



Information Report
Town of Newmarket
395 Mulock Drive
P.O. Box 328
Newmarket, ON L3Y 4X7

September 30, 2015

**CORPORATE SERVICES REPORT - JOINT LEGAL AND LEGISLATIVE SERVICES
INFORMATION REPORT 2015-03**

TO: Mayor Van Bynen and Members of Council

SUBJECT: 2014-2015 Litigation and Insurance Claims Information Update Report

ORIGIN: Associate Solicitor, Legal Services
Director, Legal Services/Municipal Solicitor
Director, Legislative Services/Town Clerk

IN ACCORDANCE with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming Committee of the Whole agenda for discussion through the Clerk.

COMMENTS

The purpose of this report is to provide Council with status updates on various ongoing and concluded litigation matters conducted throughout 2014 to July 1, 2015.

1. COURT ACTIONS AND PENDING COURT ACTIONS

Matter	Description	History	Current Status	Counsel
MC Ontario Superior Court (SCJ) File No. CV-14- 117490-00	<ul style="list-style-type: none">Construction lien action relating to sidewalk and curb work conducted in various locations in the Town.	<ul style="list-style-type: none">One lien claimant claimed the sum of \$12,322.65 for excavation related services.Another lien claimant claimed the sum of \$3,779.89 for the supply of concrete.	<ul style="list-style-type: none">A settlement was reached in July of 2014. The Town paid the total sum of \$18,834.49 owing to the two lien claimants from holdback monies owed to the general contractor. The Court Action was dismissed.	Esther Armchuk
LC No Court action commenced	<ul style="list-style-type: none">A contractor claimed the sum of \$85,000 for supplying additional asphalt for street paving performed in 2014 for road resurfacing (Gorham Street).	<ul style="list-style-type: none">The terms of the contract were in dispute as any additional quantities of asphalt required pre-approval by the Town prior to payment and delivery.	<ul style="list-style-type: none">A settlement was reached January 21, 2015, for payment of the sum of \$33,000 to the contractor prior to a court action being commenced. The funds were paid from the project budget	Paul Voorn

Matter	Description	History	Current Status	Counsel
SI SCJ File No. CV-13- 113075-00	<ul style="list-style-type: none"> Claim by an RFP proponent for lost profits in the amount of \$800,000 in connection with a 2011 RFP for janitorial services in Town buildings. 	<ul style="list-style-type: none"> The Town accepted an RFP proposal from the proponent in February 2011 for janitorial services. The agreement was terminated in March 2011 when the Town discovered that the proponent had submitted a non-compliant bid. The proponent claimed wrongful termination of the Agreement, damages including lost profits, and expenses. 	<ul style="list-style-type: none"> Details and a financial breakdown of the damage claim have not yet been provided by the claimant. The next steps include the exchange of affidavits of documents and examinations for discoveries. 	Weir Foulds/ Paul Voorn
FLKI SCJ File No. CV-13-495627	<ul style="list-style-type: none"> A property owner commenced applications in December 2013 against MPAC and various municipalities, (including the Town) seeking exemption from municipal taxation for the years 2013 and onward. 	<ul style="list-style-type: none"> The Town served a notice of appearance in August 2014. 	<ul style="list-style-type: none"> MPAC has taken the lead in responding to the matter and is in the process of site investigations to determine the actual uses of the various properties to evaluate whether portions of the properties are exempt from taxation. 	Paul Voorn
SCJ File No. CV-15- 121532-00	<ul style="list-style-type: none"> The Town claims remedial and related costs resulting from damages to the Seniors' Meeting Place which occurred in February 2013. 	<ul style="list-style-type: none"> The slab floor of the building collapsed in the northeast section of the building and some utilities were severed. The cost to repair the damage was approximately \$250,000.00. Engineering reports were obtained by the Town's insurer, and by the Town. The Town commenced a court action on January 28, 2015, against the Town's insurers and the agencies conducting road/utility work in the area of the building. 	<ul style="list-style-type: none"> Defence counsel have been retained by the Town's insurer and the other defendants. Statements of Defence will be delivered if the matter does not settle. 	Paul Voorn
AP & SB SC-15-31531- 00	<ul style="list-style-type: none"> Claim by homeowners against developer, the Town and others for failure to complete subdivision property work. The homeowners took occupancy of a new home in June 2013. 	<ul style="list-style-type: none"> The subject lands are located in the Northwest Quadrant near the Environmental Park. 	<ul style="list-style-type: none"> All Defendants have filed Statements of Defence and a pre-trial conference is scheduled for October 15, 2015. 	Paul Voorn

