



July 14, 2008

Attention: Mr. Willie Handler, Senior Manager
Automobile Insurance Policy Unit
Financial Services Commission of Ontario
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Toronto ON M2N 6L9

The Regional
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of Durham

Finance Department

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R. J. Clapp, CA
Treasurer and
Commissioner of
Finance

Attention: Mr. Wayne Arthurs
Parliamentary Assistant to the
Minister of Finance
Ministry of Finance
7th Floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7

Re: Ontario Auto Insurance Five Year Review & Public Transit

Dear Sirs:

At the meeting held May 7, 2008, the Regional Municipality of Durham adopted the attached recommendation supporting the City of Brampton's resolution that was approved on January 30, 2008 requesting:

"THAT the Province review the impact on public transit of its No-Fault and Accident Benefit legislation with the consideration that all public transit be exempted from the Accident Benefit legislation, or alternatively the creation of a modified No-Fault/Accident Benefit Regime for public transit."

The Council for the Regional Municipality of Durham agrees with the views and concerns expressed in this resolution and those put forward by the Toronto Transit Commission.

A review of the Region's insurance claims from transit operations indicates that Durham's claim experience is better than that experienced by some of the larger Transit authorities. This favourable claims experience is likely due to the lower number of riders in the Durham Transit System, as well as a significantly different ridership composition in Durham compared to the larger municipalities.

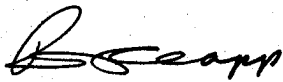


Notwithstanding, the issues raised by this proposal represent potential liabilities for the Region of Durham as its Transit system grows over time and number of riders increases. The Region experienced an increase of 14% in accident benefit claims over a one year period and this trend continues to grow steadily.

The Regional Municipality of Durham supports this resolution as a solution to what has become a financial burden which is developing into an unaffordable burden on transit authorities and those who fund them.

Thank you for your consideration of this submission, and we look forward to a positive outcome to the proposals.

Yours truly,

A handwritten signature in black ink, appearing to read "R. Clapp", written in a cursive style.

R.J. Clapp
Commissioner of Finance

c.c. Ted Galinis, General Manager, Durham Region Transit

- b) THAT the proposed Regional Transit Development Charge By-Law Amendment and Background Study as required by the *Development Charges Act, 1997* be released to the Public at no charge upon request to the Regional Clerk's Department, commencing June 3, 2008; and
- c) THAT staff be authorized to place appropriate notification in newspapers of sufficiently general circulation in Durham Region and the Regional website setting forth the date, time, location and purpose of the Statutory Public Meeting and the date and contact for the release of the proposed Regional Transit Development Charge By-law amendment and Background Study.

8. ONTARIO AUTO INSURANCE LEGISLATION REGARDING PUBLIC TRANSIT (SC #16) (2008-F-46)

RECOMMENDATION TO COUNCIL

THAT the Regional Municipality of Durham endorse the resolution from the City of Brampton that requests the Province to review the impact on public transit of its No-Fault and Accident Benefit legislation with the consideration that all public transit be exempted from the Accident Benefit legislation, or alternatively, the creation of a modified No-Fault/Accident Benefit regime for public transit.

9. REQUEST FOR FUNDING FROM THE CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY (CLOCA) FOR LAND ACQUISITION (2008-F-47)

RECOMMENDATIONS TO COUNCIL

- a) THAT in accordance with the Land Acquisition Funding Policy for Conservation Authorities, the request for funding from CLOCA for the purchase of conservation properties in the amount not to exceed \$1,091,000 be approved with the required financing from the Region's Land Conservation and Protection Reserve Fund; and
- b) THAT the Commissioner of Finance be authorized to adjust the total payment amount to CLOCA pending a review of the eligibility of final costs incurred pursuant to the Region's Land Acquisition Funding Policy.

10. THE FEDERATION OF CANADIAN MUNICIPALITIES (FCM) SURVEY ON MUNICIPAL ISSUES (2008-F-48)

RECOMMENDATIONS TO COUNCIL

- a) THAT Report #2008-F-48 of the Commissioner of Finance be received for information; and
- b) THAT a copy of Report #2008-F-48 be forwarded to all Durham MPs.

11. CORPORATE PURCHASING CARD (2008-F-49)

RECOMMENDATION TO COUNCIL

- a) THAT staff be authorized to issue a Request for Proposal for a Corporate Purchasing Card up to the limits authorized by the Region's Purchasing By-Law No. 68-2000; and
- b) THAT a subsequent report be submitted to obtain authorization prior to an award being made.

12. CONFIDENTIAL REPORT OF THE COMMISSIONER OF HUMAN RESOURCES – LITIGATION/POTENTIAL LITIGATION/MATTERS BEFORE ADMINISTRATIVE TRIBUNAL WITH RESPECT TO ONTARIO HEALTH PREMIUM GRIEVANCES (UPDATE FROM MAY 2005) (2008-A-22)

RECOMMENDATION TO COUNCIL

THAT Confidential Report #2008-A-22 of the Commissioner of Human Resources be received for information.

