

# The Globe and Mail

## Council spent over \$250,000 against advice of its lawyers

Tue Mar 8 2011  
Page: A16  
Section: Toronto News  
Byline: Kelly Grant

Toronto city council has spent more than \$250,000 pursuing a legal fight against the advice of its own lawyers, including \$96,057 on a recent unsuccessful court case, according to confidential documents viewed by The Globe and Mail.

The city's top lawyer, Anna Kinastowski, is recommending council abandon its quest for access to a database containing private information about residents, something the province's privacy commissioner and two outside legal experts warned would violate privacy laws.

But if council votes this week to reject that advice, an appeal would cost at least another \$35,000, the documents say.

"It's time to put a stop to the nonsense," said deputy mayor Doug Holyday, who tried in 2008 to halt the most recent case. "The court wouldn't deal with it. The experts have all given their own opinion that [council is] wrong and they just won't believe it."

The database legal saga began four years ago, when some councillors began pushing for "read-only" access to the Integrated Business Management System, which contains up-to-date information such as the status of permits, applications and inspections.

The city's legal department warned that granting councillors unfettered access to the IBMS would violate privacy laws because the database includes the personal information of constituents.

At council's request, the city spent more than \$150,000 seeking a different answer from outside lawyers Jane Pepino and **George Rust D'Eye**. But Ms. Pepino and Mr. Rust D'Eye agreed with the city's legal department that the councillors didn't have a case.

Still unsatisfied, former councillors Howard Moscoe and Cliff Jenkins and current Councillor Cesar Palacio commissioned a third outside legal opinion in 2008, this time from Martin Zarnett of the firm Sandler, Gordon. The Zarnett opinion, which buttressed the councillors case for access to the database, cost \$4,662.

According to 2008 expense records, 19 councillors pooled funds from their office budgets to pay the bill, five of whom now hold senior positions in the Ford administration: TTC chairwoman Karen Stintz, deputy speaker John Parker, public works chair Denzil Minnan-Wong, economic development chair Michael Thompson and Mr. Palacio, chair of the licensing committee.

Along with former councillors Mr. Moscoe and Mr. Jenkins, the other contributors were Joe Mihevc, Mark Grimes, Mike Feldman, Frank Di Giorgio, Bill Saundercook, Adam Vaughan, Michael Walker, John Fillion, David Shiner, Glenn De Baeremaeker, Chin Lee and Ron Moeser.

On July 14, 2008, both **Mr. Rust D'Eye** and Ann Cavoukian, the provincial privacy commissioner, sent letters to then-mayor David Miller and to council eviscerating the Zarnett opinion.

"With due respect, this legal opinion can hardly be characterized as 'expert,' given that it provides, at best, faulty advice," Ms. Cavoukian wrote.

Despite this, council voted 27-12 in October, 2008, to take the case to the Ontario Superior Court of Justice.

Mr. Ford, then a councillor, was absent for that vote. Mr. Miller voted against pursuing the case.

In a decision on Jan. 14, 2011, Madam Justice Katherine Corrick rejected the city's position, saying the municipal government must first exhaust its appeal options with the provincial privacy office before it can call on the courts.

That was the fight that cost \$96,057, according to the confidential documents.

Mr. Palacio is now urging his colleagues to drop the matter when it comes before council this week, even though he still believes he's in the right.

"In the interest of avoiding a long legal battle, I will vote to accept the recommendations made by the city solicitor," Mr. Palacio wrote in a letter to the mayor and councillors on Monday.

© 2011 CTVglobemedia Publishing Inc. All Rights Reserved.