Matter	Description	History	Current Status	Counsel
JB Pending Court Action	<ul style="list-style-type: none"> Claim for negligence and damages against the Town relating to the administration and investigations under The Council Code of Conduct. 	<ul style="list-style-type: none"> This claim relates to matters that have been the subject of previous complaints and investigations under The Council Code of Conduct. 	<ul style="list-style-type: none"> This claim is under review by the Town's insurer to determine whether it is within the Town's insurance coverage. 	Paul Voorn

2. OMB MATTERS

Matter	Description	History	Current Status	Counsel
235 Park Avenue OMB File No. PL131039	<ul style="list-style-type: none"> Appeal to the OMB by the Owner of 235 Park Avenue from a decision of the Committee of Adjustment to deny an application for Minor Variance for height setback and lot coverage variances 	<ul style="list-style-type: none"> The subject lands were originally part of 237 Park Avenue and were created by Consent in 2011. The Town passed Zoning By-law 2013-30 in June 2013 to prevent overbuilding in certain stable residential neighbourhoods, including the area of Park Avenue. 	<ul style="list-style-type: none"> The OMB hearing took place on February 25, 2014. The appeal was allowed by OMB Order dated March 28, 2014. 	Esther Armchuk
390 Ontario Street OMB File No. PL130806	<ul style="list-style-type: none"> Appeal to the OMB by the Owner of 390 Ontario Street from a decision of the Committee of Adjustment to refuse applications for provisional consent and associated Minor Variances 	<ul style="list-style-type: none"> The Owner proposed to divide the property into two parcels and construct a two-storey single detached home with attached garage on each lot. Planning staff recommended that the applications be approved subject to certain conditions including that the owner enter into a Site Plan agreement with the Town. Local residents opposed the proposal. Council elected not to take a position re the subject appeal or to participate in the hearing. 	<ul style="list-style-type: none"> The OMB hearing took place on February 26, 2014. The appeal was allowed by an OMB Order dated April 28, 2014. 	Esther Armchuk

Matter	Description	History	Current Status	Counsel
180-194 Main Street OMB File No. MM130083	<ul style="list-style-type: none"> Appeal by the owners of 180-194 Main Street to the OMB of the Lower Main Street South Heritage Conservation District By-law 2013-51 	<ul style="list-style-type: none"> In August 2013 a rezoning application was filed to redevelop the lands at 180-194 Main Street. A public meeting was held on February 3, 2014. On October 21, 2013 Council enacted the Lower Main Street South Heritage Conservation District Bylaw 2013-51. The lands are located with the Heritage Conservation District. 	<ul style="list-style-type: none"> In August 2014 the OMB ordered that By-law 2013-51, save and except for the lands located at 180-194 Main Street shall be deemed to have come into effect on October 21, 2013. A date has not been set for hearing of the appeal until after Council makes a decision regarding the rezoning application for the lands. 	Esther Armchuk
NH re lands at the end of Newpark Blvd. OMB File No. PL140670	<ul style="list-style-type: none"> Appeal to OMB from a decision of the Committee of Adjustment to deny an application for Minor Variance to allow an increase in lot coverage and reduction in setbacks. 	<ul style="list-style-type: none"> Planning staff supported the application. Committee of Adjustment denied the requested variances in June 2014. Council elected not to participate in the appeal. 	<ul style="list-style-type: none"> Appeal allowed and OMB Order dated December 11, 2014, 	Esther Armchuk
536 & 550 Mulock Court OMB Hearing OMB File No. PL140952	<ul style="list-style-type: none"> Appeal re Official Plan and Zoning By-law amendments seeking to place a medical centre at the north east corner of Bayview and Mulock Drive. 	<ul style="list-style-type: none"> Appellant proposed to redesignate and rezone lands from Stable Residential to Commercial and Retail Commercial to permit a 3,048m sq commercial/medical building on the properties. Planning staff recommended that the applications be denied. OMB hearing commenced March 30 for four days. 	<ul style="list-style-type: none"> Appeal allowed by OMB order dated April 21, 2015. Site Plan has been submitted and also appealed to the OMB. a hearing date of November 5, 2015 has been scheduled by the OMB for the Site Plan appeal. 	Esther Armchuk
MD OMB File No. PL130413 and PL100685	<ul style="list-style-type: none"> Appeals to the OMB re former Glenway Golf Course Land 	<ul style="list-style-type: none"> Phase 1 of the Marianneville OMB Hearing took place on March 17-27, 2014. The OMB gave a verbal decision that the fundamental test of the principle of development had been met and that there was no legislative prohibition or restriction on developing a residential subdivision on former golf course lands. Town Council adopted recommendations relating to a settlement of the Phase 2 hearing on the technical details of the development. 	<ul style="list-style-type: none"> On April 23, 2014 the OMB issued a verbal decision allowing the appeals "in part." On November 18, 2014 the OMB issued a written decision on the appeals. The appellant has submitted Site Plan applications which are currently being processed by Town staff. 	Mary Bull/ Esther Armchuk