13. APPOINTMENT TO THE DURHAM REGION ROUNDTABLE ON CLIMATE CHANGE

RECOMMENDATION TO COUNCIL

THAT Councillor Mitchell be appointed as the Finance & Administration Committee representative to the Durham Region Roundtable on Climate Change and that Councillor Henry be appointed as the alternate.

Respectfully Submitted,
M. Pearce, Chair
Finance & Administration Committee

MOVED by Councillor Pearce, SECONDED by Councillor McLean,
(244) "THAT the recommendations contained in Items 2 to 5 and 7 to 13 of the
Sixth Report of the Finance Committee be adopted."

CARRIED

Item 1 of the Sixth Report of the Finance Committee was dealt with earlier in the meeting. See Motion (237) on page 26.

MOVED by Councillor Pearce, SECONDED by Councillor McLean,
(245) "THAT the recommendations contained in Item 6 of the Sixth Report of the
Finance Committee be adopted."

CARRIED

SIXTH REPORT OF THE PLANNING DEPARTMENT

1. IMPLEMENTATION OF BILL 51, THE *PLANNING AND CONSERVATION LAND STATUTE LAW AMENDMENT ACT, 2006* – ADOPTION OF AMENDMENT #123, FILE: OPA 2007-007

STANDING COMMITTEE CORRESPONDENCE #SC-2008-15 FROM MS. CHRISTINE CHASE, ADMINISTRATIVE ASSISTANT, DEVELOPMENT SERVICES DEPARTMENT, CITY OF OSHAWA, DATED FEBRUARY 5, 2008

STANDING COMMITTEE CORRESPONDENCE #SC-2008-17 FROM MR. MARTIN DE ROND, CLERK, TOWN OF AJAX, DATED FEBRUARY 12, 2008 (2008-P-33)

RECOMMENDATIONS TO COUNCIL

- a) THAT the amendment to the Durham Regional Official Plan to incorporate certain changes to the *Planning Act* made under Bill 51, (the *Planning and Conservation Land Statute Law Amendment Act, 2006*), shown as Attachment #1 to Report #2008-P-33 of the Commissioner of Planning, be adopted as Amendment #123; and
- b) THAT 'Notice of Adoption' is sent to the area municipalities, agencies, and all other persons or public bodies who requested



The Regional Municipality of Durham
Report to: The Finance and Administration Committee
From: R.J. Clapp, Commissioner of Finance
Report No.: 2008-F-46
Date: April 30, 2008

SUBJECT:

Ontario Auto Insurance Legislation Regarding Public Transit (SC #16)

RECOMMENDATIONS:

That the Finance and Administration Committee recommend to Regional Council that the Regional Municipality of Durham endorse the resolution from the City of Brampton that requests the Province to review the impact on public transit of its No-Fault and Accident Benefit legislation with the consideration that all public transit be exempted from the Accident Benefit legislation, or alternatively, the creation of a modified No-Fault/Accident Benefit regime for public transit.

REPORT:

1.0 INTRODUCTION

- The purpose of this report is to address several issues raised by the City of Brampton regarding the implications of No Fault Accident Benefit Insurance for municipal transit operations as contained in correspondence SC#16 (refer to Attachment #1).

2.0 AUTO INSURANCE IN THE PROVINCE OF ONTARIO

- On January 30, 2008, the City of Brampton adopted the following resolution regarding No Fault Insurance for Municipal Transit Operations:

“That the Province of Ontario review the impact on public transit of its No-Fault and Accident Benefit legislation with the consideration that all public transit be exempted from the Accident Benefit legislation, or alternatively the creation of a modified No-Fault/Accident Benefit Regime for public transit.”

- It was further requested “That all Ontario municipalities who operate a Transit system be requested to endorse this recommendation of the City of Brampton.”
- Every vehicle owner in Ontario is required to purchase, at the very least, the following automobile insurance coverage: Third-Party Liability Coverage, Direct Compensation – Property Damage and Statutory Accident Benefits Coverage:

- **Third-Party Liability Coverage:** protects the vehicle owner in the event of a “third party fatality or injury” or their property is damaged. It will pay for claims as a result of lawsuits up to the limit of the coverage, and will also pay the costs of settling the claims.
 - **Direct Compensation - Property Damage:** covers damage to a vehicle or its contents, and for loss of use of the vehicle or its contents, to the extent that another person was at fault for the accident. It is called direct compensation because even though someone else causes the damage, the vehicle owner collects directly from its own insurer, instead of the person who caused the damage.
 - **Statutory Accident Benefits Coverage:** provides benefits including supplementary medical, rehabilitation, attendant care, caregiver, non-earner and income replacement benefits, in the event a person is injured in an automobile accident, regardless of who caused the accident.
- In 1990, the Province of Ontario opted for “no-fault” insurance. No-fault insurance does not mean that drivers are never at fault in accidents. Someone is always found to be “at-fault” in a car accident, whether partially or fully.
 - The underlying premise of No Fault Insurance is that if a person is injured in an accident or their vehicle is damaged, then the vehicle owner deals with its own insurance company when making a claim, regardless of who is at-fault for causing the accident.

