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CANADA

March 26th, 2012

Chair and Members
Finance and Administration Services Committee

RE: COMPLAINTS TO THE OMBUDSMAN OFFICE

ISSUE

Collectively and now individually City Councillors are being “charged” and “under investigation” by the Ombudsman’s office. The complaint may or may not have merit.

The complaints process is new and, if City Council is to continue with the Ombudsman office being the preferred model for handling a citizen complaint, the rights of the elected official to have representation, and when, where and who pays for the investigations needs to be clarified.

BACKGROUND

AS I understand the situation, the former City Council asked the Ombudsman office to receive complaints or concerns about the decision making process and/or use of powers and authority by the City of London. The Ombudsman was selected by City Council rather than using city staff, or having the City hire and/or contract to an individual or company to handle these complaints. This was done for a number of reasons including: arms-length investigations; independence; confidentiality, and cost savings.

Once a complaint is received by the Ombudsman, their office initiates an investigation and members of City Council are compelled to participate. If they refuse, they can be summoned. City Councillors have the option to seek their own legal council and the costs of that legal counsel are to be approved and covered by City Council. Councillors have been informed that the Ombudsman will not permit City Councillors to be represented in the interview process by legal counsel. City legal staff CANNOT provide individual members of Council legal advice.

CONCLUSIONS

Citizens must retain the rights to register their concerns and City Council members must have their rights to fair representation appropriately defined.

I would request that City staff (including legal) to report to Council on the following:

- a) Role of City legal counsel on behalf of the Corporation in the Ombudsman complaint process
- b) The rights of a City Council member to seek independent legal advice and representation when they, others, or the actions of City Council collectively are under investigation

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- c) The rights of an individual City Council member to recuse themselves from investigations on grounds provided by their legal counsel
- d) The ability of legal counsel on behalf of City Council to request dismissal of the investigation by the Ombudsman on grounds to be defined (similar to OMB appeals, for example)
- e) The procedure for approving legal representation for Council members in the complaint process
- f) The rights of a Council member to have legal representation during interviews conducted by the Ombudsman's office
- g) The rights of a citizen, Council member or the Corporation of the City of London to appeal the decisions of the Ombudsman's office
- h) The approval process to cover legal costs of a City Councillor and or the City

The above report should also address situations in which citizen complaints to the Ombudsman are deemed to be without merit. The Ombudsman's office is to be consulted to ensure City Council and the community is well served, and a fair complaint process is in place.

SUMMARY

The review of the complaints process is warranted. The public must have confidence that their local government is open, transparent and accountable. At the same time elected officials, city staff and the Corporation have a legal right to fair representation. Legal costs are an emerging issue. If the complaint process becomes immersed in frivolous complaints, becomes politically motivated rather than in the public interest, then the ability of City Hall staff and City Council to conduct the public's business efficiently and effectively may be in jeopardy.

Respectfully submitted,

A handwritten signature in blue ink that reads "J. Swan / sm".

Joe Swan
Councillor, Ward 3