

### Ombudsman Toronto Report: Enquiry into How the City of Toronto Handles Homeowner Third-Party Liability Claims for Basement Flooding and Sewer Backups

**Date:** November 17, 2020  
**To:** Toronto City Council  
**From:** Susan E. Opler, Ombudsman

#### SUMMARY

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Pursuant to section 170(2) of the *City of Toronto Act, 2006* (COTA), Ombudsman Toronto has concluded an Enquiry to review how the City of Toronto handles homeowners' third-party liability claims for basement flooding and sewer backups.

We hereby table with City Council for its November 25 and 26, 2020 session the Enquiry Report, dated November 12, 2020.

#### RECOMMENDATIONS

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The Ombudsman recommends that City Council adopt the report and in so doing, accept the Ombudsman's findings and direct the City administration to implement all of the recommendations.

#### FINANCIAL IMPACT

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This report has no financial impact.

#### DECISION HISTORY

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In July, 2019, City Council requested that Ombudsman Toronto "[review the City's process for public claims for damage due to the escape of water from the City's sewage system, including basement flooding, and conduct an investigation into this process, if warranted.](#)"

Ombudsman Toronto conducted this Enquiry pursuant to section 171(1) of COTA, which empowers the Ombudsman to investigate any decision, recommendation, act or

omission in the course of the administration of the City and most of its agencies and local boards. This function is conferred and exercised independently of Toronto City Council and of the City administration.

This work built upon a 2011 Investigation by the Office of Toronto's Ombudsman: [Potholes, Floods and Broken Branches: How the City Handles Your Claims -- An Investigation into the Processing of Third Party Liability Claims Under \\$10,000.](#)

## COMMENTS

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Ombudsman Toronto's Enquiry led to the following findings:

- The City is not providing homeowners with clear and accurate information about the third-party liability process for basement floods and sewer backups, and how it assesses the claims it receives.
- The City is not always or adequately making homeowners aware that it will generally only pay a claim when the claims adjuster who investigates claims finds that the City's negligence caused the property damage.
- The City only tells claimants after denying their claims that the claimant has the job of proving the City's negligence. (We found that the first and only time this is explained is in claim denial letters.)
- Reporting a basement flood or sewer backup to 311 could make the difference in whether a claimant is able to prove that the City was negligent, but homeowners are not always told about the importance of contacting 311 if their basement floods and they are considering making a claim against the City.
- The City routinely requires claimants to sign a confidentiality clause as part of settling a claim with the City, although it will generally agree to delete the clause if the claimant asks. This compromises transparency of the process, highlights the power imbalance between the parties, and risks undermining the public's confidence that the City is being fair.
- Investigations of basement flood and sewer backup claims resulting from major "storm events" are often lengthy and complex processes, involving coordination and communication across multiple City divisions. Yet there are no written processes, policies or procedures to guide these investigations.

The Ombudsman made nine recommendations to address these findings. They include:

- Insurance and Risk Management and Toronto Water should revise their *Basement Flooding – General Information* brochure to include better information about how the City handles basement flood and sewer backup claims, including specifically explaining that the City will only pay a claim where the claimant is able to prove that the City was negligent.

- The City should update all relevant sections of its website to ensure that the public gets clear, consistent and detailed information about how Toronto Water investigates basement floods and sewer backups.
- Insurance and Risk Management, in collaboration with Toronto Water, Legal Services and Strategic Communications, should work together to provide clear information on the City's website about the importance of reporting a basement flood or sewer backup to 311.
- Insurance and Risk Management should stop routinely requiring a confidentiality clause in the Final Release it has claimants sign when it settles a claim. This should apply to all third-party liability claim settlements, not just those related to basement floods and sewer backups. The exception will be where the City Solicitor or outside counsel representing the City expressly recommends including the confidentiality clause in a particular case.
- Insurance and Risk Management, Legal Services and Toronto Water should develop a written "business process" to coordinate the investigation of storm event claims—including a clear definition of a "storm event", roles and responsibilities for all involved in the investigation process, and a formal communications strategy. The City should post information about the storm event claims investigations process on its website.
- Toronto Water should review the job responsibilities for the Coordinator – Business Process (an internal staff position to help it respond to third-party liability claims) and examine ways to share third-party liability claims data with sections of Toronto Water responsible for preventing and addressing basement floods and sewer backups.

The City administration agrees with the Ombudsman's findings. It accepts her recommendations and has undertaken to implement them by the end of March, 2021. Ombudsman Toronto will follow up to ensure that it does so.

## **CONTACT**

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## **SIGNATURE**

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(Original signed)

Susan E. Opler  
Ombudsman

## **ATTACHMENTS**

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