
MEMORANDUM

PHD-C 5-2021

Subject: Update Regarding Class Action Lawsuit Against Opioid Manufacturers and Distributors On Behalf of Canadian Municipalities

Date: April 13, 2021

To: Public Health & Social Services Committee

From: Scott Crocco, Legal Counsel

The purpose of this Memorandum is to provide Regional Council with an update further to the resolution of PHSSC, approved September 19, 2019, directing staff *“to provide a legal opinion on the feasibility of Niagara Region joining the Ontario and British Columbia (and any other) provincial governments in their proposed class action lawsuit from August 2018 against pharmaceutical companies with respect to the opioid crisis”*.

Given the significance of this issue for many municipalities, Staff’s investigations have focussed on engagement and collaboration with various other municipal legal departments, including Peel Region, Brampton, Mississauga, St. Catharines, Brantford and Toronto, some of which had received a similar direction from their respective Councils.

In March 2020, Guardian Law Group LLP (**“Guardian Law”**), a Calgary-based class action law firm, approached municipal legal departments across Canada seeking municipalities willing to participate as “representative plaintiffs” in a proposed class action lawsuit against opioid pharmaceutical manufacturers and distributors to be commenced on behalf of all Canadian municipalities.

Guardian Law is working with Napoli Shkolnik PLLC (**“Napoli Law”**), a New York City based law firm who reached a \$260-million settlement with three opioid distribution companies and one manufacturer on behalf of an Ohio county in 2019.

In June 2020, the City of Grande Prairie, Alberta agreed to stand as a representative plaintiff for the proposed class action. At that time, Guardian Law and Napoli Law filed a proposed **\$10 billion class action** lawsuit in Alberta against opioid manufacturers and

distributors, naming Grande Prairie as Representative Plaintiff on behalf of **all Canadian municipalities** (the “**Proposed Class Action**”). The Proposed Class Action, as amended, is attached as **Appendix 1**.

Through summer and fall of 2020, Guardian Law continued to seek a second, Ontario-based “representative plaintiff” to join the Proposed Class Action. Region legal staff continued to engage with other Ontario-based municipal legal departments through this period, particularly Brantford, who liaised with lawyers at Guardian Law. In late Fall 2020, Brantford confirmed that it was prepared to take the lead and come forward as the second, Ontario-based representative plaintiff in the Proposed Class Action. As a result, on November 17, 2020, Brantford was formally added as a second, Ontario-based Representative Plaintiff in the Proposed Class Action.

Staff engaged in discussions with lawyers at Guardian Law who confirmed that **Niagara Region does not need to undertake any steps or assume any costs or risks** to participate in the Proposed Class Action at this time.

A summary of the Proposed Class Action and anticipated timelines are as follows:

- The \$10 billion claim is made on behalf of all Canadian municipalities and seeks recovery of increased costs incurred by municipalities as a result of the opioid crisis, including, among other things, increased EMS, policing and mitigation costs. A separate class action has been commenced in British Columbia seeking recovery of health care costs incurred by Provinces.
- More than 40 companies are named as defendants. There are two main targets: drug manufacturers and drug distributors.
- The lawsuit asserts a number of causes of action, including conspiracy, public nuisance, negligence, negligent misrepresentation, fraud, unjust enrichment, and alleges (at page 1) that manufacturers of prescription opioids “*engaged in a massive false marketing campaign to drastically expand the market for such drugs and their own market share,*” and both manufacturers and distributors “*reaped enormous financial rewards by refusing to monitor and restrict the improper distribution of those drugs.*”
- Niagara Region does not need to come forward or take any steps until the example case (representative case) is determined, likely in **2 to 3 years** from now, or not at all. This is known as the **certification stage**, which includes determination of (1)

issues in common; (2) whether the proposed class (municipalities) is an appropriate class; and (3) whether the named Representative Plaintiffs are appropriate representative plaintiffs.

- At the certification stage (2 to 3 years from now), if the Proposed Class Action is certified, a Notice will go out to all municipalities, providing an option for the Region to “opt out” of the lawsuit. If the Region does nothing at that point (does not opt out), it will automatically be included in the Proposed Class Action going forward.
- **Settlement** negotiation typically occurs after certification. If there is no settlement, the class action proceeds to: (1) common issue trial; and (2) individual issues trial (e.g. individual municipalities proving damages). Such trials are extraordinarily rare.
- If a settlement is reached, the Region can elect to “opt out” of that settlement. If it does not, the settlement would bind the Region and the Region would receive a portion of the settlement proceeds. A settlement structure is usually put in place to apportion damages / settlement proceeds among the participating plaintiffs. Apportionment may be simple (e.g. population based), but not necessarily, if, for instance, some communities assert they have been disproportionately impacted by the opioid crisis. It is possible that that the Region may need formal legal representation should this lawsuit reach the settlement stage.

The Region does not need to retain Guardian Law, Napoli Law or any other external lawyers, nor otherwise incur any costs in relation to the Proposed Class Action at this stage. Region legal staff will continue to monitor the Proposed Class Action and report back to Council when the claim advances to the certification stage (likely 2023 to 2024).

Respectfully submitted and signed by

Scott Crocco
Legal Counsel