

Clause embodied in Report No. 7 of the Community Services Committee, as adopted by the Council of the City of Toronto at its meeting held on September 22, 23, 24 and 25, 2003.

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### **Child Care Implications of the Mediated Settlement with Ontario of the Pay Equity Charter Challenge**

*(City Council on September 22, 23, 24 and 25, 2003, adopted this Clause, without amendment.)*

**The Community Services Committee recommends the adoption of the following report (August 22, 2003) from the Commissioner of Community and Neighbourhood Services:**

Purpose:

This report provides preliminary information concerning the mediated settlement with the Ontario Government of the Pay Equity Charter Challenge brought by five unions and four individuals. In particular, the implications of this settlement on child care and on the City's role as service system manager for child care are identified.

Financial Implications and Impact Statement:

There are no net financial implications for the City's approved 2003 Operating Budget. There will be future cost-sharing implications and potential retroactive cost-sharing implications that will be identified and addressed as part of the 2004 budget process. There is insufficient data to estimate the future financial impact for the City at this time. The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement provided.

Recommendations:

It is recommended that:

- (1) the City continue to work through the Association of Municipalities of Ontario to identify the retroactive and future cost-sharing implications of the mediated settlement to the Pay Equity Charter Challenge, and to secure from the Ontario Government adequate additional administrative resources to perform the recently delegated responsibilities associated with implementing the terms of the mediated settlement in Toronto's child care community;
- (2) authority be granted to receive the provincial funds from the mediated settlement, to distribute them to qualifying child care operators and to adjust all service contracts accordingly;

- (3) the Children's Services Division continue to work with the child care community to identify strategies to resolve the equity, service and funding issues resulting from the distribution of the child care portion of the mediated pay equity settlement;
- (4) in recognition of the unfunded pay equity liabilities within the child care community and the inequities imposed in 2003 by the selective distribution of pay equity monies attached to the mediated settlement, and as a short-term solution, the City authorize the use of the \$667,000.00 approved in the 2003 Operating Budget as its share of this year's instalment in the phased return to actual costs for those child care programs that will not benefit directly from the mediated pay equity settlement;
- (5) as a longer term solution and as part of the 2004 Service Planning Process for Child Care, the City explore revisions to the current fee subsidy and wage subsidy programs such that operators' actual costs of providing subsidized care are reflected in their service contracts and operators have the financial capacity to address outstanding pay equity liabilities as required by the Pay Equity legislation;
- (6) the Department report back to Council through the 2004 budget process on the future and retroactive cost-sharing implications of this mediated settlement; and
- (7) the appropriate City officials take the necessary actions to give effect thereto.

Background:

On April 17, 2001, the Equal Pay Coalition comprised of five unions and four women launched a Charter Challenge of the Provincial Government's decision to deny pay equity to women in predominantly public sector workplaces including child care. This legal action was taken as a result of the Ontario Government's decision to discontinue providing pay equity funding to the publicly funded employers who employ women to provide essential public services. On November 6, 7, and 8, 2001, Council authorized the City to seek intervenor status in the Pay Equity Charter Challenge of the Equal Pay Coalition. Children's Services worked with City Legal in the preparation of the City's motion. Before that motion for intervenor status could be filed, the Ontario Government reached a mediated settlement with the Equal Pay Coalition for pay equity payments of up to \$414 million.

Under the mediated settlement the Ontario Government agreed to provide pay equity funding to address the following sectors funded by the Ministry of Health and Long-Term Care and the Ministry of Community, Family and Children's Services: long-term care facilities, long-term care community services, community mental health, substance abuse, community health centres, district health councils, private hospitals, child care, developmental services, children's mental health, young offenders, violence against women, community support services.

In the case of child care, the Ontario Government has delegated responsibility for the implementation of the mediated pay equity payout to Consolidated Municipal Service Managers (CMSMs) in their role as the service system manager for child care programs. Therefore, this report focuses exclusively on the impact of the mediated settlement on child care in Toronto and Toronto's role as the child care service system manager.