Matter	Description	History	Current Status	Counsel
OMB File No. PL141386 – PL141389	<ul style="list-style-type: none"> Appeals re lands west of the terminus of Silken Laumann Drive between the Metrolinx Rail Corridor and the existing Hydro Corridor. 	<ul style="list-style-type: none"> Planning staff recommended settlement of the appeals Council directed staff to settle the appeals subject to securing a condition that Town lands not be used by the developer unless a significant community benefit is provided and agreed to by Council. 	<ul style="list-style-type: none"> A pre-hearing to determine the parties and participants was held on March 26, 2015. A hearing took place on September 28, 2015. The OMB issued a verbal decision allowing the appeals “in part” subject to the parties finalizing a zoning by-law amendment and Draft Conditions of Approval. 	Esther Armchuk

3. OTHER LITIGATION – INSURANCE DEFENDED COURT ACTIONS

Claimant & Court Number	Date of Loss	Legal File No.	Explanation
GI CV-09-05724-00AI	February 21, 2008	L02-054-11	The claimant was struck by a Town vehicle that lost control on 19 th Side Road west of Bathurst. The Town owns the road and King maintains it as part of an old agreement. There are complex liability issues, including King’s winter maintenance and the Town’s ownership of the road. Patterson McDougall Law (“PM Law”) is representing the Town.
JW CV-09-093301-00	March 6, 2009	L02-15-09	The claimant, a student at Newmarket High School, was crossing Mulock Drive east of Clear Meadow and was struck by a vehicle traveling westbound on Mulock. The Town, the Region, the YRDSB and the operator of the vehicle all were named as defendants. The Town has no involvement in this claim other than the fact it has not been released from the action. The Town will be responsible for its own legal costs (paid for by its insurer). PM Law is representing the Town.
SM CV-11-423578	April 3, 2009	L02-19-09	The claimant was walking on the sidewalk along Clearmeadow Boulevard and fell on the sidewalk. At the time of the loss the Town had not assumed this sidewalk as the area was under construction. The Town was named as a party along with builder, developer and engineer. The Town has no involvement in this claim other than the fact it has not been released from the action. Clyde and Co. have been assigned this loss.
PS (deceased) CV-11-103345-00	March 16, 2010	L02-022-10	PS was canoeing on the Holland River and attempted to go over the dam or was swept over the dam at Lock 3 in George Richardson Park. He unfortunately drowned as a result. The Town is being sued by the wife and daughter of the deceased as well as other family members. PM Law is representing the Town. Liability is at issue as to whether or not this was dangerous situation that should have been foreseen by the Town. The lock in question has been in place for 100 years with no other incidents. The trial commences in August 2015.

