Agenda – Council – July 18, 2024

Report – Executive Policy Committee – July 9, 2024

Item No. 3 Increase in Claims Settlement Authorities

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2024, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That a new Claims Settlement By-law (draft amending by-law is attached as Schedule "A") be enacted to:

    A. Authorize the following City staff to settle claims by and against the City within the following limits, not including interest or other associated costs:

        i. the City Solicitor, for settlement of any claim by or against the City to a maximum amount payable of $100,000 for any one claim;

        ii. the Chief Financial Officer, for settlement of any claim by or against the City to a maximum amount payable of $250,000 for any one claim;

        iii. the Chief Administrative Officer, for settlement of any claim by or against the City to a maximum amount payable of $500,000 for any one claim; and

        iv. the Executive Policy Committee, for settlement of any claim by or against the City to a maximum amount payable of $750,000 for any one claim.

    B. Amend the City Organization By-Law No. 7100/97 to remove any authorization limits referred to in (a).

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Executive Policy Committee – July 9, 2024

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2024, the Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service and submitted the matter to Council.

On May 22, 2024, the Executive Policy Committee laid the matter over for up to 60 days.

ADMINISTRATIVE REPORT

Title: Increase in Claims Settlement Authorities

Critical Path: Executive Policy Committee - Council

AUTHORIZATION

Author	Department Head	CFO	CAO
C. Kloepfer	C. Kloepfer	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

Despite recommendations made by the City Auditor in 2011 (Appendix A), the claims settlement authority of the Corporate Risk Manager and the City Solicitor has not been increased since 1993. They are by far the lowest among eight Canadian cities surveyed.

As noted by the City Auditor, increasing the settlement authority would reduce internal red tape and assist in expediting claims settlements which would in turn reduce overall costs to the City, provide for quicker closure of claims and release by claimants, and reduce the time that senior level management is inefficiently tied up with briefing notes and approvals related to smaller claims.

Accordingly, this report recommends that Council enact a new Claims Settlement By-law to set the authority levels for claims settlement as follows:

- the City Solicitor, for settlement of any claim by or against the City, to a maximum amount payable of $100,000 for any one claim;
- the Chief Financial Officer, for settlement of any claim by or against the City to a maximum amount payable of $250,000;
- the Chief Administrative Officer, for settlement of any claim by or against the City to a maximum amount payable of $500,000; and
- the Executive Policy Committee, for settlement of any claim by or against the City to a maximum amount payable of $750,000 for any one claim.

Any settlement of a claim by or against the City for an amount payable exceeding $750,000 would require Council approval. All settlement authority limits are in addition to any interest or other costs ancillary to the settlement.

RECOMMENDATIONS

1. That Council enact a new Claims Settlement By-law (draft amending by-law is attached as Schedule “A”) to

   (a) authorize the following City staff to settle claims by and against the City within the following limits, not including interest or other associated costs:

      (i) the City Solicitor, for settlement of any claim by or against the City to a maximum amount payable of $100,000 for any one claim;

      (ii) the Chief Financial Officer, for settlement of any claim by or against the City to a maximum amount payable of $250,000 for any one claim;

      (iii) the Chief Administrative Officer, for settlement of any claim by or against the City to a maximum amount payable of $500,000 for any one claim; and

      (iv) the Executive Policy Committee, for settlement of any claim by or against the City to a maximum amount payable of $750,000 for any one claim.

   (b) amend the City Organization By-Law No. 7100/97 to remove any authorization limits referred to in (a).

2. That the Proper Officers of the City of Winnipeg be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Council approval is required to enact a new Claims Settlement By-law and to amend the City Organization By-Law.

IMPLICATIONS OF THE RECOMMENDATIONS

Approving the recommendations set out in this report will result in increased delegation of claims settlement authority to the City Solicitor, the Chief Financial Officer, the Chief Administrative Officer and the Executive Policy Committee.

