

From: JUS-G-MAG-Webmaster <JUS.G.MAG.Webmaster@ontario.ca>
Sent: Tuesday, July 16, 2019 10:01 AM
To: JUS-G-MAG-Webmaster
Subject: Joint and Several Liability and Insurance Consultations

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.

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. 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?