



**LEGAL SERVICES DEPARTMENT  
MEMORANDUM**

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**TO: MAYOR J. LEHMAN AND MEMBERS OF COUNCIL**

**FROM: S. HAUGHTON, INSURANCE RISK EXAMINER, EXT. 5134**

**NOTED: I. PETERS, DIRECTOR OF LEGAL SERVICES**  
**M. PROWSE, CHIEF ADMINISTRATIVE OFFICER**

**RE: JOINT AND SEVERAL LIABILITY**

**DATE: MARCH 7, 2022**

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For a number of years, Municipalities have been concerned with Joint and Several Liability under the Ontario Negligence Act. Under Joint and Several Liability a plaintiff may recover all damages from any of the defendants regardless of their individual share of the liability. This has lead to Municipalities bearing the brunt of court awards and as a result increasing insurance costs.

As a result, in 2014 Association of Municipalities of Ontario (AMO) had encouraged Municipalities to forward correspondence to the Provincial Government concerning proposed changes. We have attached correspondence sent on behalf of the City of Barrie in 2014.

These concerns have not changed and AMO once again has asked municipalities to lend their support by passing a council resolution supporting the proposed changes. Please see attached suggested resolution for consideration.



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**APPENDIX "A"**

**Letter to The Province of Ontario on April 2, 2014**

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THE CORPORATION OF THE CITY OF BARRIE  
Legal Services Department  
*"Committed to Service Excellence"*

April 2, 2014

INGRID PETERS  
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The Honourable Kathleen Wynne  
Premier of Ontario  
Legislative Building - Room 281  
Queen's Park  
Toronto ON M7A 1A1

The Honourable Madeleine Meilleur  
Attorney General  
McMurtry-Scott Building  
720 Bay Street – 11th Floor  
Toronto ON M7A 2S9

The Honourable Bill Mauro  
Minister of Municipal Affairs and Housing  
777 Bay Street - 17th Floor  
Toronto ON M5G 2E5

Dear Premier, Attorney General, MMAH Minister:

**RE: PROPOSED CHANGES TO THE NEGLIGENCE ACT IN ONTARIO**

We support the government's consideration and adoption of measures which limit the impact of joint and several liability on municipalities. Specifically, we understand three options are under consideration – the Saskatchewan Model, the Multiplier Model, or a third model which combines both.

I write to you in support of this third Combined Model as described by AMO's March 4, 2014 policy update. We support AMO's advice to the government that such changes would represent a significant incremental step to address a pressing municipal issue. It places some reasonable limits on the damages that may be recovered from a municipality under limited circumstances.

The provisions of the Negligence Act have not been updated for decades and the legislation was never intended to place the burden of insurer of last resort on municipalities. It is entirely unfair to ask municipalities to carry the lion's share of a damage award when at minimal fault or to assume responsibility for someone else's mistake.

For this reason, we support the adoption of the Combined Model under consideration. We strongly encourage the government to immediately proceed with legislation which gives effect to this model.

Yours truly,

Ingrid Peters  
Director of Legal Services

c: Matthew Wilson, Senior Advisor, AMO

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APPENDIX "B"

**Proposed Joint and Several Liability Resolution**

**WHEREAS** the cost of municipal insurance in the Province of Ontario has continued to increase – with especially large increases going into 2022; and

**WHEREAS** Joint and Several Liability continues to ask property taxpayers to carry the lion's share of a damage award when a municipality is found at minimum fault; and

**WHEREAS** these increases are unsustainable and unfair and eat at critical municipal services; and

**WHEREAS** the Association of Municipalities of Ontario (AMO) outlined seven recommendations to address insurance issues including:

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 nonprofit insurance reciprocals.
6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims and deductible limit changes which support its own 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;

**NOW THEREFORE** be it resolved that the Council for the Corporation of the City of Barrie call on the Province of Ontario to immediately review these recommendations despite COVID 19 delays, as insurance premiums will soon be out of reach for many communities.

**BE IT FURTHER RESOLVED** that this motion be provided to the Honourable Doug Ford, Premier of Ontario, the Honourable Peter Bethlenfalvy, Minister of Finance, the Honourable Doug Downey, Attorney General of Ontario and MMP for Barrie-Springwater, the Honourable Andrea Khanjin, MPP for Barrie-Innisfil, and all Ontario municipalities.