

Avoiding a Municipal Insurance Crisis

*It is safe to say that a few years ago it was very shocking to hear about a \$5M liability award. Today, larger awards are becoming commonplace. Court awards for severe bodily injury claims have been increasing dramatically. A claim that may have been settled for \$5M five years ago is now settling for \$12M-\$20M. Recent Court cases such as Guiliani (attack on the MMS) and Deering (higher proportion of municipal liability) demonstrate that the municipal insurance environment continues to deteriorate. The Deering case has cost more than \$20M to litigate thus far. Fordham (Court ruling in favour of the young driver who was drinking and driving without a seatbelt) is perhaps the most telling case underlining the exposures municipalities face. If we are to make roads safe for this kind of driver, where will the funds come from? **It is imperative to act now!***

Frank Cowan Company is a leader in providing municipal insurance for over 85 years. Part of our mandate is to monitor the insurance environment to ensure our clients are protected. At Frank Cowan Company, we are very concerned about recent trends affecting the cost of municipal liability insurance. Municipal liability claims costs have escalated to unprecedented levels at a time when municipalities are facing considerable budget constraints. Recent court decisions have driven the cost of claims up to alarming levels. The current situation is not sustainable and a long-term solution is required that is beneficial to all parties. This solution is critical to providing future financial stability for municipalities. Action must be taken now so that a proactive approach can be achieved and a crisis averted.

What's Driving Claims Costs Up?

Municipal insurance premiums are influenced by many drivers. One of the most significant factors in the pricing of insurance is the long tail nature of municipal liability claims. An incident may occur in a given policy year, but the claim may not be presented until many years later and may take several years to settle. Forecasting what the Courts may award a plaintiff years in the future is very challenging.

Over the past few years, there has been a startling upward trend regarding the factors impacting the municipal cost of claims. As the cost of claims increase exponentially, insurance premiums have followed suit. Key drivers that are influencing the cost of rising claims are:

- **Damage awards are getting larger**
A higher proportion of liability is being assigned to municipalities and total awards are escalating dramatically.
- **Future care costs are accelerating**
Providing future health care is extremely costly.
- **Joint & several liability** (also known as the 1% rule)
Municipalities are perceived as having deep pockets and therefore pay more than their fair share.
- **Cost of defending claims is increasing**
Cases are becoming more complex and taking longer to resolve driving legal costs upward.
- **Class actions**
Courts are certifying more class action suits.
- **Municipal claims inflation**
Claims inflation is running at 6% to 8% annually.
- **More litigious society**
There is a higher frequency of claims and more municipalities are being named in Court cases even if only remotely associated with the claim.

AMO 2011 Municipal Insurance Survey

In August 2011, AMO released their municipal insurance survey. Some of the key findings included:

- Insurance premiums are among the fastest growing municipal costs
- Rising costs disproportionately impact smaller municipalities
- Increases reflect the legal reality that municipalities are “deep pocket” defendants

Property taxpayers are paying for these unsustainable insurance increases. Municipalities are continuously facing significant challenges to fund their mandated services. Rising insurance costs can only translate into service level reductions in the critical services that taxpayers rely upon daily.

What can Municipalities do to Reduce the Cost of Claims?

Municipalities cannot simply stand by and wait for legislative change. There are a number of strategies that can be deployed that will help to offset some of these increases. Typical remedies include increasing deductibles, reviewing your limits and coverages and managing risk. Unfortunately these solutions are not enough!

A Call to Action!

The current situation is not sustainable. As the costs of claims increase at a faster rate than premiums some insurance companies will simply walk away from this business sector. Let's avoid an insurance crisis! All stakeholders need a long-term solution that achieves the following principles/objectives:

- Stability
- Sustainable
- Equitable to all parties

Simply put, municipalities need more protection. A long-term sustainable solution can be achieved by a careful review and the adoption of one or more of the following solutions:

- Capping awards
- Developing a Provincial fund to assist with paying for large claims
- Utilizing tribunals to streamline the Court system
- Structured settlements that provide awards over time
- Immunities for municipalities

These remedies are already in place in other jurisdictions. Adopting a number of these solutions will have the added benefit of reducing legal costs which will assist in reducing the total cost of claims. Another substantial benefit is that some of these solutions will decrease the amount of time in which victims receive their much needed awards. A careful consideration of these options along with the goal of developing a stable, sustainable and an equitable solution will lead to a balanced approach that all stakeholders require.

Collective Effort

Frank Cowan Company (representing 144 Ontario municipalities), The County of Brant, The Municipality of Chatham-Kent, The Region of Durham, The Municipality of Dutton/Dunwich, The City of Toronto, The Region of Waterloo, The Association of Municipalities of Ontario (AMO) and many others endorse this call to action and will offer assistance where required.

Take a stand with Frank Cowan Company.