



**STAFF REPORT
ACTION REQUIRED
with Confidential Attachment**

**Proposed Settlement of the Reimbursement of a
Compliance Audit Payment**

Date:	May 23, 2012
To:	City Council
From:	City Manager
Wards:	
Reason for Confidential Information:	This report is about litigation or potential litigation that affects the City or one of its agencies, boards, and commissions.
Reference Number:	

SUMMARY

At its meeting of February 7 and 8, 2011, City Council considered the City Solicitor's report on the Court of Appeal Decision on Payment of Legal Expenses for Compliance Audits. Council adopted the recommendations of external counsel to seek recovery from Giorgio Mammoliti and Adrian Heaps providing a reasonable indulgence of two years for them to comply.

Negotiations with Mr. Mammoliti have resulted in a proposed settlement which requires Council approval.

RECOMMENDATIONS

The City Manager recommends that:

1. Council adopt the recommendations set out in the confidential attachment;
2. Council authorize the release of the confidential recommendations upon adoption;
and

3. Council authorize the release of the confidential Minutes of Settlement in Appendix 1 once they have been signed and the balance of the confidential attachment 1 remain confidential in its entirety due to litigation privilege.

Financial Impact

The financial impact is set out in the confidential attachment.

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

<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 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.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.3>

At its meeting of February 7 and 8, 2011 City Council adopted the following:

1. City Council repeal City By-law No. 1080-2010 being the grant by-law adopted by Council on August 26, 2010.
2. City Council adopt the recommendation of external counsel contained in Attachment 2 to seek recovery of \$74,402.00 from Giorgio Mammoliti and \$64,757.70 from Adrian Heaps providing a reasonable indulgence of two years for them to comply.

<http://www.toronto.ca/legdocs/mmis/2011/cc/bgrd/backgroundfile-35603.pdf>

ISSUE BACKGROUND

An application for judicial review of City Council's jurisdiction to make certain 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 quashing 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. 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 refused the City's application for leave to appeal. At its meeting on February 7 and 8, 2011 City Council recommended that recovery be sought from Giorgio Mammoliti and Adrian Heaps as recommended by the City's external counsel.

COMMENTS

Subsequent to Council's decision, efforts were made to recover the monies. At that time it was confirmed that Mr. Mammoliti was paid \$52,081.37 on account of legal and appraisal services related to his 2006 compliance audit. In addition the City grossed up income taxes in the amount of \$43,218.50 directly to Canada Revenue Agency (CRA) to make Mr. Mammoliti whole. These are the correct figures rather than the \$74,402.00 referred to in earlier reports.

Gregory Richards of the law firm WeirFoulds LLP was retained to pursue the recovery of payments made. Since that time, good faith negotiations have taken place between the parties resulting in the proposed resolution set out in the confidential attachment.

CONTACT

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SIGNATURE

Joseph P. Pennachetti, City Manager

ATTACHMENT

Confidential Attachment 1 – Confidential Information