
MEMORANDUM

CL-C 67-2019

Subject: AMO Submission regarding Joint and Several Liability Reform

Date: October 17, 2019

To: Regional Council

From: Donna Pasto, Risk Management Program Manager

The purpose of this Memo is to advise Council of a request from the Association of Municipalities of Ontario (AMO) encouraging Municipal Councils to endorse their October 1, 2019 report and recommendations to the Attorney General for Ontario for joint and several liability reform.

Background Information

In July of 2019, a letter from the Attorney General for Ontario (Attorney General) was circulated inviting municipalities to make submissions as part of a consultation regarding joint and several liability.

Joint and several liability, in its current form, creates additional costs and financial risk to municipalities, which include increased liability payouts and insurance premium costs.

A letter was submitted by the Region's Legal Services division supporting a review and reform of the joint and several framework in collaboration with our insurer and other municipalities.

Subsequently, AMO submitted an October 1, 2019 report and recommendations to the Attorney General entitled "A Reasonable Balance: Addressing growing municipal liability and insurance costs (a copy of the report is attached as **Appendix 1** or the link to the report is https://www.amo.on.ca/AMO-PDFs/Reports/2019/Towards-a-Reasonable-Balance-Addressing-growing-mu.aspx?_zs=p1U9N1&_zl=kHvN1).

AMO is encouraging Municipal Councils to endorse their report and recommendations. The Attorney General has agreed to accept municipal resolutions up until November 1, 2019.

AMO's report outlines the significant negative impact that joint and several liability has on municipalities and the need for change. As mentioned in the report on page 5 at paragraph 6,

"Joint and several liability is problematic not only because of the disproportional burden on municipalities that are awarded by courts. It is also the immeasurable impact of propelling municipalities to settle out of court to avoid protracted and expensive litigation for amounts that may be excessive, or certainly represent a greater percentage than their degree of fault."

The report (commencing at page 9) includes a summary of a number of court decisions which highlight the consequences of joint and several liability for municipalities.

AMO (at page 7 of their report) recommends seven measures to address the issues posed by joint and several liability that may be 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
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General

Staff are supportive of AMO's report and recommendations and recommend that Council provide its endorsement as requested by AMO. If it is Council's wish to endorse AMO's report, the following resolution can be approved by Council and forwarded by way of letter to the Attorney General, The Honourable Doug Downey:

"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,

That Staff **BE DIRECTED** to forward the approved resolution to the Ministry of the Attorney General prior to November 1, 2019."

Respectfully submitted and signed by

Donna Pasto
Risk Management Program Manager

APPENDICES

Appendix 1 "Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs" AMO submission dated October 1, 2019