



Report to: General Committee

Meeting Date: October 22, 2019

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| <b>SUBJECT:</b>     | Joint and Several Liability and Insurance Reform for Municipalities |
| <b>PREPARED BY:</b> | Claudia Storto, City Solicitor & Director of Human Resources        |

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**RECOMMENDATION:**

1. That the report entitled “Joint and Several Liability and Insurance Reform for Municipalities” be received; and,
2. That Council support the Association of Municipalities of Ontario’s (AMO) position that the joint and several liability principle requires reform, along with the recommendations to the Attorney General of Ontario contained within the AMO report entitled “Towards a Reasonable Balance: Addressing Growing Municipal Liability and Insurance Costs” as set out in Attachment 1 to this report; and,
3. That this resolution be forwarded to the Attorney General of Ontario and the Association of Municipalities of Ontario; and further,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

**EXECUTIVE SUMMARY:**

The Association of Municipalities Ontario (“AMO”) submitted a position paper entitled “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs” to the Attorney General of Ontario on October 1, 2019, which is attached as Attachment 1 to this report. This paper outlines the challenges municipalities face as a result of the joint and several liability rule set out in the *Negligence Act*, R.S.O. 1990, c. N.1, related insurance cost implications, and the influence “liability chill” has on the delivery of public services. AMO has requested that municipalities indicate their support for its position and recommendations seeking a review of the principle of joint and several liability and the impact on insurance costs by submitting Council resolutions to the Attorney General of Ontario, which has indicated that submissions will be accepted until November 1, 2019.

**PURPOSE:**

The purpose of this report is to provide information regarding the challenges municipalities face as a result of the joint and several liability rule and to request that Council support the position and recommendations identified by AMO in response to the Province’s commitment to review the joint and several liability rule.

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**BACKGROUND:**

The *Negligence Act* sets out that “[w]here damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage...”. While fault may be apportioned among the parties to litigation, a defendant who is only 1% responsible for damages may be required to satisfy the entire judgment, regardless of the size of the judgment or apportionment of responsibility. As a result, municipalities are targets of litigation due, in part, to a perception that they have “deep pockets” to satisfy judgments that other defendants do not. This results in scenarios where a municipality may only be found to be 1% responsible for damages and subsequently held responsible for all of the damages.

This has impacted municipalities by increasing claims against them as well as resulting in increases to insurance premiums and potentially, risking the ability to obtain insurance coverage. It has also resulted in deterring municipalities from providing certain public services that may be identified as being high risk or more likely to attract litigation. Liability concerns and risk management practices have increased over the years, impacting municipalities from a financial, operational and policy perspective. Ultimately, this has a detrimental impact on property taxpayers.

**OPTIONS/DISCUSSION:**

AMO’s position paper explains the impact of joint and several liability on Ontario municipalities through examples of recent municipal claim outcomes across Ontario and examples of how municipal insurance premiums have increased over the last few years. The paper also refers to the motion introduced by Randy Pettapiece, MPP for Perth-Wellington calling for a reform of joint and several liability in 2014 which was supported by over 200 municipalities, including the City of Markham. The paper further outlines various liability frameworks that could replace the current joint and several liability principle.

AMO recommends seven measures to address the joint and several liability issues:

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.
2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.
3. Implement a cap for economic loss awards.
4. Increase the catastrophic impairment default benefit limit to \$2 million and increase the third-party liability coverage to \$2 million in government regulated automobile insurance plans.

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5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.
  6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.
  7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.

Staff believe these recommendations will be beneficial in reducing the litigation and insurance burden on property taxpayers and recommend that Council support AMO's position paper and the above recommendations. It is further recommended that Council's resolution be forwarded to the Attorney General of Ontario and AMO to confirm its' support.

**FINANCIAL CONSIDERATIONS:**

Not applicable

**HUMAN RESOURCES CONSIDERATIONS:**

Not applicable

**ALIGNMENT WITH STRATEGIC PRIORITIES:**

Stewardship of money and resources

**BUSINESS UNITS CONSULTED AND AFFECTED:**

Financial Services

**RECOMMENDED BY:**

Claudia Storto  
City Solicitor & Director of Human Resources

Andy Taylor  
Chief Administrative Officer

**ATTACHMENTS:**

1. AMO Submission to the Attorney General of Ontario "Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs", dated October 1, 2019