PROPOSED NATIONAL FLOOD INSURANCE MODELS FOR CANADA: A SUMMARY OF THE RECENT REPORT FROM THE TASK FORCE ON FLOOD INSURANCE AND RELOCATION

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On August 30, 2022, the Government of Canada's *Task Force on Flood Insurance and Relocation* (the "Task Force") released a report titled *Adapting to Rising Flood Risk: An Analysis of Insurance Solutions for Canada*. The report's primary objective is to provide insights and recommendations for the development of a national flood insurance program. A summary of the Task Force's findings are discussed below.

Flooding has been Canada's most common and costliest disaster in the 21st Century. Prior to 1995, only three times in Canadian history had annual losses from flooding reached $500 million (when adjusted for inflation), whereas between 2013 and 2017, total losses in Canada from flooding were estimated to be $16.4 billion. Climate change has played an important role, as warmer temperatures have increased the chance of major rainfalls. Major cities, such as Montreal, Toronto and Vancouver are not adequately prepared to deal with major floods, and those living by any major body of water are at a heightened risk.

Uninsured losses are also growing, leaving Canadians more vulnerable. Globally, the gap between economic losses and insured losses grew to $231 billion in 2020. Similarly in Canada, more than 50% of losses from flooding have been uninsured in recent years. Future risks remain concentrated in a small number of properties, as 90% of the financial flood risk resides in 10% of properties in Canada. Most people who are affected are from traditionally disadvantaged groups, exacerbating the problem. Many high risk homes are critically underinsured, or have no insurance at all due to high premiums. Sometimes homeowners are unaware that they are underinsured due to confusing policy language.

The report concludes that it is unsustainable for the government to continuously fund major recovery costs. Instead, Canadians must learn to "live with water", and having a well-designed national flood insurance program would significantly reduce the risk of doing so.

Based on an examination of flood programs in other countries including Australia, France, the United Kingdom and the US (some of which are described in our prior bulletin), the Task Force identified the following 4 themes for the development of a national flood insurance program in Canada:

1. removing uncertainty around insurance and where potential risks lie;
2. focusing on market penetration, including collaborating with insurers to manage financial risk and providing incentives to join the program;
3. ensuring insurance is affordable, which may include a universal definition of flooding and ensuring high risk areas have access to affordable insurance; and
4. being conscious of moral hazards, which could include drafting clearer insurance policies with minimum deductibles.

The Task Force then developed 6 related policy objectives:

1. provide adequate and predictable financial compensation for residents in high risk areas;
2. incorporate risk-informed price signals that promote risk-appropriate land use, mitigation and flood resilience, including pricing flood risk in an efficient and transparent manner;
3. affordability to residents in high risk areas, with special consideration for marginalized, vulnerable and/or diverse populations;
4. availability for those at high risk;
5. maximum participation of residents in high risk areas; and
6. value for money.

These policy objectives, in turn, led the Task Force to examine four potential models for a national flood insurance program.

The first, a Flat Cap High Risk Pool, would be available exclusively to high-risk property owners. The government would have little to do with its operation, but would intervene to keep prices affordable (for instance, by mandating lower, flat premium caps). The model remain stable through market-based reinsurance, and government backstop.

The second model is a tiered high risk pool. This model would be similar to the one above, except it would consist of five pricing tiers, rather than one flat cap. The tiers would be divided by estimated home reconstruction costs in high risk areas and premium caps would rise with reconstruction costs. In this model, the government would require residents with a mortgage to purchase the insurance.

The third model would feature a public insurer, likely led by a Crown corporation who would underwrite comprehensive flood insurance as an intermediary, with a government backstop. Unlike the first two models that are focused on high risk properties, this third model would cover all overland flood risk. The Crown corporation would remain stable through reinsurance and the presence of a government backstop. It would also feature standardized coverage levels.

The final model the Task Force examined was based around a public reinsurer. This model would introduce a layered approach, building on both public and private insurance. The first layer would provide the homeowner the option to purchase insurance from the private market at the full risk-based price, offering coverage to a modest limit. The second layer would involve the mandatory purchase of flood insurance up to a higher limit. A Crown corporation would sell subsidized excess of loss reinsurance to private insurers and would reimburse insurers for losses incurred from the second layer.

Relocation of the highest-risk properties was also discussed as a potential solution in some circumstances, tempered by, for instance, Canada's housing shortage and the close relationship that Indigenous populations have to their traditional lands.

Based on the report, Canadian insurers will likely be called upon to collaborate more closely with the Federal Government on flood risk mitigation. This may include working on ways to help manage financial risk, developing incentives for Canadians to take advantage of flood mitigation strategies and ensuring there are as few gaps in coverage as possible. Insurers may also be consulted regarding the development of standard language for insurance policies and to help standardize the definition of "flooding", as has been done in Australia.

Although the report did not specify that the Task Force preferred one idea over another, it did indicate that the flat cap and tiered high risk pool would require less upfront funding, but would come with a fair amount of residual risk if a large flood were to occur. The report acknowledges that a national flood insurance program will need to be adaptable to regional and cultural contexts. It must also be recognized that mandatory insurance models may not be appropriate for all individuals, particularly for those in socio-economically disadvantaged groups or for whom financial literacy acts as a barrier. Despite these challenges, the report was clear that all parties must find a solution, and quickly, as it would be unwise to wait for the next great disaster to strike. With losses mounting, it is clear that Canadians need a national flood insurance program that can close the ever-widening gaps in protection.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.