

# CITY OF HAMILTON

## NOTICE OF MOTION

General Issues Committee: January 15, 2020

**MOVED BY COUNCILLOR B. CLARK.....**

**Protection of Solicitor-Client Privilege by Separating Legal Advice from all Confidential Staff Reports and Recommendations**

WHEREAS, the Solicitor-Client privilege is a legal concept that enables the client to entrust with their lawyers confidential and private information and enables their lawyer to provide unfettered and confidential advice to their client;

WHEREAS, the Supreme Court of Canada has called Solicitor-Client Privilege, “a principal of fundamental justice and civil right of supreme importance in Canadian law.” (Lavallee, Rackel & Heintz v. Canada (Attorney General); White, Ottenheimer & Baker v. Canada (Attorney General); R. v. Fink, [2002] 3 S.C.R. 209, 2002 SCC 61);

WHEREAS, the Solicitor-client privilege is solely the clients’ and as such only the client can voluntarily waive the privilege;

WHEREAS, it has been past practice of Hamilton’s Senior Leadership Team to provide confidential staff reports that are a hybrid of staff information, recommendations and legal advice;

WHEREAS, concerns have been expressed that any public release of such reports could mean a waiver of Solicitor-Client privilege;

**THEREFORE, BE IT RESOLVED:**

That the City Manager and City Solicitor be directed to implement a policy, by March 31, 2020, requiring the separation of any legal advice from all confidential staff reports, with any such legal advice to be provided as an appendix to be attached to the corresponding confidential staff report.