

**2014 LAW DEPARTMENT LEGAL COMPLIANCE AND RISK MANAGEMENT AND CLAIMS  
REPORT TO AUDIT COMMITTEE**

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**EXECUTIVE SUMMARY**

Annual report regarding legal compliance and risk management and claims matters.

**ADMINISTRATION RECOMMENDATION(S)**

That Audit Committee recommend that Council receive this report for information and keep it confidential pursuant to Sections 25(1)(b) and (c) of the Freedom of Information and Protection of Privacy Act.

**RECOMMENDATION OF THE AUDIT COMMITTEE, DATED 2014 MAY 15:**

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That Council receive this report for information and keep **Attachment 6** confidential pursuant to Sections 25(1)(b) and (c) of the *Freedom of Information and Protection of Privacy Act*.

**PREVIOUS COUNCIL DIRECTION / POLICY**

On 2014 February 20, Audit Committee considered Report AC2014-0194, 2014 Law Department Legal Compliance Report – Deferral Request. The Committee adopted Administration’s recommendation to defer the Law Department’s 2014 report on legal compliance to the Committee’s 2014 March 20 meeting, to be considered in conjunction with the Department’s annual insurance coverage report.

The Law Department has provided Audit Committee with legal compliance and insurance reports for several years. However, this report contains additional information to that historically provided given Audit Committee members’ expressed desire to learn more about how the Law Department addresses claims, litigation and risk.

**BACKGROUND**

To help protect The City’s interests for all Calgarians, members of the Law Department provide advice and services to the Mayor and Council, City Manager, General Managers, and business units throughout the corporation of The City of Calgary. The Department is comprised of three Divisions:

- Legal Services, a full service, in-house municipal law office responsible for providing legal and risk management advice on matters relating to:
  - municipal law and governance;
  - real estate;
  - planning and development;
  - the environment;
  - finances;
  - intellectual property;
  - assessment and tax;
  - freedom of information; and
  - contracts; andrepresenting The City in lawsuits and quasi-judicial proceedings and conducting prosecutions;

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- Risk Management & Claims, responsible for investigating, adjusting, collecting, and settling claims made by and against third parties and purchasing and administering insurance coverage for The City; and
- Corporate Security, responsible for providing security services to protect The City's staff, visitors, information, and assets.

Organizational charts for the Law Department and each Division of it are included as Attachments 1 through 4 inclusive.

The Department's vision is to assist its clients in making informed decisions by serving as a strategic partner in achieving Council priorities and corporate objectives.

The Department's mission is to provide timely and quality service and advice through working proactively with its clients and through:

- gathering, analyzing and integrating information;
- participating in the development of strategic solutions;
- identifying risk and recommending solutions to mitigate, manage and monitor it; and
- assisting in the development of effective implementation strategies.

The current City Solicitor was appointed on 2013 June 29. Pursuant to Bylaw 48M2000, the City Solicitor Bylaw, the City Solicitor reports to the City Manager and has the following powers, duties and functions:

- to initiate, prosecute and maintain or defend any action, claim or other proceeding at law or in equity deemed to be in the best interest of The City;
- to settle any action, claim or other proceeding provided the amount does not exceed \$250,000;
- to retain outside counsel when the City Solicitor deems it in the best interest of The City; and
- to report to Council on any legal matter where in her independent judgment a Council decision is necessary.

There are 128.5 full-time equivalent positions in the Law Department. Corporate Security is also responsible for retaining and overseeing a contract guard service of approximately 150.

Regardless of position, nature and extent of expertise or Division membership, all members of the Department are engaged in assisting clients in identifying and providing advice to assist in mitigating, managing and monitoring risk for the benefit of the corporation, which is ultimately to the benefit of all Calgarians.

The Law Department is a respectful, safe, professional, and productive environment that values behaviour that accords with corporate and departmental values. Managers in the Department strive for excellence in municipal management by pursuing continuous improvement. To enhance management capability, four members of the Department's management team have secured, and two members of the Department's management team are in the process of

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securing, Masters Certificates in Municipal Leadership from the Schulich Executive Education Centre.

**INVESTIGATION: ALTERNATIVES AND ANALYSIS**

**Legal Services Division Report:**

Legal Compliance:

A report on legal compliance is included as Attachment 5.

**Risk Management & Claims Division Report:**

Claims:

The Risk Management & Claims Division's mission is:

To monitor the operational risks of The City and associated Boards and Authorities to determine cost-effective solutions to eliminate, reduce, manage, transfer or insure such risks and to manage claims either brought forward by the public or the Corporation, in a fair and equitable manner, utilizing generally accepted insurance industry methods.

The Division handles approximately 9000 claims each year. Claims experience is reviewed and compared against past years' results to analyze trends and assess and manage risk. Information about claims in which City property was damaged and in which City operations caused damage is outlined in Attachment 6.

The City has not yet been served with any lawsuits by or on behalf of property owners affected by flood damage. However, The City has received notices of potential claims from 946 citizens and a notice of a potential claim from an insurance company purporting to be provided on behalf of all of its affected policy holders. Additional information in regard to damage caused by the flood and the Division's management of The City's flood claim is included in Attachment 6.

Risk Management:

A civic insurance program was instituted in the 1970s as a mechanism to pool the risks of all business units and some civic partners. One of the goals of this program was to reduce the cost of securing insurance for those parties by allowing each to benefit from The City's well established relationship with the insurance industry.

The program combines elements of self-funded and purchased insurance coverage. Each business unit or civic partner is assessed an annual premium based on its share of the cost of purchased insurance coverage, a self-funded property and liability component based on a three year claims history and Risk Management & Claims' administrative costs.

