

Escalating Cost of Municipal Claims 2022

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Introduction

At Intact Public Entities (IPE), we are concerned about recent and historical trends affecting the cost of municipal insurance. Municipal claims costs continue to escalate. At a time when municipalities are facing considerable pressure managing their budgets due to increasing economic challenges, increasing claims costs creates additional financial pressure since it affects all municipalities and their insurance providers. We believe it is important you understand why.

This report was created to help municipal clients understand the changing landscape. The information was compiled based on analysis conducted by IPE using industry data, as well as real claims from our own database that contains years of information collected over our long history in the municipal insurance business. This report provides an overview of the major trends influencing claims costs, and then looks closer at some of the primary drivers, including:

- Climate Change
- Cyber Liability
- Class Actions
- Joint and Several Liability (The 1% Rule)
- Changing Legal Landscape (social inflation)
- Future Care Costs
- Transit Claims

There is clearly an increase in a number of areas that impact the cost of municipal claims. All of the insurers of municipal governments are being impacted by this increasing cost of claims and will need to respond in order to ensure that premiums are adequate to pay for these claims.

These cost factors are the fundamental reasons why the municipal sector is currently in a hard market. The cost of claims drive premiums.

Overview - Claims are Driving Premiums

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. Then the claim may take several years to settle. Forecasting what the courts may award a plaintiff several years, if not decades, in the future is very challenging.

Over the past few years, there has been a rise in the number of factors impacting municipal claims – factors that are driving up claims, which, in turn, are driving up the cost of insurance. These trends will likely never reverse.

What has changed?

Property losses are more frequent and severe. Climate change has resulted in a substantial increase in property losses and catastrophic losses. Regardless of whether this has impacted a municipality directly, the substantial escalation in the cost of claims has increased both property insurance and reinsurance rates worldwide. Accessing adequate property capacity is becoming increasingly harder across Canada. Cyber liability claims have risen dramatically in the last three years. More important, it is anticipated that these claims will continue to grow at an exponential rate. A number of cyber carriers are exiting the market and in addition, many of those remaining will not insure government entities.

Class action lawsuits are increasing in frequency because the certification process is now much easier and there are more plaintiff lawyers who pursue this type of claim. Municipalities have a growing exposure here. Even though a municipality may be innocent of the allegations, class actions are much more difficult

and costlier to defend. COVID-19 claims have recently triggered a number of class action suits for municipalities.

Joint and several liability (the 1% rule) is a significant concern for municipalities in Ontario. The Association of Municipalities of Ontario (AMO) has created a number of working groups over the years with the goal of reforming this law. As the severity of awards increases, so too does the exposure to those who have deep pockets. The Province of Ontario has recently initiated a consultation process regarding the joint and several principle. Although recent initiatives have not generated change, they have increased awareness and IPE will continue to assist the municipal sector in lobbying for relief. Although joint and several liability has had an impact on municipalities, it is only one of many cost drivers. A change in joint and several liability that favours municipalities will not absorb or offset the impacts of the current hard market.

The changing legal landscape. There is a continuing trend that shows we, as a society, have become more litigious and demonstrate less personal accountability resulting in a higher frequency and severity of claims. In response, judges have awarded more contributory negligence to municipalities versus plaintiffs. Although the municipal sector has recognized this trend for some time, recently the term social inflation describing the changing landscape has emerged across the insurance sector.

Damage awards are substantial. A number of years ago it was alarming to hear about a \$5M liability award. Today, larger awards are more frequent. Court awards for severe bodily injury claims have increased dramatically in the last ten years. Claims that may have settled for \$5M ten years ago are now settling for \$12M - \$18M. These awards are primarily driven by the costs of providing future care for catastrophically injured plaintiffs. Municipalities have a large exposure to this type and size of damage award and are currently feeling the impact through the cost of insurance.

