

**LETTERS AND OTHER SUPPORTING DOCUMENTATION FOR THE
CHIARELLI-CULLEN MOTION ON COST AWARDS**

31 January 2009

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City of Ottawa Environmental and Forest and Greenspace Advisory Committees

Mayor O'Brien and City Councillors

18th January 2009

Dear Mayor and Councillors,

The Ottawa Forests and Greenspace Advisory Committee (OFGAC), and the Environmental Advisory Committee (EAC) are concerned about a recent decision by the City to pursue legal costs against a citizen's organization.

Volunteer groups and organizations contribute significantly to public policy development at the City and play an important role in public dialogue.

Both the OFGAC and the EAC urge the City to clarify its positions and policy on this issue, and further urge City Council to approve the proposed motion by Councillors Rick Chiarelli and Alex Cullen to be introduced at the meeting of the Corporate Services and Economic Development Committee on January 20, 2008.

Sincerely,

Nicole Parent, Chair OFGAC
Heather Hamilton, Vice-Chair OFGAC
Mike Lascelles, Chair EAC

City of Ottawa Rural Issues Advisory Committee (Resolution)

WHEREAS civic participation is essential for a democratic process.

Residents and community groups have been long recognized as an important component of policy development and decision making

AND WHEREAS a practice of seeking cost awards may significantly deter residents and community groups from participation in the available process and appearing before boards or courts.

BE IT RESOLVED that RIAC support and endorse the Chiarelli/Cullen motion and urge the council to clarify city's policy on seeking cost awards from residents, community groups and other community based organizations unless the presiding judge or tribunal or Chair of proceedings indicates that the case advanced by the community or resident public interest group is either frivolous, vexatious or of oblique motive.

(Passed unanimously)

Canadian Parks and Wilderness Society – Ottawa-Valley Chapter

January 14, 2009

Larry O'Brien, Mayor
City of Ottawa
110 Laurier Avenue West
Ottawa, Ontario K1P 1J1

Subject: Chiarelli-Cullen Motion on Cost Claims against Community Groups

Mayor O'Brien,

Founded in 1963, the Canadian Parks and Wilderness Society (CPAWS) is Canada's pre-eminent wilderness conservation organization being directly responsible for the protection of some 410,000 km² of Canada's public lands and waters – an area seven times the size of Nova Scotia. Over the course of our 45 years, we have had the opportunity to work with a number of partners including the Greenspace Alliance of Canada's Capital.

We were deeply disturbed to hear of the City of Ottawa's intention to pursue the Greenspace Alliance for legal costs. These costs arose in relation to an unsuccessful legal challenge before the Ontario Divisional Court. The challenge was part of the Alliance's efforts, over the past decade, to protect the provincially significant Leitrim Wetland. The City was demanding \$5,120. On December 10, 2008, the Court agreed with the City's demand and also decided that the developers of Findlay Creek Village – companies associated with Tartan, Tamarack and Taggart – should be paid \$25,000 as well.

By pursuing the Greenspace Alliance for costs, the City of Ottawa is sending a very clear and chilling message to all community and environmental group to the extent that if a group challenges the City's decisions in court, the City may go after the group for costs. Like most community groups, the Greenspace Alliance has limited resources (we are certain that the City is aware of this fact) raised through donations from citizens and organizations sharing the Greenspace Alliance's vision for our city. To pursue such an organization is extremely undemocratic and will certainly discourage citizens from standing up for their beliefs. To that end, we support the motion introduced by Councilors Chiarelli and Cullen to the effect that "the city will not seek cost awards from community or resident public interest groups unless the presiding judge or tribunal or Chair of proceedings indicates that the case advanced by the community or resident public interest group is either frivolous, vexatious or of oblique motive".

In closing, we hope you will seriously consider the negative implications associated with moving forward with the proceedings against the Greenspace Alliance and embrace the motion by Councilors Chiarelli and Cullen.

Sincerely,

Ken Buchan
Chapter President
Ottawa Valley Chapter

John McDonnell
Executive Director
Ottawa Valley Chapter

Conseil régional de l'environnement et du développement durable de l'Outaouais

Mayor and Councillors
City of Ottawa

Re: Policy on Seeking Cost Awards

Dear Mayor and Councillors,

The Regional Council of the Environment and Sustainable Development of the Outaouais urge you to support a Motion being put forward by Councillors Rick Chiarelli and Alex Cullen at the Corporate Services and Economic Development Committee on January 20, 2009 on the above matter.

The Motion to ensure that the City not seek cost awards from community groups unless it is judged that the case advanced by these groups is either frivolous, vexatious or of oblique motive is considered by our organization and volunteers to be a very important one. The laws and regulations protecting the Environment are few contrary to popular belief. CREDDO believes that when organized groups try to protect land from misuse, they should be listened to rather than dragged through a judicial process. This does not apply to the NIMBY Syndrome individuals, but to groups who wish to protect the environment for future generations and your constituents.

