October 16, 2019

Re: Motion to Declare Climate Emergency

To Whom It May Concern,

We are writing as concerned citizens of the Town of Blue Mountains, Ontario, Canada and the World. As a people we are facing the most critical time in humanity’s history – a climate crisis of epic proportions. There is urgency to act now – time is running out. And citizens are coming to that realization.

This proposed motion is a core step forward to put a solid action plan in place, begin to act immediately on issues, initiatives, and establish targets to ensure we are making choices and changes that are significant, meaningful and sustainable. Time is quickly become too short – targets and actions for 2020, 2025, 2030 and 2040 are essential.

Other municipalities, towns and cities in Canada and elsewhere are the battle ground soldiers where the consequences of climate change are and will be felt the soonest with the most significant impact and costs. Collingwood Town Council will have heard and hopefully passed a similar motion (scheduled for October 16th). Other councils in our local area are doing the same.

Climate action teams/groups are springing up quickly in communities frustrated by the lack of leadership and wherewithal to move forward. People are overwhelmed, anxious and don’t know what to do. We must act and need municipal governments to step in. It will take everyone of us to mobilize. We don’t have to wait for others to go first. The time is right now.

We support this motion not only for making the declaration of a climate emergency but because it also sets in the motion the mandate to act and act quickly.

50% of the efforts needs to come through government and industry to take a lead and initiate the larger changes needed to manage and avert this emergency.

Sincerely,

Catherine Daw & Bryan Vermander

cc. Odette Barnicki, Deputy Mayor
To: Town of The Blue Mountains Mayor and Council

From: Elizabeth Zetlin, co-producer/director of the local climate change documentary
Resilience: Transforming Our Community (Watch the film free here: https://resiliencedoc.info/)

Date: October 16, 2019

Re: Support for the motion to declare a climate change emergency for the Town of The Blue Mountains

Please accept my congratulations on considering the motion to declare a climate emergency. This type of motion is forward thinking and will help ensure a sustainable prosperous future for any municipality.

For the past four years, I have been researching and sharing, through film and community discussions, climate impacts and solutions for our region. Declaring a climate crisis is an important step which would give our local municipalities a lens to make decisions to maintain the beauty of the natural environment, waterfront and escarpment. And to ensure tourism and agriculture can rely on clean air, soil and water.

According to Grey County senior planner Scott Taylor, declaring a climate emergency is

a great way to raise awareness and inspire others to do the same. . . I think on behalf of any municipality or organization or community that passes such a climate crisis declaration, it’s a great way to start to demonstrate commitment towards action moving forward. There’s been a lot of discussions, but I think there’s a number of people in our communities that are really looking for ‘well, OK what is the action, what are the next steps that we’re really moving forward on?’

The Town of the Blue Mountains hosted a screening of the Resilience film and I saw first-hand the concern of many residents, who want council to take a leadership role.

One very positive action council unanimously supported was the single-use-plastic motion of June 3. However, it appears to be “on hold” although grass-roots organizations like CANN (Climate Action Now Network chaired by Diana Dolmer) have been moving ahead with this agenda. I understand that the Sustainability Committee decided not to take action on the June 3rd motion until they have written the ICSP which will likely take 18 months to 2 years. This is the type of action that should be initiated sooner than later.

Finally, I’d like to share more of Scott Taylor’s comments that he made at our Climate Action Team BGOS meeting in August.

Declaring a climate crisis “self-identifies a municipality to the point where other municipalities can start to build networks. So if West Grey has already declared this crisis, then there could be other municipalities across the country that are looking at that
and reach out to officials or staff at West Grey to say “Hey, listen, we saw the process that you went through. We’d like to learn from that. We’d like to do the same thing.” Many times a municipal government is not facing truly unique problems. Our fellow planners in Bruce County refer to it as “R and D” – robbing and duplicating. So there’s lots we can learn from our other municipalities and hopefully teach each other and go through it together.

Thank you for considering my comments.

Elizabeth Zetlin
Deputation To The Town Council Of The Blue Mountains
RE: The Declaration Of A Climate Crisis

To Mayor Alar Soever, Deputy Mayor Odette Bartnicki, and Members Of Council,

What leaders say matters and so does the language they use. We are now in a ‘climate crisis’, and declaring it so demonstrates that you, as an organization, embrace the reality that a growing number of people now accept. The changes to our climate and ecosystems are no longer hypothetical. The data show that Canada is heating up at twice the global average. What is driving that statistic is our arctic territory, which is destabilizing more and more each year, with jet-streams behaving erratically, summers approaching ice-free, permafrost melting, methane being released, and wildfires raging. The wolf is at the door, and people need leaders to lead. Having our elected representatives call this a crisis, or an emergency, frames the conversation. It doesn’t allow for denial, doubt, or delay. Action has been put off for decades, and the longer we wait, the more extreme the solutions become. There is so much to lose here, so much of what sustains us existentially and economically depends, literally, on the weather. The microclimates and ecosystems in The Blue Mountains create the conditions for clean air, water, and food; for niche crops to grow in summer, and for a solid base to ski on in the winter. It is my sincere hope that council adopt the motion to declare a climate crisis, and then follow that up with swift and meaningful action and long-term planning to mitigate risk to our town, and adapt as necessary to the changes we know are coming. Let’s follow the lead of municipalities such as Kingston, and our close neighbour Collingwood, by declaring a climate crisis and becoming leaders on this issue. It is the responsible action to take.

