

SUBJECT: AMO Call to Action on Joint and Several Liability

File Number ACS2022-ICS-LEG-0001

Report to Finance and Economic Development Committee on 1 February 2022

and Council 9 February 2022

Submitted on January 21, 2022 by Valerie Turner, General Manager, Innovative Client Services

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE

OBJET : Appel à l'action de l'AMO au sujet de la responsabilité solidaire

Dossier : ACS2022-ICS-LEG-0001

Rapport au Comité des finances et du développement économique

le 1er février 2022

et au Conseil le 9 février 2022

Soumis le 21 janvier 2022 par Valerie Turner, Directrice générale, Services novateurs pour la clientèle

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REPORT RECOMMENDATION(S)

That the Finance and Economic Development Committee recommend that City Council endorse the measures proposed by the Association of Municipalities of Ontario calling on the Provincial Government to enact reforms addressing the issue of joint and several liability, as set out below:

- 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.
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.

RECOMMANDATION(S) DU RAPPORT

Que le Comité des finances et du développement économique recommande au Conseil municipal d'approuver les mesures proposées par l'Association des municipalités de l'Ontario, pressant le gouvernement provincial d'adopter des réformes sur la responsabilité solidaire, comme il est décrit ci-après :

1. Que le gouvernement provincial adopte un modèle de responsabilité intégralement proportionnelle en remplacement de la responsabilité solidaire.
2. Mettre en place des améliorations à la période de restriction actuelle, notamment l'applicabilité continue de la règle des dix jours dans les cas de chute accidentelle, compte tenu des récentes interprétations judiciaires, et déterminer si une période de restriction d'une année pourrait être bénéfique.
3. Plafonner les indemnités pour perte financière.
4. Augmenter à deux millions de dollars la limite du plafond de prestations

par défaut pour incapacité invalidante, et augmenter à deux millions de dollars l'assurance responsabilité civile dans les régimes d'assurance automobile réglementés par le gouvernement.

- 5. Évaluer et mettre en place d'autres mesures permettant de soutenir les primes moins élevées, ou des solutions de remplacement pour les services d'assurance fournis par d'autres prestataires, comme les mutuelles sans but lucratif.**
- 6. Contraindre le secteur de l'assurance à fournir toutes les données financières nécessaires, notamment les primes, les sinistres et les changements aux franchises qui s'y rapportent, ainsi que les arguments municipaux portant sur l'incidence fiscale de la responsabilité solidaire.**
- 7. Créer un groupe de travail provincial et municipal chargé d'examiner les points susmentionnés, et proposer des recommandations au procureur général.**

BACKGROUND

On October 1, 2019, the Association of Municipalities of Ontario (AMO) delivered to the Attorney General for the Province of Ontario its white paper entitled "Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs," attached as Document 1. The AMO submission was made in response to Premier Doug Ford's announcement during remarks at the 2019 Rural Ontario Municipal Association (ROMA) Conference that his government was going to launch consultations into the long-standing municipal concern around joint and several liability.

The issue of joint and several liability arises in the context of litigation brought by a plaintiff against more than one defendant. The principle is enshrined in Section 1 of the *Negligence Act*, which states:

"Where 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 for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent."

At law, joint and several liability is defined as follows:

The condition in which rights and liabilities are shared among a group of persons collectively and also individually. Thus, if defendants in a negligence suit are jointly and severally liable, all may be sued together or any one may be sued for full satisfaction of the injured party.

Referred to colloquially as the “1% Rule,” the concept of joint and several liability dictates that a plaintiff can recover 100 per cent of their damages from a single defendant, regardless of that particular defendant’s true share of fault.

To date, the Ontario Government has offered no formal response to the AMO submission nor any update on the status of the consultation. More recently, AMO has raised some concern that the Attorney General, Minister Downey, “may still be unconvinced about the data surrounding joint and several liability and its relation to higher insurance premiums for municipal governments,” due to Minister Downey’s response to a Minister’s Forum question at a recent AMO and ROMA Conference. As a result, and as part of its January 2022 Policy Update, AMO has issued a Call to Action “asking for municipal councils to lend their support to the seven recommendations contained in the AMO submission to re-establish the priority for provincial action on this issue.”

DISCUSSION

The City of Ottawa's recent experience with the impact of joint and several liability figures prominently in the AMO submission. As was noted in the Comprehensive Legal Services Report for the period January 1 to June 30, 2020 ([ACS2020-ICS-LEG-0005](#)), the “ongoing pressure on premiums continues to be influenced by municipalities’ exposure to claims under the rules of joint and several liability, which often mean that municipal defendants are required to bear a share of compensation that greatly exceeds their proportionate share of liability.” The impact of joint and several liability on the City was previously the subject of an August 2010 report entitled, “Joint and Several Liability Reform - Association of Municipalities of Ontario” ([ACS2010-CMR-LEG-0014](#)). In the context of managing risk and defending actions against the City, that report identified two inter-related problems arising out of joint and several liability:

1. The City ends up paying more than its fair share when named in litigation with multiple defendants because of the other defendants’ inability to pay (or ability to avoid payment); and

2. The City gets targeted in litigation that has only a seemingly tangential connection to it because plaintiffs (and more specifically, counsel for plaintiffs) know that they only have to show the minimal fault on the part of the City to access its “deep pockets.”

Those concerns prompted the Corporate Services and Economic Development Committee (as the Finance and Economic Development Committee was then known) to recommend that, "Council support the efforts of the Association of Municipalities of Ontario to seek joint and several liability reform in Ontario and to call on the Provincial Government to pursue much needed changes to the *Negligence Act*."

Despite the efforts of AMO and others, progress toward reform of the *Negligence Act* provisions dealing with joint and several liability has been stalled, with the Ontario Government having abandoned a prior initiative in 2014. The problems noted in the 2010 report therefore continue to affect the City of Ottawa, as evidenced by the two specific cases cited in the 2019 AMO white paper.

In light of the above, staff are recommending that City Council renew its support for AMO's advocacy on the issue on behalf of municipalities and, in particular, for the measures proposed in the 2019 white paper.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

LEGAL IMPLICATIONS

The associated legal implications have been outlined in this report.

COMMENTS BY THE WARD COUNCILLOR(S)

This section is not applicable as this is a city-wide report.

CONSULTATION

As this is an administrative report, no consultation was undertaken.

ACCESSIBILITY IMPACTS

Legal Services supports and considers the *Accessibility for Ontarians with Disabilities Act, (2005)* in its operations. This report has no associated accessibility impacts.

RISK MANAGEMENT IMPLICATIONS

Legal Services' concerns with joint and several liability have been described above, and Legal Services shares the concerns of the AMO as identified in the initiative. A more detailed discussion of specific cases that were impacted by these concerns would be subject to solicitor/client privilege and/or confidentiality requirements that commonly accompany such matters, and would need to be addressed *in camera*.

RURAL IMPLICATIONS

There are no rural implications arising out of this report.

TERM OF COUNCIL PRIORITIES

There are no direct implications to the 2019-2022 City Strategic Plan.

SUPPORTING DOCUMENTATION

Document 1 – 2019 AMO white paper “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs”

DISPOSITION

Subject to any direction by the Finance and Economic Development Committee and Council, the Office of the City Clerk will prepare a letter to advise the Province of Ontario and AMO of Council's resolution.