Claimant & Court Number	Date of Loss	Legal File No.	Explanation
VD SC-13-00028669-0000	January 22, 2012	L02-004-12	The claimant fell while skating at the River Walk outdoor ice rink. She alleged over-crowded conditions and lack of supervision as a reason for her fall. She broke her wrist as a result of the fall. The claim recently settled with the claimant on a without costs basis.
NG CV-13-112688-00	February 14, 2012	L02-011-12	The claimant slipped and fell on the sidewalk on Bob Scott Avenue. The Town had not assumed this sidewalk at the time of the fall. Her lawyer has not removed the Town from the action at this time. PM Law is representing the Town. It does not appear that the Town will have any liability.
JB CV-14-119559-00	August 18, 2012	L02-040-12	The claimant was walking along the water feature at the River Walk Common when she fell off of the small curb. The claimant broke her ankle in the fall. PM Law is representing the Town and is defending on the basis that the claimant was not watching where she was going and simply stepped off the curb.
RM CV-12-466748	November 4, 2010	L02-051-12	The claimant sustained eye injuries when a hydro transformer box on a hydro pole exploded. The Town does not own nor maintain the hydro pole or the transformer. To date the Town has not been let out of the action. PM Law is representing the Town.
VA and JA SC-14-30877-00	December 10, 2012	L02-056-12	The claimants experienced a sewer back up in their home. They issued a claim against the Town for negligence. The Town had inspected and flushed system as per Town policy and has denied the claim. PM Law is representing the Town. The claim is proceeding to discoveries shortly.
KM 13-1180	January 7, 2013	L02-005-13	The claimant fell on ice in the parking lot at the Magna Centre early in the morning of January 7, 2013. The claimant sustained a broken ankle. At issue is the condition of the parking lot at the time of the fall and the amount of damages being claimed. PM Law is representing the Town.
JH CV-13-113481-00	March 1, 2013	L02-021-13	The claimant fell while entering or exiting the property at 200 Davis Drive. The property is not owned or maintained by the Town. However, the claimant's lawyer has not released the Town from the action. PM Law has been assigned the loss.
AG CV-14-118204-00	May 17, 2013	L02-047-13	The minor Plaintiff lost the top part of his index finger of his right hand (dominant hand) when it was cut off after it became stuck in the hole in a pole of a P gate at Woodhaven Court. The Town is still investigating the circumstances surrounding the accident. Town is represented by Dolden Wallace Folick LLP.
BR No court number assigned.	July 2, 2013	L02-054-13	The claimant alleges that she fell while walking on Bonshaw Avenue at the intersection of Woodspring Avenue. Blaney McMurtry LLP is handling the loss on behalf of the Town.
CK No court action to date.	October 2, 2013	L02-068-13	The claimant tripped over a manhole cover at the intersection of Davis Drive and Yonge Street. The Town does not have ownership of this manhole. The Region of York has taken the position that it belongs to the Town. It appears that this manhole is for the conduits for the traffic lights at the intersection, which are not under the Town's jurisdiction. This file will be assigned to defence to file a statement of defence.

Claimant & Court Number	Date of Loss	Legal File No.	Explanation
JD CV-14-119369-00	November 7, 2013	L02-080-13	The claimant was jogging on the path through Lion's Park and became entangled in orange construction fencing, fell and broke his hip. At the time of the loss the area was under construction as a parking lot and basketball court were being resurfaced. Fencing was put up by the Town's contractor. The claimant's lawyer has not let the Town out of the action at this point. Loopstra Nixon LLP is representing the Town.
JZ CV-15-121788-00	November 12, 2013	L02-087-13	The claimant slipped and fell while walking on Cranberry Street near Bayview Avenue. The Town does not undertake winter maintenance on this sidewalk. The Town's adjuster is hopeful that the claim can be resolved. The file has not yet assigned to defense counsel to prepare a defence to the claim.
SO CV-13-115787-00	November 19, 2009	L02-097-13	The Claimant fell in a bus shelter on Davis Drive at Patterson Street. The Town does not own, maintain or inspect these shelters. However, to date the Town has not been let out of the action.
A. (Business) CV-14-501270		L08-37-13	The claimant is suing the Town and Buckley's Insurance over issues involving the laneway right of way at the rear of the two businesses off Main Street. The allegation against the Town is that Building permits for exit doors in the easement area should not have been approved. Discoveries took place in July of 2015. PM Law is representing the Town.
MM CV-15-121336-00	January 17, 2013	L02-013-15	The Town was served with a Statement of Claim March 12, 2015 in regards to a fall that took place at the RJT Centre on January 17, 2013. The Town was not given any prior notice of this loss. Given the late reporting of this loss, it will in all likelihood require litigation to be resolved. The Claim has been sent to the Town's Insurer.
P. (Business) CV-15-122201-00		L02-033-15	The claim is for alleged construction deficiencies at 430 Coventry Hill Trail. The claimant claims that the Town failed to enforce the Ontario Building Code. The claimant has not sued the original builder, Oxford Homes, but they have named the previous home owners and the claimant's building inspector as defendants in addition to the Town. The Town is awaiting a report from its expert responding to the allegations of breaches of the Building Code and any required remediation to the structure. The Town's insurers have retained the firm Loopstra Nixon to defend the matter.

