

## **CITY OF VAUGHAN**

### **EXTRACT FROM COUNCIL MEETING MINUTES OCTOBER 2, 2019**

Item 7, Report No. 27, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on October 2, 2019.

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#### **7. UPDATE ON JOINT AND SEVERAL LIABILITY**

**The Committee of the Whole recommends approval of the recommendation contained in the following report of the Deputy City Manager, Administrative Services and City Solicitor, dated September 24, 2019:**

##### **Recommendations**

1. That this report be received for information.

## Committee of the Whole (2) Report

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**DATE:** Tuesday, September 24, 2019

**WARD(S):** ALL

**TITLE: UPDATE ON JOINT AND SEVERAL LIABILITY**

**FROM:**

Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

**ACTION:** FOR INFORMATION

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**Purpose**

To provide an update on the Government of Ontario's consultations regarding joint and several liability, insurance costs, and current market trends affecting municipal insurance programs.

**Report Highlights**

- The Province of Ontario is conducting consultations regarding joint and several liability as it relates to insurance costs and everyday public services.
- The Province has requested input from the municipalities. Staff are preparing a response, which will be provided to the province by September 27, 2019.

**Recommendations**

1. That this report be received for information.

**Background**

Recent Provincial Direction

During the 2019 Rural Ontario Municipal Association (ROMA) conference, the Premier of Ontario announced a review of joint and several liability. On July 12, 2019 Doug Downey, Attorney General sent a letter (Attachment #1) to each of the 444 municipalities in the province requesting their participation in the government's

consultations. That letter states that the province is undertaking an evidence-led consultation and policy development process. The communication includes three main themes for municipalities to address and included thirty (30) questions:

1. Describe the nature of the problem as the municipality sees it.
2. Evidence that supports the views listed in point one (1).
3. Suggested solutions that ensure catastrophically injured persons are fairly compensated and that costs are not simply transferred to the publicly funded health care system.

The Attorney General requested that municipal officials respond, in writing, by September 27, 2019. The Attorney General will be putting together a Technical Team comprised of provincial and municipal elected officials to build on the Association of Municipalities Ontario's (AMO) existing Task Force.

#### What is Joint and Several Liability?

Joint and Several Liability (also known as the 1% rule) is a legal principle holding that those who have combined to cause a single loss are each liable to the injured person for the full amount of the damages suffered, regardless of the extent of their liability. Put another way, where an individual is harmed through the fault of several wrongdoers, the individual can collect the full amount of their damages from a defendant who is even only 1% at fault for the damage, where the other defendants are unable to pay their share.

Joint and Several Liability impacts those corporations or entities that are perceived to be a 'deep pocket'. These corporations or entities have larger limits on their insurance liability policy are often brought into actions where additional funds may be required.

#### Prior Provincial Consultation on Joint and Several Liability and Insurance Premiums

In 2011 AMO completed the first ever comprehensive survey of municipal insurance costs across the province. The survey was prompted by anecdotal reports of rising insurance costs. It sought to quantify, in part, some of the costs associated with joint and several liability in the provincial *Negligence Act*. The report was created in order to support municipalities in a call for change to the *Negligence Act*. The report found that of the participating municipalities, liability premiums had increased 22.2% between 2007 and 2011. The report noted that based on current trends, insurance costs will rise from \$155.2 million to \$214 annually by 2020.

The Province consulted with various stakeholders including organizations like the Ontario Trial Lawyers Association who do not believe that change is required, citing access to justice issues for innocent victims. Four alternative options were introduced which were as follows:

1. Adopt a strict “several liability” model, where defendants only pay their individual share of assessed liability, even if there is a “shortfall”.
2. Adopt the Saskatchewan Model, where if a plaintiff is held to be contributorily negligent and one of the defendants cannot pay their share of a Judgment, then the “shortfall” is split amongst all of them in proportion to their assessed degree of fault.
3. Adopt the “Multiplier Model” where a defendant will only have to pay a maximum of double their assessed share of liability if there is a “shortfall”.
4. Combined Saskatchewan/Multiplier Model - Combine the two, applying (if applicable) first the Saskatchewan Model and then, depending on the size of the shortfall and the “split”, apply as a “cap” to the prorated apportionment of the “shortfall” the Multiplier Model, so that a municipality still never pays more than double its original assessed % of liability.

In 2011, AMO supported Option 4 – Combined Saskatchewan/Multiplier Model.

Upon review of all material, the provincial government of the time opted not to make any changes. In February 2014, the Ontario Legislature unanimously passed a motion calling on the provincial government to implement a “comprehensive, long-term solution to reform joint and several liability for municipalities by no later than June of 2014”. By August of 2014, the provincial government had announced that they would not be making any changes due to lack of evidence. Later that year, the Insurance Bureau of Canada wrote an article titled *Disjointed – A Look at Joint and Several Liability*. It is attached (Attachment #3) to this report for further information and examples of the types of claims affecting municipalities.

