
HALDIMAND COUNTY

Report LSS-01-2022 Joint and Several Liability

For Consideration by Council in Committee on February 8, 2022



OBJECTIVE:

To support the Association of Municipalities of Ontario in their effort to reform Joint and Several Liability in Ontario.

RECOMMENDATIONS:

1. THAT Report LSS-01-2022 Joint and Several Liability 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 and copied to the Association of Ontario Municipalities.

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

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

EXECUTIVE SUMMARY:

In January 2022, the Association of Municipalities of Ontario (AMO) asked municipalities to send letters of support to the Ministry of Attorney General to re-establish as a provincial priority action, the review to reform Joint and Several Liability prior to the end of its current mandate. This is a reform measure that staff at Haldimand County have supported for several years to reduce the increasing insurance costs municipalities face year after year, and to implement a more proportionate system of liability in the province. Staff recommend that Council submit a letter to the Ministry of the Attorney General in support of joint and several liability reform.

BACKGROUND:

Memos and reports have previously been provided to Council providing explanation, updates and activities regarding the impacts of the Joint and Several Liability system practiced in Ontario. In September 2019, staff presented report LSS-20-2019 Joint and Several Liability – Consultation of the Ministry of Attorney General (Attachment #1). The report recommended that a letter be sent from the Mayor's Office to the Ministry of Attorney General outlining concerns related to the current Joint and Several Liability; and the impacts it has on Ontario municipalities. Council approved the staff recommendation and a letter was sent from the Mayor's Office.

On October 1, 2019, the Association of Municipalities of Ontario (AMO) submitted to the Attorney General of Ontario a document "*Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs*" which included seven recommendations as follows:

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”.*

As there has been minimal movement from the provincial government since AMO brought this request forward, AMO is seeking to reconfirm municipal support to bring this issue back to the forefront for provincial action. Specifically, AMO has requested that letters of support be sent from municipalities to the Ministry of Attorney General’s office.

ANALYSIS:

Joint and Several Liability is a provision within the *Negligence Act* and is commonly referred to as the 1% rule. Legal counsel often names municipalities in suits on behalf of their injured clients, as municipalities are seen as “deep pocket” defendants having unlimited resources, and are able to pay the significant judgments being awarded. Under joint and several liability, a municipality is only required to be found 1% liable for the cause of loss which contributed to the plaintiff’s injuries, in order to be held jointly and severally liable - potentially having to pay 100% of the amount awarded, despite contributory negligence by other parties.

This issue has become even more critical over recent years as the cost of judicial settlements and awards are in the millions, which has had a direct impact on monies paid by insurance companies. This trend has resulted in municipalities seeing significant insurance premium increases and higher deductibles - both which have a direct impact on the tax payer. In some cases, municipalities have reported that they have been unable to obtain quotes for insurance coverage.

Staff are recommending that another letter from the Mayor’s Office be sent to the Ministry of Attorney General reconfirming support of AMO’s seven recommendations as outlined above. A draft letter is included as Attachment #2.

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. Report LSS-20-2019 Joint and Several Liability – Consultation of the Ministry of the Attorney General
2. Draft Letter to the Attorney General