

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF APRIL 8, 2014

Item 19, Report No. 14, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on April 8, 2014.

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**JOINT AND SEVERAL LIABILITY REFORM
CITY OF VAUGHAN SUPPORT FOR PRIVATE MEMBERS BILL**

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Commissioner of Legal & Administrative Services/City Solicitor, dated March 25, 2014:

Recommendation

The Commissioner of Legal & Administrative Services/City Solicitor in consultation with the City Clerk and Manager of Insurance and Risk Management recommends:

1. That the City of Vaughan support the AMO initiative to reform joint and several liability for municipalities by submitting a letter to the provincial government substantially in the form attached as Attachment 1.

Contribution to Sustainability

Municipalities are being financially burdened with increasing premium costs which insurers attribute to joint and several liability being imposed against them. Limiting the financial contribution to claims' settlements will allow insurers the ability to stabilize insurance premiums to the municipal sector.

Economic Impact

There is no immediate financial impact associated with this report however legislative modifications have the potential to reduce insurance costs for municipalities in the future.

Communications Plan

Subject to Council's approval, a letter substantially in the form of Attachment 1 will be sent to The Honourable Kathleen Wynne, Premier of Ontario, The Honourable John Gerretsen, Attorney General and to The Honourable Linda Jeffrey, Minister of Municipal Affairs and Housing outlining the City of Vaughan's support for reduced municipal liability resulting from the application of joint and several liability, also known as the '1% rule'.

Purpose

The purpose of this report is to seek Council's support for changes being proposed by the Association of Municipalities of Ontario (AMO) to amend the *Negligence Act* in order to reduce municipal liability for damages beyond their proportionate share of actual liability.

Background - Analysis and Options

On March 4, 2014, AMO issued a 'breaking news' communication to municipalities advising that on February 27, 2014, MPPs from all parties supported a motion calling on the government to reform joint and several liability. 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.

Joint and several liability may oblige a defendant who is found to be little as 1% at fault to be responsible for the cost of a plaintiff's entire judgment, particularly where the other defendant(s) are unable to meet the award ordered by the court. As a result municipalities are often brought

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into a lawsuit when it is anticipated other defendants may not have the means to satisfy a judgment. The result of having been found even minimally liable raises the potential that municipalities, and their insurers, will be required to fund the plaintiff's damages well beyond the proportion attributed to municipal fault. The impact on municipal insurance premium and deductible costs is significant.

The following example illustrates the concern:

A motorist travelling at an excessive speed along a municipal road collides with another vehicle. The municipality is found to be 1% at fault because it is determined that a warning sign is not properly situated. \$3,000,000 in damages is awarded to the plaintiff for his injuries, however the speeding driver carries only \$1,000,000 in insurance. Even though the vast proportion of liability is attributed to the speeding driver, the municipality becomes responsible for \$2,000,000 of the award, which is the amount the award exceeds the coverage held by the offending driver.

The Ministry of the Attorney General is consulting with municipalities and the legal community on a comprehensive long term solution and has identified three options for consideration which are listed 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 plaintiffs' 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 the 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 road authority cases which municipalities have advised impose the most significant and unfair burden.

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 the municipality would not be liable for more than two times its proportion of damages.

AMO supports adoption of the Combined Model as it places some reasonable limits on the damages that may be recovered from a municipality under limited circumstances.

Relationship to Vaughan Vision 2020/Strategic Plan

In consideration of the strategic priorities related to Vaughan Vision 2020, this report supports:

- Organizational Excellence – Ensure Financial Sustainability

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Regional Implications

There are no regional implications resulting from the recommendations contained in this report.

Conclusion

Municipalities currently bear a disproportionate responsibility for the cost of insurance claims in circumstances where they are minimally at fault but represent the 'deep pocket' amongst other defendants who may not have the means to satisfy a judgment. It is therefore recommended that the City of Vaughan support AMO's initiative on joint and several liability reform by sending a letter of support substantially in the form of Attachment 1.

Attachments

Attachment 1: AMO Draft Letter

Report prepared by:

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(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)