### **Previous Reports/Authority**

N/A

### **Analysis and Options**

#### **AMO Response to Provincial Consultation on Joint and Several Liability**

AMO has put together a working group comprised of municipal risk managers and defence lawyers to collectively discuss the province’s request. This group is known as

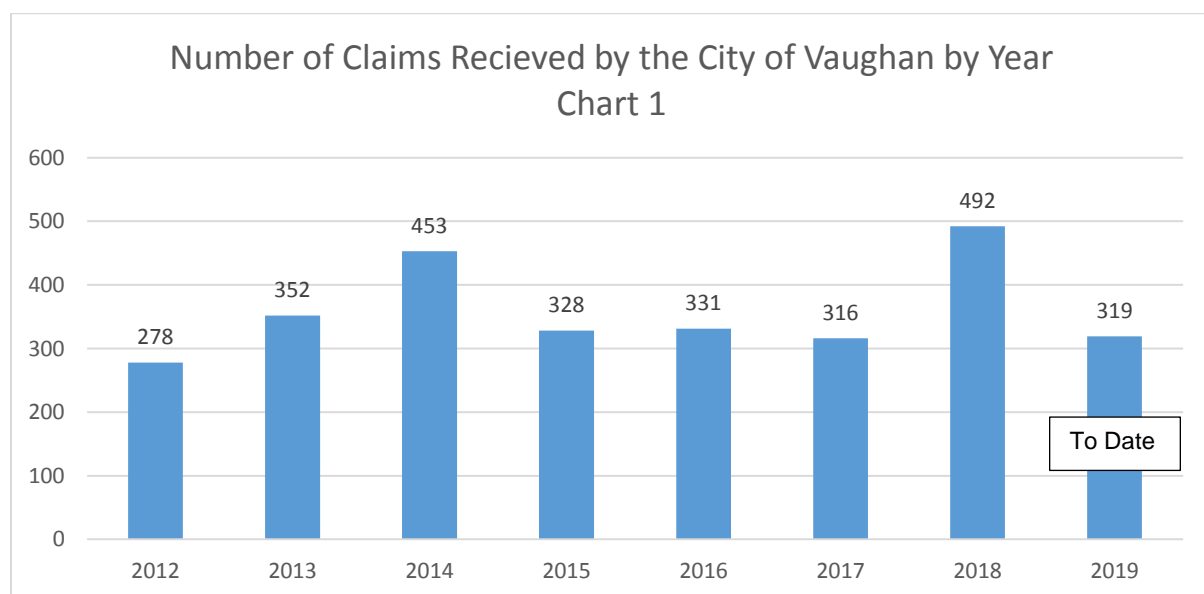
AMO's Joint and Several Liability Task Force. In August of 2019, this Task Force met with government officials to start the conversation. At the time of writing this report, the findings of this group have not been released. A media release/backgrounder from AMO on this matter can be viewed on their website at <https://www.amo.on.ca/AMO-Content/Backgrounders/2018/MunicipalLiability.aspx>

### City of Vaughan's Response

The City of Vaughan's Insurance and Risk Management group is working on a submission for this provincial review. The direct impact on the pure cost of joint and several liability is difficult for any municipality to quantify, and much of the requested data will be difficult to collect in the time provided by the Province. However, some data points will be provided with the main ones discussed below:

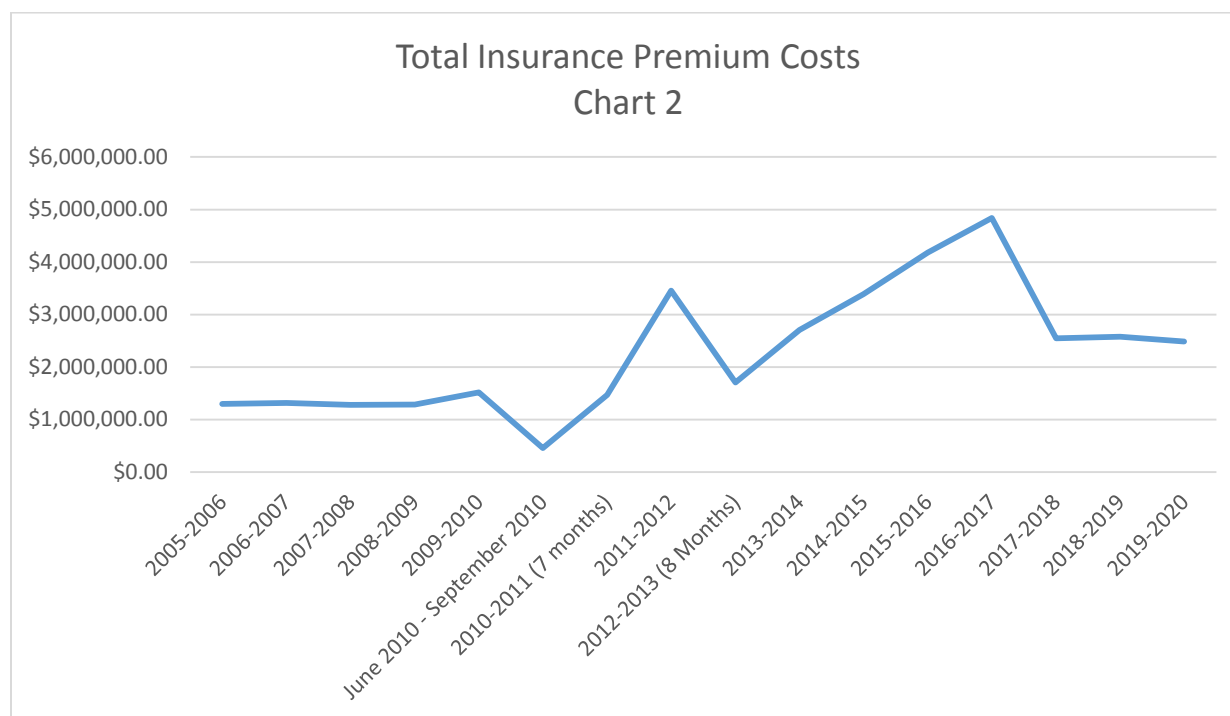
### **Insurance Claims History**

There was an increase in claims in 2014 due to extreme weather such as the December 2014 ice storm. The number of claims received in 2015, 2016 and 2017 was more in line with historic numbers, approximately 18% higher than 2012. In 2018, the City realized a 50% increase in claims as compared to the previous year. The number of claims this year is only 3.3% below where they were at this time last year (as of August 2019). This trend indicates that the City may incur almost 500 claims in 2019. The increase in the number of claims received in 2018 and 2019 cannot be attributed to one single event but appear to be reflective of a broadened risk profile and the rise of litigious behavior (see Chart 1 for the number of claims the City has received in recent years).



