

Committee of the Whole (2) Report

DATE: Tuesday, September 22, 2020

WARD(S): ALL

TITLE: CITY OF VAUGHAN ET. AL. ATS FRANK MIELE

FROM:

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

ACTION: FOR INFORMATION

Purpose

To provide an update regarding a successful application to the Ontario Superior Court of Justice related to *City of Vaughan et al. ats. Miele* (the “Action”).

Report Highlights

- On August 25, 2020, a judge of the Ontario Superior Court of Justice heard the City Council’s court application and granted an order permitting members of City Council to receive reports and to consider, discuss and vote on resolutions to instruct City legal counsel on the Action, including its resolution, subject to certain conditions.
- The Plaintiff in the Action, Frank Miele, had originally obtained standing to intervene and oppose the application. Prior to the hearing of the application, Mr. Miele sought to withdraw his intervention, and the Court granted his withdrawal. The Court also ordered Mr. Miele to pay the City \$20,000 in cost with respect to his intervention.

Recommendation

1. That this report be received for information.

Background

The Action was commenced against the City of Vaughan and various former and current members of City Council in May 2019 by Mr. Frank Miele. The Action seeks to

hold former and current members of City Council personally liable for allegedly voting to divert specially raised funds for other purposes and to have them disqualified from office pursuant to s. 424 of the *Municipal Act, 2001*.

Pursuant to the requirements of subsection 5(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the “MCIA”), those affected members of City Council were required to declare a pecuniary interest, abstain from discussing the Action or providing any direction to City legal counsel with respect to the Action.

Given that eight (8) of the current nine (9) members of City Council declared pecuniary interests in the Action, City Council did not have quorum to hold any meeting to vote on any resolutions related to the Action, including its potential resolution.

Section 7 of the MCIA provides a remedy for lack of quorum in such circumstances. An application may be made to a judge for an order authorizing a council to meet and deliberate on a matter which it could not otherwise address because of lack of quorum resulting from declarations of interest required to be made under the MCIA. Orders made under section 7 of the MCIA are subject to such conditions and directions as the judge hearing the application deems appropriate.

On August 25, 2020, an application for relief under subsection 7(2) of the MCIA was heard and granted by the Honourable Mr. Justice F.L. Myers of the Ontario Superior Court of Justice.

Previous Reports/Authority

[Special CW\(CS\) Extract, October 7, 2019, Item 1, Report 30](#)

Please refer to Minute No. 142, page 4

Analysis and Options

As a result of the Court’s Order, City Council may now meet and provide City legal counsel with instructions relating to the Action, subject to the terms set out in the Order respecting the approval of any potential settlement or resolution of the Action.

The Order provides that the eight (8) members of City Council are now authorized to receive reports regarding the Action and to consider, discuss and vote on resolutions to instruct City legal counsel on issues in the Action for which there has not been a delegation of authority, including settlement and resolution.

While all members of City Council are now able to consider, discuss and vote to instruct legal counsel on the Action, a condition of the Order is that any settlement to be considered, discussed or voted on by the affected members of City Council must

contain a term that it is not binding on the City until it obtains the approval of a Judge of the Superior Court of Justice.

Mr. Miele originally opposed the application and obtained standing as an intervenor. Mr. Miele abandoned his opposition and was subsequently granted leave by the Court to withdraw his intervention. The Order also awards costs in the amount of \$20,000 to the City of Vaughan to be paid by Mr. Miele for his role in the application.

Financial Impact

N/A

Broader Regional Impacts/Considerations

N/A

Conclusion

The City was successful in its application to the Superior Court of Justice under s. 7(2) of the *Municipal Conflict of Interest Act*. As such, all current members of Council are authorized by court order to consider, discuss and vote on matters pertaining to the Action, including its resolution.

For more information, please contact:

Wendy Law, Deputy City Manager Administrative Services & City Solicitor, ext. 8700.

Sam Hall, Legal Counsel, ext. 8298

Attachments

N/A

Prepared by

Wendy Law, Deputy City Manager Administrative Services & City Solicitor

Sam Hall, Legal Counsel

Approved by

A handwritten signature in black ink, appearing to read "Wendy Law".

Wendy Law, Deputy City
Manager, Administrative
Services & City Solicitor

Reviewed by

A handwritten signature in black ink, appearing to read "Jim Harnum".

Jim Harnum, City Manager