The cost of defending a claim is going up. Individual claims are more complex to defend resulting in more time to manage the claim with more detailed investigation, more experts and more legal time involved in the process – at ever-increasing rates.

Transit claims are increasing in severity. Operating a transit system has inherent exposures attached since urban municipalities can serve a large number of riders. When buses have accidents, claims can be filed by all occupants resulting in very significant awards. Recent transit claims have put tremendous pressure on auto policy premiums.

The Insurance Market Cycle

Insurance is a cyclical business. It has been historically defined as being either hard or soft. A soft market typically exhibits low rates, generous terms, abundance of capital and more competition. A hard market is the opposite - higher rates, restrictive terms, reduced levels of capital and less competition.

This insurance cycle impacts all lines of business (property, liability, automobile, for example) across commercial and personal lines. Over the past five decades, there have been four hard markets: one in the mid 70's, mid 80's, early 2000's and the one we are in right now. It's been 15 years since the last hard market, consensus was we were overdue. One consistent observation is that the hard market is usually short in duration - around 3 years. A soft market usually lasts much longer, the last one being 15 years. The current hard market began in 2019 and continues in 2022.

How is the current hard market impacting municipal premiums and terms? The municipal sector is affected in much the same way as others in the commercial insurance space. Double digit premium increases were typical for municipalities in 2020, 2021 and 2022. Property capacity is challenging

especially for municipalities with large property schedules. In certain cases, restrictive terms have been applied. In addition, competition has been reduced. Historically Ontario municipalities usually have up to four bidders participate on a municipal insurance RFP. Over the past two years that level of participation has dropped and in some cases only one bidder is quoting.

The question most are asking is when the hard market will end? It's difficult to predict when the current hard market will end but insurance professionals expect it will continue through 2022. However, the industry has begun to describe the commercial hard market as: softening, thawing, past its peak or tapering off. Various commercial segments will climb out of the hard market at different times. Those segments that have their fundamentals in place may exit sooner, higher risk segments will be slower. The financial sector may soften before transportation and public sector, for example, while other challenging lines such as Directors and Officers or Cyber will last much longer.

Finally, there are a number of factors at play that may cause the hard market to continue: high inflation (driving up the cost of claims), costly reinsurance, social inflation, COVID -19 (impact of class action suits) and geopolitical uncertainty.

The commercial insurance space is making solid strides in improving their underwriting performance, a soft market is on the horizon. In time Municipalities will once again enjoy the stability that a soft market provides.

What Can Municipalities Do?

Municipalities must increasingly rely on an insurance provider that keeps abreast of emerging issues and provides best-in-class risk management and claims services. It is further recommended that in order to help reduce the total cost of claims, municipalities should leverage initiatives implemented by their insurers to help drive efficiencies such as insurer internalization and utilization of the insurers preferred vendors and rates.

Think of insurance as a service, not a commodity.

Make sure your provider has superior tailored risk management and claims services. Municipalities can't rely on the provincial government to provide relief - they must take matters into their own hands. A Total Cost of Risk (TCoR) approach must be employed to ensure your insurance program is cost effective and efficient. A TCoR methodology is a tailored approach that mitigates local exposures (risk management) and implements best practices in claims management.

Ask how long your service provider has been part of their insurance program.

Municipal insurance operates in a long tail claims environment. Some service providers compete on price and shed their municipal insurance markets regularly to ensure they can continue to offer low premiums. This approach is not sustainable. Constantly changing markets results in poor claims service with multiple insurers providing claims services from different countries and lines. Your partners need to be committed to the municipal insurance space. It is important to ask how long your service provider has had their markets, specifically liability.

With the described escalation in the cost of claims, it is necessary to ensure that premiums are adequate to recover the cost of claims. What was viewed as a problem historically has become a full-blown urgent situation today, especially in a highly specialized area such as municipal liability.