## Insurance Premiums History

Chart 2 illustrates the total cost of insurance premiums since the 2005-2006 policy period. It illustrates a rising trend that is typically offset by the issuance of an RFP (2010, 2012 and 2016). The City's insurance premiums have remained flat since the 2016 RFP but staff do anticipate an increase for 2020.



While the issuance of an RFP's in response to rising premium costs is standard, this practice adds to the cyclical nature of the business. It is not a long-term solution but rather a temporary one. This is not true of every municipality, but it is the experience of the majority. The cost of an insurance policy is just one aspect to consider when purchasing insurance. Other factors to consider include financial stability of insurers, experience in the Canadian market place (and more specifically in Ontario), breadth of coverage, exclusions and additional services offered.

Joint and Several Liability is just one piece in a large and complicated puzzle that is Public Sector risk, insurance and claims. The insurance market place for municipalities is much different than it is for private automobiles and homes. There are typically five to six brokers/managing general agents who have access to insurers who write this type of business. With the demise of the not for profit insurance reciprocal for municipalities (Ontario Municipal Insurance Exchange - OMEX), all options are for profit entities. On August 15, 2019, Intact Insurance announced its intent to purchase The Guarantee and

MGA Frank Cowan Company. It remains to be seen how this merger will impact the Public Sector practice.

As of the time of writing, the market is experiencing lessening capacity, which means that those insurers providing coverage are not able to provide the limits of coverage that they have in the past. This in turn increases the cost of the policy. Also impacting the cost of insurance is the claim experience of the municipality. Several municipalities that have purchased insurance in 2019 have faced increases from 10% to 59%.

The City of Vaughan is currently entering into the renewal period with the current carriers through our broker, AON. Very early analysis indicates a potential premium increase, an increase in the deductible for certain policies or a combination of both.

### **Implementation of ClearRisk**

Since January 1, 2017, the City's risk group has been working to create enhanced reporting capabilities through a software program called ClearRisk. This software not only tracks the claims but is allowing the department to work towards claim trending reports which will assist all decision makers across the corporation in identifying and treating the multitude of risks faced by the City which can generate a claim. Fully realizing the capabilities of this software has been delayed due to an increase in the number of claims submitted to the City. The increase in claims has necessitated an increase in staff time devoted to claims administration. While the creation of risk reports is paramount, ultimately the work required to administer each claim must take priority. Standard operating procedures are being implemented as efficiencies are sought out to provide for more time for staff to focus on risk management and analysis of claims and other strategic initiatives. This is becoming more difficult as the claim counts continue to rise.

### **Financial Impact**

If the *Negligence Act* is not amended, municipalities will continue to run up against this legislation when attempting to negotiate the purchase of insurance. While there is no way to specifically pinpoint the direct financial impact of joint and several liability, the concept is woven into every claim as it is managed. It is ever-present and the risk of paying 60% of a judgement when you are 20% responsible must be considered before taking any matter to trial.

As noted above, there is a potential of an increase in premiums or deductible or both in our insurance renewal term. Increases in deductible could potentially have an impact on staff resources and external legal costs, as a higher number of claims will need to be managed by Risk Management and Legal Services without insurance coverage.

## **Broader Regional Impacts/Considerations**

York Region's risk management team faces the same challenges as joint and several liability impacts their claim process and their carriers. Their risk manager currently sits on AMO's Joint and Several Liability Task Force.

## **Conclusion**

Managing the cost of risk is of paramount importance in the current environment and will be as we move through the next insurance cycle. Much like the real estate market, the insurance market place has proved to be cyclical in nature. Key 2019 market indications show that there is less capacity (which impacts the amount of insurance an insurer will provide) along with a hardening market (which impacts the cost of insurance). Joint and Several Liability, together with other factors, may contribute to both capacity and premium rates for municipal programs.

The City's Insurance and Risk team will complete the report for the Province. As part of our 2020 initiatives, Risk Management and Legal Services are commencing a litigation and risk management services review to look at process improvement and alignment, as well as overall risk mitigation strategies.

**For more information**, please contact: Shannon Devane, Manager, Risk and Registration Services, ext. 8167

## **Attachments**

1. Letter from Doug Downey, Attorney General, dated July 12, 2019
2. AMO's 2011 Municipal Insurance Survey Results – Managing the Cost of Risk
3. Disjointed – A Look at Joint and Several Liability – Insurance Bureau of Canada, 2014

## **Prepared by**

Shannon Devane, Manager, Risk and Registration Services, ext. 8167



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**JUL 12 2019**

Our Reference #: M-2019-3638

Dear Head of Council,

Further to the Premier's announcement at the 2019 ROMA conference, I am writing to invite you to participate in the government's consultations regarding joint and several liability, insurance costs, and the 'liability chill' affecting the delivery of everyday public services.

In order to make this consultation process as effective as possible, the government needs to hear directly from you about your municipality's experiences. It is impossible to canvass possible solutions without understanding the actual problems faced by municipalities.

This will be an evidence-led consultation and policy development process. The first phase of the process will involve collecting background technical information. I therefore ask that you have your municipal officials respond in writing to the general questions noted below. We will also be establishing a Technical Table of provincial and municipal elected officials, building on AMO's existing Working Group, to make sure that we are all on the same page around the issues and evidence that need to be addressed.

