
Subject: Motion by the Municipality of Charlton and Dack respecting the Cost of Municipal Insurance

Report to: Corporate Services Committee

Report date: Wednesday, March 10, 2021

Recommendations

1. That this report **BE RECEIVED** for information.

Key Facts

- This report is provided in response to a request made at Corporate Services Committee on January 13, 2021, and ratified by Regional Council on January 21, 2021, that staff provide a report respecting Correspondence Item CWCD 2021-08.
- Correspondence Item CWCD 2021-08 concerned a Motion from the Municipality of Charlton and Dack respecting the rising cost of municipal insurance in light of the joint and several liability regime.
- As a result, this report provides Council with an update with respect to Staff's review of the efforts undertaken by other municipalities and Association of Municipalities of Ontario (AMO) to request the Province take action to address concerns regarding municipal insurance and the need for joint and several liability reform.
- Joint and several liability, in its current form, creates significant financial risk to municipalities, including increased liability payouts and insurance premium costs.
- With joint and several liability, if other parties are unable to pay, damages can be recovered from any defendant, even if they are deemed just one per cent responsible. As a result, a fraction of fault can cause municipalities to pay significant damage awards. Often municipalities are targeted for inclusion in litigation deliberately as "deep pocket" insurers when other defendants do not have the means to pay.
- In September, 2019 a letter was submitted by the Region's Legal Services division to the Attorney General of Ontario, in response to a broad municipal consultation on the joint and several framework, supporting reform.
- In October 2019 Regional Council approved a Staff report (being CL-C 67-2019 – AMO Submission regarding Joint and Several Liability Reform) endorsing AMO's October, 2019 report and recommendations to the Attorney General for Ontario for joint and several liability reform.

- Despite numerous municipalities endorsing AMO's recommendations and sending letters of support to the Attorney General for Ontario, except for a change to the limitation period for slip and falls, it does not appear that any further steps have been taken by the Province to date to address the concerns raised.

Financial Considerations

As reported in CSD 74-2020 Insurance Program Update for 2020-2021, Niagara Region experienced a significant premium increase. The premium increase from 2020 to 2021 of \$899,386 or 99.5% was approved in the 2021 Levy Operating Budget.

Analysis

In July, 2019 the Attorney General of Ontario (Attorney General) reached out to municipalities to participate in the government's consultations regarding joint and several liability, insurance costs, and the 'liability chill' affecting the delivery of public services. At that time, Legal Services Staff conducted a review in consultation with Niagara Region's insurer, completed a questionnaire and a formal response was provided to the Attorney General on September 27, 2019.

In an October 2019 report to the Attorney General, AMO recommended seven measures to address the issues posed by joint and several liability reform, summarized as follows:

1. Adopt a model of full proportionate liability to replace joint and several liability;
2. Implement enhancements to the existing limitations period including the applicability of the existing 10-day rule on slip and fall cases 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 as well as the third-party liability coverage to \$2M in government regulated auto insurance plans;
5. Assess and implement additional measures which would support lower premiums or alternatives to the provisions of insurance by other entities such as non-profit insurance reciprocals;
6. Compel the insurance industry to supply all necessary financial evidence which support arguments as to the fiscal impact of joint and several liability; and
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.

On October 17, 2019, Regional Council endorsed AMO's report and approved the following resolution:

1. The Regional Municipality of Niagara hereby **ENDORSES** the submission of the Association of Municipalities Ontario to the Attorney General of Ontario entitled “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs” dated October 1, 2019; and,
2. That Staff **BE DIRECTED** to forward the approved resolution to the Ministry of the Attorney General prior to November 1, 2019.

At the January 13, 2021, meeting Corporate Services Committee received a letter from the Municipality of Charlton and Dack (“Charlton and Dack”), being Correspondence Item CWCD 2021-08, to the Honourable Doug Ford, Premier of Ontario regarding municipal insurance and joint and several liability reform issues. As a result, Staff was requested to provide a report regarding the matter.

Staff reached out to Charlton and Dack as well as other municipalities to see what actions or other steps have occurred since the 2019 consultation efforts noted above. Similar to other municipalities canvassed, Charlton and Dack indicated that the 2021 insurance renewal was very difficult and resulted in a significant overall premium increase. The common concern expressed amongst municipalities is that premium increases and overall claims costs are not sustainable and action by the Province is necessary.

In addition, Staff was informed that in May 2020 AMO provided an update to indicate that regretfully they had no news to offer municipalities in terms of steps being taken by the Province. AMO indicated that at the January 2020 Rural Ontario Municipal Association Conference the Attorney General was asked a question regarding progress on joint and several (which was also the one-year anniversary of the Premier’s announcement to pursue options). It is Staff’s understanding that the Attorney General at that time was non-committal.

