

Litigation In US and Canada Regarding Prescription Opioids

Date: January 26, 2022

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City of Toronto ("the City") and contains advice that is subject to solicitor-client privilege.

SUMMARY

There are several litigation proceedings involving government claims to recover costs incurred as a result of the opioid crisis. The claims are being advanced against the manufacturers and distributors of prescription opioids in the United States and Canada.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding these legal proceedings.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council authorize the public release of the confidential recommendations contained in Confidential Attachment 1, at the discretion of the City Solicitor, but that the remainder of Confidential Attachment 1 remain confidential as it contains advice which is subject to solicitor-client and litigation privilege.

FINANCIAL IMPACT

The financial implications of the litigation are discussed in Confidential Attachment 1.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

Individuals and governments across North America have alleged that prescription opioid manufacturers and distributors ("Opioid Defendants") should bear some financial responsibility for the opioid crisis because, amongst other things, they misrepresented the addictiveness of and harms caused by opioid drugs.

The Canadian Class Action Proceedings

In 2020, the City Solicitor became aware of a class proceeding being advanced against Opioid Defendants in Canada on behalf of all Canadian municipalities ("the Municipal Class Action"). As a municipality in Canada, the City is automatically a class member. The Municipal Class Action is being advanced by Guardian Law Group LLP ("Guardian"), a law firm based in Alberta. The Municipal Class Action was commenced in 2020 and has not yet been certified by the Court.

Separately, a class proceeding was commenced in 2018 on behalf of all federal, provincial and territorial governments in Canada against Opioid Defendants ("the Provincial Class Action"). The Provincial Class Action is being advanced by three law firms in British Columbia.

The Purdue Bankruptcy Proceedings in the United States

In the course of monitoring the Municipal Class Action, the City Solicitor also became aware of an established claims process for submitting claims against Purdue Pharma L.P. and certain associated companies, the makers of OxyContin in the United States (the "US Bankruptcy Process"). This process, established through U.S. bankruptcy proceedings and recognized by court orders made in Canada, is applicable to all claims against Purdue Pharma in the U.S.

To preserve the City's rights, the City, along with other Canadian governments, submitted a claim in the US Bankruptcy Process. Guardian has submitted claims in the US Bankruptcy Process on behalf of several other Canadian municipalities and Indigenous band councils.

The US Bankruptcy Process resulted in a negotiated Bankruptcy Plan (the "US Bankruptcy Plan"), which was approved by the US Bankruptcy Court in September 2021. The US Bankruptcy Plan will result in billions of dollars being placed in "Opioids Abatement Trusts" that will be used to address the opioid crisis in the United States. These trusts will be accessible to American non-federal domestic governments, but not Canadian governments.

The US Bankruptcy Plan was approved with broad support from many creditors. However, a group of eight US States (the "Objecting States") and a number of Canadian municipalities and Indigenous band councils represented by Guardian ("Guardian Municipalities") objected to the US Bankruptcy Plan and appealed.

The US Bankruptcy Plan was overturned on appeal by a US District Court in a decision released on December 16, 2021. However, the appeal court explicitly confirmed that it was reasonable for Canadian governments to be excluded from access to the Opioids Abatement Trusts.

Purdue is pursuing a further appeal to re-instate the US Bankruptcy Plan.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Confidential Instructions to Staff