Given the importance of hearing your experiences, there is no predetermined format or questionnaire for this consultation. We don't want to inadvertently limit you. We would ask, though, that your officials consider and address three broad questions so that there is some comparability among the responses.

First, please describe the nature of the problem as you see it. What are the problems that you need addressed to benefit your municipality. Is it increasing premiums? Rising deductibles? Being unfairly named in lawsuits? Being held to unreasonably strict standards (e.g., regarding road design or maintenance)? Feeling that you cannot offer certain services because of the liability risk? A general sense of unfairness that municipal taxpayers pay more than their fair share (e.g., because individuals are under-insured or were behaving irresponsibly)? Please have your officials describe all the specific problems that are directly affecting your municipality.

Second, please indicate what evidence leads you to your view of the problem. Without limiting the types of evidence you may wish to discuss, I have attached to this letter a list of potentially relevant facts and evidence that your officials may wish to address.

Finally, given your view of the problem and the supporting evidence, what solutions do you propose? In formulating your proposals, please keep in mind the need to ensure that catastrophically injured persons are fairly compensated and that costs are not simply transferred to the publicly funded health care system.

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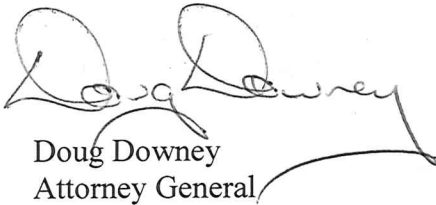
I will provide an update on the consultation process at AMO in August. I will also meet with interested delegations.

The second phase of the municipal consultation process will involve formal discussions in early Fall among elected officials about the evidence and the potential policy solutions. Once there is a provincial and municipal understanding on the key issues, the government will engage with other interested stakeholders.

The Ministry of the Attorney General has established a dedicated email address to receive the background technical information from your officials. Please have your officials respond by Friday, September 27, 2019 to [magpolicy@ontario.ca](mailto:magpolicy@ontario.ca). For further information, please have your officials reach out to MAG at the email address noted above.

Our goal must be meaningful and lasting reform. I encourage you to share your experiences on this important subject.

Sincerely,



Doug Downey  
Attorney General

## Attachment

### **Potentially Relevant Facts and Evidence**

#### Nature of Insurance Coverage

- Does your municipality purchase liability insurance? If so, from what company?
- Do you use an insurance broker? If so, which company?
- Does your municipality self-insure against some or all liability risks? If so, please describe the program.

#### Premiums

- Municipal insurance premiums over time (both absolute dollars and percentage increases)
- Insurance premiums in other business lines over the same time period
- Typical ratio of premiums to claims payouts
- What triggers premium increases? Being named in a claim? Incurring defence costs? Paying on the claim?
- The secondary literature speaks of 'insurance cycles' or the market 'tightening' periodically such that premiums increase markedly in a relatively short period of time. Do you have any views on this topic?

#### Deductibles

- Amount
- Trigger for payment by municipality (being named, filing a defence?)
- Changes over time
- Comparison to changes in other business lines over time

#### Litigation Costs

- Amount
- Does joint and several liability ("JSL") impact costs?
- Changes over time
- Are municipal liability cases any more expensive to defend than other types of claims?
- Have any steps been taken, or are planned, to reduce defence costs?

### Types of Claims

- Data regarding types of claims including road/auto, building inspections, other personal injury (e.g., tobogganing) – both volume and cost
- Number/ portion of cases that involve two or more defendants and thus raise JSL issues
- Changes over time

### Settlement of Claims

- Data regarding JSL cases – and ideally the specific cases – where municipalities have settled for amounts disproportionate to their fault.
- Non-JSL cases where the municipality has paid amounts viewed as disproportionate to their level of fault (e.g., in the past some stakeholders have identified single vehicle collisions involving impaired drivers).

### Adjudication of Claims

- Data regarding JSL cases – and ideally the specific cases – where municipalities have been required to pay amounts disproportionate to their degree of fault as determined by the court.
- Non-JSL cases where the municipality has been found liable and required to pay amounts viewed as disproportionate to their level of fault (e.g., in the past some stakeholders have identified single vehicle collisions involving impaired drivers).

### Claim Costs

- Is the cost of individual claims raising, e.g. claims related to injuries in automobile accidents? If so, why?
- In 2016, the previous government reduced the cap for no fault catastrophic injury payments in automobile cases from \$2M to \$1M. Did that have any impact on municipal costs? If so, what savings are expected from the government's plan to increase the cap back to \$2M? Would a further increase to no fault benefits result in savings to municipalities?
- Are settlements ever for a sum less than or equal to the deductible?

## Other

- How does JSL positively impact catastrophically injured plaintiffs? How would associated costs be distributed if JSL is abolished?
- What if any impact have road maintenance standards had on claims against municipalities?
- What types of everyday activities have been impacted by insurance costs and other liability risks? To what extent is JSL a factor in these situations? What steps have municipalities taken to mitigate these costs and risks?



# AMO's 2011 Municipal Insurance Survey Results

*Managing the Cost of Risk*

*August 23, 2011*

Association of  
Municipalities  
of Ontario

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## **AMO's 2011 Municipal Insurance Survey Results**

The Association of Municipalities of Ontario has completed the first ever comprehensive survey of municipal insurance costs across the province. The survey 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 are \$155.2 million. Liability premiums make up the majority of these expenses at \$85.5 million. Property taxpayers are paying this price.

Insurance costs exceed annual province-wide municipal spending in each of these respective areas: maintaining bridges and culverts, administering and providing Ontario Works employment assistance benefits, and funding Conservation Authorities.