It is increasingly recognized that the democratic process is threatened by a decline in widespread public participation and debate due to cynicism about the political process and the belief on the part of many that their voice will neither be heard nor is it wanted by governments. Seeking costs from community groups when they have engaged in this process with honourable intentions will send a further chill and strong message that this cynicism is warranted.

Volunteer groups and organizations not only contribute significantly to public policy development at the City, they represent a fundamental link in encouraging public dialogue within the democratic process. Engaging groups and the public during the decisional process makes for sounder decisions and less confrontational reactions.

We strongly urge your support of this Motion.

Sincerely

Nicole DesRoches
Executive Director
CREDDO

Ecology Ottawa

January 19, 2009

To: City of Ottawa Corporate Services and Economic Development Committee

Chair: Mayor L. O'Brien

Vice-Chair: Councillor S. Desroches

Committee members: Councillors R. Bloess, G. Brooks, R. Chiarelli, D. Deans,
E. El-Chantiry, P. Hume, R. Jellett, M. McRae, M. Wilkinson

CC: Councillor A. Cullen

Re: MOTION – POLICY ON SEEKING COST AWARDS

Ecology Ottawa strongly endorses the motion on seeking cost awards that will be considered by the Corporate Services and Economic Development Committee on Tuesday.

The motion, if passed, would create a policy that the city will not seek cost awards from community groups unless it is judged that the case advanced by these groups is frivolous, vexatious, or of oblique motive.

Community groups should not be punished for engaging with honourable intentions in the democratic process. The city is currently seeking legal costs from the volunteer-based, non-profit Greenspace Alliance for its involvement in a challenge to a development decision. The alliance's motivation in this case was to protect local wetlands from degradation. The amount in question (\$5,120) is a pittance for the city but an amount that would, if collected, bankrupt the Greenspace Alliance. This would clearly set a precedent that would discourage rigorous public involvement in development decisions.

We look forward to seeing your support on Tuesday for this reasonable, fair motion that has been presented by Councillors Cullen and Chiarelli.

Sincerely,

Mike Buckthought
Steering Committee Member
Ecology Ottawa

Federation of Citizens' Associations of Ottawa-Carleton (Statement)

The Federation of Citizens' Associations of Ottawa-Carleton Incorporated (here referred to as "FCA") is a non-profit corporation under the laws of Ontario (Corporation 000899230). The members of the FCA are incorporated and non-incorporated community associations and like civic interest groups.

The purpose of the FCA is to provide a forum for the sharing of information among the members and to act as a vehicle for joint action by member groups. In addition the FCA facilitates contact with community groups by municipal government and other authorities. In short, the FCA is an umbrella organization for community associations and like groups in Ottawa. Community associations from both the urban and rural areas of Ottawa participate in FCA activities.

At its board meeting of November 27, 2008, the members of the FCA voiced their unanimous support for the motion before the Committee which would restrict the circumstances in which the City would seek cost awards from community or public interest groups.

Community groups have no choice but to engage with quasi-judicial bodies such as the Ontario Municipal Board and with the courts to resolve contested planning and similar matters. They do so with limited resources at their disposal and with only their understanding of the public interest as motivation.

Although the City of Ottawa is considering suing for costs, it has been pleased to take advantage of community associations' support when the associations side with the City in a legal dispute. A current example is the hearing regarding developments in Manotick in which the FCA has appeared in support of the City before the Ontario Municipal Board.

Efforts to sue community groups for costs will likely discourage participation in judicial hearings in the future. This will not only undermine City interests in cases in which we agree, it will also be to the detriment of the public participation policies of the City.

The FCA is a member of the Federation of Urban Neighbourhoods of Ontario (FUN), which brings together community associations across the province. That organization has taken considerable interest in this motion. In discussion at the provincial association level, parallels have been drawn between Ottawa's pursuit of costs and the phenomenon known as SLAPP (Strategic Lawsuits Against Public Participation). A SLAPP is a suit, or threat of same, intended to intimidate and silence critics by burdening them with legal costs until they abandon their criticism or opposition. By defining the restricted circumstances in which Ottawa would seek costs, the City would clarify its stance.

By adopting the motion before the Committee, Ottawa will affirm that it encourages valid public participation. The Federation of Citizens' Associations urges the Committee to recommend the motion to full Council.

Federation of Urban Neighbourhoods of Ontario

Dear Mayor O'Brien and Members of Ottawa City Council,

The Federation of Urban Neighbourhoods of Ontario is very supportive of the *Motion - Policy on Seeking Costs Awards* as follows:

That Council clarify its policy on seeking cost awards after successfully defending its positions against community and resident public interest groups and that the clarification be structured such that, in such disputes in front of tribunals, the City will not seek cost awards from community or resident public interest groups unless the presiding judge or tribunal or Chair of proceedings indicates that the case advanced by the community or resident public interest group is either frivolous, vexatious or of oblique motive.

