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# HALDIMAND COUNTY

## Report LSS-20-2019 Joint and Several Liability – Consultation of the Ministry of the Attorney General



For Consideration by Council in Committee on September 17, 2019

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### OBJECTIVE:

To seek Council's support of the consultation of the Ministry of the Attorney General to Joint & Several Liability.

### RECOMMENDATIONS:

1. THAT Report LSS-20-2019 Joint and Several Liability – Consultation of the Ministry of the Attorney General be received;
2. AND THAT a letter, similar to the draft version included in Attachment #2, be sent from the Mayor's Office to the Ministry of the Attorney General prior to September 27, 2019.

**Prepared by:** Dana McLean, Supervisor, Risk Management & Legal Services

**Respectfully submitted:** Cathy Case, General Manager of Corporate & Social Services

**Approved:** Craig Manley, MCIP, RPP, Chief Administrative Officer

### EXECUTIVE SUMMARY:

Council was recently notified by the Attorney General regarding the Provincial government's consultation on joint and several liability. Staff recommend that a letter be sent from the Mayor's office in support of this consultation.

### BACKGROUND:

Council was notified by the Attorney General on July 12, 2019 (Attachment #1) of a consultation process being undertaken by the government regarding joint and several liability. Ontario municipalities have been invited to participate in the consultation and provide information with regard to the impact the principle of joint and several liability has had on the municipality.

### ANALYSIS:

The joint and several provisions of the *Negligence Act*, indicate, "Where damages have been caused or contributed to by the fault or neglect of two or more persons... and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage...". This is commonly referred to as the 1% rule. The joint and several provisions may oblige a defendant, which is only 1% at fault, to pay the plaintiff's entire judgment. This is particularly relevant in cases wherein the other defendant is unable to meet a damage award. This is commonly seen in cases involving motor vehicle accidents wherein one party is catastrophically injured and the party responsible for the motor vehicle accident has limited automobile liability limits. In Ontario, the

mandatory automobile liability limit is \$200,000. The rising costs for future care associated with catastrophic injuries is seeing the corresponding increase in judgment awards (some in the multi-million dollar range) to ensure these injured persons are cared for.

Municipalities, often the target of legal counsel acting on behalf of their injured clients, are seen as “deep pocket” defendants with unlimited resources able to pay the significant judgments being awarded. The principle of joint and several liability ensures that one need only find the municipality 1% liable for the cause of loss which contributed to the plaintiff’s injuries in order for the municipality to be held jointly and severally liable, potentially having to pay 100% of the amount awarded. Sympathetic judiciary needing to ensure injured persons are fairly compensated for their losses need not dig too deep to arrive at a finding of 1%. For this reason, most claims are settled out of court for a reduced, agreed upon compensatory resolution to avoid the risk of a significant monetary award in court.

The County has seen the outcome of such a system impact its insurance premiums over the years, with insurance representatives indicating that a significant portion of any increase in liability premiums is a direct result of the risk to the municipality associated with joint and several liability. The provision of Joint and Several Liability has caused a number of insurers to impose coverage restrictions or withdraw entirely from the public entity market, limiting a municipality’s options for securing appropriate coverage. In 2011, Council opted to increase the County’s municipal liability deductible from \$25,000 to \$250,000. This had the effect of significantly reducing premiums, however, also increased the County’s exposure to higher claims costs as it internally insures claims up to the first \$250,000.

In 2014, Council was notified by the Association of Municipalities of Ontario (AMO) that a resolution was passed by Members of the Provincial Legislature supporting government reform of joint and several liability. At that time, Haldimand County Council provided support on this issue by sending a letter from Mayor Hewitt. Nearly 200 other Ontario municipalities supported the motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called on the government to implement a comprehensive, long-term solution no later than June 2014.

Unfortunately later in 2014, a spokesperson for the Ministry of the Attorney General advised that, the Ontario government “decided not to move forward with changes to the rule of joint and several liability,” due to “significant concerns” raised, many of which came from the legal community, including the “potential burden” on injured plaintiffs.

Staff recommend supporting this latest consultation process put forth by the Attorney General. Staff recognize that the letter received from the Attorney General dated July 12, 2019 seeks significant information by way of facts and evidence. Given the amount of resources required to assemble the amount of requested data within the short turnaround time provided, staff recommend that the County show support of reform by sending a letter from the Office of the Mayor to the email address provided in the correspondence, copying the local Member of Parliament, the Premier’s office and the Minister of Municipal Affairs and Housing. A draft letter is included as Attachment #2 outlining concerns related to the current system of joint and several liability and the impacts it has for Ontario municipalities, as follows:

- A limited insurance market for municipal liability
- Increased insurance premiums
- Increased liability deductibles to offset rising insurance premiums, while assuming more risk exposure for liability claims
- Increased staffing to manage increased claims under the deductible
- Unreasonable standards for infrastructure and reporting/inspecting as a defence for liability claims

It is staff's understanding that a second phase of this consultation could occur in the fall of 2019. Should further information be requested from municipalities at the time, staff will again bring this matter to Council's attention to provide an update and seek direction.

### **FINANCIAL/LEGAL IMPLICATIONS:**

A reform to joint and several liability could significantly impact all Ontario municipalities and potentially result in reduced costs.

### **STAKEHOLDER IMPACTS:**

Not applicable.

### **REPORT IMPACTS:**

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

### **ATTACHMENTS:**

1. Letter from the Attorney General dated July 12, 2019
2. 2019 Draft letter to the Attorney General