These costs disproportionately affect small municipalities. The per capita insurance costs for communities with populations under 10,000 are \$37.56. By comparison, per capita costs in large communities with populations over 75,000 are \$7.71. Property taxpayers in one northern community are spending more on insurance than their library. In one southern county, for every \$2 spent on snowplowing roads, another \$1 is spent on insurance.

The survey was prompted by anecdotal reports of rising insurance costs. It sought to quantify, in part, some of the costs associated with joint and several liability in the provincial *Negligence Act*. It does not include legal fees, self-insurance costs, settlements, risk management expenses or court mandated awards. Based on current trends, insurance costs will rise to \$214 million annually by 2020.

The insurance premiums paid by municipalities reflect the legal reality that municipalities are “deep pocket” defendants, often targeted for litigation because the law has established such a low threshold of responsibility. Just a fraction of fault can cost a municipality millions of dollars. The premiums charged by insurance companies, non-profit insurance reciprocals and pools reflect, in part, this legal risk.

Continued advocacy by municipalities is needed to help change this legal environment and explore alternatives such as proportionate liability. Many common law jurisdictions have pursued proportionate liability in the face of rising costs and this unequitable burden. AMO looks forward to discussing these pressing municipal issues with the next government.

**Please see the back of this booklet for tips on managing your municipal premiums.**



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# Municipal Insurance Survey Results

AUGUST 23, 2011

<b>Survey Results for 2011<sup>1</sup></b>	<b>All Municipalities</b>
<b>Total Insurance Costs<sup>2</sup></b>	
Average Annual Insurance Premium for 2011	\$378,589
Total Insurance Costs for 2011	\$155,221,422
Avg. % Change in Premiums since 2007	Up 20.8%
<b>Liability Insurance<sup>3</sup></b>	
Avg. Annual General Liability Insurance Premium for 2011	\$208,767
Total Premium Costs for 2011	\$85,594,449
Avg. % Change in Premiums since 2007	Up 22.2%
Avg. Per Occurrence Deductible	\$108,583
Avg. % Change in Deductibles since 2007	Up 2.4%
Avg. Total Annual Dollar Limit of Coverage	\$27,327,876
<b>Property Insurance<sup>4</sup></b>	
Avg. Annual Property Insurance Premium for 2011	\$82,774
Total Premium Costs for 2011	\$33,937,189
Avg. % Change in Premiums since 2007	Up 16%
Avg. Annual Deductible	\$46,882
Avg. % Change in Deductibles since 2007	Up 2.8%
Avg. Total Value Insured	\$162,501,159
<b>Automobile Insurance</b>	
Avg. Auto Insurance Premium for 2011	\$78,812
Total Premium Costs for 2011	\$32,312,881
Avg. % Change in Premiums from 2007	Up 21.2%
Avg. Annual Auto Insurance Deductible	\$42,085
Avg. % Change in Deductibles since 2007	Up 3.6%

<sup>1</sup> All results have been weighted from a sample size of between 97 and 122 municipalities representing approximately 50% of the Ontario population. With a 95% confidence limit, the results are accurate to within +/- 7.42%. Premiums vary based on individual municipal claims history.

<sup>2</sup> Premiums include all coverage from general liability, property and automobile insurance plus other coverage, including other liability insurance as well as environmental, transit, crime, aviation, and marine insurance.

<sup>3</sup> Includes coverage for annual aggregate commercial or comprehensive general liability insurance (including primary, umbrella and excess layers).

<sup>4</sup> Deductible includes coverage for boiler and machinery.





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## Small Municipalities with Population under 9,999

AUGUST 23, 2011

<i>Survey Results for 2011<sup>1</sup></i>	<i>Municipalities with a population of 1-5,000</i>	<i>Municipalities with a population of 5,001-9,999</i>
<b>Total Insurance Costs<sup>2</sup></b>		
Average Annual Insurance Premiums for 2011	\$98,757	\$189,765
Avg. % Change in Premiums since 2007	Up 13.4%	Up 15%
<b>Liability Insurance<sup>3</sup></b>		
Avg. General Liability Insurance Premiums for 2011	\$68,680	\$120,780
Avg. % Change in Premiums since 2007	Up 20.0%	Up 8.2%
Avg. Per Occurrence Deductible	\$6,667	\$9,808
Avg. % Change in Deductibles since 2007	Up 2.6%	Up 7.4%
Avg. Total Annual Dollar Limit of Coverage	\$22,203,125	\$21,730,769
<b>Property Insurance<sup>4</sup></b>		
Avg. Annual Property Insurance Premium for 2011	\$26,920	\$44,932
Avg. % Change in Premiums since 2007	Up 2.8%	Up 26.7%
Avg. Total Value Insured	\$22,497,108	\$44,661,275
Avg. Annual Deductible	\$8,393	\$6,944
Avg. % Change in Deductibles since 2007	Up 2.2%	Up 4.2%
<b>Automobile Insurance</b>		
Avg. Auto Insurance Premium for 2011	\$19,476	\$28,330
Avg. % Change in Premiums since 2007	Up 21%	Up 8.8%
Avg. Annual Auto Insurance Deductible	\$4,192	\$5,019
Avg. % Change in Deductibles since 2007	Up 19.8%	Up 5.9%

<sup>1</sup> All results have been weighted from a sample size of between 97 and 122 municipalities representing approximately 50% of the Ontario population. With a 95% confidence limit, the results are accurate to within +/- 7.42%. Premiums vary based on individual municipal claims history.

<sup>2</sup> Premiums include all coverage from general liability, property and automobile insurance plus other coverage, including other liability insurance as well as environmental, transit, crime, aviation, and marine insurance.

