

2015 LAW DEPARTMENT LEGAL COMPLIANCE, CLAIMS AND RISK MANAGEMENT REPORT

EXECUTIVE SUMMARY

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

ADMINISTRATION RECOMMENDATION

That Audit Committee recommend that Council receive this report for information and direct that Attachment 2 remain confidential pursuant to Sections 25(1)(b) and (c) of the Freedom of Information and Protection of Privacy Act.

PREVIOUS COUNCIL DIRECTION / POLICY

An annual legal compliance report from the City Solicitor was identified as a potential area of future focus in Attachment 2 to Report AC2005-06, Audit Committee Terms of Reference, considered by Council on 2005 March 7. The Law Department has provided annual legal compliance reports since that time.

For many years the Department has also provided an annual report regarding The City's insurance coverage. In 2014, information about legal compliance and claims, risk management and insurance matters was consolidated into one report (AC2014-0231). This report also includes information regarding all four topics.

BACKGROUND

The Law Department was historically comprised of legal, risk management, claims and security professionals. In 2014 City Manager Fielding decided that responsibility for issues management and corporate strategy should also be assigned to the Department given the obvious alignment between the services provided by Department members and professionals engaged in identifying and managing issues facing the corporation and developing corporate strategy. Outlined in Attachment 1 is further detail about the benefits of this transfer of responsibility and City Manager Fielding's inclusion of the City Solicitor in Administrative Leadership Team (ALT) meetings and in the preparation of the City Manager's annual risk report to Council.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Regardless of their area of expertise, all members of the Law Department are engaged in advising on the identification, management, mitigation, monitoring or transfer of risk in the interest of the corporation of The City of Calgary. This ultimately benefits all Calgarians.

As indicated in the Department's 2014 compliance report, the extent to which Department members can assist clients in achieving Council, corporate and business unit objectives on time and on budget is directly related to the timeliness of the Department's involvement in a matter or project. Members of the Department continue to promote the importance of involving the Law Department at the stage at which clients are identifying opportunities, such as at the project chartering stage of an initiative. Early involvement allows the early identification of risk and the establishment of risk management strategies. The alternative, choosing not to involve the Department until lawsuits or other legal proceedings have commenced, negotiations have broken down, relationships have deteriorated or losses have been incurred, places the corporation in a reactive position, can be very costly and can result in significant delays, exposure to financial hardship and/or the payment of damages.

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Legal Services Division Report:

Attachment 1 outlines several new initiatives in the Legal Services and Corporate Security Divisions.

Risk Management & Claims Division Report:

The mission of the Risk Management & Claims Division is:

“To monitor 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.”

Claims by or against The City:

The City's claims experience is reviewed and compared against past years' results to analyze trends and assess and manage risk. Detailed information about claims in which City property was damaged or in which City operations caused damage is included in Attachment 2.

The increasing complexity of claims and claims that The City either needs to address or submit as a result of the 2013 flood and 2014 early snowfall and downtown electrical fire events have resulted in a significant increase in the workload of Claims Division members. For example, in the 20 months since the flood, Claims' staff and their clients in business units and at civic partners have expended thousands of hours gathering and reviewing invoices in order to ensure that necessary due diligence has been undertaken to allow The City to submit defensible insurance and Disaster Recovery Program claims. This work continues. Further information about the status of this work is included in Attachment 2.

Concurrently, with a view to ensuring that in the case of future large scale events a quicker review and submission of claims is possible, Risk Management & Claims Division staff, assisted by staff from Information Technology, Finance and the Recovery Operations Centre and a team from MNP LLP, created new processes and a new system to deal with claims resulting from a catastrophic event. This system will allow Administration to:

- improve the efficiency of damage assessments and repair work;
- simplify the submission of estimates and invoices; and
- streamline the collection and processing of information for claims.

Training on this new system for staff in Finance and other members of the Administration will begin this spring.

Risk Management Activities:

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

As in previous years, The City continues to benefit from a combination of self-funding risk (with a \$2 million self-insured retention similar to a deductible) and purchasing insurance coverage. Each business unit or civic partner included in The City's coverage 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
- the Division's administrative costs.

The City's Civic Insurance Committee is chaired by the City Solicitor. 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.

The workload of risk management staff also increased in 2014. The City's construction of new infrastructure, addressing the impact of the flood and the Department's increasing concern with addressing current and emerging cyber security risk (which concern was emphasized by the Department in its 2015-2018 Action Plan submission) all resulted in a requirement for risk management staff to reassess the sufficiency of The City's insurance coverage and research the availability of new forms of coverage. This is addressed further in Attachment 2.

Stakeholder Engagement, Research and Communication

Stakeholder engagement was not undertaken during the course of preparing this report. 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 to the Mayor or Councillors.

Strategic Alignment

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 or reputational damage. An adequately resourced Law Department, comprised of staff trained in current and emerging areas of law, properly connected to the Mayor, 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 maintaining 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

A properly resourced Law Department whose members:

- receive training to ensure expertise in current and emerging areas of law and seek opportunities to assist clients by identifying issues at the earliest stages of initiatives or projects; and
- are consulted by clients on a timely basis;

assist in securing legal compliance, identifying, mitigating, managing, monitoring and transferring risk for the corporation, avoiding unnecessary expenditures or losses and achieving Council, corporate and business unit objectives on time and on budget.

REASONS FOR RECOMMENDATION:

Legal compliance, properly managing claims by and against The City and ensuring that appropriate insurance coverage is in place benefits the corporation of The City of Calgary and therefore, all Calgarians, and are essential to:

- achieving Council's objective of having a well-run city;
- achieving success in Council approved projects;
- mitigating, managing, monitoring and transferring risk;
- fostering public confidence in municipal government;
- ensuring that municipal actions are defensible; and
- avoiding undue financial hardship or loss of reputation for the corporation.

ATTACHMENTS

1. Legal Services Division Report
2. Risk Management & Claims Division Report