



STAFF REPORT ACTION REQUIRED

Standing Authority for the City Solicitor to Commence Actions to Recover Claims Involving Amounts of \$500,000.00 or less

Date:	May 6, 2008
To:	Government Management Committee
From:	City Solicitor
Wards:	All
Reference Number:	

SUMMARY

This report seeks to:

- (1) obtain standing authority for the City Solicitor, subject to the terms set out in this report, to commence, settle or terminate legal action to recover monies owing to the City of Toronto, where the amount sought to be recovered, exclusive of any interest or costs, is \$500,000.00 or less; and
- (2) obtain ratification of any legal action taken to date by the City Solicitor to which this authority would otherwise apply.

RECOMMENDATIONS

It is recommended that:

- (1) the City Solicitor be granted standing authority to commence, settle or terminate legal actions to recover monies owed to the City of Toronto with respect to any type of claim, where the amount sought to be recovered, exclusive of interest or costs, is \$500,000.00 or less;
- (2) such authority include the authority to settle claims without commencing formal legal action where appropriate, to commence legal action where appropriate, to discontinue or settle such legal action once commenced where it is concluded that it is reasonable to do so, to appeal any decision where warranted, to take

- collection proceedings to enforce judgments and orders where necessary, to recommend write-off of amounts that are uncollectible where it is appropriate to do so, or otherwise to deal with the recovery of such claims, in consultation, where appropriate, with the head of the relevant City division, and to execute any documents in furtherance thereof;
- (3) Council ratify all actions already taken by the City Solicitor and any legal proceedings already commenced, to which this delegated authority would otherwise apply, and to authorize the City Solicitor to deal with those actions in accordance with this authority;
 - (4) this authority supersede and replace any policies, authorities or by-laws which existed in the seven former municipalities with respect to the subject matter hereof but not any policy, authority or by-law authorized by the City of Toronto since amalgamation, which shall remain in force; and
 - (5) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

FINANCIAL IMPACT

There is no financial impact beyond what has already been approved in the current year's budget.

ISSUE BACKGROUND

Nature of the Issue

During the normal course of City business, there are numerous instances where monies may become due and owing to the City of Toronto (the "City") or where the City may have a claim against another party. For example, it may be discovered that a welfare recipient has received money to which he or she was not entitled. Motor vehicle accidents cause damage to the City's property. Commercial contracts are breached by third parties that cause financial harm to the City. Overdue and unpaid amounts can accrue on the account of a resident of one of the City's Homes for the Aged. A daycare subsidy recipient may fraudulently obtain a subsidy. Contractors may perform work which leads to deficiencies that need to be repaired or replaced or which may cause damage to City property.

The affected City division typically attempts to resolve such claims and recover payment before referring the matter to the City's Legal Division ("Legal"). Once the matter has been referred to Legal, it will then conduct its own pre-litigation efforts for collection. It is usually only after such efforts are exhausted that Legal commences a legal action to recover any outstanding amounts. However, given that there is now, in general, a two year limitation period to commence lawsuits (see below), an action will be commenced,

from time to time, to avoid the expiry of the limitation period even though pre-litigation discussions may be ongoing.

The New Limitations Act

On January 1, 2004, a new statute of limitations came into force. It has shortened the limitation period for the commencement of litigation for most new claims to two years instead of six years as was the case prior to that date. Essentially, most lawsuits involving claims arising after January 1, 2004 must now be started within two years of the discovery of the debt or cause of action or they cannot be commenced at all. This creates pressure on Legal to commence actions prior to receiving Council authority in order to avoid the expiry of a limitation period as, in most cases, the limitation period clock starts to run prior to the claim being referred to Legal. This could also create unnecessary costs and expense in commencing litigation in situations where a claim may potentially be settled, but the lawsuit must nonetheless be commenced in order to preserve the limitation period until specific Council authority to settle the matter can be obtained. The proposed authority would eliminate such problems, unnecessary costs and inefficient use of staff time and resources.

The Litigation Process

In general, litigation to recover unpaid or outstanding claims begins with the issuance of the Statement of Claim, which starts the lawsuit, and the service of the Statement of Claim on the defendant or defendants. If the action is not defended, default judgment is obtained. If the action is defended, then there will be an exchange of relevant documentation by both the City and defendant(s) and, depending on the amount claimed, an out of court examination of a representative of the City and of the defendant(s). There will also be a settlement conference or pre-trial to attempt to resolve the lawsuit. Finally, if no settlement is reached, there will be a trial.

Depending on the nature of the claim and its complexity, the City may need to engage outside experts or professionals, such as engineers, doctors and lawyers, to assist it in pursuing the claim both before and at trial. Sometimes, the City's own internal staff will be sufficient, other times, an external expert or professional is required.

There is no guarantee that the City will be successful at trial. There is always a risk involved with litigation. If the City were to be unsuccessful, there is the possibility that it may be required to pay the legal costs and disbursements of the winning side. Typically, this does not represent 100% of the other side's legal bill but only a portion of it (about 33% - 50%). Similarly, if the City is successful, it would be entitled to ask for reimbursement of a portion of its legal costs and disbursements.

Furthermore, at times, an appeal from a trial or lower court decision may be warranted. Again, as with the original litigation, the results of an appeal are also never guaranteed and involve potentially similar costs and costs consequences, as indicated above.

Given the myriad types of claims and factors involved in litigation, it is not possible to provide any quantification of the costs involved related to the retention of experts and professionals, the progress of a lawsuit or the payment of legal costs should the City be unsuccessful in litigation.

As well, in order to avoid the unpredictable nature and cost of litigation, settlement is always an option. This negotiated resolution of the claim will typically involve the execution of documents such as a Release, wherein the City promises that it will not sue the defendant(s) about the same matter again in the future nor will the City sue anyone else who might turn around and sue the defendant(s) about the same matter.

Typically, once authority is granted by Council, any of the decisions related to the lawsuit are made by the City Solicitor, or her designate, in consultation with the head of the affected Division or his or her designate.

Current Process for Obtaining Authority

At this time, in order for the City Solicitor to commence legal actions or deal with claims for which no standing or other authority is currently in place, a report to Council has to be submitted for each such claim. Given the number of claims that the City deals with on a regular basis, this inevitably leads to delay, unnecessary paperwork and an inefficient use of staff resources.

It was identified that there was a gap in reporting to Council to seek authority to commence legal actions or seeking ratification of actions already commenced for which no standing authorities existed. Legal began to be more active in seeking these specific authorities but it was ultimately determined that staff resources could be better used by obtaining a standing authority to deal with such claims involving amounts up to \$500,000.00.

The purpose of this change is to improve organizational efficiency, eliminate unnecessary and duplicate reporting processes and enable a more effective use of staff and Council resources. City staff would no longer be required to prepare and present reports to this Committee and Council for every claim that the City has and in situations where the City Solicitor and the affected Division have already discussed the matter and are in agreement on the appropriate course of action where the amount of the claim sought is \$500,000.00 or less. This authority level is in line with the limit on the spending authority delegated to the City Solicitor and various division heads by the City Manager pursuant to Chapter 71 of the City of Toronto Municipal Code.

Furthermore, authority is also sought to ratify all such actions already commenced for which specific authority has not already been sought and to which this authority would otherwise apply. Again, this would avoid the inefficiencies of reporting on these claims at this or a later time.

It is recommended that the requested authorization be granted.

CONTACT

Glenn K. L. Chu, Solicitor, Legal Services Division, Tel: (416) 397-5407
Fax: (416) 397-1765, e-mail: gchu2@toronto.ca

SIGNATURE

Anna Kinastowski
City Solicitor