



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

Divisional Court Decision on Payment of Legal Expenses for Compliance Audits and Defamation Actions

Date:	August 11, 2010
To:	Executive Committee
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report contains advice or communications that are subject to solicitor-client privilege and concerns litigation affecting the City.
Reference Number:	

SUMMARY

The purpose of this report is to advise the Executive Committee of the Divisional Court decision, dated July 19, 2010, in respect of various resolutions of Council for the payment of legal expenses for compliance audits and defamation actions and to submit a communication from external counsel seeking instructions as to further steps in the matter.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the recommendation of external counsel as contained in Appendix 1 to confidential Attachment 2.
2. Council authorize the release of the confidential recommendation upon adoption by Council.

FINANCIAL IMPACT

At the time of this report, financial impacts were unavailable from outside counsel.

DECISION HISTORY

At its meeting of September 24 and 25, 2008, City Council decided to reimburse Councillors Heaps and Mammoliti for legal expenses incurred in relation to compliance audit applications brought against them. Pursuant to By-law No. 1043-2008 the Councillors were paid \$64,757.70 and \$74,402.00 respectively.

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-09-24-cc24-dd.pdf> (Items EX23.4 and EX23.5 respectively)

At its meeting of December, 2009, City Council approved the payment of legal expenses incurred by Councillor Heaps in defending a defamation action. By-law No. 1262-2009 authorized the payment of \$36,000.00 to Councillor Heaps, but Councillor Heaps refused to accept payment.

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-11-30-cc42-dd.htm> (Item MM42.3)

On August 2, 2009, City Council decided to compensate Councillor Bussin for legal expenses incurred in relation to pursuing a defamation action. Pursuant to By-law No. 749-2009 Councillor Bussin received \$7,700.96.

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-08-05-cc38-dd.htm> (Item EX33.6)

ISSUE BACKGROUND

An application for judicial review of City Council's jurisdiction to make the four payments described above was brought to the Divisional Court and heard on May 17, 2010. A decision was released on July 19, 2010 and is attached to this report as Attachment 1. The Court quashed By-law 1043-2008 to the extent it permitted the payment of legal expenses for the two compliance audits. The Court upheld City Council's decision to reimburse Councillor Bussin for her legal expenses in relation to the defamation action. The Court found that the issue regarding expenses incurred by Councillor Heaps in defence of a defamation action was moot because he had refused to accept payment from the City.

Notice of Leave to Appeal was filed by the City's external legal counsel in order to preserve the City's rights pending receipt of instructions from Council.

COMMENTS

An opinion from the City's external counsel in this matter is attached as part of confidential Attachment 2. It comments on the Divisional Court decision and makes a recommendation to Council on further steps in the matter.

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SIGNATURE

Anna Kinastowski
City Solicitor

ATTACHMENTS

Attachment 1 – Divisional Court Decision released on July 19, 2010
Attachment 2 – Confidential Attachment