<sup>3</sup> Includes coverage for annual aggregate commercial or comprehensive general liability insurance (including primary, umbrella and excess layers).

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# Medium Municipalities with Population of 10,000-74,999

AUGUST 23, 2011

<i>Survey Results for 2011<sup>1</sup></i>	<i>Municipalities with a population of 10,000-42,500</i>	<i>Municipalities with a population of 42,501- 74,999</i>
<b>Total Insurance Costs<sup>2</sup></b>		
Average Annual Insurance Premiums for 2011	\$375,666	\$895,023
Avg. % Change in Premiums since 2007	Up 25.4%	Up 8.6%
<b>Liability Insurance<sup>3</sup></b>		
Avg. Annual General Liability Insurance Premiums for 2011	\$241,006	\$535,810
Avg. % Change in Premiums since 2007	Up 34.9%	Up 5.3%
Avg. Per Occurrence Deductible	\$14,167	\$41,500
Avg. % Change in Deductibles since 2007	Up 10.1%	Up 105.3%*
Avg. Total Annual Dollar Limit of Coverage	\$33,335,185	\$41,428,571
<b>Property Insurance<sup>4</sup></b>		
Avg. Annual Property Insurance Premium for 2011	\$76,405	\$170,315
Avg. % Change in Premiums since 2007	Up 19.7%	Up 5.1%
Avg. Total Value Insured	\$62,950,880	\$246,306,435
Avg. Annual Deductible	\$11,111	\$28,125
Avg. % Change in Deductibles since 2007	Up 1.7%	Up 87.5%*
<b>Automobile Insurance</b>		
Avg. Auto Insurance Premium for 2011	\$53,845	\$146,336
Avg. % Change in Premiums since 2007	Up 28.5%	Down 4.9%
Avg. Annual Auto Insurance Deductible	\$7,650	\$22,500
Avg. % Change in Deductibles since 2007	Down 1.5%	Up 111.8%*

<sup>1</sup> All results have been weighted from a sample size of between 97 and 122 municipalities representing approximately 50% of the Ontario population. With a 95% confidence limit, the results are accurate to within +/- 7.42%. Premiums vary based on individual municipal claims history.

<sup>2</sup> Premiums include all coverage from general liability, property and automobile insurance plus other coverage, including other liability insurance as well as environmental, transit, crime, aviation, and marine insurance.

<sup>3</sup> Includes coverage for annual aggregate commercial or comprehensive general liability insurance (including primary, umbrella and excess layers).

<sup>4</sup> Deductible includes coverage for boiler and machinery.

\* Reflects changes in policy.



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# Large Municipalities with Population of 75,000 and up

AUGUST 23, 2011

<i>Survey Results for 2011<sup>1</sup></i>	<i>Municipalities with a population of 75,000-165,000</i>	<i>Municipalities with a population of 165,001+</i>
<b>Total Insurance Costs<sup>2</sup></b>		
Average Annual Insurance Premium for 2011	\$1,420,459	\$2,313,802
Avg. % Change in Premiums since 2007	Up 27.3%	Up 32.5%
<b>Liability Insurance<sup>3</sup></b>		
Avg. Annual General Liability Insurance Premium for 2011	\$706,996	\$976,030
Avg. % Change in Premiums since 2007	Up 26.7%	Up 32.6%
Avg. Per Occurrence Deductible	\$177,778	\$584,444
Avg. % Change in Deductibles since 2007	Up 3.2%	Up 5.5%
Avg. Total Annual Dollar Limit of Coverage	\$48,888,889	\$43,750,000
<b>Property Insurance<sup>4</sup></b>		
Avg. Annual Property Insurance Premium for 2011	\$272,502	\$433,840
Avg. % Change in Premiums since 2007	Up 25.6%	Up 20.2%
Avg. Total Value Insured	\$476,847,515	\$1,467,506,942
Avg. Annual Deductible	\$150,556	\$548,333
Avg. % Change in Deductibles since 2007	No Change (0%)	Up 3.1%
<b>Automobile Insurance</b>		
Avg. Auto Insurance Premium for 2011	\$322,913	\$583,872
Avg. % Change in Premiums since 2007	Up 34%	Up 26.5%
Avg. Annual Auto Insurance Deductible	\$138,889	\$560,278
Avg. % Change in Deductibles since 2007	Up 1.2%	Up 4%

<sup>1</sup> All results have been weighted from a sample size of between 97 and 122 municipalities representing approximately 50% of the Ontario population. With a 95% confidence limit, the results are accurate to within +/- 7.42%. Premiums vary based on individual municipal claims history.

<sup>2</sup> Premiums include all coverage from general liability, property and automobile insurance plus other coverage, including other liability insurance as well as environmental, transit, crime, aviation, and marine insurance.

<sup>3</sup> Includes coverage for annual aggregate commercial or comprehensive general liability insurance (including primary, umbrella and excess layers).

<sup>4</sup> Deductible includes coverage for boiler and machinery.