The mediated settlement will assist only those not-for-profit child care operators who have received proxy comparator orders from the Pay Equity Commission, who have posted a pay equity plan and who have not achieved pay equity. The Ministry of Community, Family and Children's Services will fully fund proxy pay equity adjustments for 2003, but municipal 20 percent cost-sharing of the 2004, 2005 and 2006 adjustments will be required. It is not yet clear whether the Ministry will also require the City to cost-share any retroactive pay equity liability payments to qualifying child care operators for the period of 1999 to 2002 inclusive. Discussions with the Ministry through AMO continue on this issue.

Comments:

(1) Implementation of Mediated Pay Equity Settlement:

On June 16, 2003, officials from the Ministry of Community, Family and Children's Services confirmed the provincial expectation that the City assume responsibility for implementing the terms of the settlement with child care operators. The first step in this process is to distribute and explain to child care operators a survey developed by the Ministry to measure the pay equity liability within child care programs in Toronto. On July 18, 2003, the Ministry's pay equity questionnaire was mailed to all non-profit child care operators. Information sessions to assist child care operators to complete the survey were held by City staff on August 7, 2003, and August 12, 2003. The required return date for the questionnaires was August 15, 2003, to allow the City staff sufficient time to collate the data and submit to the Ministry by its September 7, 2003, deadline. This information will be used to establish what proportion of the total \$414 million settlement should be allocated to child care and to child care in Toronto specifically. There is no guarantee that the total mediated settlement is sufficiently large to address the full pay equity liability that is being identified in the survey. It is important to remember that the mediated settlement is intended to address pay equity liability in a wide variety of service areas within the broader public service including child care and that payouts will be made within a Province-wide context.

Once the Ministry determines what Toronto's fair share for child care pay equity payment is, the City will then be responsible for validating individual child care program's entitlement and for flowing the funds under contractual agreement to qualifying employers. The Ministry expects that the 2003 funds will be flowed to qualifying operators before calendar year end and will require the City to agree to accountability mechanisms including written confirmation that the funds paid out are used by operators for pay equity purposes.

The payments required to address past liability issues for the period 1999-2002 will be identified early in 2004 and may or may not require a municipal cost-sharing contribution. The City will however, be responsible for flowing these retroactive payments by April 1, 2004. In addition, the City will be required to make cost-sharing provision in its 2004 base operating budget to recognize any retroactive and ongoing pay equity cost-sharing responsibilities to qualifying programs from 2004 to 2006 when the term of the mediated settlement ends. Estimates of the financial pressure on the City as a result of both retroactive and go forward cost-sharing of pay equity payments to qualifying child care operators are not available at this time. This information will be provided through the 2004 operating budget process.

(2) Issues and Implications of the Mediated Settlement:

(a) Impacts On the City's Role as Child Care Service System Manager:

The downloading of pay equity responsibility on the City significantly adds to the administrative workload of the Children's Services Division. For the initial survey work with the community, it is estimated that additional work in the amount of three full-time equivalent positions for a period of one month has been added. Phase two of the implementation which includes the validation of individual program eligibility, the distribution of the new funding and the site by site monitoring as per the Ministry's accountability framework will require significantly more investment of staff time and resources. To date there has been no recognition of this added workload in the level of funding the Ministry provides for administration.

As identified earlier in this report, it is anticipated that the payment of retroactive pay equity liability (1999–2002) and go forward pay equity liability (2002–2006) will create an added financial pressure on the City's net budget submission for child care. Unfortunately, until the Ministry calculates the City's share of mediated settlement allocated to child care, it is not possible to provide an estimate of the pressure on the City's budget. This information will be provided as soon as it is available and will certainly feature in the 2004 operating budget discussions.

Assuming implementation responsibility and accountability for this mediated settlement also significantly modifies and expands the City's role as service system manager for child care and falls outside of the previously negotiated terms of the City's Service Level Agreement with the Ministry. Adjustments in this Service Contract will now be required to reflect the added administrative workload and potential funding liability.

This mediated pay equity settlement also puts the spotlight on the inadequate level of public funding being made available to child care operators within the City. While all have a legal obligation as employers to meet pay equity obligations, many are not receiving their actual costs of operation in the per diem payments made by the City on behalf of subsidized clients. While the City has a multi-year strategy to phase in the return to the payment of actual costs, and has for the last four years approved sufficient money in the City budget to pay at least the City's share of these instalments, the Ministry has not provided matching cost-sharing. For the first time in four years, at its July 2003 meeting, Council did not authorize Children's Services to pay out the \$667,000.00 approved in its net 2003 budget in the absence of provincial cost-sharing.

