



**STAFF REPORT  
ACTION REQUIRED**

**Proposal to Establish an Office of Independent Counsel  
and the Use of Grant Making Powers for Members' Legal  
Expenses**

<b>Date:</b>	June 1, 2010
<b>To:</b>	Executive Committee
<b>From:</b>	City Manager
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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This report responds to Executive Committee’s motion with respect to establishing an Office of Independent Legal Counsel. The City Manager has reviewed the proposal and does not recommend establishing a separate office for this purpose. Processes and policies are already in place to enable City Council and Members to seek external legal advice on all matters related to City business.

This report also responds to Executive Committee's motion with regard to developing a Policy for Council to use its grant making powers to reimburse legal expenses of Members in particular circumstances.

**RECOMMENDATIONS**

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The City Manager recommends that this report be received for information.

**Financial Impact**

There are no financial implications as a result of this report.

**DECISION HISTORY**

At its meeting on March 1, 2010, the Executive Committee approved a Notice of Motion with respect to establishing an Office of Independent Counsel, for consideration by City

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Council at its meeting on March 31 and April 1, 2010. The full motion is attached as Appendix A.

City Council at its meeting on March 31 and April 1, 2010, referred this item back to Executive Committee for further consideration at the same meeting the committee considers reports respecting candidate legal expenses and other related matters.

<http://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-27982.pdf>  
<http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-28771.pdf>

The Executive Committee at its meeting on March 1, 2010 in considering the report, *Feasibility of Establishing a Candidate Insurance Fund* requested the City Manager, in consultation with outside legal counsel, consider in his report, a policy as follows:

"In recognition of the fundamental role that the protection of democratic elections has to this City Government, Council authorize the use of its grant making powers to protect Members of Council from the cost of legal fees in circumstances where there are reasonable grounds to believe that legal proceedings are occurring by virtue of the Member's election and/or, because of inconsistencies and loopholes in relevant laws, regardless of the date the matter being litigated occurred."

## **COMMENTS**

This report responds to the motion to establish an Office of Independent Counsel and the motion related to a Policy to use the City's grant making power for Members' legal expenses.

### **1. Current Legal Coverage for City Council and Members of City Council**

#### **(i) Legal Advice**

The City Solicitor provides legal advice to City Council on all matters pertaining to City business. City Council may request external legal counsel on any matter as it deems appropriate.

The City Solicitor provides legal advice to individual Members on matters pertaining to City business including ward related matters. The Integrity Commissioner also provides advice, although not specifically legal advice, to Members on a range of matters including conflict of interest issues.

A Member may request the retention of external legal counsel to provide a second opinion on any issue or to advance a specific position in a legal proceeding. The Expense Policy requires Council approval to retain external legal counsel for this purpose.

## **(ii) Legal Protection**

Indemnification of legal expenses in proceedings against City Council extends to all activities of the Council in its official capacity. Indemnification of legal expenses is available where the proceedings relate to activities of the Member while carrying out his or her official duties, including ward related matters. Protection extends to civil suits, and criminal and regulatory offences.

Current coverage includes:

- legal costs and damages if sued;
- damages or costs where lawsuits are not covered by insurance if Council determines the proceeding resulted from acts or omissions in his or her capacity as a Member of Council; and
- reimbursement of legal expenses in criminal or regulatory offences if acquitted or charges are dismissed or withdrawn.

The Indemnification Policy allows for the advancement of funds to cover legal costs at the beginning of, or during, any civil, criminal or regulatory proceeding, up to a maximum of \$25,000 on approval of City Council.

## **(iii) Other Coverage**

The Expense Policy allows for payment of legal fees up to a maximum of \$500 for an initial consultation on a Code of Conduct complaint.

The Code of Conduct Complaint Protocol (The Code) provides for reimbursement of legal expenses, processed under the Indemnification Policy, up to a maximum of \$5000. In cases where the Integrity Commissioner exercises the powers of a commission under the *Public Inquiries Act* or in cases involving judicial review, the Code provides for reimbursement of legal expenses up to a maximum of \$20,000. The Code also enables Council to consider higher limits for reimbursement of legal expenses on a case-by-case basis. Reimbursement of legal costs are contingent on the Integrity Commissioner concluding that there has been no contravention of the Code by the Member or where Council receives the Integrity Commissioner's report and determines that it will take no action. The Code provides that the Integrity Commissioner may recommend advance funding under specific circumstances.

Council may reimburse legal expenses of Members on a case-by-case basis to address matters of reputational harm related to legal action for defamation.

## **2. Proposal to Establish an Office of Independent Counsel**

There are very few legal matters involving City Council and individual Members that are not currently covered. The current exceptions to legal coverage involving Members are

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appropriate as they relate to personal matters that are outside their duties as a Member of Council, criminal or regulatory matters where the Member has been found guilty, and conflict of interest proceedings where there has been a finding of a contravention of the *Municipal Conflict of Interest Act*. *The Municipal Conflict of Interest Act* prohibits the reimbursement of legal costs where there has been a finding that the Act has been contravened.

The City Manager does not recommend establishing a separate legal office for City Council and Members of City Council as Council already has authority to retain external legal counsel on behalf of the Council or an individual Member on any matter related to City business. A separate office would be a duplication of the role of the City Solicitor and existing authorities.

Implementation of an "independent counsel" model would also be hindered by Law Society of Upper Canada rules. In representing the interests of Members of Council an "independent counsel" would be required by the Law Society of Upper Canada to avoid a conflict. An "independent counsel" would, therefore, be precluded from advising Members on opposing sides of an issue. For example an "independent counsel" could not advise one Member on ways to hasten an approval process for a project and another Member on the potential legally based objections to the project. The City Solicitor is similarly constrained.

To ensure that current legal coverage of Members is clear, a summary guide will be distributed to all Members at the beginning of the next term of Council.

### **3. The Use of Grant-Making Power for Members' Legal Expenses**

The City Manager was requested to consider a policy using the power contained in section 83 of the *City of Toronto Act, 2006* (COTA) to allow for the reimbursement of legal expenses in circumstances where it appears the Member is being targeted by virtue of his or her elected position.

The grant making power provided for in COTA is very broad allowing Council to make grants "to any person, group or body...for any purpose that Council considers to be in the interests of the City." However, the ability to use the grant making power for this purpose is the subject of current litigation. Outside legal counsel is defending the actions of the City by relying on the City's ability to use its grant making power. A decision is not expected for a few months.

The Court's decision needs to be considered in the policy development process. The City Manager will begin developing a Policy to guide Council's decision making, with clear criteria that can be applied on a case-by-case basis. The City Manager will report back on the details of the Policy once the court outcome is known.

## **CONTACT**

Joseph P. Pennachetti  
City Manager  
416-392-3551  
[jpennac@toronto.ca](mailto:jpennac@toronto.ca)

## **SIGNATURE**

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City Manager

## **ATTACHMENTS**

Appendix A: Directions Related to the Proposal to Establish an Office of Independent Counsel