3.0 ACCIDENT BENEFITS

- Persons injured in accidents involving the “use or operation of a motor vehicle” (including a transit bus) may qualify for Accident Benefits on a “no fault” basis
- Accident Benefits are provided according to the Statutory Accident Benefit Schedule (SABS), which is a regulation made under the Insurance Act. If a person qualifies, a person may receive several kinds of accident benefits:
 - Income replacement benefits, caregiver benefits
 - Non-earner benefits
 - Medical and rehabilitation benefits pay
 - Attendant care benefits and funeral expenses death benefits
- Depending on the circumstances, a person may also be entitled to other benefits e.g. benefits to pay for housekeeping assistance, visitors’ expenses, repair or replacement of eyeglasses or clothing damaged in the accident.

- Section 268 of the Insurance Act sets out a priority ranking for determining which insurer is liable to pay for accident benefits in situations where more than one insurer may be liable to pay for benefits. If a person does not own his/her own vehicle, they can seek Accident Benefit coverage through the transit vehicle that they were a passenger on.
- For example, a municipal transit bus is involved in a left hand turn motor vehicle accident and ten passengers are injured on the bus. Only three own a car and have coverage through their auto policy. The remaining seven passengers claim accident benefits through the municipal transit insurance policy.
- Some of the most common types of claims involving transit Accident Benefits include the following:
 - Jerks, Jolts or Movements of the Bus
 - Slip and Fall or Trip and Fall while boarding or disembarking
 - Slip and Fall or Trip and Fall inside the bus
 - Doors Closing on Passengers
- The type of benefits available to passengers of public transit are often subject to abuse because of the wide range of benefits provided under the Accident Benefit legislation (e.g. income replacement, homecare expenses, home attendant costs, etc.). In addition, the claimant is able to receive compensation under the Accident Benefit coverage, while at the same time, is able to pursue benefits through Tort settlement.
- As a result, the frequency and severity of these “No Fault” claims are often uncontrollable with little possibility of effective risk management.

4.0 **BRAMPTON'S RESOLUTION**

- The staff report from the City of Brampton indicates that during the period 1997 to 2006, the City and its insurers have paid in excess of \$10 million to settle transit related claims including payments under Accident Benefits.
- The following excerpt from the Brampton staff report summarizes the key issues from Brampton's perspective. These issues have been raised before the Auto Insurance Review Committee that was established by the Province in 2002 to review Auto Insurance legislation in Ontario.
 - “1. There is little accountability on a passenger to putting in an accident benefit claim, as they will not be impacted by any automobile insurance rate increase. In many cases, after conducting an investigation, claimants who have appropriate coverage available, still make a point of attempting to claim under the transit service provider policy.

2. Due to the high cost of insurance, many transit service providers retain large deductibles on accident benefit coverage....
3. Public transit is extremely vulnerable under this legislation. The cost of handling both an Accident Benefit claim and a bodily injury tort claim, which must be handled separate of one another, further impacts the operating budget since in most cases, the City is claimed against twice.
4. Accident Benefit claims are payable regardless of fault. Public transit is in the business of transporting large amounts of people at any given time. Unlike private passenger vehicles, public transit is exposed to a higher degree of risk, including unpredictable traffic and passenger safety conditions. The safety features applicable to an automobile are not applicable to public transit. In addition, no matter how much driver safety training is provided and safety features are introduced, the fact remains, public transit is overly susceptible for Accident Benefit claims.
5. There is no duty to report an incident to the public transit driver or police at the time of the incident occurring. Reports are received days later many times without the driver having any knowledge of the incident.
6. The frequency and severity of these no fault payments are uncontrollable with little or no possibility of effective risk management.”

5.0 IMPLICATIONS FOR DURHAM

- A thorough review of the Region’s insurance claims from transit operations indicates that Durham’s claim experience is extremely favourable compared to that experienced by Brampton.
- Durham’s favourable claims experience is likely due to the lower number of riders in the Durham Transit System, as well as a significantly different ridership composition in Durham compared to Brampton. Notwithstanding, the issues raised by Brampton represent potential liabilities for the Region of Durham as its Transit system grows over time and ridership increases and changes.
- It is therefore recommended that Regional Council support Brampton’s resolution that asks the Province to review the impact on public transit of the No Fault and Accident Benefit legislation and consider exempting municipal public transit systems from the current legislation or create a new benefit regime for public transit claims.

- This report has been reviewed by staff of the Durham Transit Commission.

R.J. Clapp, CA
Commissioner of Finance

Recommended for Presentation to Committee:

G.H. Cubitt, M.S.W.
Chief Administrative Officer