Increasing and clarifying the settlement authority provided for under the new Claims Settlement By-law would reduce internal red tape and assist in expediting claims settlements which would in turn reduce overall costs to the City, provide for quicker closure of claims and release by claimants, and ensure high level management and elected officials are not inefficiently tied up with briefing notes and approvals related to smaller claims issues. Currently the authority level for claims settlement for the Chief Administrative Officer, the Chief Financial Officer and Executive Policy Committee are not included in the Claims Settlement By-Law as those authority levels were approved by resolution or under other by-laws. The new Claims Settlement By-law comprises all delegated settlement authorities.

HISTORY/DISCUSSION

One of the key functions of the Risk Management Division of the Corporate Finance Department, headed by the Manager of Corporate Risk, is to receive, investigate, negotiate and, where appropriate, settle claims against the City. As noted by the City Auditor in a Risk Management Audit in 2011, the goal is to "[protect] the City's assets and its ability to provide services and meet its objectives by reducing its exposure to losses." The Legal Services Department, headed by the City Solicitor and Director of Legal Services, has a similar function, although this is generally exercised after formal litigation against the City has been commenced. Employees of both of these units within the Public Service have the training, experience and expertise necessary for this function.

Executive Policy Committee Delegation of Authority

On May 27, 1998, Council passed a resolution giving the Chief Financial Officer (CFO) the specific power and duty:

(12) To consider and report to Council on matters relating to employee pensions, Insurance, Property Assessment, Taxes, Financial Matters and local improvements;

(13) The approval of settlement of:
- (a) claims against the City;
- (b) claims brought by the City;
- (c) claims arising out of expropriations (excluding interest and legal and appraisal fees)

exceeding $100,000.00 and up to a maximum of $250,000.00.

Subsequent changes to the City of Winnipeg Charter Act then impacted the Organizational By-law such that under that Organizational By-law Council delegated the authority to the Chief Administrative Officer (CAO) to settle claims to a maximum of $100,000 upon the advice of the City Solicitor and report such action on a statistical basis to the EPC.

Under file C/GL-3.2 City Clerks confirmed that Council has delegated their authority up to $100,000 to the CAO which in turn was delegated by the CAO to the CFO for the settlement of any claims brought by or against the City.

Claims Settlement By-law

The current Claims Settlement By-law (the "By-law") No. 3349/83 provides to these expert members of the Public Service the authority to settle claims. This authority allows the negotiator to make a serious offer in good faith to a claimant within this authority. Giving this authority to those involved in such negotiations assists in improving service standards and response time which ultimately avoids escalation in costs and damaged reputation that could arise out of delays in settlement.

Currently, the By-law allows the Manager of Corporate Risk to settle claims to a maximum of $5,000 and gives the City Solicitor a settlement authority of $10,000.

City Organization By-law

In accordance with the City Organization By-law No. 7100/97, all claims settlements exceeding the above-mentioned authorization limits to a maximum of $100,000 must be referred by briefing note or report to the Chief Financial Officer for approval, as per the above-referenced Executive Policy Committee direction. Claim settlements exceeding $100,000 to a maximum of $250,000 must be sent by way of administrative report to the Executive Policy Committee for approval.

Audit of Risk Management

In a 2011 Audit of the Risk Management Division, the City Auditor noted that the current settlement limits for the Manager of Corporate Risk and the City Solicitor were out of date and inappropriately low.

> *These limits have not been revisited since 1993 and are low in comparison to the purchasing limits of most City Department Heads that can enter into consultant contracts up to $100,000, with some being able to enter into contracts up to $2,000,000. These low limits have resulted in onerous reporting requirements in order to receive approval from the Chief Financial Officer (CFO). Currently a Briefing Note to the CFO with Legal input must be submitted to the CFO for approval on all settlements between $5,000 and $10,000, and a formal Report to CFO with Legal input is required for all settlements greater than $10,000. We found for the five year period 2005 to 2009, 169 Briefing Notes and another 219 Full Reports, were prepared for CFO review and approval. This translates to approximately 78 reports per year. If the authorization limit were increased to $25,000 during this period, it would have reduced the total number of reports required to 79, a reduction of 79.4% and would have still covered 45.7% of the total dollar value of the transactions for that period. In order to effectively and efficiently process claims a balance has to be struck between management review and delegation of authority. Given the expertise in the Risk Management Division and the Legal Department we believe a revision to the current authorization limits is warranted and that a further delegation of authority to settle claims is warranted.*

