliance Audit Application

Date:	September 22, 2008
To:	City Council
From:	City Solicitor
Wards:	all
Reference Number:	

SUMMARY

City Council has invited members of Council who have incurred legal expenses as a result of compliance audits to submit an application for reimbursement of these legal expenses. City Council has also directed me to report on the reasonableness of the expenses. This report relates to an application made by Councillor Mammoliti.

The report also refers to advice set out in a report dated November 9, 2007 from me to City Council. That report explained that courts have established that municipalities lack jurisdiction to reimburse councillors for legal expenses incurred outside of the office of councillor such as expenses incurred as a candidate for municipal council.

FINANCIAL IMPACT

There are no direct financial impacts of this report.

DECISION HISTORY

At its meeting of May 26 and 27, 2008 City Council adopted a motion to invite Members of Council who incurred legal and related expenses as a result of campaign audits to submit applications for reimbursement to the Executive Committee for recommendations to Council. It also adopted a motion to instruct the City Solicitor review the legal bills associated with these applications and to report to the Executive Committee only on the reasonableness of the expenses.

The City Solicitor's report dated November 9, 2007 can be found at:
<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/ex13.1e.pdf>

Executive Committee at its meeting of September 2, 2008 considered Councillor Mammoliti's request for reimbursement and recommended that payment of the legal expenses incurred by Council Mammoliti in relation to a Compliance Audit Application be approved in principle. Executive Committee further requested that I report to Council on the reasonableness of the legal fees incurred.

ISSUE BACKGROUND

City Council has directed me to report on the applications for reimbursement of legal expenses by members of Council. This report relates to an application by Councillor Mammoliti. The councillor has incurred legal expenses in relation to an application for a compliance audit of his election campaign finances. The application for an audit was rejected by the Compliance Audit Committee.

COMMENTS

I have been directed to comment on the reasonableness of the councillor's legal expenses. The councillor has submitted invoices from the law firm of Cassels Brock and Approved Appraisal Services, Real Estate Appraisers and Consultants.

The Cassels Brock invoice is for \$36,593.87 including disbursements and GST.

The Approved Appraisal Services invoice is for \$17,346.00. This amount includes GST and interest. If Council approves the reimbursement, the interest in the amount of \$1,770.00 should not be reimbursed and the amount of GST recalculated on the appraisal amount only for a total of \$15,487.50.

The Indemnification Policy for Members of Council approved on July 15, 16 and 17, 2008 requires that the City Solicitor's report shall include an assessment of the reasonableness of the lawyer's account, having regard to the factors ordinarily considered by a court, including, but not limited to, the experience, skill and competence of the lawyer, the complexity of the issue, the importance of the matter and the time expended by the lawyer.

It is difficult to comment on some of these matters nonetheless, it appears that Cassels Brock's invoice is reasonable and the rates charged are competitive in the Toronto market. Councillor Mammoliti's lawyer advised me that the appraisal reports prepared by Approved Appraisal Services were essential to the legal submissions before the Compliance Audit Committee. The appraisal services charged also appear to be within the range of what is typically charged for appraisal reports. Therefore, except for the interested charged, the invoice appears to be reasonable.

While I have been directed to comment on the reasonableness of the invoices, it is incumbent upon me to remind Council of the law with respect to reimbursement for these sorts of expenses. The courts have held that conduct as a candidate predates the term of office and is not encompassed by the performance of the office of councillor. They have also held that a municipal council lacks authority to reimburse a member of council for legal expenses incurred in relation to activities such as responding to a compliance audit application or dealing with any other election-related matter as these are outside of the office of councillor. Should Council choose to reimburse the councillor, its actions could be subject to a legal challenge on the basis of lack of jurisdiction and would be vulnerable. If a court found the reimbursement to be illegal, it could order repayment by the councillor. If this order was not made specifically but the grant was found to be illegal it would be incumbent upon the City to seek reimbursement of the grant.

Although the Executive Committee voted to reimburse Councillor Bussin for legal expenses incurred for court proceedings relating to allegations that she violated the campaign finance provisions of the Municipal Elections Act, 2006, the circumstances were unusual for several reasons including that the proceedings against her were commenced in a manner contrary to law.

CONTACT

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SIGNATURE

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