

City Clerk's Office

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Ref.: 10-EX41.16**

April 7, 2010

**EXECUTIVE COMMITTEE:****Subject: Executive Committee Item 41.16  
Establishing an Office of Independent Counsel for Council and Members of  
Council**

City Council on March 31 and April 1, 2010, referred this Item back to the Executive Committee for further consideration when the Committee considers candidate legal expenses and other related matters.

for City Clerk

M. Toft/sb

Attachment

c. John Wright

**Executive Committee**

EX41.16		Referred		
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**Establishing an Office of Independent Counsel for Council and**

## **Members of Council**

### **City Council Decision**

City Council on March 31 and April 1, 2010, referred this Item back to the Executive Committee for further consideration when the Committee considers candidate legal expenses and other related matters.

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### **Committee Recommendations**

The Executive Committee recommends that:

1. City Council establish the Office of Independent Counsel.
2. City Council direct that the Terms of Reference for this office be:
  - a. To represent the interests of Members of Council both collectively and individually in matters related to their function as elected representatives and members of Toronto Council.
  - b. To advocate for the interests of Council and Members of council in matters related to their rights as elected representatives in dealing with, but not limited to: the public, the media, Agencies Boards and Commissions, external organizations, other orders of government and their agencies and the City of Toronto.
  - c. To report directly to Council.
  - d. To receive support as required from the City Manager in consultation with the Mayor and the Clerk.
3. City Council direct that the Initial budget for the establishment of this office be taken from the current budget of the City Solicitor and various legal reserves with a view to establishing a discrete budget for this function in the 2012 budget.
4. City Council direct that this office be up and running no later than May of 2010 and if necessary, until such time as it is fully functional, the City Manager in consultation with the Mayor provide for outside legal representation and temporary office assistance.

### **Committee Decision Advice and Other Information**

The Executive Committee requested the Mayor, in consultation with the City Manager, City Solicitor and Treasurer to report directly to Council on the anticipated staffing and budget required to support the Office of Independent Counsel.

### **Origin**

(March 1, 2010) Letter from Councillor Moscoe and Councillor FLetcher

## **Summary**

In recognizing the necessity to protect the public interest Council has established a number of accountability positions. The Auditor General holds Council and the administration accountable for stewardship of public funds and value for money in public operations. We have an Integrity Commissioner to ensure adherence to Codes of Conduct and ethical behaviour.

The Ombudsman oversees administrative practices to ensure that the public are treated fairly by the civil service. The Lobbyist Registrar watches over the integrity of the City's decision-making through public disclosure of lobbying activities and lobbyists' conduct. We also employ a Fairness Commissioner to ensure that business dealings with the city are open and transparent.

The one missing component in all of this protection is that there is nobody to advocate for Council and members of Council.

Over the past term of council elected representatives are increasingly coming under attack. Politicians are considered fair game and are frequently being used for target practice by both the media and disgruntled individuals. Any individual, who has \$300, can for whatever reason, launch a lawsuit and push a member of Council towards financial ruin. The City Legal Department has made it quite clear that they represent the City of Toronto and not its elected representatives.

Because there are a number of emergent issues it is important that we act quickly on this matter. To do so will require access to existing funding. For that reason we should use both legal reserves and existing funds within the current legal department's budget. The presence of Independent Legal Counsel will take pressure off the department in that much of the work that is presently being done for Council will be taken up by the New Office of Independent Counsel. For example, this year the Solicitor spent some \$250,000 to commission independent legal opinion on MFIPPA and substantial additional legal fees seeking a court determination of Council and councillor's rights under MFIPPA. This kind of work will now be undertaken by Independent Legal Counsel.

## **Background Information (Committee)**

Establishing an Office of Independent Solicitor for Council and Members of Council  
<http://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-27982.pdf>

## **Background Information (City Council)**

(March 24, 2010) supplementary report from Mayor David Miller on the proposed Office of Independent Counsel (EX41.16a)  
<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-28771.pdf>

## **Communications (City Council)**

(March 29, 2010) E-mail from John Wright (CC.New.EX41.16.1)

## **Declared Interests (Committee)**

The following member(s) declared an interest:

Councillor Giorgio Mammoliti - In that he was recently named in a lawsuit.

**Declared Interests (City Council)**

The following member(s) declared an interest:

Councillor A.A. Heaps - as he has incurred legal expenses in the past.

Councillor Giorgio Mammoliti - as he has incurred legal expenses in the past.



## Member Motion

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### Executive Committee

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#### Notice of Motion

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### Establishing an Office of Independent Solicitor for Council and Members of Council

#### Recommendations

Councillor Moscoe, seconded by Councillor Fletcher, recommends that:

1. Toronto Council establish the office of Independent Council.
2. That the terms of reference for this office be:
  - a) To represent the interests of Members of Council both collectively and individually in matters related to their function as elected representatives and members of Toronto Council.
  - b) To advocate for the interests of Council and Members of council in matters related to their rights as elected representatives in dealing with, but not limited to: the public, the media, agencies boards and commissions, external organizations, other orders of government and their agencies and the City of Toronto.
  - c) To report directly to Council.
  - d) To receive support as required from the City Manager in consultation with the Mayor and the Clerk
3. That the Mayor in consultation with the City Manager, City Solicitor and Treasurer report directly to Council on the anticipated staffing and budget required to support the office of independent Council.
4. The Initial budget for the establishment of this office be taken from the current budget of the City Solicitor and various legal reserves with a view to establishing a discrete budget for this function in the 2012 budget.
5. That this office be up and running no later than May of 2010 and if necessary, until such time as it is fully functional, the City Manager in consultation with the Mayor provide for outside legal representation and temporary office assistance.

## Summary

In recognizing the necessity to protect the public interest Council has established a number of accountability positions. The **Auditor General** holds Council and the administration accountable for stewardship of public funds and value for money in public operations. We have an **Integrity Commissioner** to ensure adherence to Codes of Conduct and ethical behaviour. The **Ombudsman** oversees administrative practices to ensure that the public are treated fairly by the civil service. The Lobbyist Registrar watches over the integrity of the City's decision-making through public disclosure of lobbying activities and lobbyists' conduct. We also employ a **Fairness Commissioner** to ensure that business dealings with the city are open and transparent.

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