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Item No. 10.1.1
Halifax Regional Council
February 9, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in black ink, appearing to read "Dan English".

Dan English, Chief Administrative Officer

A handwritten signature in black ink, appearing to read "Mike Labrecque".

Mike Labrecque, Deputy Chief Administrative Officer - Corporate
Services and Strategy

DATE: February 1, 2010

SUBJECT: Insurance Cap Submission to Province

ORIGIN

Staff originated

RECOMMENDATION

It is recommended that Halifax Regional Council approve the position set out in the attached draft submission to the Provincial Review of the insurance cap and request that it be forward to the Office of the Superintendent of Insurance by February 15, 2010.

BACKGROUND

Between 2000 and 2003, auto insurance premiums were rapidly increasing, reaching a point where it was becoming unaffordable for many people. The insurance industry's position was that an increase in the number of "pain and suffering" claims and their associated awards was a major reason for the rising premiums.

In 2003 the Provincial Progressive Conservative government implemented reforms to auto insurance regulations in an effort to control the rising premiums. This included the institution of a cap of \$2500 for pain and suffering awards for minor soft-tissue automobile injuries (essentially injuries which take less than 12 months to resolve). It must be stressed that the cap does not apply to serious injuries and does not limit the compensation victims can receive from their own insurance for work missed due to injuries. The objective of the \$2500 cap was to stabilize pain and suffering award costs and so make it financially viable for insurers to reduce premiums by 20%.

The current NDP government objected to the cap when it was brought in, on the grounds that people injured in accidents should receive fair compensation and not be limited by a subjective amount chosen by the government. One of the NDP's long-standing commitments has been to review the cap on pain and suffering awards and look at alternatives. In January 2010, the government released a discussion paper "*Concerning the Cap on Pain and Suffering Awards for Minor Injuries*" and invited public comment on the cap and possible alternatives. Submissions are due by February 15, 2010, with a target completion date for the review of Spring 2010.

The Province's main concern with the cap is the issue of fairness to accident victims. Examples of issues they wish to explore under the review include the definition and range of injuries considered "minor," whether the \$2500 cap amount is too low, and insensitivity of the cap with respect to injury severity and the pain and suffering endured at time of accident and during the following 12 months. The discussion paper floats a suggestion of allowing disputes regarding injuries to be subject to negotiation and (if necessary) settled by the courts, rather than an artificially-set limit introduced to reduce insurance premiums. It should be noted that while the NDP in the past have mentioned the idea of a public insurance system, the Premier has made it very clear in recent months that he does not intend to pursue that option.

As the owner of over 1400 vehicles, many of which operate 24/7, and as the operator of a public transit system which has 70,000 passengers daily, HRM has a large interest in any changes to auto insurance regulations. Staff have prepared a draft submission to the Province for Council's approval.

DISCUSSION

The cap has had a positive impact on insurance claims against HRM. Prior to the cap HRM was experiencing a rising number of claims, leading to increased expenditures, legal costs, and higher awards. As well, HRM's own insurance premiums were increasing markedly. However, since the implementation of the cap, overall auto insurance rates in Nova Scotia have decreased by approx 27%. The number of claims brought against HRM are down significantly, which has led to savings around legal fees, discoveries and court costs. In addition, HRM has seen its average cost of a transit claim drop by 26.7% and the average cost of non-transit claims drop by 30.5%. The combination of decreased premiums, fewer claims, and lower claim costs has led to significant savings of taxpayer dollars.

HRM's draft submission to the Superintendent of Insurance describes the above, but also outlines the benefits of the cap in general. The settlement of claims under the cap system removes the adversarial component which existed under the former tort system. With the cap, it is much easier to shift the focus from pain and disability, which is counter-productive, to treatment and ability. This results in earlier resolution. In addition, the advantage of a fixed amount for 'pain and suffering', typically the contentious part of the claim, is that it is now easier to identify the claim value, leading to a less litigious approach to claims. This means claim payments are being made months or years earlier than under the previous system.

The Provincial discussion paper floats the idea of replacing the cap with a deductible. In its draft submission, HRM describes the problems with that approach. To have any lasting impact, the deductible would need to be significant (Ontario, which took this approach, increased deductibles from \$15,000 to \$30,000). This eliminates payment for minor injuries and is counterproductive to the stated aim of making compensation fairer. In comparison, under the cap system all injuries receive compensation. The deductible approach also reinstates a system that encourages litigation for minor injuries, and has the consequence of driving insurance premiums back up.

In the opinion of HRM staff, the insurance cap has achieved its objective of increasing insurance affordability, using an approach that is fair. There are opportunities to make adjustments to the current system, such as increasing the cap or better clarifying the definition of "minor injury." Should Council agree with this approach, the attached submission will be sent to the Provincial Office of the Superintendent of Insurance by February 15, 2010, as HRM's position on the insurance cap review.

BUDGET IMPLICATIONS

None

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

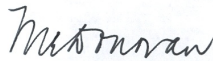
None

ATTACHMENTS

HRM Submission "Concerning the Cap on Pain and Suffering Awards for Minor Injuries"

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Anne Totten, Corporate Policy Analyst, 490-5623



Report Approved by: Mary Ellen Donovan, Director, Legal Services



Concerning the Cap on Pain & Suffering Awards for Minor Injuries

Submission from Halifax Regional Municipality

**Office of the Superintendent of Insurance
PO Box 2271
4th Floor, Provincial Finance Building
1723 Hollis Street
Halifax, NS B3J 3C8**

February, 2010



INTRODUCTION

As noted in the discussion paper, in the period leading up to the introduction of the cap, consumers experienced rapidly rising automobile insurance premiums and many had difficulty finding appropriate coverage. HRM agrees with the industry contention that an increase in the number of claims and associated awards for “pain and suffering” was a key reason for rising insurance premiums.