Based on this history of what is driving claims costs, there has been a strong upward response in insurance premiums. It is recognized that this has caused increased pressure on the finances of

municipalities over the past two years. We believe, however, that the need to offset the ever-increasing cost of claims with premium adjustments cannot be ignored. We trust that our clients will continue to value our expertise based on our past experience and insight in order to be assured of long-term sustainability in their insurance program.

In the interim, municipalities must continue their efforts to attack the root causes of this problem by working to reduce both the frequency and severity of claims. Wondering where to start?

Developing risk management plans and strategies can seem overwhelming. Consider taking it one step at a time. Work with your broker or insurer on a claims analysis – where are your claims coming from? Look at both the frequency and severity. If the majority of your claims are coming from sidewalk trip and falls for example, start by reviewing your sidewalk maintenance policy and make sure it follows MMS guidelines. If your severity (those large dollar losses) is coming from MVA's, look for any patterns. Are they in the same area or at the same intersection? Are they caused by snow and ice, or is there a common issue of improper signage? You may find trends in these claims that can point you to an area that needs attention.

Risk management needs to be integrated into municipal culture at all levels – from Council to front-line employees. A Risk Manager can put together excellent policies, procedures and guidelines for every department – but if no one is following them, they aren't helpful.

Here are some practical places to start your risk management journey:

1. Claims analysis – do you know where your claims coming from?
2. Incident reports – gain valuable information on where there is possible exposure and fix the problem before it becomes a claim.
3. Education – educating everyone from Council to staff on the importance of risk management is a great way to increase buy-in. Have your insurer present on the current municipal claims environment and risk management strategies.
4. Contracts – contracts should transfer unnecessary liability, but only if they are properly written and include insurance requirements and indemnity. Have your insurer and legal council review for proper risk transfer.
5. Leverage your relationship with your insurer – look at what value added services are offered. Are there fleet reviews available? Do they inspect your properties for valuation, or can they also inspect for liability hazards?

IPE has been working with municipalities for over 95 years. We understand municipal liability and we are here to assist you in addressing your various risks. We believe the best way to keep your total insurance costs low is by preventing claims before they happen. As an IPE client, you have unrestricted access to our risk management services – at no extra charge. These include educational sessions, consultation services and on-site inspections. Our experts can analyze your operational policies and procedures, identify exposures and risks in your facilities, and consult with municipal workers on risk management topics.

The balance of the article is dedicated to explaining the cost drivers of municipal insurance premiums. It is important to note that fundamentally claims experience drives premiums. There are a number of factors outlined below that are driving up the cost of claims. These factors have evolved over the ten or so years and have culminated in triggering the current hard market.

The critical takeaway from this article is to focus on the factors that a municipality can control. It is more important than ever for municipalities to manage their risk. Reducing exposures and mitigating risk will reduce the frequency and severity of claims. Lower claim costs = lower premiums.

Drivers of Escalating Claims Costs

Climate change

The average global surface temperature in 2021 was the sixth highest since global records began in 1880 and the 45th consecutive year with temperatures, at least nominally, above the 20th century average. Globally, the frequency and severity of catastrophic property losses are on the rise. No one can argue that our weather patterns have not changed. What was deemed to be a “100-year storm” years ago now occurs with increasing frequency. Municipalities must pivot to climate adaptation.

According to Munich Re, overall losses from worldwide natural catastrophes (cat losses) in 2021 totaled \$350 billion dollars. The third highest level in almost four decades. Canada’s total was \$2 billion, our 5th highest year on record. Nationally in 2021, there were 14 catastrophes, which ties with 2011 for second place. Canada is not immune to catastrophic property losses. The severe weather events in Canada in 2021 included rain, fires, windstorms and flooding. Western Canada was particularly hard hit with wildfires (Lytton) and the flooding (Abbotsford, Merritt) in Q4. The 2016 Fort McMurray wildfire event was the single largest cat loss in Canadian history. Prior to Fort McMurray, the largest single cat loss event was the Alberta floods of 2013. Eight of top 10 highest loss years on record occurred in the last decade.

