

Holyday seeks costs for suing city; Deputy mayor wants council to cover his legal fees from fighting decision to cover others' legal fees

Tue Mar 29 2011
Page: GT1
Section: News
Byline: Daniel Dale Toronto Star

Deputy Mayor Doug Holyday personally sued the city to challenge a controversial 2008 council decision to use taxpayer money to cover two councillors' campaign-related legal fees. He said he was willing to take a financial hit to stand up for an important principle.

He won. But now, more than a year later, he is asking council to use taxpayer money to cover most of his own legal fees.

Holyday said Monday he had planned to pay for the lawsuit himself until its cost ballooned far beyond the expected \$40,000. The final bill was \$124,180, according to a letter to councillors from his lawyer, **George Rust-D'Eye**.

Rust-D'Eye asked council to pay \$16,000 in fees the courts have already required the city to cover, plus two-thirds of the remaining fees, for a total of \$88,120. Given that Holyday brought the lawsuit in the public interest and in defence of an opinion provided by the city's lawyer, Rust-D'Eye wrote, it "would be manifestly unfair" if he was "left to shoulder the burden."

Holyday, a staunch fiscal conservative, said he knows some taxpayers will be unhappy with his request - but they will save money as a result of his actions even if council reimburses him.

His legal victory, he noted, prevents council from making such improper payments in future. And the amount he seeks from the city is significantly less than the \$139,000 the victory allowed council to demand Councillor Giorgio Mammoliti and former councillor Adrian Heaps return to the public purse.

The city, however, also spent thousands defending itself against Holyday's lawsuit, and it is not clear exactly how much will be recovered. More than \$40,000 of the \$139,000 was paid to the Canada Revenue Agency to cover tax on what was deemed to be a "taxable benefit." Mammoliti's lawyer, Peter Greene, said Mammoliti will repay his legal fees but cannot be responsible for money sent to the government.

Holyday filed suit after council ignored legal advice in 2008 and instead voted to cover the fees the councillors incurred when they defended themselves - successfully - against complaints about their campaign spending.

A court ruled in Holyday's favour, saying the city did not have authority to cover the councillors' costs. But council again ignored its own lawyer's advice and

appealed that decision.

Holyday said he has paid about \$40,000 of the fees personally. He is capable of covering the entire bill, he said, but doing so would force him to give up about two years' net salary.

"I was quite prepared to spend the money that I have spent," he said. "But the bill just kept getting bigger and bigger because the city kept stalling the matter even though they were told that to do that was ridiculous, that they would be 'scofflaws'. . . that just racked up my expenses, which is what they knew they were doing."

Between the original court decision in July and the dismissal of the city's appeal by a higher court in December, Rust-D'Eye billed Holyday for \$51,933. Holyday said he was not able to explain this figure but that Rust-D'Eye is "the top municipal lawyer in the country."

Councillor Glenn De Baeremaeker said Holyday's plea was "a little hard to swallow" given that "the man asking for money is the same man who told us not to give other people money." But he said he would wait to make up his mind. So did Councillor Shelley Carroll, though she said "a whole lot of people are going to want to see him squirm."

Carroll said the Holyday request is further evidence that the city should hire a lawyer to dispense advice to councillors on individual matters.

© 2011 Torstar Corporation