# Upper Tier Municipalities

AUGUST 23, 2011

<i>Survey Results for 2011<sup>1</sup></i>	<i>Upper Tier Municipalities</i>
<b>Total Insurance Costs<sup>2</sup></b>	
Average Annual Insurance Premiums for 2011	\$943,702
Avg. % Change in Premiums since 2007	Up 25.1%
<b>Liability Insurance<sup>3</sup></b>	
Avg. Annual General Liability Insurance Premiums for 2011	\$440,005
Avg. % Change in Premiums since 2007	Up 30.9%
Avg. Per Occurrence Deductible	\$913,947
Avg. % Change in Deductibles since 2007	Up 0.8%
Avg. Total Annual Dollar Limit of Coverage	\$28,684,737
<b>Property Insurance<sup>4</sup></b>	
Avg. Annual Property Insurance Premium	\$198,023
Avg. % Change in Premiums since 2007	Up 24%
Avg. Total Value Insured	\$512,273,482
Avg. Annual Deductible	\$102,632
Avg. % Change in Deductibles since 2007	Up 3%
<b>Automobile Insurance</b>	
Avg. Annual Auto Insurance Premium for 2011	\$302,497
Avg. % Change in Premiums since 2007	Up 20.1%
Avg. Annual Auto Insurance Deductible	\$81,861
Avg. % Change in Deductibles since 2007	Up 1.6%

<sup>1</sup> All results have been weighted from a sample size of between 97 and 122 municipalities representing approximately 50% of the Ontario population. With a 95% confidence limit, the results are accurate to within +/- 7.42%. Results for Upper Tier Municipalities include the Waterloo Region Municipalities Insurance Pool. Premiums vary based on individual municipal claims history.

<sup>2</sup> Premiums include all coverage from general liability, property and automobile insurance plus other coverage, including other liability insurance as well as environmental, transit, crime, aviation, and marine insurance.

<sup>3</sup> Includes coverage for annual aggregate commercial or comprehensive general liability insurance (including primary, umbrella and excess layers).

<sup>4</sup> Deductible includes coverage for boiler and machinery.

## Have questions about the premiums paid by your municipality?

### ***Five things your municipality can do:***

**1. See how your local premiums compare.** Contrast your municipal premiums to the averages listed in this booklet. Keep in mind that this is only one point of reference. Claims history also plays a significant role in determining the premiums charged by insurers and were not part of this survey. Also, the types of facilities and services your community offers will likely differ over others and affect premiums.

**2. Consider increasing deductibles.** The survey reveals municipal deductibles have remained generally unchanged in the past five years. Consider increasing your municipality's deductible as a way to reduce premiums. This means your municipality will be responsible for managing a greater degree of risk before insurance coverage begins. Discuss this with your insurance provider.

**3. Review the dollar limits of your municipal liability coverage.** The survey reveals that over the past five years, the dollar limits of coverage have remained unchanged sector wide. With the increasing frequency and size of damage awards, discuss with your insurance provider the continued appropriateness of your municipality's exposure limits.

**4. Continue to manage risk.** Help to reduce the possibility of claims being made against your municipality by following good risk management practices. More information is available on the Local Authority Services Limited website [www.las.on.ca](http://www.las.on.ca). Look for *Risk Management* under the *Administration Programs* heading.

**5. Advocate for joint and several liability reform.** As "deep pocket" defendants with seemingly limitless public resources at their disposal through the power of taxation, municipalities have often become the targets of litigation when other defendants do not have the means to pay high damage awards. This reality is reflected in the insurance premiums paid by municipalities. Many common law jurisdictions have adopted reforms to restore the balance. Add your municipality's voice to the call for Ontario to do the same.

For information please contact Matthew Wilson, Senior Policy Advisor at [mwilson@amo.on.ca](mailto:mwilson@amo.on.ca) or call 416-971-9856 extension 323.

August 23, 2011



## **Disjointed – A Look at Joint and Several Liability**

*By Insurance Bureau of Canada*

The legal doctrine of joint and several liability has been the subject of numerous studies in recent years. Law commissions and provincial governments from British Columbia to Manitoba to Ontario have examined whether to amend, abolish or modify the so-called “1% rule.”

Joint and several liability is a common law principle holding that those who have combined to cause a single indivisible loss are each liable to the injured person for the full amount of the damage suffered. A defendant, who may be only 1% at fault, can be obligated to pay the plaintiff’s entire judgment, particularly in cases where the other defendant (s) is unable to meet a court-ordered award.

In all, 11 common law jurisdictions in Canada have “joint and several” language contained in their contributory negligence legislation. In addition to Ontario, other jurisdictions with the joint and several rule in their statutes include Alberta, B.C., Manitoba, New Brunswick, P.E.I., Nova Scotia, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut.

In Ontario, the joint and several provisions of the Negligence Act, indicate: “Where damages have been caused or contributed to by the fault or neglect of two or more persons ... and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage.”

Ontario is a particularly relevant example; it is the latest province to review joint and several liability through stakeholder consultations. In February 2014, the Ontario legislature unanimously passed a motion calling on the provincial government to implement a “comprehensive, long-term solution to reform joint and several liability insurance for municipalities by no later than June 2014.” The motion, introduced by PC MPP Randy Pettapiece, was supported by IBC, insurance brokers and more than 200 municipalities. .

Over the years, the application of joint and several liability under the Negligence Act has been an area of concern to commercial establishments, municipalities and their insurance companies.

Joint and several liability encourages plaintiffs and their legal counsel to name large establishments in lawsuits, even when their responsibility for a loss is questionable or marginal at best. For example, often, municipalities are perceived to have significant financial assets and sufficient insurance to cover an entire tort award. Consequently, this practice generates frivolous cases, drives up settlements and ultimately puts pressure on insurance prices.

According to the Association of Municipalities of Ontario (AMO), for several years the cost of municipal insurance has been rising at a disproportionate rate compared to inflation and all other municipal expenditures. The AMO noted in a 2011 study that municipality liability premiums increased 22% from 2007 to 2011. The report predicts that, unless change is made, insurance-related costs will increase further to \$180 million by 2015, an additional 16%.

Rising severity of liability exposure forces many municipalities, especially smaller ones, to eliminate public services, such as community events, in an attempt to manage and limit potential liability exposures and lower insurance costs. Joint and several liability affects smaller municipalities to a disproportionate degree as they are less capable of spreading the losses within their tax base.

