

From: [Vokes, Sharon](#)
To: [McLevy, Marlene](#); [Warder, Tara](#); [Weppler, Kevin](#); [Kelly, Michael](#)
Subject: RE: AMO Breaking News - Joint and Several Liability
Date: Wednesday, March 05, 2014 9:08:57 AM

TO THE IMMEDIATE ATTENTION OF THE CLERK AND COUNCIL

March 4, 2014

Legislature Supports Motion on Municipal Liability Reform – More Municipal Action Needed

On February 27, 2014, MPPs from all parties supported a motion calling on the government to reform joint and several liability. Passage of this resolution marks a significant milestone in the municipal campaign for reform. Now that the issue has captured the attention of the Legislature, it is time for your municipality to consider the endorsement of a more detailed legislative solution.

Nearly 200 municipalities supported the motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called on the government to implement a comprehensive, long-term solution no later than June 2014. Many more also wrote to the Attorney General, the Honourable John Gerretsen in response to AMO's February 7, 2014 call for support.

Currently, the Ministry of the Attorney General is consulting municipalities and the legal community on a comprehensive long-term solution. The Ministry describes three options below:

The Saskatchewan model: This modification to joint and several liability was adopted in Saskatchewan in 2004. Under 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. This model would apply to all types of defendants in all types of negligence claims.

The Multiplier model: In road authority cases (auto accident cases in which a municipality is sued for breach of duty to maintain a public road), 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. Because this rule has the potential to result in a seriously injured plaintiff being unable to fully recover, the proposal would be limited to municipalities and to the specific subset of cases that municipalities tell us impose the most significant and unfair burden – road authority cases.

The Combined model: The Saskatchewan model and the Multiplier model could be combined. In a case in which both models would apply – a road authority case involving contributory negligence on the part of the plaintiff – the Saskatchewan model would be applied first. The Multiplier model would be applied if needed to ensure that the municipality would not be liable for more than two times its proportion

of damages.

AMO supports the adopted of the "Combined model" listed above. This places some reasonable limits on the damages that may be recovered from a municipality under limited circumstances. It is a significant incremental step to address a pressing municipal issue.

The Ministry of the Attorney General is seeking your comments by April 16, 2014. We urge all municipalities to express their support for this combined model. This includes municipalities which supported either the Pettapiece motion or AMO's form letter of February 7, 2014.

Below is a draft letter for municipalities to submit to the provincial government by April 16, 2014. Please add your community's voice of support to this solution.

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

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

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

Dear Premier, Attorney General, MMAH Minister:

[I or 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. This 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, [I or 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.

Sincerely,

Name

cc: AMO

AMO Contact: Matthew Wilson, Senior Advisor, 416-971-9856 Ext. 323 or mwilson@amo.on.ca.

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