Simply put, property and reinsurance rates continue to rise.

Cyber Attacks

Cyber liability claims have risen dramatically in the last three years. In December of 2021, the Federal Government reported:

- Canada is among the top countries impacted by ransomware.
- The frequency of ransomware attacks around the world increased 151% from 2020 to 2021.
- The average ransom payment worldwide is around \$200,000 CAD.
- The average cost of recovery from ransomware worldwide has more than doubled in the past year from \$970,722 CAD in 2020 to \$2.3M CAD in 2021.

With both the frequency of claims/attacks on the rise coupled with the 151% increase in the cost of claims, premiums are increasing at rapid rates. Some industry experts are speculating that this exposure might become uninsurable.

The cyber insurance market is very volatile and insurance providers are constantly revising their requirements for coverage. Cyber markets are exiting geographies or certain insurance segments (government).

The frequency of municipal cyber attacks reported in the media is alarming. According to a recent poll, cyber-attacks in Canada increased by 50% in 2021 (personal and commercial). In addition, Canada is 3rd in the world in cyber-attacks per million of population behind the UK and US.

Cyberhackers are attacking municipalities daily using sophisticated tactics. A town in Florida (population 15,000) had its water system hacked – the assailant was attempting to increase the levels of lye.

At one time the perception regarding cyber-attacks was equivalent to NIMBY – not in my backyard; now it’s a question of when. Municipalities must increase their protection, ensure they are adequately insured and implement best practices. Hackers prey on the underprepared resulting in the greater probability of a damaging cyber event.

In recent years, a number of smaller Ontario municipalities reported cyber-attacks to the point where the OPP issued a warning. Since then, a number of high-profile events have emerged. A larger Western

municipality responded to a significant phishing scam resulting in a seven-figure initial payment. In Atlantic Canada, a large municipality had to deal with a significant ransomware attack costing millions to rebuild with a massive impact on service levels. On October 25th 2021, a small city in Eastern Ontario was attacked and as of early December the municipality was still unable to process pre-authorized payments for taxes, water and sewer as well as daycare services.

Joint & Several Liability (The 1% Rule)

Joint and several liability is legislated in many Canadian provinces. In Ontario, the governing statute is *The Negligence Act*. This legislation directs that a person injured by two or more wrongdoers may collect full damages from one of the wrongdoers regardless of the proportion of their liability. In our opinion, given that municipalities carry high limits, the legislation has a very negative impact on municipalities.

Severe injuries are most common in road maintenance cases. People that become injured in road accidents, bring actions against the at fault driver of the vehicle as well as the municipality, alleging poor road maintenance or design.

Due to the high value of severe injuries, the limits of insurance on the vehicle are generally not enough to satisfy the judgment. Therefore, due to joint and several liability, the municipality's insurer must pay the balance, even if the municipality is only 1% liable.

For over a decade IPE has participated in a number of initiatives with AMO and the Provincial government to solicit change to the 1% rule for municipalities and relieve them of this unfair burden. In 2014, the Ontario government (Attorney General's Office) was considering the Saskatchewan model of proportionate joint and several liability. Unfortunately, the provincial election resulted in a newly appointed Attorney General and the proposal was abandoned. Early in 2019, the province initiated a consultation process regarding the joint and several liability principle.

Regulatory changes to the Statutory Accident Benefit Schedule could expose municipalities to a higher frequency of joint and several claims allegedly arising due to poor road conditions. For claims arising out of accidents that occurred on or after June 1st, 2016, the maximum benefits available under the Statutory Accident Benefit Schedule to 'catastrophically impaired' persons have been reduced from \$2 million (\$1 million in medical and rehabilitation plus \$1 million in attendant care benefits) to a total of \$1 million (i.e. a 50% reduction). This benefit reduction only impacts new claims for accidents occurring on or after June 1st, 2016. This represents a significant change and that shortfall in available coverage under the Statutory Accident Benefits Schedule for claimants who did not purchase optional benefits must be addressed by the at-fault auto defendant thereby eroding their liability limits quicker. Given that the majority of auto liability policy limits are \$1 million, municipalities will likely see an increase in the frequency of joint and several claims from injured claimants.

