

Ombudsman Toronto

Enquiry into How the City of Toronto Handles Homeowner Third-Party Liability Claims for Basement Flooding And Sewer Backups

Presentation to Toronto's General Government and Licencing
Committee on January 4, 2021

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REQUEST FROM CITY COUNCIL

- Toronto homeowners experience costly basement flooding and sewer backups every year.
- Increased frequency of rainstorms means these events are on the rise.
- Some homeowners are dealing with repeated flooding and significant property damage.
- Council asked Ombudsman Toronto to review the City's process for investigating third-party liability claims by members of the public whose properties have suffered damage due to basement floods and sewer backups.
- We did not examine the cause of repeated basement flooding.



THIRD-PARTY LIABILITY CLAIMS AGAINST THE CITY

- From January 1, 2015 to December 31, 2019, Toronto homeowners filed 1,461 basement flooding/sewer backup claims against the City.
- Of those claims, the City denied 1,130 (approximately 77 per-cent) based on the third-party claims adjuster's determination that claimants had not proved that the Toronto Water division's operations were negligent, either in maintaining the City's sewer system or in responding to individual flooding events.



WHAT PEOPLE TOLD US

- Many homeowners we spoke to expressed anger and frustration that their homes continue to be flooded, even after the City has completed upgrades to the sewers in their neighbourhood.
- Their anger and frustration are compounded when they submit a third-party liability claim against the City, believing that the City should be responsible for the property damage caused by the floods, only to have the third-party claims adjuster deny their claim.
- Others told us they didn't understand the City's third-party liability claims investigation process, or how to file a claim against the City.



OUR FINDINGS

- The City is not giving homeowners clear and accurate information.
- The City is not always making it clear to homeowners that it will generally only pay a claim if the City was negligent.
- The City only tells people after denying their claims that the claimant has the job of proving the City's negligence.
- Homeowners are not always told about the importance of contacting 311.
- The City routinely requires claimants to sign a confidentiality clause as part of settling a claim.
- There are no written processes, policies or procedures to guide lengthy and complex “storm event” investigations.



SOME OF OUR RECOMMENDATIONS

- The City should share better and clearer information about how it handles these claims, including the importance of reporting to 311 and that the City will only pay a claim if it was negligent.
- Insurance & Risk Management, Legal Services and Toronto Water should develop a business process to coordinate the investigation of storm event claims.
- Insurance & Risk Management should stop routinely including a confidentiality clause on settlement.
- Toronto Water should review staff job responsibilities to ensure relevant information about basement flooding claims is shared with staff responsible for preventing and addressing basement flooding.



THE CITY'S RESPONSE

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

