

February 1, 2019

Dear Heads of Council,

At the recent Rural Ontario Municipal Association conference, Premier Doug Ford announced the province will be launching a joint and several liability review. Liability reform represents a longstanding municipal request. Details on the nature and timing of this review and its accompanying public consultation are expected shortly.

Also known as the 1% rule, joint and several liability obliges a municipal government (which could be only 1% at fault) to pay a claimant's entire judgment in cases where other respondents are unable to pay a court ordered award. This rule means municipal governments often become the targets of litigation. It pushes municipalities to settle out of court to avoid long-drawn-out litigation for amounts that may be excessive. At the local level, this diverts property taxes away from public services to pay expensive insurance premiums or self-insurance costs. If this situation continues, efforts to limit liability exposure by scaling back public services (or activities like tobogganing in public spaces) will only continue.

Another challenge is that joint and several liability has narrowed municipal insurance choices. In 2016, the Ontario Municipal Insurance Exchange (OMEX), a not-for-profit insurer, announced that it was suspending underwriting operations citing, in part, "the impact of joint and several liability on municipal claim settlements". Less choice fuels cost.

Municipal advocacy on this issue in no way intends for injured parties to be denied justice or damages through the courts. Rather the key considerations are the inequity of how much "deep pocket" defendants are paying and the need to find a reasonable balance. Many common law jurisdictions around the world have adopted legal reforms to limit exposure and restore balance. Other countries and the vast majority of state governments south of the border have adopted forms of proportionate liability instead. Outside Ontario, others have recognized municipalities should not be insurers of last resort.

In February 2014, MPPs from all parties supported a motion calling on the province to reform joint and several liability. Nearly 200 municipal councils also supported the motion introduced by Randy Pettapiece, MPP for Perth-Wellington, which called on the government to implement a comprehensive, long-term solution.

Building on the foundation of previous AMO work, we are assembling a group of municipal lawyers and risk managers to support municipal participation in this review. If you have a staff member or ideas that could contribute to this effort, please contact AMO Senior Advisor Matthew Wilson at mwilson@amo.on.ca.

For more background, please see [AMO's Liability Reform paper](#) or view our [Managing the Cost of Risk](#) insurance survey results. Further information will be shared in the weeks ahead.

Sincerely,

Jamie McGarvey
AMO President
Mayor, Town of Parry Sound

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