IPE handled numerous joint and several exposure claims. Here are two examples:

A two-car collision at a city intersection in 2007 resulted in serious injuries. Lawsuits were brought forward which were finally resolved in 2019. The claims against the City were for non-repair of the intersection. The trial judge found one driver liable for 50%, the second driver 25% and the City liable for 25% of damages. The City was liable due to the absence of a stop line at the stop sign which constituted a state of non-repair. All of the defendants appealed the trial decision. The Court of Appeal dismissed the action against the second driver and increased the proportion of liability for the City to 33.33%. The damages awarded were \$15.5 million inclusive of PJI; exclusive of Third Party Costs, Disbursements and HST. The City should have only been responsible for \$5.166 million in damages plus their proportional share of Third Party Costs, Disbursements and HST. Since the at fault driver only had \$1 million in auto limits,

as a result of joint and several liability, the City was responsible to pick-up the shortfall. In the end, the City's exposure to the claim increased to \$14.5 million plus \$480,496 in Third Party Costs, Disbursements and HST. This represented approximately 93.5% of the total damages awarded.

A second example from 2015 involves a child who was severely injured when struck by a vehicle at a city cross section. The claim against the City was threefold:

1. Did the crossing guard leave before the assigned time?
2. Was the City negligent for operating a crossing guard program that provided for the guard to leave ten minutes before classes start?
3. Did the City fail to fulfil its statutory duty to keep the intersection in good repair – should the loss location have had a reduced speed limit?

The quantum of damages was agreed upon before trial at \$7.85 million plus expenses. The trial was required to apportion liability among the three parties. The initial ruling was that the plaintiff received no apportionment while the driver and City were each assessed 50% contributory negligence. Again, the driver only had \$1 million in auto limits and the City was required to absorb an additional \$3.9 million plus expenses. The City's final proportion of costs equated to 87%.

There are numerous examples where municipalities have a strong liability defence, however they face significant risk of joint and several damages. Many of these claims are settled out of court to avoid these excessive joint and several costs. Quantifying the impact of joint and several damages on municipalities is very challenging since the objective in many cases is cost avoidance.

Although joint and several liability has had a significant impact on municipalities, it is only one of many cost drivers. A change in joint and several liability that favours municipalities will not absorb or offset the impacts of the current hard market.

Class Actions

When a large group of people are collectively harmed they can collectively bring an action before the Court. Class actions are an economical way of bringing suit because the expenses are shared among many parties. In addition, where the group can't afford the expenses to bring a class action forward, a government fund has been created to assist them. It has become increasingly difficult to successfully oppose class certification in all jurisdictions. Courts are more readily willing to certify class actions. Recent examples of class actions include: 1) Claims against a Health Department for negligent inspection of a public swimming pool which led to infectious disease of claimants. 2) Claims against a municipality by charitable organizations for the collection of taxes for which the municipality did not have the authority to impose. 3) Claims against municipalities related to property damage arising from flooding following a rain event and the legal risk associated with stormwater management.

If liability is found against the municipality, the damage award can be significant depending upon the number of people in the group. However, more importantly, the cost of defending class actions is very high. For example, a recent class action claim commenced against a municipality for breach of privacy had 85,000 potential claimants as per the pleadings. Through the legal process it was finally determined that there were only 40 claimants. After careful review of all the submissions by claimants, the claim was settled. All but one of the claims were rejected for a total damage payout of \$113.04. Third-party legal costs, defence costs and expenses totaled approximately \$1,335,000.

Municipalities traditionally have provided Long Term Care (LTC) services. COVID-19 has resulted in a number of class actions suits filed against municipal LTC homes. This recent development adds another challenge to the municipal sector in terms of additional drivers regarding the rising cost of claims.

