



DELIVERED VIA EMAIL: magpolicy@ontario.ca

September 24, 2019

The Honourable Doug Downey
Attorney General
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto ON M7A 2S9

Dear Attorney General:

Re: Joint & Several Liability Consultation

Haldimand County wishes to respond to the correspondence received from your office dated July 12, 2019 regarding the impact of joint and several liability on municipalities.

Specifically, regarding the inquiries of that correspondence, the nature of the problem as the County sees it is the principle of joint and several liability encouraging plaintiffs to target municipalities to ensure there is a deep pocketed party at the table from which to collect compensation. This leads to the County being forced to respond and incur expenses for the defence of such claims and ultimately being exposed to as much as 100% of any damage award due to the 1% rule. In general, this has the following implications on the County and its taxpayers:

- Increased Insurance Premiums and Limited Insurance Market
 - o The market is limited in insurers willing to underwrite municipal liability insurance programs due to the risk associated with the joint & several liability principle and it's impact upon municipalities as road authorities which is the source of which a significant portion of municipal liability claims arise;
 - o Constant rise in liability insurance premiums to ensure capacity to cover the losses associated with significantly injured persons and the rise in costs

for future care and the reality that municipalities will be brought into litigation as the “deep pocket” source of funding;

- Raising Liability Deductibles and Assuming More of the Risk
 - Year after year in the early 2000s, Haldimand County would experience an increase in its liability insurance premium with the insurers citing the principle of joint & several liability as a significant factor. In 2011, Haldimand County was facing a 35% increase in premium for its liability insurance policy. At that time Council chose to raise the deductible from \$25,000 to \$250,000 in an effort to reduce the burden of the premiums on the taxpayers. This, of course, resulted in the County taking on more of the risk exposure for liability claims.
- Increased Staffing and Standards
 - As a result of raising liability insurance deductibles and the prospect of being brought into litigation, the County has needed to increase its staffing levels to handle claims within its deductible level and trying to achieve something close to perfection regarding maintenance and design of its infrastructure, which again increases costs to the taxpayers.

Haldimand County recommends a reform wherein proportionate liability is considered in awarding compensation to an injured party that reflects the extent to which any defendant is found liable.

In consideration of ensuring catastrophically injured persons are fairly compensated, a different source of funding should be researched.

The provisions of the *Negligence Act* and specifically the provision of Joint and Several Liability have not been updated for decades and the County would suggest that the legislation was never intended to place the burden of insurer of last resort on municipalities.

For this reason, we strongly support a reform to Joint & Several Liability and encourage further discussion and consultation on this process.

Sincerely,

Ken Hewitt
Mayor