

Solicitor relating to The City of Saint John Pension Plan and further, requests such advice as each might provide with respect to that plan". Councillor Ferguson stated that he and Councillor Farren have received Canadian Corporate Legal Counsel advising that this action means that they have admitted they are not experts and have increased their liability with respect to the Pension Plan; and pointed out it also means that Common Council's liability has increased in addition to Councillor's individual liability. Expressing the opinion that these are serious legal issues, Councillor Ferguson urged Council to go into Closed Session at this time to deal with agenda item #4, Access to Independent, Disinterested and Expert Advice 10.2(4)(f).

Responding to a question raised by Councillor Court, Mr. Beckett advised that approximately 50 employees took the buyout in 2002 and explained that he would request the actuary for the financial impact of these buyouts on the Plan's solvency and going-concern deficit. During discussion Mr. Woods advised that Council is responsible to fund the Pension Plan, as it is presently set out, and the Trustees are responsible to look out for the best interest of the beneficiaries.

Referencing the Canadian Corporate Legal Counsel advice which he received, Councillor Ferguson stated that all legal, actuary and audit services must be third party. Expressing concern that Council has not had any independent discussions with the auditors, Councillor Ferguson referenced Section 5751 of the Canadian Institute of Chartered Accountants handbook which he stated suggests that independent discussions be held with an audit committee. Councillor Ferguson stressed that Council has a fiduciary responsibility and because of that, there are new standards and regulations that must be followed and urged Council, once again, to go into Closed Session to deal with agenda item #4 at which time he would provide further information for consideration.

On motion of Councillor Tait
Seconded by Councillor Titus

RESOLVED that the 2004 Annual Report of The City of Saint John Pension Plan, be tabled.

Question being taken, the tabling motion was carried.

On motion of Councillor Ferguson
Seconded by Councillor Court

RESOLVED that item #4, Access to Independent, Disinterested and Expert Advice 10.2(4)(f), be brought forward for consideration at this time.

Question being taken, the motion was carried.

4. Access to Independent, Disinterested and Expert Advice 10.2(4)(f)

Mr. Nugent reviewed his report regarding the following three components of advice that Council should consider when dealing with issues: (1) independent advice; (2) conflict and disinterestedness; and (3) expert advice. Mr. Nugent explained that the Municipalities Act explicitly anticipates that a Council may wish, despite the presence of a conflict, to seek the advice of its senior officers and pointed out that instance could arise when Council seeks the advice of a senior officer when this individual might express the view that they are too close to the situation and subsequently would suggest that outside advice be acquired. Mr. Nugent commented regarding the two resolutions provided in his report and assured Council that the advice required to make informed decisions on issues is available, and that senior staff will ensure that outside expertise is also available if required.

Councillor Ferguson expressed the view that there is not third party independence in the two resolutions proposed by the City Solicitor. Discussion continued with Councillor Ferguson stressing that Council has the fiduciary responsibility with regard to the governance role of staff in the management of the Pension Plan combined with the approximate \$40 million shortfall, which in his opinion, presents a conflict of interest and a tremendous legal conundrum between staff and Common Council in respect of Council's own obligations and responsibility as sponsor of the Pension Plan. Councillor Ferguson questioned why staff put a safe legal distance between themselves and Council by declaring a conflict of interest and noted this should be respected and not confused with the previously mentioned report from the City Solicitor; and stressed that

advice needs to be completely third party. He commented that the suggestion that these individuals can now withdraw their declaration of conflict of interest and give unfettered guidance to Council, in his opinion was, initiated by his statement that their action had substantially increased the legal liability of Council and its individual members.

Councillor Ferguson stated that the legal impact of this action would expose the same consequence, in legal terms, as the action of Martha Stewart removing the computer link to the stock for which she was under investigation, noting it was this action that compounded the original action. He continued, referencing an unsubmitted document stating that equally a lawyer handling a case against the Pension Plan would have just as much leeway in handling this action; and commented this situation would have similar consequences on Common Council. **It was pointed out by Councillor Ferguson that the same individuals that could guide Council with regard to obligations and responsibilities walked away from the legal opinion of Mr. Ronald Pink who had advised the Pension Board that funds were recoverable from a doctor's insurance policy, who breached his fiduciary duty to the Pension Plan. Councillor Ferguson advised that he has been told by senior legal counsel that there is evidence of gross negligence.**

On motion of Councillor Ferguson
Seconded by Councillor Farren

RESOLVED that The City of Saint John Pension Board provide the following information to Common Council immediately - any and all advice received internally or externally with respect to legal, actuary, auditing, consulting from the years 2000, 2001, 2002 and 2003 and specifically the letter from Mr. Ronald Pink which appeared in the Telegraph Journal March 2, 2005.

A lengthy discussion followed with Deputy Mayor Hooton, Councillors Tait, Titus and White advising they would not support the proposed motion and referenced the options outlined in the City Manager's report; to which Councillor Ferguson expressed the opinion that the actuary, and auditor for the Pension Plan are not third party and stated, by law, you must have third party. Commenting with regard to fiduciary responsibility, Councillor Ferguson referred to the case Hembruff versus Ontario, which involved the Outside Municipal Employees Retirement Board; and stated whoever owns fiduciary duty wholly depends on who exercises the discretionary power which in the case for Saint John is Common Council; and stressed that employers should understand that delegating responsibility for pension plans to a third party administrator will not relieve the employer of their fiduciary responsibility or liabilities and emphasized his opinion that third party advice is required.

Responding to a question from Councillor Chase, Mr. Beckett advised that Ernst & Young are independent as the auditors of the Pension Plan; and advised that with the new independence guidelines in place they could not take on any related duties with regard to the Pension Plan.

Question being taken, the motion was lost with Deputy Mayor Hooton, and Councillors Chang, Chase, McGuire, Tait, Titus and White voting nay.

On motion of Councillor Chase
Seconded by Deputy Mayor Hooton

RESOLVED that the City Manager's report regarding The City of Saint John Pension Plan which was tabled at Council's meeting of March 29, 2005, be lifted from the table, and placed on the agenda for the next open session of Common Council.

Question being taken, the motion was carried.

On motion of Councillor Court
Seconded by Councillor Farren

RESOLVED that **Mr. Beckett provide Common Council with a report detailing the number of employees that received the buyout in 2002 and what effect this had on the Pension Plan's going-concern and solvency, including advice that Council was given at the time on this matter.**

Question being taken, the motion was carried.

(Councillor Chang withdrew from the meeting.)