Although some provinces have implemented protections against these class actions, fundamentally these impacts will take a long time to materialize as these cases will be resolved through the court systems.

Changing Legal Landscape (Social Inflation)

IPE has for some time recognized that societal changes have increased the cost of claims. Presently this phenomenon is impacting all segments in the insurance space. The term to describe this is social inflation.

Court decisions have shown a reluctance to assign contributory negligence to claimants that have been catastrophically injured. For example, consider *Stephen Campbell et al. vs. the Municipal Corporation of the County of Bruce*.

This was an occupier's liability claim in which the claimant cyclist was advancing over a "free fall" apparatus at the municipality's adventure park, when he fell off the obstacle, rendering him a quadriplegic.

The plaintiff testified that he was a relatively active middle-aged man with extensive experience road and mountain biking. He knew there were risks of injury associated with mountain biking, he understood the rating system used at the bike park and that it was an unsupervised, non-fee-paying facility. The plaintiff observed the signs requiring him to ride within his own abilities and risk and to wear a helmet, although he did not do so on the first day. With respect to the incident itself, the trial judge noted that the plaintiff "overestimated his abilities and underestimated his skill required to successfully ride this teeter-totter". The trial judge noticed that Campbell "acknowledged that his exit strategy off of free fall was incorrect". Despite all this, the trial judge concluded that the plaintiff bore no contributory negligence in this case.

Recently, the Financial Services Commission of Ontario contracted an independent research company to collect statistics on motor vehicle accident claims. Here is a highlight of some of the findings and comparisons to their last study:

- 91% of the claimants had some type of legal representation (a 37% increase since last reported).
- 83% of claimants ultimately commenced legal action (an increase of 60% since the last report).

Damage Awards are Substantial

Today, larger awards are more frequent. Court awards for severe bodily injury claims have increased dramatically in the last ten years. These awards are primarily driven by the costs of providing future care for catastrophically injured plaintiffs. Municipalities have a large exposure to this type and size of damage award and are currently feeling the impact through the cost of insurance. Listed below are the key drivers that contribute to the escalating cost of claims.

Future Care Costs

Future care costs address the medical and non-medical needs of a person who has suffered a catastrophic injury. Future care takes into account the person's future needs that will enhance the person's life. Consideration is given to medications, rehabilitative needs, nursing, home renovations, orthotics, assistive devices, transportation, social outings, educational or vocational needs, housekeeping and personal care services, recreational activities and future medical complications.

Future care costs are by far the largest component of a serious bodily injury claim. Providing future care is extremely expensive. People with severe brain injuries, spinal cord injuries and multiple orthopedic injuries are living longer. Coupled with rising healthcare costs, the cost of future care has ballooned over the past five years.

Brain injury cases are the types of cases where future care awards are the most significant. In the past 10 years, IPE has seen a dramatic increase in the number of brain injury cases reported.

Examples of Future Care Awards

IPE handled a claim in which a teenager was catastrophically injured when hit by a car in an intersection. The case was settled mid-way through trial for \$8,300,000. Future care accounted for \$5,000,000 of the settlement.

In *MacNeil vs. Bryant*, the Court awarded an \$18,427,207 judgement to a 15-year-old female who received a severe head injury as a result of a motor vehicle accident. Over \$15,000,000 of the award was for future care.

In *Sandhu vs. Wellington Place Apartments*, a severe head injury was sustained by a child who fell from an apartment window. The Court awarded a \$17,000,000 settlement which included \$11,000,000 for future care.

In *Marcoccia vs. Gill*, a 20-year-old male received catastrophic injuries as a result of an automobile accident. The Court award was in the range of \$15,500,000 as plaintiff counsel argued he would need 24/7 attendant care for the rest of his life.