In light of the new provincial funding for pay equity now being made available to some child care operators, the Department recommends that Council now reconsider using the \$667,000.00 approved as part of the net City budget for child care to provide increases to those child care programs that will not benefit in 2003 from the provincial pay-out for pay equity purposes. In a previous staff report, entitled "2003 Service Cut and Revised Spending Strategy for Child Care Resulting from Provincial Underfunding", the Department sought authority to pay its share of this year's instalment in the return to the payment of actual cost. At the Council meeting of July 22, 23, and 24, 2003, approval to maintain the 500 spaces put at risk as a result of underfunding was given but Council made no provision to continue its historic practice of paying out its share of the annual instalments towards actual costs. Should Council be willing to reconsider this matter now to provide financial relief for child care programs ineligible under the mediated pay equity settlement, those programs could potentially receive a modest per diem rate

increase retroactive to January 1, 2003, which would give them some limited ability to meet their legislated requirements. This is the course of action being recommended in this report.

There is also a longer-term implication for the City in its role as Service System Manager resulting from this mediated pay equity settlement. In 2004, the City will be developing a new Service Plan for Child Care in consultation with the child care community. This will provide a timely opportunity to reconsider the existing separation between the fee subsidy and wage subsidy programs and to seek an improved and streamlined way of providing more adequate funding on behalf of subsidized clients that will allow child care operators to meet all of their legislated requirements, including their pay equity obligations. The department is, therefore, recommending in this report that the scope of the 2004 Service Planning process include a review and reconsideration of the currently separate fee subsidy and wage subsidy streams of funding to child care.

(b) Impacts On the Child Care Community:

As was mentioned earlier, there is no guarantee that the amount of the mediated settlement is adequate to meet the total unfunded pay equity liability that will be identified in the survey process currently underway. Undoubtedly, expectations have already been raised in the child care community with no guarantee that there will be sufficient public funds available to address identified pay equity salary gaps.

Not all child care programs will be eligible for payment from this mediated settlement. Those who will not have access to these funds include: any for profit child care program, any non-profit program that does not have an order from the Pay Equity Commission for a proxy comparator and/or who has not posted a pay equity plan, and any non-profit program who has already met their pay equity obligations even if so doing resulted in the downsizing of that program or the incursion of an operating deficit. This selective eligibility of child care programs for the mediated settlement payout has the potential to be very divisive. There are early indications of frustration from those child care operators who met their legal obligations with respect to pay equity and now find themselves ineligible for this new funding.

There is an additional problem for multi-service agencies that provide child care, as only some but not all of their services may be eligible for funding from the mediated pay equity settlement.

Another impact that may be anticipated is a heightened awareness by employees of child care programs that operators may not have been meeting their pay equity obligations. These individuals can and always have been able to launch a complaint with the Pay Equity Commission for Non-compliance. It is reasonable to expect that more such complaints will be made given the publicity associated with the mediated settlement. The Pay Equity Commission may then order the offending employer to comply. Without the financial resources to do so, the future financial viability and even survival of child care programs may be jeopardized.

Conclusions:

This report provides basic information about the recent mediated settlement to the Pay Equity Charter Challenge launched by the Pay Equity Coalition against the Province of Ontario. The financial and service implications for Toronto's child care community are discussed. The delegated role for the City in implementing and monitoring the settlement payout are described. The future financial pressure of this settlement on the City is signalled but specific figures are not yet available. This report recommends addressing these financial implications as part of the 2004 Operating Budget. This report also petitions Council to consider using the \$667,000.00 net City funding approved in the 2003 Operating Budget to provide some modest relief through the subsidized per diem rate to child care operators not eligible for funds from the mediated pay equity settlement. Finally, this report recommends reviewing the future of the currently separate fee subsidy and wage subsidy programs in the interest of finding an improved way of allowing child care operators to meet their legislated requirements including pay equity.

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Ms. Jane Mercer, Toronto Coalition for Better Child Care, appeared before the Community Services Committee in connection with the foregoing matter.