

September 03, 2019

**Subject: Attorney General letter dated July 12, 2019
Joint and Several Liability, Insurance Costs, and the “Liability Chill”**

Dear Municipal Client:

Several of our Ontario Municipal clients have asked BFL to provide feedback to assist with responding to the above subject letter, which asked three questions:

- 1) Describe the nature of the problem as you see it.
- 2) Indicate what evidence leads you to your view of the problem.
- 3) What solutions do you propose?

Below we provide some general information from an insurance industry perspective that you may find useful in answering the above three questions.

Insurance costs for municipalities are driven by a variety of factors, not the least of which is market conditions. Joint and Several Liability contributes to a restricted supply from insurance companies because of the uncertainty it creates. Without Joint and Several in play, an insurer can rely on actuarial data based on the actual risk control measures a Municipality has in place. With J&S, the actuarial data becomes significantly less reliable because the hazards that give rise to risk come from sources outside the Municipality’s control, but for which the Municipality can be held responsible. The result of this uncertainty is decreased competition among insurers willing to underwrite municipal liability, leading to a reduced availability of coverage, increased pricing, higher deductibles, and less favorable terms overall.

Another key result of Joint and Several is the tendency for plaintiffs’ lawyers to “sue everyone” regardless of where actual fault may lie, thus increasing legal costs for Municipalities, even if it is to simply deny the claim. Municipalities have the reputation of having “deep pockets” and as such are frequently included on a Statement of Claim, even when connection to the incident causing injury is non-apparent.

We recommend you review your Municipality’s own insurance history to determine what effect Joint and Several may have had on your own situation. Examples might include: raising deductibles to mitigate premium increases; defending claims against roads liability where the municipality had no jurisdiction; etc.

In order to learn more about Joint and Several Liability and some potential solutions, we recommend you go to the Ontario Good Roads Association website and view the webinar on this subject at <https://www.ogra.org/courses-and-events/presentations.html>.

If you have any questions or would like clarification regarding the above information, please do not hesitate to contact our office.

Sincerely,

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Encl.