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On most of The City's insurance policies there is a \$2 million self-insured retention, which is similar to a deductible. The reason for this large retention is that history has shown that it is more cost effective to deal with most claims in-house than it is to insure them. In fact, since the time the self-insured retention was set at \$2 million, The City has presented only two claims to its insurers in excess of that amount. The first related to property damage resulting from the 2012 hail storm and the second, to property damage resulting from the 2013 flood.

Claims for less than \$2 million are paid by the civic insurance program but are subject to a \$500 internal deductible payable by the relevant business unit or civic partner.

All purchased insurance coverage is reviewed and priced for both adequacy and value. The City contracts with an insurance broker (currently AON) who provides various options and negotiates coverage and rates with both domestic and international markets.

The 2013 flood was the single largest insured loss in Canadian history and therefore, securing coverage for 2014 was challenging. Many insurers changed the way in which they viewed flood risk and, having limited capacity to cover this type of risk, decided to significantly increase premiums or limit their participation in covering flood risk. As a result, while the Risk Management & Claims Division was successful in securing all of the same types of coverage it had previously obtained (including flood coverage), the premium payable for that coverage was significantly higher and the available limit on flood coverage was reduced.

The City's Civic Insurance Committee is chaired by the City Solicitor and comprised of The City's Senior Risk Strategist from the City Manager's Office and representatives from Risk Management & Claims, Finance and some of the larger business units that typically face significant claims. The Committee meets annually to review The City's claims history and discuss the nature and extent of insurance coverage required for the following year.

Information about The City's 2013 insurance coverage and limits, the cost of risk per citizen in 2013 and the impact on The City's coverage of the 2013 flood is included in Attachment 6.

### **Litigation Approach:**

Members of Audit Committee have expressed an interest in receiving more information about the nature and extent of law suits The City either launches or is subject to and the Department's approach to litigation.

Virtually all actions commenced by The City are filed and handled by City lawyers. The vast majority of lawsuits filed against The City are also handled by City lawyers, regardless of the amount claimed or the nature of the lawsuit. As indicated in Attachment 5, external legal counsel is retained on a very limited basis.

Over the years, City lawyers have developed a great deal of expertise dealing with litigation related to, for example, personal injuries, expropriations, building regulations, contracts, and construction, environmental, planning and development, and real estate matters. City lawyers

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have appeared on behalf of The City before all levels of Court including the Supreme Court of Canada. In addition, lawyers have appeared before such bodies as the Land Compensation Board, the Environmental Appeal Board, the Municipal Government Board, the Assessment Review Board, the Subdivision and Development Appeal Board, and the Canadian Radio-television and Telecommunications Commission.

In defending The City, lawyers rely on a variety of common law defences available to municipalities as well as on defences available pursuant to the Municipal Government Act and other legislation. Each year, the Law Department provides The City's external auditor with a variety of information including the number and nature of files opened annually and the number and nature of claims opened during certain periods where claims exceed \$50,000.

In terms of potential exposure, Council receives annual corporate reports on reserves and long term liabilities. Included within the list of "operating reserves" in that report is The City's "self-insurance reserve". That reserve is in the amount of \$7 million. It can be used only to fund losses in excess of \$500,000. Because of its self-insured retention, the Insurance Act requires The City to maintain a separate fund. The amount of the reserve has remained constant since at least 2008.

In addition to this amount, a contingent liability has been created to help cover potential costs for outstanding claims. Each year, the City Solicitor is required to provide a statutory declaration to the Superintendent of Insurance, confirming the amount of The City's self-insurance fund.

The Law Department would be pleased to provide Committee members with further information about The City's approach to litigation when this report is considered

### **Stakeholder Engagement, Research and Communication**

City lawyers are not insured by the Law Society of Alberta and are required to provide an annual undertaking to the Law Society that they will not provide legal advice outside the scope of their employment. As a result, City lawyers do not provide legal advice to members of the public nor do they provide legal advice on non City-related matters to City employees or individual members of Council.

### **Strategic Alignment**

Legal compliance with federal, provincial and municipal legislation is essential to ensure that municipal actions both enjoy public confidence and are defensible. Both legal compliance and risk management are required to ensure that The City is not exposed to undue legal challenges and avoidable financial loss. An adequately resourced and trained Law Department, properly connected to the Mayor and Council, City Manager, General Managers, Directors, and employees throughout the corporation and focused on assisting clients in achieving their business objectives while addressing risk for The City, is essential to assisting clients in ensuring legal compliance.

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**Social, Environmental, Economic (External)**

Legal compliance is essential. Non-compliance can expose The City to significant damage awards by the courts, internal, and potentially external, costs of defending litigation and financial and reputational loss.

**Financial Capacity**

**Current and Future Operating Budget:**

This report does not have any budget implications.

**Current and Future Capital Budget:**

This report does not have any budget implications.

**Risk Assessment**

Having a properly resourced and trained Law Department assists clients in securing legal compliance, in identifying, mitigating, managing, and monitoring risks to the corporation, in avoiding unnecessary expenditures or losses, and in achieving Council, corporate and business unit objectives.

**REASON(S) FOR RECOMMENDATION(S):**

Legal compliance is essential to fostering public confidence in municipal government, to ensuring that municipal actions are defensible, to avoiding undue financial hardship for the corporation, and to managing, mitigating and monitoring risk while achieving Council, corporate and business unit objectives.

**ATTACHMENTS**

1. City of Calgary Law Department Organizational Chart
2. Legal Services Division Organizational Chart
3. Risk Management & Claims Division Organizational Chart
4. Corporate Security Division Organizational Chart
5. Legal Services Division Report - Legal Compliance Report
6. **Confidential**