While municipal councils have access to tax dollars and developer have financial resources, non-government community-based organizations have very limited financial resources. The awarding of costs by tribunals against such organizations will make it difficult for them to participate in proceeding before such tribunals and thus reduce the level of community participation in planning decisions.

We respectfully request that you support the above motion.

Yours truly,

William J. Phillips
President
Federation of Urban Neighbourhoods of Ontario
21 Dale Avenue, Suite 621
Toronto, Ontario M4W 1K3
(416) 969-8994
www.urbanneighbourhoods.org

Ottawa-Carleton Wildlife Centre

Dear Mayor and Councillors

Re: Policy on Seeking Cost Awards

The Ottawa-Carleton Wildlife Centre urges Ottawa City Council to support a Motion being put forward by Councillors Rick Chiarelli and Alex Cullen at the Corporate Services and Economic Development Committee on January 20, 2009 on the above matter.

The Motion to ensure that the City not seek cost awards from community groups unless it is judged that the case advanced by these groups is either frivolous, vexatious or of oblique motive is considered by our organization and volunteers to be a very important one.

It is increasingly recognized that the democratic process is threatened by a decline in public participation due to cynicism about the political process and the belief on the part of many that their voice will neither be heard nor is it wanted by governments. Seeking costs from community groups when they have engaged in this process with honourable intentions will send a further chill and strong message that this cynicism is warranted.

Volunteer groups and organizations not only contribute significantly to public policy development at the City, they represent a fundamental link in encouraging public dialogue within the democratic process.

We strongly urge your support of this Motion.

Sincerely

Donna DuBreuil
President
Ottawa-Carleton Wildlife Centre

Ottawa Field-Naturalists' Club

2009 January 18

Submission To: The Corporate Services and Economic Development Committee
City of Ottawa

Chair: Mayor L. O'Brien

Vice-Chair: Counsellor S. Desroches

Committee members: Councillors R. Bloess, G. Brooks, R. Chiarelli, D. Deans,
E. El-Chantiry, P. Hume, R. Jellett, M. McRae, M. Wilkinson

Copy to: Councillor A. Cullen

Regarding: Motion on Cost Claims against Community Groups introduced by
Councillors Chiarelli and Cullen.

This motion should be supported by Committee, and endorsed by Council. It recognises that community groups contribute to public policy development in a range of subject areas, including environment, accessibility, business, health, and development.

Community group members do their work from a sense of obligation. They do not gain from it financially, and typically do not expect to see any public recognition of their efforts. They bring a long-term perspective to City affairs, which helps to counteract the short-term pressures that surround all Councillors.

It has always been difficult to attract volunteers with the time, energy and dedication to meet community needs for effective representation on issues, and with economic instability this has become even more difficult in recent decades. If potential members have to fear punitive cost awards, they will be even less inclined to be involved. All citizens, and the City as a corporate entity, will be diminished.

The motion makes it clear that the City will remain free to pursue costs if a presiding judge, tribunal or chair of proceedings decides that the case advanced by the public interest group is either "frivolous, vexatious or of oblique motive".

For these reasons, the motion should be adopted.

Stan Rosenbaum
Chair, Conservation Committee
The Ottawa Field-Naturalists' Club
254 Grandview Road, Ottawa ON K2H 8A9
Tel: 613 596-4288, e-mail: srosen@magma.ca



SIERRA CLUB CANADA

ATTN: Mayor Larry O'Brien and Ottawa City Councillors
Re: Motion to clarify cost awards against community groups

Tuesday, January 20, 2009

Dear Mayor and Councillors,

We understand a motion is being proposed to the City of Ottawa's Corporate Services and Economic Development Committee regarding its position on seeking cost awards from community and resident public interest groups. We urge all of you to support this motion, and not seek cost awards from community or resident public interest groups unless the case advanced by the community or resident public interest group has been deemed by a judge or other presiding authority to be frivolous, vexatious or of oblique motive.

We feel that, while this is a local issue, it has broader implications for community groups and cities across the country.

Current cost-award policies are a threat to public participation. Seeking legal costs from not-for-profit groups (often volunteer-based) with minimal financial assets can mean bankrupting their organizations—and sometimes their members.

If the City of Ottawa truly values public participation, it should set an example by clarifying this policy on cost awards so as not to deter community groups from speaking up.

Sincerely,

Stephen Hazell
Executive Director
Sierra Club Canada

Dan McDermott
Director
Sierra Club, Ontario Chapter

Carol Gudz
Chair
Sierra Club, Ottawa Group