

Something to hide?

By Lee Prokaska

The Hamilton Spectator, Editorial, October 19, 2004

It is difficult to determine which of the following circumstances is the more outrageous:

That the City of Hamilton is hiding behind the principal of solicitor-client privilege as a way to prevent disclosure of how many taxpayers' dollars the city spends on lawyers' fees;

Or that city councillors approved this undemocratic step backward quietly during the summer, apparently without some of them even realizing they had substantially restricted public access to the way in which our money is spent.

The staff report in June was very clear that only limited information about legal fees will be released under Freedom of Information legislation and only then under very specific circumstances. It's amazing that any councillors could have failed to comprehend what this meant.

Even before this change, those seeking information about the city's legal bills received only the broadest of information. Access to copies of invoices was denied on the basis they are protected by solicitor-client privilege and in keeping with orders issued by the Information and Privacy Commissioner of Ontario.

The city practice was to provide the total dollar amount with respect to specific matters -- certainly not optimum public disclosure of how taxpayers' money is spent, but better than no disclosure at all.

In exercising that practice, the city relied on a Federal Court of Appeal case that dealt with an Access to Information request made to the federal Privy Council Office regarding legal fees paid on behalf of a commission of inquiry. Clearly, the case dealt with the use of taxpayers' money by a publicly-funded government body.

The city's legal services division is now relying on a 2003 Supreme Court of Canada decision that seems to broaden the scope of privilege with regard to legal fees. But in their June report, staff fails to explain that this decision relates to a criminal case -- certainly not to legal bills paid by an elected government.

Regardless, the staff report does say city council is the client when it comes to the privilege that prevents disclosure of legal fees, but that council could choose to waive that privilege. Council could do that in a very general, but limited way, or it could decide whether to release information on a case-by-case basis.

But why would council want to encourage such secrecy? And either way, these decisions could become highly politicized and subject to potentially inappropriate influence. That does nothing to dismantle the culture of secrecy that continues to exist at city hall. And it does nothing to increase public confidence in our municipal government.