SUBJECT: Extension of Human Rights Specialist Contract (HUR08017) - (City Wide)

RECOMMENDATION:

That Council approve the extension of Human Rights Specialist contract for a four (4) month period until the 2009 budget process is deliberated.

Joseph L. Rinaldo,
Acting City Manager

EXECUTIVE SUMMARY:

The City Manager commissioned an organizational review of Human Resources in 2007 which culminated in report CMO8004 to Audit and Administration Committee on January 16, 2008, highlighting the need for additional Human Resources staff. The structure included Human Rights Specialist(s) reporting to the Executive Director of Human Resources. One of the Human Rights Specialists is base funded and the second Specialist was hired on contract in 2007 to the end of June 2008 with funding coming from internal charge backs for “It Starts With You” respectful workplace training as well as gapping within the Human Resources budget. In June 2008, Council was advised that this contract was extended until December, 2008 and that the Executive Director would be looking for sustainable funding to keep this second Human Rights Specialist on staff with the pending changes in Human Rights legislation and the volume of activity in the Human Rights and Respectful Workplace portfolio. This report is recommending that the current contract be extended for an additional four months until...
the 2009 budget is deliberated. The 2009 budget will be recommending that an additional FTE be permanently added to the Human Resources complement to respond to the Human Rights legislative changes, increasing volumes of Human Rights and Respectful Workplace activity, to support ongoing training and to provide dispute resolution services across the organization.

BACKGROUND:

The City Manager commissioned an organizational review of Human Resources in 2007 which culminated in report CMO8004 to Audit and Administration Committee on January 16, 2008, highlighting the need for additional Human Resources staff.

Helen Hale Tomasik was appointed Executive Director of Human Resources on March 3rd, 2008 to implement the new organizational structure for the Human Resources Division. Human Resources contracted a second Human Rights Specialist in 2007 to assist with Human Rights training and investigations in the organization. The individual’s contract was to be concluded by the end of June 2008. In June 2008, Council was advised that this contract was extended until December, 2008 and that the Executive Director would be looking for sustainable funding to keep this second Human Rights Specialist on staff with the pending changes in Human Rights legislation and the volume of activity in the Human Rights and Respectful Workplace portfolio.

ANALYSIS/RATIONALE:

Legislative Changes

On June 30, 2008, Bill 107, the Human Rights Code Amendment Act 2006 came into force and the impact on employers is predicted to be significant. Under this amended legislation, the Ontario Human Rights system will move to a direct access model whereby individuals will file their complaints directly to the Human Rights Tribunal of Ontario rather than have the Human Rights Commission act as a filtering body for human rights issues. Applicants will be provided with free legal advice and support through a Human Rights Legal Support Centre. Unionized employees may choose to pursue their complaints before the Human Rights Tribunal instead of through the grievance process, and may do so without the support or knowledge of their union. Having an additional avenue for launching a complaint may lead to a greater number of complaints. The following chart outlines additional changes in the Human Rights Code Amendment Act 2006 that will impact the City as an employer:

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<tr>
<th>Previous Legislation</th>
<th>New Legislation</th>
<th>Implications for the City</th>
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<tbody>
<tr>
<td>$10,000 cap on damages for mental anguish</td>
<td>No $ Limit on damages</td>
<td>Increased cost if Tribunal renders decision against the City.</td>
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<td>Response times negotiated</td>
<td>35 days to respond including witness statements</td>
<td>Our Human Rights Specialists provide much of the content and information</td>
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<tr>
<td>Previous Legislation</td>
<td>New Legislation</td>
<td>Implications for the City</td>
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<td>required to issue the City’s response to a complaint. It is a time consuming process that will take precedent over other duties given strict time limit of 35 days</td>
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<td>Mediation offered</td>
<td>Unknown as to whether this will be offered as a resolution option</td>
<td>Tribunal has sweeping authority to determine a variety of alternative dispute resolutions. Human Rights Specialists provide guidance and support to the organization with respect to best practices and options.</td>
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<td>Mediated settlements were held confidential by complainant</td>
<td>The Tribunal is a public hearing process with the attendant publicity</td>
<td>Ideally, the City will want to address issues before they proceed to Tribunal. If resources are unavailable to address these issues proactively, the alternative would be for complainants to proceed with their complaints to the Tribunal, resulting in potentially negative publicity.</td>
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<td>Individuals had to lodge complaints</td>
<td>Interested third parties such as unions can make a complaint on behalf of an individual</td>
<td>Easier access to Tribunal is a virtual guarantee that all complaints will receive some kind of consideration, and free Legal Support services will likely increase the number of complaints heard by the Tribunal.</td>
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<td>Employees had six months to complain to the Ontario Human Rights Commission</td>
<td>Employees now have one year to lodge a complaint</td>
<td>This change hampers the Employer in providing a response in the case of staff turnover and loss of corporate memory.</td>
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In addition, the Association of Municipalities of Ontario has advised municipal employers in their Alert No. 08/027 to Clerks and Council, to prepare for the new human rights system in the following ways:

- Review outstanding human rights files and discuss strategy with legal counsel;
- Review return to work and accommodation policies and internal dispute resolution policies and procedures, including accompanying investigation procedures;
• Review documentation and record-keeping practices to ensure documents and appropriate records of discussions are kept in order to respond to an application;
• Review organizational policies and practices to identify potential systemic barriers or other human rights issues;
• Establish or review existing protocols for staff to follow when a government official arrives to conduct an investigation or inspection; and
• Provide additional training to individuals responsible for human rights to ensure increased familiarity with existing/new policies and facilitate a proactive approach to dealing with human rights issues to meet new challenges under Bill 107.

