



STAFF REPORT INFORMATION ONLY

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

Date:	June 12, 2008
To:	Executive Committee
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 Heaps.

The report 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>

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 Heaps. The councillor has incurred legal expenses in relation to an application for a compliance audit of his election campaign finances and in relation to an appeal of the decision of the Compliance Audit Committee's decision on that application.

COMMENTS

I have been directed to comment on the reasonableness of the councillor's legal expenses. The councillor has submitted invoices from two law firms: Cassels Brock and Iler Campbell. I note that the invoice from Iler Campbell covers a time period ending in January, 2008, and the Cassels Brock invoice covers an earlier time period. Although Iler Campbell acted for the councillor in the appeal of the Compliance Audit Committee decision, the bill does not cover preparation for or attendance at court in this matter. The appeal was heard in April of 2008. I would anticipate that further invoices will be forthcoming.

The Cassels Brock invoice is for \$29,019.65. The Indemnification Policy established in 2005, requires that the amount of the reimbursement keep in mind the 2005 Cost Grid attached to the policy. The amounts would need to be recalculated to keep in mind the cost grid and to reflect current costs as the invoice amount exceeds the Policy.

The Iler Campbell invoice is for \$319.00. The hourly rates are within the range set out in the indemnification policy.

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.

It should also be noted that Council's indemnification policy for members of Council only permits indemnification once proceedings have concluded in favour of the council member. The Municipal Conflict of Interest Act contains a similar provision permitting

reimbursement of a councillor for legal fees only after the councillor has been found not to have contravened that legislation. As of the date of this report proceedings regarding the councillor's campaign finances have not concluded.

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

Anna Kinastowski, City Solicitor