4. INSURANCE CLAIMS – NOT YET IN LITIGATION (The following files are being monitored by Legislative Services and, should a claim be served, it will be forwarded to the Town’s Insurer to deliver a defence)

Claim	Date of Loss	Town File No.	Explanation
Slip & Fall	February 21, 2014	L02-031-14	The claimant fell while walking along Davis Drive at the intersection of Lorne Avenue.
Slip & Fall	March 19, 2014	L02-050-14	The claimant fell on Penn Avenue while walking to Maple Leaf Public School.
Slip & Fall	March 28, 2014	L02-062-14	The claimant fell at the east entrance to the Magna Centre.
Slip & Fall	March 22, 2014	L02-065-14	The claimant slipped and fell on the sidewalk on Millard Avenue.
Slip & Fall	March 21, 2014	L02-068-14	The claimant fell while walking on the sidewalk on Manchester Drive.
Slip & Fall	March 20, 2014	L02-069-14	The claimant fell when walking on Lancaster Avenue.
Slip & Fall	May 6, 2014	L02-079-14	The claimant fell after exiting the Giant Tiger on Davis Drive.
Slip & Fall	August 21, 2014	L02-104-14	The claimant fell while walking along the sidewalk on Comfort Lane.
Slip & Fall	August 15, 2014	L02-106-14	The Claimant fell at the intersection of Lorne Avenue and Davis Drive.
Slip & Fall	Unknown	L02-108-14	A Notice letter was received by the Town on September 4, 2014, however, the date of the accident is unknown. The claimant fell while exiting or entering Southlake Regional Hospital.
Slip & Fall	October 1, 2014	L02-125-14	The claimant fell at the intersection of Nicholson and Harry Walker.
Slip & Fall	September 27, 2013	L02-127-14	The claimant was injured as a result of a bicycle accident on Bayview Avenue.
Slip & Fall	December 12, 2014	L02-137-14	The claimant fell outside of the Ray Twinney Centre.
Fall from Ladder on Work Site	December 12, 2014	L02-139-14	The Claimant is an electrician and was working in the Old Town Hall when he fell from a ladder.

5. OTHER LITIGATION – HUMAN RIGHTS TRIBUNAL MATTER

The status of a Human Rights Complaint is confidential in nature and has been reported separately to Members of Council.

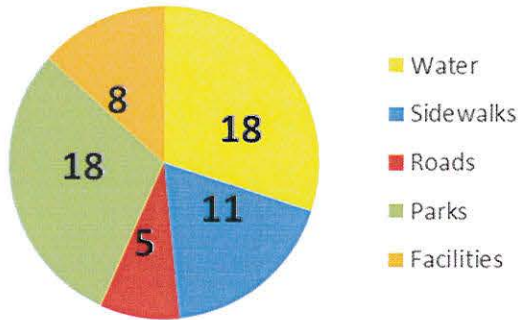
Claims History 2013-2015

During both 2013 and 2014 the Town experienced high claim numbers. In 2013, 101 claims were reported and in 2014, 140 were reported. A breakdown of the types and percentages of claims by department is noted below:

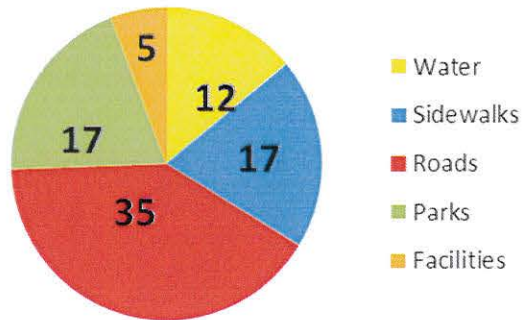


*No claim denotes those claims that were reported to the Town however there was no liability (fault) on the part of the Town, the claim was not within the jurisdiction of the Town or the claim was withdrawn.

