



The Corporation of the Town of Tecumseh

Corporate Services & Clerk

To: Mayor and Members of Council

From: Laura Moy, Director Corporate Services & Clerk

Date to Council: October 22, 2019

Report Number: CS-2019-34

Subject: Liability and Insurance Costs Reforms

Recommendations

It is recommended:

That the Association of Municipalities of Ontario's (AMO) report titled "*Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs*" and seven key recommendations submitted to the Attorney General of Ontario on October 1, 2019, **be supported;**

And that this resolution be sent to the Ministry of the Attorney General and a copy sent to AMO, AMCTO, the local MPPs and area municipalities;

And further that Report CS-2019-34 regarding Liability and Insurance Cost Reforms, **be received.**

Background

Under the *Negligence Act*, joint and several liability (JSL) dictates that damages may be recovered from any of the defendants regardless of their individual share of the liability. The joint and several liability rule obliges a defendant who is only 1% at fault to pay a plaintiff's entire judgment (100%) if the other defendant(s) lack the resources to pay their share. Even a finding of minimal liability (1%) can result in millions of dollars in damage awards, especially in cases where other liable parties do not have sufficient assets and/or lack adequate insurance coverage.

In some instances, municipalities are targeted deliberately as they are seen to be a "deep pocket" defendant.

The effects of joint and several liability on municipalities are noticeable in several areas including claims related to motor vehicle accidents, road safety, building inspections, and facility and event safety.

Joint and several liability has resulted in steadily increasing costs for municipalities, well out of proportion to actual responsibility. The costs imposed against a municipality are not only the final judgment or settlement but also include the legal defence costs, investigation and staff time and, ultimately, the increase in municipal insurance premiums.

The presence of joint and several liability has led some municipalities to withdraw services to limit liability exposure, which is in contrast with the future and community vision of the municipality. Municipalities exist to connect people to their community and the social and recreational opportunities that advance the development of a community. If the situation is allowed to continue inevitably so will the scaling back of services provided to citizens in an effort to limit liability exposures and the duty of care as well as insurance costs. Staff see the impact when non-mandated activities of the Town and its various committees must be scrutinized carefully to see if they add a lot of potential risk to the Town due to the possibility of the lack of other insured defendants in the event of a claim. Staff also see the need to become stricter about adding other entities to Town insurance as it increases the chances of being held responsible for a lawsuit when there is limited control over the activity (i.e. community groups, fundraising groups, historical societies etc.) There is also the growing need to make sure individuals or organizations that the Town partners with or that use Town facilities for events are properly insured. All such examples are steps that the Town is forced to take to combat the impact of joint and several liability.

In July of this year, the Attorney General of Ontario, The Honourable Doug Downey, invited participation in the government's consultations regarding joint and several liability, insurance costs, and the 'liability chill' affecting the delivery of everyday public services.

Comments

On October 1, 2019, AMO submitted its report titled "*Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs*" to the Attorney General of Ontario (Attorney General) in response to the invitation to participate in the consultation on joint and several liability (Report).

In the Report, AMO reasserts key issues from its 2010 paper and 2011 insurance cost survey, provides more recent examples, and details some possible solutions.

AMO highlights in the Report, the inequity of how much "deep pocket" defendants like municipalities are forced to pay, for both in and out of court settlements and that Municipal Governments cannot afford to be the insurer of last resort.

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%.

According to a statement, “A 2011 survey conducted by AMO reveals that since 2007, liability premiums have increased by 22.2% and are among the fastest growing municipal costs. Total 2011 Ontario municipal insurance costs were \$155.2 million. Liability premiums made up the majority of these expenses at \$85.5 million. Property taxpayers are paying this price.”

Joint and several liability ensures that plaintiffs are not left empty handed in the event of an injury or loss. By seeking reform to the current legislation, it is not the intent to see that injured parties be denied justice or damages through the courts, but rather some form of proportionate liability to address how much “deep pocket” defendants like municipalities are paying for both in and out of court settlements.

To that end, AMO recommends the following seven key recommendations on actions which the Provincial Government could take to reduce the negative impact of joint and several liability:

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 Attorney General has agreed to accept Municipal resolutions endorsing the Report and its recommendations, up until November 1, 2019.

In a letter dated October 2, 2019 to the Attorney General, the Association of Municipal Managers, Clerks & Treasurers of Ontario (AMCTO) delivered its support for AMO’s report and recommendations which are in line with the kinds of reforms that AMCTO has previously endorsed, particularly moving to a form of proportionate liability and finding ways to reduce municipal insurance costs.

AMO recommendations support finding a balance between making whole those who suffer losses and ensuring municipalities do not bear a disproportionate share of doing so.

The Town also participated in the consultation offered by the Attorney General. The Attorney General asked to hear from municipalities on their direct experiences. Attached is a copy of the submission provided to the Attorney General on September 27, 2019, outlining the questions put to municipalities to gain a better understanding of their experience with JSL and how the 'liability chill' has affected services offered to their community.

Consultations

Financial Services
AMCTO

Financial Implications

There is no financial impact directly associated with this report.

Link to Strategic Priorities

Applicable	2019-22 Strategic Priorities
<input checked="" type="checkbox"/>	Make the Town of Tecumseh an even better place to live, work and invest through a shared vision for our residents and newcomers.
<input checked="" type="checkbox"/>	Ensure that Tecumseh's current and future growth is built upon the principles of sustainability and strategic decision-making.
<input checked="" type="checkbox"/>	Integrate the principles of health and wellness into all of Tecumseh's plans and priorities.
<input checked="" type="checkbox"/>	Steward the Town's "continuous improvement" approach to municipal service delivery to residents and businesses.
<input checked="" type="checkbox"/>	Demonstrate the Town's leadership role in the community by promoting good governance and community engagement, by bringing together organizations serving the Town and the region to pursue common goals.

Communications

Not applicable ☒

Website ☐ Social Media ☐ News Release ☐ Local Newspaper ☐

This report has been reviewed by Senior Administration as indicated below and recommended for submission by the Chief Administrative Officer.

Prepared by:

Laura Moy, Dipl. M.M., CMMIII HR Professional
Director Corporate Services & Clerk

Reviewed by:

Tom Kitsos, CPA, CMA, BComm
Director Financial Services & Chief Financial Officer

Recommended by:

Margaret Misek-Evans, MCIP, RPP
Chief Administrative Officer

Attachment Number	Attachment Name
1	AMO Report " <i>Towards a Reasonable Balance: Addressing Growing Municipal Liability and insurance costs</i> " dated October 1, 2019
2	Attorney General Consultation Regarding Joint and Several Liability and attachments thereto dated September 27, 2019