

Item No. 11.1.3
Halifax Regional Council
September 13, 2011

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY: Original signed by 

Richard Butts, Chief Administrative Officer

Original Signed by Director

Mary Ellen Donovan, Q.C., Director, Legal Services

DATE: August 9, 2011

SUBJECT: Settlement Policy for Legal Actions and Proceedings

ORIGIN

Staff

RECOMMENDATION

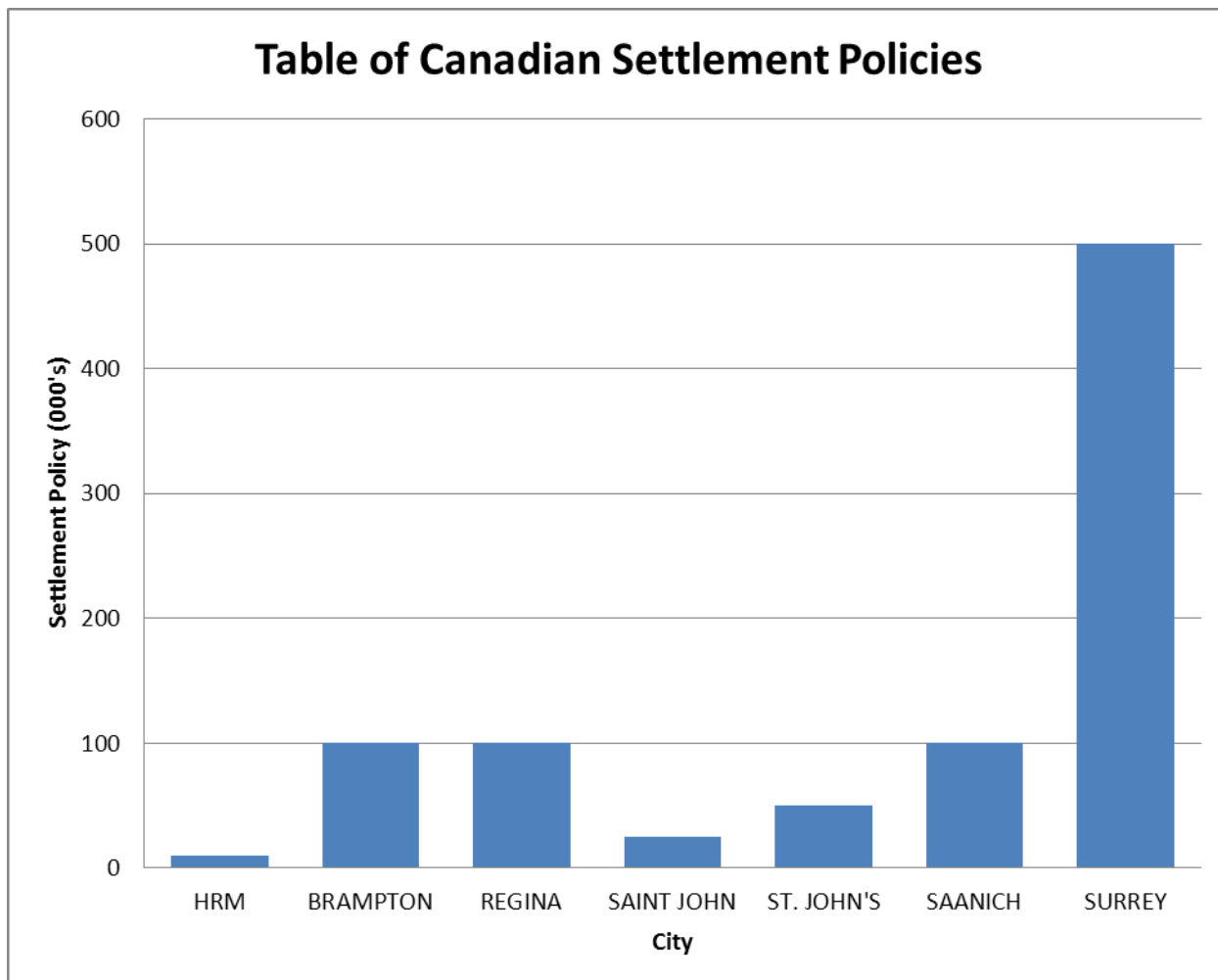
It is recommended that Halifax Regional Council adopt the Settlement Policy for Legal Actions and Proceedings attached as Appendix "A".

BACKGROUND

On January 6, 1998 Regional Council approved the Settlement Policy attached to this report as Appendix “B”. This was adopted pursuant to s. 35(2)(f) of the *Halifax Regional Municipality Charter* which provides that the Chief Administrative Officer may “where council so provides by policy, settle a legal action or proceeding in accordance with the policy”. The policy needs to be updated for a number of reasons. Firstly, due to corporate reorganizations, the references in the current policy to certain administrative staff titles no longer apply and as a result the policy needs to be amended to reflect the current corporate structure. Secondly, inflation since 1998 has resulted in an increase in court costs, and higher court awards. Few legal actions or proceedings, including property damage and personal injury cases, resolve for less than \$5,000. Thirdly, HRM settlement limits in general are out of step with other Canadian municipalities and for administrative efficacy should be adjusted to improve efficiency.

