

Submission to Finance and Economic Development Committee

by Robert Brocklebank

Meeting of 6 September 2011

Agenda item 4: **Policy on seeking legal costs: review**

The purpose of this submission is to bring to the attention of members of Committee some further considerations about the issue of seeking legal costs.

Before dealing with the topic of legal cost recovery, it is important to consider the context in which the original policy of 2009 and today's discussion of 2011 are taking place. The 2009 discussion was influenced by the Greenspace Alliance matter involving development in Leitrim. The 2011 discussion is driven by the hearings involving the Friends of Lansdowne Inc.

Without making any claim to legal training, I believe that at least one statement in the staff report before you is not correct. I fear that it may give Councillors a mistaken impression of the issue through an unfortunate choice of words. The phrase in question is "*the courts have no place in the chambers of the nation's municipal councils*". It was asserted that this was the substance of the decision by Justice Hackland of the Ontario Superior Court. I consider this a distortion of the ruling delivered this summer.

I understand the concept that the courts should give appropriate deference to elected bodies. In particular, in considering the courts' duty to interpret provincial statute, there is a need to give deference to the Legislative Assembly of the Province of Ontario. If this concept of deference is pressed to suggest that municipal councils are sovereign and are not subject to the statutes duly adopted by the Province, the concept has been stretched beyond reason.

Municipal Councils are constrained in their actions by provincial legislation. When municipalities are perceived (rightly or wrongly) to have violated those restraints, recourse to the Courts is entirely appropriate.

But considering that this whole discussion is taking place in the context of the Lansdowne issue, I believe that Councillors might wish to consider the topic of recovery of legal costs in light of the Lansdowne experience to date.

The first question Councillors might ask is -- why did the Lansdowne question cost the City so much? Apparently a considerable amount of money was spent by the City. If City actions are readily defended and soundly based on the City's authority, why did it cost 1.25 million dollars to reach this stage?

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Another question worth asking is -- whether any attempts were made to reach an out-of-court settlement in the matter of redevelopment of Lansdowne? In the staff report before you, it is noted that *"The potential for cost consequences can operate... ..as an incentive for the early negotiation of settlements"*. It is unclear whether any attempts were made by the City to reach a settlement with the Friends of Lansdowne, thereby limiting the cost to the taxpayers. Indeed it has been suggested by some supporters of the Friends of Lansdowne that the City deliberately prolonged the litigation, incurring additional costs to the City while applying pressure to the Friends of Lansdowne.

Finally, I would ask you to consider the effect of your decision on seeking recovery of legal costs, whatever decision you reach. If you decide to retain the 2009 policy, you are at perfect liberty to seek costs from anyone whose actions before the Courts are frivolous, vexatious etc. If you decide to revoke the policy of 2009, every public interest group that takes you to Court will incorporate. Just like the corporate bodies that may be involved in matters with the City, public interest groups will seek to limit liability. This is what 1374537 Ontario Ltd. did in the dispute about development in Leitrim. Their action was totally appropriate, as will be similar action by public interest groups such as Friends of Lansdowne Inc.

With respect to the comment in the staff report that repeal of the 2009 policy would *"provide additional opportunity for the City of Ottawa to seek to recover costs in litigation matters"*, I would caution Councillors to consider this hope for cash in the light of reality. There isn't much cash out there – and by contrast, the nub of the issue before you, is that the City of Ottawa has taxing power to raise significant funds for any litigation.

Respectfully submitted,
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