All of the above preparations fall within the purview of the Human Rights Specialists function within the City of Hamilton.

Increasing Human Rights activity within the City of Hamilton

The Ontario Human Rights Code requires that employers be pro-active in creating fair and equitable workplaces. This includes establishing anti-discrimination and harassment policies as well as for dealing effectively, quickly, and fairly with situations that involve these matters. Employers are held liable by a court or human rights tribunal if they or responsible staff members do not act to end discrimination or harassment in their workplaces. Employers are required to have a complaint mechanism in place to handle complaints promptly and effectively with the appropriate resources that are neutral, objective and knowledgeable about human rights issues.

Human Rights activity has more than doubled since 2004 in the City of Hamilton Human Rights portfolio. Formal complaints have become much more complex with multi-stakeholder involvement such as provincial health and safety authorities, police officers, multiple named respondents and potentially sensitive exposures in the media. In a City Of Hamilton Legal Services settlement to a recent complaint to the Human Rights Commission, the City was directed to retain a consultant with expertise in human rights to devise and implement an Accommodation of Religious Observances Policy and to retain a consultant with expertise in human rights to train staff on the new policy. Our Internal staff has been developing this policy and will be providing the associated training and consultation that will be required with policy implementation.

In light of the recent changes to Human Rights legislation and the current need for investigations, ongoing training and dispute resolution in an organization the size of the City of Hamilton, staff will be recommending the addition of one full-time permanent Human Rights Specialist during the 2009 budget process. Most matters that involve the Human Rights Specialist require immediate attention, and as such, there is need for back-up and coverage when one of the Specialists is out of the office due to vacation or involvement in another case. In addition, the organization will be in a much better positioned to be proactive and enabled to prevent escalation of workplace issues to the Human Rights Tribunal. Until the 2009 budget is deliberated, staff is recommending that the employment contract that is currently held with one of the Human Rights Specialists be extended for four (4) months.
ALTHERNATIVES FOR CONSIDERATION:

Council could direct Human Resources to use the services of an external consultant to investigate Human Rights complaints and carry out the current Religious Observances directives from the Human Rights Commission that can’t be accommodated with the current staff complement. The cost of an external Human Rights consultant ranges from $250 - $400/hour. Investigations to date undertaken by external consultants have ranged from $8,000 to $40,000 per investigation. This option is reactive in nature and doesn’t enable the department to leverage proactive strategies to prevent human rights complaints.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial/Staffing: Extension of the employment contract for another four months with the second Human Rights Specialist would cost approximately $34,000.

Legal: Bill 107, the Human Rights Code Amendment Act 2006 is likely to increase the number of complaints filed with the Ontario Human Rights Tribunal. As a potential respondent, the City has an obligation to respond to complaints in a timely manner. An additional Human Rights Specialist will provide the anticipated level of service required to meet the City’s obligation under the Ontario Human Rights Code. The City has received its first complaint through this new process.

There is also increased speculation based on the first reading of a bill from December 2007 that the Province will amend the Occupational Health and Safety Act to include harassment in the workplace as a health and safety issue. This will result in the need for more proactive and potentially reactive responses to issues related to the City’s “Personal Harassment Prevention Policy”.

POLICIES AFFECTING PROPOSAL:

“Harassment and Discrimination Prevention Policy (includes Sexual Harassment)”
“Personal Harassment Prevention Policy”

RELEVANT CONSULTATION:

Legal Services has reviewed this report.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.
Community Well-Being is enhanced.  ☑ Yes  ☐ No

The Human Rights Specialists receive complaints as per the requirements of both the Personal Harassment Prevention Policy and the Harassment and Discrimination Prevention Policy. These policies were approved by Council to ensure that the City has a respectful environment for both employees and the public. Members of the public do make complaints to the Human Rights Specialists regarding individual employee behaviour that contravenes these policies. The Human Rights Specialists in their role support the intent of both policies which enhances community well-being.

Environmental Well-Being is enhanced.  ☐ Yes  ☑ No

Economic Well-Being is enhanced.  ☑ Yes  ☐ No

The cost of prevention of human rights complaints through education, awareness training and early resolution of complaints at the municipal level will be less costly than staff costs related to the Tribunal process and external awards to the complainants.

Does the option you are recommending create value across all three bottom lines?  ☑ Yes  ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants?  ☑ Yes  ☐ No

The City of Hamilton Strategic Plan 2008-2011 includes a focus area entitled “Skilled, Innovative and Respectful Organization”. Creating an enabling work environment which includes a respectful culture is supported by enhanced and sustainable funding for the Human Rights Specialist role. The Human Rights Specialists provide ongoing training to support staff expectations of a respectful workplace and handle complaints and investigations expeditiously when they arise. They provide a neutral sounding board for front-line employees and management staff.