DISCUSSION

Each legal action and/or proceeding is fact specific. Settlement offers are based on a thorough review of risk factors, applicable court decisions, and statutory provisions. Settlement negotiations proceed on the basis of the recommendation of HRM’s solicitors with the approval of the Director of Legal Services & Risk Management, the Manager of Insurance and Risk Management and/or HRM’s insurers. Currently, all settlements greater than \$10,000 are subject to the approval of Regional Council. In light of this provision, staff are unable to provide plaintiff’s counsel with any definitive figures at mediation, judge-oriented settlement conferences or during the course of settlement negotiation. Staff undertook a review of comparative Canadian cities to ascertain approval limits (see below table) and have determined that current HRM limits are the lowest. Staff are therefore recommending that all approvals be adjusted as set out in Appendix A with the \$10,000 Council approval limit moving to \$100,000.



Any settlement above the amounts indicated in this table requires approval, ratification, or briefing of Council.

Property damage claims for motor vehicles regularly exceed \$5,000 and quite often are in excess of \$10,000. Liability assessment of these claims is, for the most part, based on the application of the Fault Determination Rules as found in the Insurance Inter Company Settlement Agreement (ICSA). The ICSA provides that damages are to be calculated by independent appraisal. The ICSA covers losses up to and including \$50,000.00. Under this agreement, HRM is bound to honour any subrogated claim received from a participating insurer. Council's and/or the CAO's approval of motor vehicle property damage claims of less than \$50,000 is therefore superfluous. Reports on these types of settlements unnecessarily take up Council's time, and increase the volume of materials which require the CAO's review and approval. It is therefore proposed that the new policy would not apply to settlements under the ICSA, given that such are driven by that agreement. These matters would be dealt with on a routine basis by the Manager of Insurance and Risk Management.

Section 35(2)(b) of the *Halifax Regional Municipality Charter* provides that the CAO may "appoint, suspend and remove all employees of the Municipality...". In conjunction with the

exercise of this legislative power, the CAO will often be required to give consideration to settlements respecting employment issues. It is recommended that the CAO be given authority to resolve staffing issues where the amount of the settlement or severance is less than 18 months salary. This will enable the CAO to resolve staffing issues in a timely and effective manner.

With respect to the settlement of those legal actions and/or proceedings which do not require Council approval, it is recommended that the CAO continue to report to Council on an annual basis.

BUDGET IMPLICATIONS

There are no budget implications to this recommendation.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

Not applicable.

ALTERNATIVES

The Alternatives are:

1. Council could substitute approval limits other than those recommended.
2. Council could maintain the existing approval limits. This is not recommended.

ATTACHMENTS

1. Appendix "A" Recommended Policy
2. Appendix "B" Current Policy

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: E. Roxanne MacLaurin, Senior Solicitor, 490-4218

Original Signed

Report Approved by: _____
M.E. Donovan, Q.C., Director, Legal Services, 490-4226

Appendix "A"
Settlement Policy for Legal Actions or Proceedings

Settlements of \$25,000 or less

1. A settlement of a legal action or proceeding for \$25,000 or less may be made on the recommendation of staff with the approval of the Manager of Risk and Insurance Services or the Director of Legal Services & Risk Management.

Settlements greater than \$25,000 and up to and including \$100,000

2. A settlement of a legal action or proceeding greater than \$25,000 and up to and including \$100,000 may be made with the approval of the CAO on the recommendation of a staff solicitor, the Director of Legal Services & Risk Management, or Manager of Risk and Insurance Services.

Settlements greater than \$100,000

3. A settlement of a legal action or proceeding over \$100,000 shall be submitted to Regional Council for approval on the recommendation of the Director of Legal Services & Risk Management.

Employee Settlement/Severance

4. The CAO shall have the authority to settle employment issues for an amount which does not exceed 18 months' salary.

Reports to Regional Council

5. The CAO shall provide a written report to Regional Council annually on all settlements made pursuant to paragraphs 1, and 2 of this policy.

ICSA Agreement

6. Any portion of a settlement done pursuant to the ICSA agreement only requires approval of the Director of Legal Services & Risk Management or the Manager of Risk and Insurance Services.

General

7. This policy applies to the settlement of legal actions and proceedings which have been commenced, and to all settlements where it would be anticipated that a legal action or proceeding would be commenced but for the settlement.

Approved: August 16, 2011

Appendix "B"

1. **Claims up to \$5,000** - A settlement of \$5,000 or less requires the approval of the Procurement Manager or the Director of Administrative Services. When the settlement has been recommended by an independent adjuster the signature of the Procurement Manager or the Director of Administrative Services shall be sufficient. Where the services of an independent adjuster are not used on the claim, then the signature of a second staff member, as identified by the Director of Finance, shall be required to effect the settlement.
2. **Claims up to \$10,000** - A settlement of a greater than \$5,000.00 and up to \$10,000 may be made with the approval of the CAO on the recommendation of either a staff lawyer or the Procurement Manager.
3. **Claims over \$10,000** - All settlements over \$10,000 shall be submitted to Council for approval.
4. **Reports to Council** - The CAO shall make a written report to Council quarterly on all settlements made pursuant to Clause 1 and 2 of this policy during the period covered by the report.

Approved: January 6, 1998