



STAFF REPORT ACTION REQUIRED

Council direction regarding payment of legal invoice related to judicial review

Date:	December 4, 2014
To:	City Council
From:	City Clerk and City Solicitor
Wards:	All Wards
Reference Number:	

SUMMARY

The City Clerk has received a request from a Councillor to pay a legal invoice on expenses related to a judicial review of a Code of Conduct investigation. The Councillor incurred these costs in good faith. Under the current Constituency Services and Office Budget Policy, legal fees related to judicial reviews related to Code of Conduct investigations are eligible expenses. Automatic payment is up to a limit of \$20,000. As the submitted invoice brings the legal costs related to this judicial application over the limit, the City Clerk and the City Solicitor are seeking Council direction on payment of the submitted invoice.

RECOMMENDATIONS

The City Clerk and City Solicitor seek City Council's consideration and direction on whether the submitted legal invoice should be paid, and whether future legal invoices related to the same matter should be paid.

Financial Impact

To date, the City Clerk's Office has received and paid two invoices related to this judicial review application, totalling \$14,831.25, inclusive of HST.

The current invoice submitted by the Councillor totals \$33,644.87, inclusive of HST. This would bring the total legal expenses for this application to \$48,476.12, or \$28,476.12 over the \$20,000 limit.

Any payment of the current invoice will be funded from the 2014 Council General Expense Budget.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

Legal fees related to Code of Conduct complaints and investigations were included in various Integrity Commissioner reports related to the Complaint Protocol for Code of Conduct for members of Council.

Item CC2.5, titled "Amendments to the Code of Conduct Complaint Protocol under the Members Code of Conduct" was adopted and amended by City Council at its meeting on February 5, 6, 7 and 8, 2007.

<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc2.5.pdf>

In considering the report, City Council adopted the following relevant recommendations:

1. City Council authorize the amendment of the Code of Conduct Complaint Protocol to provide that claims for reimbursement by members of Council be processed under the "Indemnification Policy for Members of Council", subject to the following provisions applicable to Code of Conduct complaints:
 - a. An increase in the limit for an automatic claim for legal and associated costs from \$5,000 to \$20,000 in investigations where the Integrity Commissioner exercises the authority under the City of Toronto Act, 2006, to proceed under the powers conferred by the Public Inquiries Act or when a Member of Council finds it necessary to apply for judicial review
.....
 - d. That Members of Council, their staff, and local boards (restricted definition) be eligible for legal costs up to \$20,000, and also be eligible to claim for reimbursement of additional legal costs of a successful application for judicial review under the Judicial Review Procedure Act as well as those of intervention in a judicial review application arising from the actions of City Council or the Integrity Commissioner

The Complaint Protocol was further amended and adopted by Council at its meeting held on July 16, 17, 18 and 19, 2007 when it considered item CC11.8 titled "*Report on Code of Conduct Complaint Protocol*".

<http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc11.8.pdf>

At its meeting on June 11, 12, 13 and 14, City Council adopted the report EX42.2, "Amendment to Legal Fees Section in Constituency Services and Office Budget Policy and Authority to Pay a Legal Invoice" and amended the legal fees section of the Constituency Services and Office Budget Policy so that all legal fees are paid out of the Council General Expense Budget and legal fees related to investigations by the four Accountability Officers mandated under the *City of Toronto Act, 2006*, are eligible expenses.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX42.2>

COMMENTS

Eligible Legal Fees in the Constituency Services and Office Budget Policy

The Constituency Services and Office Budget Policy outlines the following relevant policies with regard to eligible legal fees for payment from the Council General Expense Budget:

- Legal fees related to Code of Conduct investigations:
 - if the Integrity Commissioner finds that the Councillor has inadvertently violated the Code or violated the Code in good faith; or
 - if the Integrity Commissioner has found the Councillor violating the Code and City Council received the Integrity Commissioner's report for information.
- Fees related to informal complaints (part A) and formal complaints (part B) of the Code of Conduct Complaint Protocol for Members of Council.
- Fees related to judicial reviews related to Code of Conduct investigations.
- Legal fees related to complaints or investigations handled by the Lobbyist Registrar, Ombudsman or Auditor General under Part V of the *City of Toronto Act, 2006*.

The judicial review

As a result of a complaint from an individual, the Integrity Commissioner conducted an investigation and in a report dated June 24, 2014, she recommended that City Council find that Councillor Mammoliti violated the Code of Conduct and that City Council suspend the remuneration paid to Councillor Mammoliti in respect of his services as a member of Council for a period of 90 days, commencing on September 1, 2014. City Council considered the Integrity Commissioner's report at its meeting of July 8, 2014 and adopted the Integrity Commissioner's recommendation together with an additional recommendation.

On August 5, 2014, the Integrity Commissioner and the City were served with Councillor Mammoliti's Notice of Application for Judicial Review. The Application seeks to quash the decision of the Integrity Commissioner, quash the decision of City Council to suspend the Councillor's remuneration and, an order for an interim stay restraining the City from suspending the Councillor's remuneration. The Integrity Commissioner and the City are separately represented by outside counsel.

On August 19, 2014, Councillor Mammoliti brought an urgent motion for an interim stay of the suspension of his remuneration to be heard on August 28, 2014. This was a date prior to the commencement of the suspension of remuneration.

Cross-examinations on affidavits of Councillor Mammoliti and the City Solicitor were held on August 22, 2014.

On August 25, 2014, Councillor Mammoliti withdrew his motion for an interim stay of the suspension of his remuneration. The Judicial Review Application continues on its merits.

As of November 5, 2014, no further action has been taken on the Application. If the Application continues, further significant expenses will be incurred by the Councillor, the Integrity Commissioner and the City.

The legal invoice

As set out in the Financial Impact section, to date, the City Clerk's Office has received and paid two invoices related to this judicial review application, totalling \$14,831.25, inclusive of HST.

The current invoice submitted by the Councillor for payment is \$33,644.87, inclusive of HST. This would bring the total legal expenses for this application to \$48,476.12, or \$28,476.12 over the \$20,000 automatic payment amount set in the Complaint Protocol for Conduct of Conduct for Members of Council.

The City Clerk and the City Solicitor have reviewed the submitted fees and the City Solicitor has deemed the fees as reasonable.

As the Complaint Protocol states that automatic payment of legal fees is restricted to a maximum of \$20,000, the City Clerk and the City Solicitor are therefore seeking Council direction on this matter.

Council Direction

Council needs to decide whether to pay all, part of, or none of the submitted invoice. In addition, City Council should provide direction concerning future invoices related to the same judicial review.

CONTACT

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SIGNATURE

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