In *Morrison and Gordon vs. Greig*, Gordon was rendered a paraplegic and Morrison sustained a catastrophic brain injury. Morrison was awarded \$11,500,000 and Gordon \$12,600,000.

As outlined in the cases above, future care costs ranged from \$5,000,000 to \$15,000,000 which had an immense impact on the total cost of these claims.

What Factors are Impacting Future Care Assessments?

Attendant Care

Attendant care, private duty nursing or a personal support worker is often required/demanded in the most serious cases. To help illustrate how these costs can escalate quickly, imagine a young person with a brain injury who has a 50-year life expectancy requiring 24/7 care. Attendant care for that person could easily cost millions. There are other providers of future care services including services such as: housekeeping, nanny services, lawn and home maintenance, speech therapists, psychological counseling, occupational therapy, personal support worker and employment counseling.

Inflation on Medical Expenses

Statistics have shown that medical expenses inflate at a higher rate than average. Statistics Canada published inflation rates demonstrate that Health Care Services inflation exceeds CPI by 23.3% over the last 15 years. In the case of *MacNeil vs. Bryant*, the Court accepted the expert evidence that medical costs will inflate at a higher rate than average. Our medical system is currently strained and with no future relief in sight and medical service costs will increase as demand exceeds supply which could increase future care costs significantly.

Management Fees

Awards for future care must be managed to ensure the capital provided lasts a lifetime and often neither the plaintiff nor the plaintiff's family is capable or experienced in managing a large sum of money. The Courts realize that a professional guardian needs to be hired to ensure the funds are properly invested and managed. Management fees are approximately 5% of the futures award but in *Sandhu vs. Wellington Place Apartments*, the management fee alone was well above at 15%.

Interest Rate and Discount Rate Impact

Current interest rates are low. When a claim for future care is settled an insurer is paying a large sum of money today for an expense into the future. A discount rate, which is tied to interest rates, is used by Courts to assess the current value of this future expense. Until 2003, the rate was 2.5% on all damage awards for future losses. Since then, the rate was lowered to 0.1% for the first fifteen years of the future award and 2.5% thereafter. This change has resulted in a minimum increase of 18% on these awards.

Additional Heads of Damage

Loss of competitive advantage was introduced in the early 1980's. It was argued that a person, with even the most minor injury, was entitled to damages in the case of a job loss and/or the fact that a prospective employer may not hire a "damaged person". In 1980, this head started at a \$5,000 award. Today, it can be valued at \$100,000 or more.

Loss of Interdependent Relationship (LOIR) was first pleaded in the early 2000's. The damages are based on the fact a severely injured person may never have a spousal relationship, and benefit from the ability of two people living cheaper than one. When first pleaded this award was less than \$100,000 and has subsequently doubled.

Municipal Claims Inflation

Claims inflation should not be confused with the Consumer Price Index (CPI).

CPI is an indicator of the changes in consumer prices experienced by Canadians. These items include food, shelter, transportation and clothing. The CPI is frequently used to estimate the extent to which purchasing power of money changes, so it is widely used as a measure of inflation. Since the onset of COVID-19 the cost of claims has been impacted due to increased material costs and supply chain issues.

Inflation on municipal claims is a very different concept. Actuaries refer to this concept as trending. Actuaries take a measurement of claims trending on a large book of business, such as Ontario municipal liability, and will use this information to determine appropriate rate adjustments. To determine the level of trending in the municipal portfolio the actuary considers trends related to both claims severity and claims frequency. This is a predictive measure used to estimate future expected values by analyzing historical data and other relevant information. They also take into consideration jury awards, court decisions, changes to legislation, emerging trends that may impact the claims as well as any professional fees for lawyers, adjusters, and experts.

IPE has a large statistically relevant municipal database established over 95 years of working with our clients. Taking all factors into account, our actuaries estimate that municipalities have a claims cost trend that is well above CPI.

