



**STAFF REPORT
ACTION REQUIRED
With Confidential
Attachment**

**Court of Appeal Decision on Payment of Legal Expenses
for Compliance Audits**

Date:	January 27, 2011
To:	City Council
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards and commissions. This report contains advice or communications that are subject to solicitor-client privilege.
Reference Number:	

SUMMARY

At its meeting of August 25, 26 and 27, 2010 City Council considered an item entitled Divisional Court Decision on Payment of Legal Expenses for Compliance Audits and Defamation Actions. It instructed the City's external counsel to continue a motion for leave to appeal the Divisional Court decision. It also enacted a by-law granting amounts to Councillors Heaps and Mammoliti to compensate them for compliance audit expenses including legal expenses. This report advises City Council that the application for leave to appeal was dismissed and recommends that steps be taken as a result of the disposition of the matter.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the recommendations set out in the confidential attachment.

2. Council authorize the release of the confidential recommendations upon adoption by Council and that the balance of the confidential attachment 1 remain confidential in its entirety due to litigation and solicitor client privilege.

FINANCIAL IMPACT

Costs have been awarded against the City in the amount of \$15,000.00 for the Divisional Court and \$1,000.00 for the Court of Appeal proceedings. Funding in the amount of \$16,000.00 for the Divisional Court and Court of Appeal costs is available in Legal Services' 2011 Recommended Operating Budget, funded from the Arbitration and Legal Awards Reserve Fund.

Additional financial impacts are set out in the confidential attachment. The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

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)

At its meeting of August 25, 26 and 27, 2010 City Council adopted the following:

1. City Council instruct the City Solicitor and Counsel to continue the Motion for leave to appeal.
2. City Council enact a by-law in the form of the bill attached to the motion by Mayor David Miller.

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. On July 19, 2010 the Divisional Court released its decision. It quashed a City by-law to the extent that the by-law permitted the payment of councillor legal expenses for compliance audits and upheld a Council decision to pay a council member's legal expenses in relation to a defamation action. The City's external counsel reported to the Executive Committee at its meeting of August 16, 2010 on the decision and the merits of an appeal. Council at its meeting of August 25, 26 and 27, 2010 instructed the City's external counsel to continue a motion for leave to appeal the decision of the Divisional Court and also adopted a by-law granting funds to Councillors Heaps and Mammoliti.

The Court of Appeal in a decision dated December 24, 2010 has refused the City's application for leave to appeal. A copy of the court's decision is attached as Attachment 3.

COMMENTS

Attached are a communication from external counsel and a set of recommendations reflecting his advice.

CONTACT

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SIGNATURE

Anna Kinastowski, City Solicitor

ATTACHMENTS

Attachment 1 - Confidential Information
Attachment 2 - Confidential Letter from External Counsel
Attachment 3 - Court of Appeal Decision