

**CITY OF HAMILTON**

**CITY MANAGER'S OFFICE**  
**Human Resources**

<b>TO:</b> Chair and Members of Audit, Finance and Administration Committee	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> November 12, 2012	
<b>SUBJECT/REPORT NO:</b> Legal and Arbitration Fees - Employee and Labour Relations (HUR12016) (City Wide)	
<b>SUBMITTED BY:</b> Chris Murray, City Manager	<b>PREPARED BY:</b> Lora Fontana Director, Employee & Labour Relations Ext 4091
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the Human Resources/Labour Relations budget request for an additional \$200,000 for legal fees and an additional \$50,000 for mediations/arbitrations be referred to the 2013 budget process.

**EXECUTIVE SUMMARY**

Since 2009, Council has been provided with an analytical account of the City's labour relations activities. The Report includes analysis of the legal fees based on activity, including law firm and individual lawyer performance (measured through results achieved). The high level of legal fees is associated with successes that generate large returns on investment which is viewed as a necessary business expense in order to achieve desired results. The analysis of the arbitration and mediation costs are reported on specific matters that have been either mediated or arbitrated.

The City's approach to litigating and mediating matters has rendered improved labour relations over the past few years. There is a more collaborative approach between the parties seeking mutual resolve of matters versus an automatic referral to often times lengthy and costly litigation. Having said that, there are many cases when extensive litigation is necessary in order to protect the City's overall interests and preserve management rights on a corporate wide basis. In these instances, the City has enjoyed

much success as it continues to prioritize and strategize its approach to litigation on a number of important matters.

It is clear that the budget allocation for both legal fees and mediation/arbitration costs have been insufficient over the years. Preliminary figures for 2012 indicate continued over expenditure in both accounts, thereby continuing the trend of chronically under funded activities. In order for the City to secure significant gains, as demonstrated through preserved and/or improved management rights and greater operational efficiencies through the arbitration and mediation process, such costs are a necessary business expense. To compromise our ability to litigate and mediate matters based on budgetary restrictions would have adverse longer term implications.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS** (for Recommendation(s) only)

The legal fees and mediations/arbitrations accounts within the labour relations budget have been chronically under funded since at least 2006 (See Appendix A of Report HUR12016). Actual expenditure for legal fees in 2011 was \$713,388 compared to budget allocation of \$500,000 (which is a shortfall of \$213,388 or 42.4% under funding). Similarly, actual expenditures in 2011 for arbitration/mediation costs was \$141,548 compared to budget allocation of \$80,000 (which is a shortfall of \$61,598 or 76.9% under funding). Expenditures for 2012 for both legal fees and mediations/arbitration costs are again expected to exceed budget allocations by similar amounts.

**Staffing:** N/A

**Legal:** In accordance with the *Ontario Labour Relations Act*, the City and its unions are required to refer matters to the relevant legal bodies for resolve of any outstanding matter arising out of labour relations. This legal requirement is also prescribed within mandatory time frames, either through the collective agreements or the applicable legislation. Unresolved matters stemming from the grievance procedure are referred to Arbitration for eventual resolve by a third party. This third party is generally an Arbitrator appointed by the Ontario Labour Relations Board who possesses the legal authority to render a binding decision on all stakeholders.

These matters require significant preparation with external legal counsel in order to appropriately prepare and present the City's arguments at the various hearings. Notwithstanding the City's efforts to manage and control these legal costs as best as possible, the activity levels and associated complexities of certain matters invariably result in significant legal fees and other related costs.

As well, the various collective agreements contain provisions for the referral of outstanding matters to the mediation process. This process engages the services of external Conciliators and Mediators charging relatively high fees on either a daily or hourly basis. Although this process allows for the potential early resolve of matters, and thereby avoiding more lengthy litigation, it is nonetheless a costly process.

**HISTORICAL BACKGROUND** (Chronology of events)

In the 2012 GIC Report (HUR12010), staff reported the total legal fees and arbitration costs as it related to budgetary allocation.

Both legal fees and mediation/arbitration costs fall within the Labour Relations budgets. Specifically, mediation sessions and arbitration hearings are allocated within the “contractual services” account of the budget and legal fees have a separate account. Both accounts have been under funded since at least 2006.

Given the large volume of activity within the City, there continues to be a high demand for litigation of labour relations issues, either through the mediation or arbitration process. Labour Relations views mediation as an effective and efficient tool for working cooperatively and collaboratively with the various unions to achieve individual, group and organizational goals, where appropriate. Similarly, the arbitration process is often times necessary in order to protect the City’s overall interests and preserve its management rights on a corporate wide basis. Both the mediation and arbitration process require extensive litigation thereby generating related legal fees and associated costs.

In order to reconcile the financial shortfalls, Labour Relations has relied on the financial support from various operating departments having the ability to shore up these under funded accounts. This approach has necessitated ongoing reliance on operating budgets throughout the City. In addition to the continued uncertainty of our ability to reconcile these financial short comings, this approach is not considered to be sustainable and a more permanent financial resolve is necessary.

**POLICY IMPLICATIONS**

N/A

**RELEVANT CONSULTATION**

Senior Management Team

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The City is responsible for the management and administration of 19 collective agreements. Consequently, there are a significant number of grievances that are litigated in some form or another. Analysis of the legal fees and mediation/arbitration costs are reported to Council on an annual basis through the Labour Relations Activity and Analysis Report. This analysis focuses on the City's labour relations activities and the associated returns on investment. High legal fees associated with successes that generate large returns on investment is viewed as necessary business expenses in order to achieve desired results. Conversely, low legal fees resulting in undesirable results will likely result in the discontinuation of such legal services received from either a particular law firm or a particular lawyer.

Mediation services are cost shared with the unions. The parties also view these services as an effective and efficient tool, as provided for in the collective agreements, for resolving outstanding grievances, without the need for costly arbitration hearings. Given the high levels of activity and the opportunity for efficiencies, it is appropriate to maintain higher levels of utilization of such services.

**ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

1. Reduce budget request by 50% (i.e. \$100K for legal fees and \$25,000 for mediation/arbitration) - given the historical high levels of activity with these accounts, as well as their chronic under funding over the years, this alternative is not recommended.
2. Hold budgets at current levels – the Mediation/Arbitration account was significantly increased for the 2009 budget year (from \$8,000 to \$80,000). Notwithstanding, this account remains chronically under funded due to the high levels of activity required given the City's size and complexities. Legal fees budget has remains significantly under funded. For these reasons, this alternative is not recommended.
3. Manage through budget exception – given the continual high volumes of activity, as well as the size and complexities of the City's operations and associated labour relations implications, managing through budget exception is not considered to be an appropriate approach. As a result, this alternative is not recommended.

**CORPORATE STRATEGIC PLAN** (Linkage to Desired End Results)

1. Skilled, Innovative and Respectful Organization
2. Financial Sustainability
3. Growing Our Economy

**APPENDICES / SCHEDULES**

Appendix A to report HUR12016.

Appendix A to Report: HUR12016

