

COMMUNICATION 130183

Received from Trisa McConkey, CPA, CGA, Treasurer
Addressed to Committee of the Whole
Date October 8, 2019
Topic Addressing Municipal Liability and Insurance Costs

SUMMARY:

The AMO Board made a submission to the Attorney General entitled "*Towards A Reasonable Balance: Addressing growing municipal liability and insurance costs*". AMO is encouraging municipalities to endorse the report and its recommendations by passing a resolution and submitting it to the Attorney General before November 1, 2019.

COMMENT:

Under joint and several liability, parties with a relatively minor share of the fault bear the risk of full liability. Therefore, under this arrangement, parties with "deep pockets" may be exposed to huge risks in a law suit. As a result, from a business perspective it is important to limit joint and several liabilities because it may obligate the business to liabilities far beyond its share of responsibility

The following is an excerpt from the report:

"Municipal governments accept the responsibility to pay their fair share of a loss. Always. Making it right and paying a fair share are the cornerstones of our legal system. Citizens expect nothing less of their local governments.

But what is a challenge for municipalities and property taxpayers alike, is being asked to assume someone else's responsibility for someone else's mistake. Municipal governments should not be the insurer of last resort. For municipalities in Ontario, however, the principle of joint and several liability ensures that they are just that. Joint and several liability means higher insurance costs. It diverts property tax dollars from delivering public services. It has transformed municipalities into litigation targets while others escape responsibility. It forces municipal government to settle out-of-court for excessive amounts when responsibility is as low as 1%."

AMO has examined the issue of growing municipal liability and insurance costs. The AMO report includes the following seven (7) key recommendations on actions which the government could take to reduce the negative impact of joint and several liability on municipalities:

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.

The report builds on previous reports and resolutions submitted in 2010, 2011, and 2014. Please see the full report attached for more details.

FINANCIAL IMPLICATIONS

There are no financial implications resulting from this report.

STAFF RECOMMENDATION

THAT the Council of the Town of Carleton Place supports the Association of Municipalities of Ontario (AMO) in its submission to the Attorney General entitled *“Towards A Reasonable Balance: Addressing growing municipal liability and insurance costs”*; and

THAT the Town endorses the AMO’s recommendations to address these issues 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.