Because of the high and rising liability exposure, the market capacity for municipal insurance has been retracting. In fact, over the past several years a number of insurance companies have entered and then exited the market after experiencing the high risks involved in providing liability coverage to municipalities.

“In the past two years, (we) have paid out (for files that were resolved or closed) approximately \$94 million for settlements or judgments for large claims against municipalities, of which approximately 25% represents payments as a result of the application of joint and several liability,” according to a document published in April 2013 by Frank Cowan Company, a Canadian Managing General Agent representing municipalities across the country. “This percentage has been steadily increasing, making it problematic for municipalities to obtain reasonably priced insurance for their risks.”

While there are many legal examples of joint and several liability, Frank Cowan Company cites one particular case to demonstrate the doctrine’s consequences on municipalities.

In *Deering v. Scugog* (2010) ONSC 5502, a young, inexperienced driver with a G2 license was driving on a rural road with no centerline. The driver approached a steep hill and perceived the vehicle traveling towards her was on her side of the road. She took evasive action, which caused her to lose control of the car, strike a culvert and flip over, resulting in severe injuries to the driver and her sister. A centerline was not required on the road according to the Ontario Manual of Uniform Traffic Control.

The accident occurred on a boundary road with shared jurisdiction between the municipalities of Scugog and Oshawa. Both municipalities were sued, shared the liability and the payment.

According to Frank Cowan Company: “This case has cost the municipalities, and therefore (their) taxpayers and their insurers, more than \$20 million. If joint and several liability were not a factor, the cost would have been \$16 million. If a reasonable assessment of 25% liability on the municipalities had been made in a non-joint and several liability scenario, the cost would have been \$6 million to the municipalities, taxpayers and their insurers.”

Prior to the spring election, the Ontario government had canvassed groups, including Insurance Bureau of Canada (IBC), on potential reforms to joint and several liability. Other organizations, such as the AMO and the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO), have lobbied for some time for changes to the legal doctrine. Meanwhile, groups such as the Ontario Trial Lawyers Association (OTLA) feel there is no need for change.

Other countries, such as the United States, have made changes to joint and several liability rules. Currently, the vast majority of states in the U.S. do not have joint and several liability in their contributory negligence laws. Most have modified the rule to some form of proportionate liability, in

which the liability of each co-defendant is limited to the proportion of the loss or damage for which he or she is found to be actually responsible.

Closer to home, Saskatchewan amended its Contributory Negligence Act in 2005 to address situations where liable defendants cannot fund an award of damages. The Act provides that if a defendant cannot fund its proportion of liability, as found by the Court, the uncollectible amount will be apportioned between all parties, including the plaintiff where the plaintiff is found contributorily negligent.

There is also a level of proportionate liability in British Columbia. In that province, courts have interpreted the wording of the Negligence Act so that a defendant's liability is proportionate if the plaintiff is contributorily negligent and joint and several if the plaintiff is not.

In spring 2014, the Ontario Ministry of the Attorney General put forward two main proposals for considering reform of the issue of joint and several liability for municipalities.

**The Saskatchewan Model:** "Where there is a shortfall due to one defendant being insolvent and the plaintiff's own negligence contributed to the harm, the shortfall is to be divided among the remaining defendants and the plaintiff in proportion to their fault."

**The Multiplier Model:** "Where there is a shortfall due to one defendant being insolvent, the municipality would never be liable for more than two times its proportion of damages, even if this means that a plaintiff does not fully recover."

The most appropriate model for addressing the effects of joint and several liability is the multiplier model for all claims arising from the use and operation of motor vehicles. Car collisions account for the largest share of the problem for municipalities.

The multiplier model will ensure that a defendant who only contributed marginally to the loss does not assume significantly disproportionate amount of liability because of a non-contributing defendant. In contrast, a defendant who has been attributed increased fault for the loss will bear increased responsibility for covering the share of a non-contributing defendant than otherwise would be afforded under the Saskatchewan model. For that reason, the multiplier model will provide the plaintiff more of an opportunity to collect the compensation award.

The Saskatchewan model only applies in circumstances where the plaintiff contributed to the loss. The multiplier model's applicability should not be contingent on a finding of contributory negligence. A pre-requisite finding of contributory negligence leaves room for legal counsel and the courts to circumvent the reform by changing the evidentiary threshold for findings of contributory negligence.

Insurance companies in Ontario have experience with similar unintended consequences from tort reform. For example, in 1996, after the government increased the deductible for non-pecuniary awards in motor vehicle collision cases from \$10,000 to \$15,000, the cost of the average bodily injury claim increased from around \$70,000 to \$90,000, or almost 30%, within one year, which, in effect, offset the amount of the deductible.

IBC supports any provincial government's effort to relieve municipalities from the inequitable consequences of the application of joint and several liability. We believe the multiplier model is the most appropriate model for addressing the problem.

IBC also supports expanding the reform to include all defendants involved in claims for property damage and bodily injury losses arising from the use and operation of motor vehicles in Ontario. This approach will help minimize the potential shift of liability costs to other defendants that may be associated with focusing the reforms only on municipalities, and will contribute to lowering the cost of auto insurance for consumers.

Unfortunately, in August 2014, Ontario Attorney General Madeleine Meilleur advised attendees at the AMO annual meeting in London that the government has no plans to make changes to the law due to a lack of evidence. However, this year alone one municipality has already seen \$300,000 in added costs due to higher premiums. Multiply that dollar figure by the more than 400 municipalities in Ontario and you'll see that cities are facing a real budgetary challenge. We believe that reform of the joint and several liability law would go a long way to relieving this pressure.