As a result, the Audit report recommended that "The Chief Financial Officer should reevaluate the claims settlement authorization limits with a mind to further delegating some of the CFO's authority to the Corporate Risk Manager and City Solicitor. We further recommend that the Corporate Risk Manager authorization limit should be increased to at least $25,000."

Analysis

The Auditor's Report cited above noted the large number of reports that were necessitated due to the low settlement authority levels at that time. Since 2012, the Risk Management Division and Legal Services Department have defended and settled hundreds of claims against the City of varying types and complexity. Of these, Risk Management Division records show 266 have required settlements in excess of $5,000. 251 of these were for settlements between $5,000 and $50,000. If the claims settlement authority proposed in this report had been in place, these would not have required reports. There were 20 claims in excess of $50,000. (Appendix C))

Even assuming the settlement authority levels were appropriate when they were established in 1993, inflation-adjusted costs alone would have justified an increase to the current settlement authority. Changes and trends in litigation and awards, as well as the higher frequency of claims and higher settlements due to easier access to media communication only underline the need for high claims settlement levels.

The low settlement authority given to the Public Service in Winnipeg is out of step with that of other comparable Canadian cities. The results of a jurisdictional scan (Appendix B) of seven other Canadian cities which responded to a request for information, shows that the settlement limits for the Corporate Risk Manager in Winnipeg are by far the lowest. The lowest settlement authority for a Risk Manager outside of Winnipeg is $25,000 in Halifax. The highest is $200,000 in both Surrey and Victoria, B.C.

In addition, given more than a decade has passed since the audit recommendations noted above, inflation has continued to increase the cost of claims settlements and therefore the Public Service is recommending higher amounts than noted in that report.

Subject to approval of this report's recommendations, the CFO will delegate some authority to the Corporate Risk Manager to expedite smaller routine claims. Examples of such claims include vehicle accident subrogation with Manitoba Public Insurance or slip and falls.

Table 1

Summary of Changes to Delegated Authority

(in dollars)

Delegated Authority to:	Existing Authority	Proposed Authority
Manager, Risk Management	up to $5,000	to be delegated by CFO
City Solicitor	up to $10,000	up to $100,000
Chief Financial Officer	up to $100,000	up to $250,000
Chief Administrative Officer	up to $100,000	up to $500,000
Executive Policy Committee	up to $250,000	up to $750,000

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 28, 2024

Project Name:

Increase In Claims Settlement Authorities

Comments:
There are no financial implications associated with the recommendations in this report.

Randy Bernard
Randy Bernard, CPA, CMA
Manager of Finance & Administration (Campus)

CONSULTATION

Legal Services (as to legal issues)

OURWINNIPEG 2045 POLICY ALIGNMENT

Goal #1: Leadership and Good Governance:

Objective #1: Establish and implement priority actions through evidence-informed decision-making processes. Evidence-informed actions require transparent and accountable decision-making to determine the long-term public interest and the appropriate trade-offs in levels of service, taxation, and budget priorities.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Climate Action Plan (CAP), and it was determined that the CAP is not applicable to this specific report.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (PRS), and it was determined that the PRS is not applicable to this specific report.

SUBMITTED BY

Department: Corporate Finance
Division: Risk Management
Prepared by: Tom Miller and Catherine Kloepfer
Date: April 19, 2024

Attachments:

Appendix A - January, 2011 Risk Management Audit – See Recommendation #7

Appendix B - Claims Authority Settlement Levels – Canadian City Scan

Appendix C - 3rd Party Claims Greater than $5,000 – Claims 2012-2023

Schedule “A” – Draft Claims Settlement By-law