The Auto Insurance Regulatory Reforms were implemented in 2003 in an effort to control increasing insurance premiums. The adoption of a cap on minor injuries has achieved its objective of making insurance more affordable; and by making it more affordable, it not only achieved a more reasonable insurance cost, it resulted in younger drivers able to secure otherwise unaffordable insurance. The cap has likewise had a positive impact on insurance claims against HRM and its ability to maintain affordable insurance coverage.

COVERAGE

HRM owns over 1,400 vehicles including 294 buses, police cars, fire trucks, snow and ice control equipment, etc. 70,000 passengers use HRM transit daily with over 17 million passenger trips annually. Many of HRM vehicles operate on a 24/7 basis. All of which creates a high level of claim exposure.

HRM maintains insurance coverage on all of its automobiles. HRM currently has a large per claim automobile deductible, resulting in HRM being effectively a self-insurer for 95% of its automobile claims.

Prior to the introduction of the cap, settlement demands for minor soft injuries were increasing with each passing year. In addition, costs for medical treatment, narrative medical reports, and investigative services increased at a similar rate. The net result of this was an increase in expenditures for settlements, and defence costs. The majority of these costs fell within HRM’s deductible and as such, were a direct outlay of taxpayer’s dollars. HRM also experienced an annual marked increase in its insurance costs at renewal.

POST CAP BENEFITS

Non-pecuniary damages for minor soft tissue injuries have historically been a significant part of bodily injury settlement costs for HRM. Since the implementation of the caps HRM has seen its average cost of a transit claim drop by 26.7%. For non transit claims, the average cost per claim has dropped by 30.5%. This means that taxpayers are paying out less monies under the deductible portion of the coverage. So it is not just the insurance industry that has seen a stabilization of insurance claims costs; but also HRM taxpayers have seen

a significant moderation of claims costs, as a result of the cap. The Province, with a \$1M deductible, is effectively its own automobile insurer, and has presumably had a similar experience with the resultant savings to Provincial general revenues.

Since the implementation of the caps, claims have resolved more expeditiously which is beneficial to all parties. The settlement of claims under the caps regime removes the adversarial component which existed under the former tort system. With the caps, it is much easier to shift the focus from pain and disability which is counter productive, to treatment and ability. This results in earlier resolution.

Since 2003 there has been a significant reduction in the number of court actions initiated against HRM as a result of motor vehicle claims. This has resulted in additional savings with respect to defence costs including legal fees, and discovery and court costs.

Overall, since 2003 HRM has experienced significant savings with respect to the cost of its automobile insurance coverage.

DISCUSSION

To address some of the points raised in the discussion paper: The paper notes that some have suggested that “the financial arguments in favour of the cap are not valid because industry financial results are cyclical in nature and profits of automobile insurers have increased substantially in recent years”. Regardless of what has transpired with respect to insurance industry profits, on which HRM offers no comment, the reality is that insurance has become more affordable with the introduction of the cap.

With respect to the suggestions that “in the general interest of fairness, all disputes regarding injury claims should be subject to negotiation, and, if necessary, settled by the courts”, the advantage of a fixed amount for ‘pain and suffering’, typically the contentious part of the claim, is that it is now easier to identify the claim value, leading to a less litigious approach to claims, the direct result being that claim payments are being made months, if not years earlier than previously would have been the case.

The discussion paper also notes that some have suggested that “the cap is a deterrent to accessing professional advice”. Solicitors retainers for motor vehicle claims have historically been based on contingency. Upon resolution, the solicitor receives a percentage of the settlement. Any contingency fee claim has an inherent deterrent to accessing professional advice if the value of the claim is not large enough to generate sufficient income for the solicitor. This is not something that is unique to the current caps regime. Regardless of the nature of the claim, the smaller the claim, the less room exists to support litigation fees.

The insurance industry itself has published information of assistance to the public in better understanding when their claim is considered minor under the legislation, and to understand all of the other recovery elements that are not subject to the cap.

With respect to substituting the cap with a deductible, that raises a number of concerns:

- those with minor claims could receive less or nothing at all;
- artificial inflation of claims over time in an effort to absorb the deductible;
- the deductible approach reinstates a system that encourages litigation for minor injuries; and
- savings with respect to overall claims costs and insurance premiums would be lost.

To have any lasting impact, the deductible would need to be significant. The deductible in Ontario was increased from \$15,000 to \$30,000 for this very reason. This then eliminates any payment for minor injuries. This is at odds with the policy of the caps system whereby all injuries receive compensation.

CONCLUSION

The government of Nova Scotia mandates that individuals carry automobile insurance and therefore, it is incumbent upon government to ensure consumers are treated fairly and that they have access to coverage at reasonable rates.

HRM submits that the insurance cap has achieved its objective of increasing insurance affordability, using an approach that is fair. That approach compensates those incurring minor injuries for all financial losses, reimbursing for all work related losses, and all medical related expenditures. The only change has been to quantify the compensation for pain and suffering of a minor injury at \$2,500.00.

There are opportunities to make adjustments to the present system, if it is felt that the present system is not as fair as it could be. The \$2,500 cap may need to be increased, or the definition of minor injury may require further clarification.

HRM would like to thank the government of Nova Scotia for the opportunity to participate in the insurance review process and we would welcome the opportunity to engage in further discussions. HRM is committed to work collaboratively to ensure that insurance in this Province remains accessible, affordable, and fair.