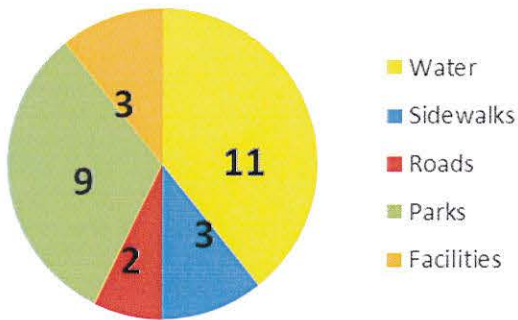
Liability Losses 2013(60)



Liability Losses 2014(86)



Liability Losses 2015(30)



- Water losses include Sewer, water main or other losses associated with the Water/Wastewater Department activities.
- Sidewalk losses include claims involving injuries as a result of trip or slip and fall incidents that occurred on Town Sidewalks.
- Road losses include claims that relate to road activities such as pothole claims, and claims involving Town road clearing equipment.
- Parks losses include incidents on Town trails, parks, as well as forestry issues.
- Facilities losses include any losses that occurred in or around Town facilities.

The high numbers in 2013 and 2014 can be attributed to bad winters in both years with cold temperatures, frequent snow storms and in the case of 2014 the ice storm. In addition to this we experienced several large spring and summer storms that led to water and sewer claims.

This year as of the end of July 30 claims have been as compared to 62 in 2013 and 97 in 2014 for the same period of time.

This lower number can be attributed to several factors. By comparison the winter and summer of 2015 was much better than the two previous years in terms of severity and frequency of storms.

In addition over the last several years Town staff have implemented many risk management practices that are now starting to show results. These included a pre-winter walk through of high traffic areas such as Davis Drive to address sidewalk issues before winter arrived. As well a complete inspection of the Tom Taylor Trail was conducted to identify and rectify areas of concern.

Training and information sessions have been conducted several times over the last two years to provide staff with information on how to identify areas of risk and to address those concerns.

Information and warning signs have been posted at several locations throughout the Town to warn the public of the potential risk associated with particular activities. These areas include the River Walk Common Water Feature winter and summer, community ice rinks and Town trails.

The Town's Claim and Risk Analyst is also working the Town's insurer and adjusting company to identify municipal risk trends and to implement strategies to deal with those issues. In addition we are working closely with our insurer and legal experts in regards to amending Town parks and trail signs to reduce the Town's exposure to potential claims with properly worded and placed signs.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The recommendations support the *well-equipped* and *managed* objectives of the strategic plan by providing for the efficient management of litigation by and against the Town.

COMMUNICATION CONSULTATION POLICY

All affected departments have been advised and consulted on the various claims and court actions.

HUMAN RESOURCE CONSIDERATIONS

Staffing levels are not impacted as a result of the recommendations in this report.

BUDGET IMPACT

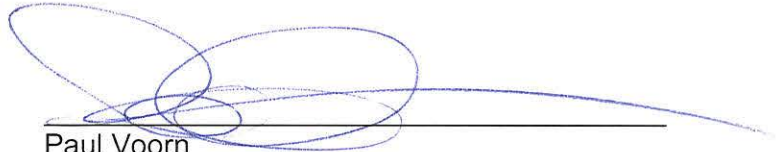
Any proposed settlement payment by the Town not covered by the Town's insurance policy or provided for in the approved budget will be brought to Council for approval.

CONTACT

For more information on this report, please contact: Paul Voorn, Associate Solicitor at Ext. 2436, Esther Armchuk, Director, Legal Services/Municipal Solicitor at Ext. 2432 or Andrew Brouwer, Director, Legislative Services/Town Clerk at Ext. 2211.



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Director, Legal Services/Municipal Solicitor



Paul Voorn
Associate Solicitor, Legal Services



Andrew Brouwer
Director, Legislative Services /Town Clerk



Anita Moore
Commissioner, Corporate Services