



## CITY COUNCIL AGENDA REPORT

**Subject: COUNCIL MOTION – LAWSUIT FUNDING**

On October 19, 2015 Councillor MacKay provided notice in accordance with Section 23 of Procedure Bylaw 35/2009 that he intended to bring forward the following motion:

*In order for Council to debate the motion, the motion must be formally moved.*

(Councillor MacKay)

That the agreement to fund the lawsuit between Patrick Draper, John Doe, ABC corporation, Gord Hennigar, Richard Stringham and Nolan Crouse be modified to limit the cities funding to a maximum of \$20,000 from the current arrangement of unlimited funding. After this point each party involved will pay their own costs and damages, the city will no longer request any potential awards from the city manager and he will be free to collect whatever damages are awarded if there are any.

Further to this the City should reaffirm its indemnity from any damages or costs that arise from this lawsuit. These risks were never agreed to by the city and should be the sole responsibility of the city manager and the respective parties to pay for.

### **Attachments:**

1. Administrative Backgrounder

Originating Department(s):	Legislative Services
Author(s):	B. Gaskarth, Legislative Officer
City Manager Signature:	Date:

**Administrative Backgrounder  
(Lawsuit Funding)**

On October 19, 2015 Councillor MacKay provided notice in accordance with Section 23 of Procedure Bylaw 35/2009 that he intended to bring forward the following motion:

“I move that the agreement to fund the lawsuit between Patrick Draper, John Doe, ABC corporation, Gord Hennigar, Richard Stringham and Nolan Crouse be modified to limit the cities funding to a maximum of \$20,000 from the current arrangement of unlimited funding. After this point each party involved will pay their own costs and damages, the city will no longer request any potential awards from the city manager and he will be free to collect whatever damages are awarded if there are any.

Further to this the city should reaffirm its indemnity from any damages or costs that arise from this lawsuit. These risks were never agreed to by the city and should be the sole responsibility of the city manager and the respective parties to pay for.”

**BACKGROUND:**

On July 14, 2014 Council approved the following:

1. That Council support the City Manager in the defense of his personal and professional reputation.
2. That Council authorize the City Manager to commence personal legal action against the author(s) of and/or contributors to the Third Floor News blog site.
3. That the legal action commenced by the City Manager against the author(s) of and/or contributors to the Third Floor News blog site be funded from the Stabilization Reserve.
4. That Council approve the City Manager’s proposal to donate all financial proceeds from this legal action to the City and that any funds be paid into the stabilization reserve to offset the legal costs.

The motion provided by Councillor MacKay refers to Nolan Crouse however; Mr. Crouse is not a part of the motions that was approved by Council in July 2104.

The legal action against the authors and creators of the Third Floor News website is still in process through the legal system. Approximately \$24,976 has

been incurred in legal expenses up to September 2015, funded from the Stabilization Reserve.

At this time, it is recommended that the motion before Council be deferred until Q1 2016, at a date determined by Agenda Committee. There are certain developments in the lawsuit that need to be allowed to run their course over the next few months. It is anticipated that legal expenses would not be significant in the interim.

If, however, Council wishes to deal with this motion, there are necessary legislative steps outlined in section 16.14 of the Procedure Bylaw that must be followed. As this proposed motion is essentially a motion to “amend a motion previously adopted” Council may consider the motion “provided that the councillor sets out in writing what special or exceptional circumstances warrant further debate”.

Also, section 16.16 of the Procedure Bylaw states “A motion to rescind, renew or amend a motion previously adopted may not be introduced where the vote on the original motion has caused an irrevocable action”. The proposed motion would limit funding related to this matter to \$20,000, and authorized expenditures have already exceeded that amount. Funds legally expended for services provided to date cannot be “un-spent” and therefore these expenditures should be considered irrevocable actions.

If Council reverses a previous decision and approves the proposed motion from Councillor MacKay, there is a risk that the City of St. Albert could be perceived as interfering in the legal process and attempting to protect those responsible for the defamation against Patrick Draper.

On the second part of the notice of motion, regarding the city reaffirming its indemnity, the following comment is provided by the City of St. Albert Solicitor:

*A reaffirmation by its very nature requires an affirmation. In its initial motion(s) regarding the proposed Patrick Draper claim, Council did not affirm or declare that the City is entitled to some sort of indemnity from damages or costs and certainly, with respect to Patrick Draper, Council implied the opposite through its commitment to fund the claim.*

The third party claim against Mayor Crouse is covered by insurance. The likelihood that the City will incur damages or costs related to that claim is remote.

Report Date	November 2, 2015
Committee/Department	City Manager's Office