A further update from AMO in August 2020 advised as follows:

AMO awaits the government’s response to the consultation and understands that delays are occurring due to COVID-19. However, the current environment is seeing increased liability concerns emerge as municipal governments work to manage COVID-19 and the phased re-opening across the province.

The concerns set out above are what prompted the recent Motion by Charlton and Dack to reach out to the Premier of Ontario.

Staff can report, however, that further to the recommendations made by AMO the Province did recently change and reduce the two year limitation for an individual to bring an action for a slip and fall to 60 days.

On February 16, 2021 AMO posted an article (attached as Appendix 1) with respect to Joint and Several Liability and Rising Municipal Insurance Costs, highlighting that this continues to be an issue of significant concern for all municipalities.

As indicated in CSD 74-2020 Insurance Program Update for 2020-2021, Staff is undertaking a review of the current insurance program and associated risks in the context of the now known changing insurance market. Staff is targeting a report back to Council by the end of April 2021 regarding available options including potentially going back out to market in 2021 with a new procurement process and a revised insurance program.

Alternatives Reviewed

No alternatives were reviewed as this report is being provided for information purposes.

Relationship to Council Strategic Priorities

Niagara Region's review of the Province's actions respecting Municipal Insurance and Joint and Several Liability Reform is consistent with Council's strategic priority focus on Sustainable and Engaging Government – High Quality, Efficient and Coordinated Core Services and Fiscally Sustainable.

Other Pertinent Reports

- CWCD 2021-08 – Motion from the Municipality of Charlton and Dack respecting Municipal Insurance
- CSD 74-2020- Insurance Program Update for 2020-2021
- CL-C 67-2019- AMO Submission regarding Joint and Several Liability Reform

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This report was prepared in consultation with Donna Gibbs, Director Legal and Court Services.

Appendices

Appendix 1 AMO Article dated February 16, 2021



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Joint and Several Liability & Rising Municipal Insurance Costs

February 16, 2021

By Rick Johal, Senior Advisor, AMO

In early 2019, Premier Doug Ford announced to the delegates of the Rural Ontario Municipal (ROMA) Conference that his government was going to launch consultations into the long-standing municipal concern around joint and several liability. I remember being in the room and noting that this announcement was positively received. I think many, including myself, thought that this new government could well take a different perspective and approach to this issue.

Later that year, with the support of its Task Force, AMO staff prepared a submission titled, "[Toward a Reasonable Balance: Addressing growing municipal liability and insurance costs](#)" to the Attorney General. In this submission, AMO outlined a series of recommendations that included, but was not limited too, introducing a model for full proportionate liability to replace joint and several liability and implementing a cap for economic loss awards.

Unfortunately, AMO and the municipal sector have not formally heard back from the Attorney General with respect to the outcome of this consultation. Naturally, many in the sector understood the impact of

the pandemic and that it placed a pause on many government consultations in early 2020. However, recent comments at the AMO and ROMA Conference from the Attorney General have caused some concern. Notably, Minister Downey indicated in a response to a Minister's Forum question that he may still be unconvinced about the data surrounding joint and several liability and its relation to higher insurance premiums for municipal governments. Suffice it to say, this may be a point of contention and AMO is keen to learn more about the Attorney General's thoughts moving forward.

2021 is representing a challenging year for municipalities in several ways. One of these challenges focuses on insurance premiums. It is a growing trend that municipal governments are reporting significant increases and, in some cases, even struggling to get quotes. This can be attributed to a series of factors including being in a "hard" insurance market, managing challenges arising from COVID-19, and joint and several liability that continues to place a heavy burden on municipalities.



Recently, the Federation of Northern Ontario Municipalities (FONOM) and the Northwestern Ontario Municipal Association (NOMA) shared some initial data gathered from their members on insurance premiums.

The data captures the percentage increase in premiums from 2020 to 2021 for nearly 65 municipalities. The average rate of increase is just over 20% and for many smaller communities, this is simply not sustainable. One municipal government noted that it must now increase taxes to ratepayers by 2.5% to simply make up for the increase on its insurance premiums. This scenario, left unaddressed, will continue to draw property tax dollars away from key public services for Ontario residents.

This issue is not going away.

Without action, the public and media will continue to circle matters related to joint and several liability. AMO has outlined options for the government to pursue that have worked in other jurisdictions. The provincial government can do more to support a risk management approach from municipal governments in the pursuit of a more fair, reasonable, and responsible system for liability.

The time to restart this dialogue is now as there remain too many outstanding concerns and the trend line is less favourable for municipal governments with each passing year.

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