Emerging Issues: Frequency of building inspection E&O claims

We are presently seeing an influx of E&O inspection claims and are closely monitoring this development. Specifically, we have experienced a 21% increase in number of annually reported new claims in the 5 year period leading up to 2022.

The Big Picture

Over the course of our nine decades of successful and continuous business in Canada, IPE has watched as new insurers have entered and exited the municipal insurance sector. Many have underestimated the long tail nature of municipal liability claims. They thought they could deliver coverage to the marketplace

at a discount, only to find out within a few years that they lacked sufficient premium to pay the cost of claims. The only solutions available at that point was to either raise their clients' premiums to the appropriate level or exit the business, sometimes leaving municipalities without insurance coverage.

In 2016, OMEX discontinued underwriting operations. As reported in Canadian Underwriter in 2016, OMEX “has struggled in recent years to grow in an extremely soft insurance market and a highly competitive business environment. This low pricing environment combined with the impact of joint and several liability on municipal claim settlements has made it difficult to offer sustainable pricing while still addressing the municipalities' concern about retro assessments.” Insurance providers that do not have a long-term perspective will not survive.

IPE's long-term, sustainable model has stood the test of time. Some brokers in the municipal insurance space frequently change insurers so that they can continue to offer deeply discounted premiums at the expenses of other critical elements of a value proposition. Due to the hard insurance market, some brokers are struggling to find a market that will offer insurance to municipalities.

IPE partners with insurance companies that understand the high risk and the long tail nature of municipal liability claims. Together, we recognize that as the cost of claims continues to rise, premiums must adjust accordingly. We validate pricing decisions with actuarial reviews that ensure the long-term sustainability of our product and the continued ability to provide broad insurance coverage and our top quality, local risk management and claims services. Our actuarial studies are based on decades of data from the experience of hundreds of Canadian municipalities.

The rising cost of claims and the impact on insurance premiums is a critical issue to manage as part of an organization's overall risk management plan. We believe it is very important for all clients to understand the factors that are driving up the cost of claims and the long-term dangers if municipalities and insurers are not managing this risk proactively. While there may be opportunities in the marketplace where some insurers are prepared to underprice their product, it must be understood that this eventually leads to realistic premium levels as the impact of claims is realized.

Municipalities need to be certain they have the appropriate insurance protection for their assets and liabilities on an ongoing basis. The purchase of sustainable and appropriately priced insurance and a robust risk management program must remain at the core of their insurance program.

Each municipality must be informed of how their insurer provides risk management and claims services. Ask questions about claims management:

- How does your insurer manage claims?
- Are all primary lines serviced by one Canadian provider under “one roof” or by multiple insurers in various countries?
- Does your insurance provider utilize best practices to manage their claims volume?
- What is the cycle time of claims?
- Are older claims increasing in proportion?
- Is the legal spend being managed appropriately?
- Some municipalities have large deductibles – can your insurance provider assist with implementing a best practice environment in your municipality?
- In some municipalities the cost of claims below the deductible is the largest expenditure of the insurance program. Is the cost of consulting services covered by the premium or does your insurance provider charge additional fees?

Municipalities have long tail claims – managing claims properly will reduce municipal expenses.
Ask questions about risk management:

- What risk management services does your insurer provide?
- Do they utilize a tailored approach or are the risk management services generic and not industry/geographically specific?
- Can their staff perform a road review, MMS review, inspect a toboggan hill, playground equipment or trail?
- Does your insurance company provide you with the tools to mitigate risks?
- Municipalities must do everything they can to protect systems from hackers and social engineers. Implementing cyber security standards and routine education for staff on the latest 'fraud' techniques' can help. Insurers are now requiring organizations to have minimum security standards in place **before** cyber insurance can be considered, including:
 - Multi Factor Authentication (MFA)
 - Disaster Recovery Plan and Business Continuity Plan
 - Annual phishing training
 - Email filtering systems
 - Regular security software updates
- Is the cost of the risk management services covered by the premium or does your insurance provider charge additional fees?