Sincerely,

Nicholas Clayton
From: Carmen Lenauskas  
Thornbury, On  
N0H2P0

To : Town Council  
Town of Blue Mountains  
Thornbury Ontario

October 17, 2019

Re: Motion to Declare Climate Emergency

To Whom It May Concern,

I am writing as concerned citizens of the Town of Blue Mountains, Ontario, Canada and the World. As a people we are facing the most critical time in humanity’s history – a climate crisis of epic proportions. There is urgency to act now – time is running out. And citizens are coming to that realization.

This proposed motion is a core step forward to put a solid action plan in place, begin to act immediately on issues, initiatives, and establish targets to ensure we are making choices and changes that are significant, meaningful and sustainable. Time is quickly become too short – targets and actions for 2020, 2025, 2030 and 2040 are essential.

Other municipalities, towns and cities in Canada and elsewhere are the battle ground soldiers where the consequences of climate change are and will be felt the soonest with the most significant impact and costs. Collingwood Town Council passed a similar motion on October 16th. Other councils in our local area are doing the same. It is important not to be left behind, we need to be leaders and preserve our beautiful home.

Climate action teams/groups are springing up quickly in communities frustrated by the lack of leadership and wherewithal to move forward. People are overwhelmed, anxious and don’t know what to do. We must act and need municipal governments to step in. It will take everyone of us to mobilize. We don’t have to wait for others to go first. The time is right now.

I support this motion not only for making the declaration of a climate emergency but because it also sets in the motion the mandate to act and act quickly. 50% of the efforts needs to come through government and industry to take a lead and initiate the larger changes needed to manage and avert this emergency.

Sincerely,
Carmen Lenauskas
To the Mayor and Council of the Town of the Blue Mountains

From; David Walton, Chairperson of the Climate Action Team Bruce Grey Owen Sound
October 17, 2019

Re support for the motion to declare a climate emergency

I want to thank you for considering this motion because it is an important first step. This is a growing movement and it will gain momentum as more jurisdictions make this declaration. Our Federal Government has made this declaration but I don’t see much action coming from them to make the necessary changes. As I see it we all have a part to play as individuals and as governing bodies. Your Council is closer to your constituents and therefore can have a more grassroots approach and this kind of push will show the upper levels of government that they must act. Passing this motion is just the first step but it is the right thing to do. The next step will be to set up a task force to come up with a plan of action. "If you fail to plan you plan to fail”. I think that this quote is as valid now as when it was first stated. People are concerned as every opinion poll shows so I recommend that you pass this motion and begin the process of making the necessary changes to mitigate and hopefully stop climate change.

Thank you.

Sincerely

David Walton
Letter of Support for Declaration of a Climate Emergency – Town of the Blue Mountains

To the Clerk of the Town of the Blue Mountains,

First, let me introduce myself. I am a scientist studying climate change in Ontario. I have developed a number of historic data sets for temperature and precipitation that stretch as far back as 1880 and up to the present. I have also accessed climate model projections for our region that detail expected trends until the end of the 21st century. I have given many public lectures on climate change; what it is, how it will impact us and what we can do about it. In the spring of 2019, I released a climate change documentary film with my co-producer Liz Zetlin; poet, filmmaker and activist. I am now working with a number of municipalities and local citizen groups to develop climate action plans (CAP) as part of long-term strategic planning for the many changes and impacts that are coming. I have two children and two grandchildren and I am very concerned for their futures.

I can share with you that our climate in Ontario has been changing for decades; we have been getting steadily warmer and wetter since the early 1970s. These trends are unprecedented in our recorded history. And climate models demonstrate these trends will continue for decades; regardless of what we do, or do not do, to reduce greenhouse gases. Scientists tell us these trends are now “locked-in” due to the amount of carbon humans have already burned and the slow moving processes of our climate system.

Are we in a climate emergency? Yes. The time to act slowly and incrementally has past. Scientists have been warning our leaders for over thirty years to reduce carbon emissions in order to avoid catastrophic climate change. Yet nothing has happened, emissions keep rising. We have almost used up our carbon budget; the amount of carbon dioxide humans can release into the atmosphere and avoid catastrophic climate change. Scientists have set the Doomsday Clock at two minutes to midnight for the last two years; the closest it has ever been. Economists and bankers at the World Economic Forum have listed climate change as the greatest threat to our economies in the next ten years. The World Bank warned in 2012 that our society will not survive a four degree warmer world; yet we are on track for more than four degrees warmer by the end of this century. The Insurance Bureau of Canada has reported exponentially increasing insurance costs since the early 1980s; costs that now approach two billion dollars each year. Young students now leave their classes to strike for climate. This signs of crisis are all around us, if you care to look.

One of the most difficult things to understand about climate change is the long timescale over which climate processes operate, compared to the human time scale. For example, a typical human life is around 80 years while our generational timescale is about 25 years. In contrast, our climate operates on the order of thousands of years. For example, our planet was been in a stable climate since the last ice age, a period of about 12,000 years known as the Holocene. An important consequence of the slowly moving bio-physical processes of climate change is that we get “locked-in” to changes that are going to happen no matter what we do, or do not do. The climate models demonstrate that we will warm to temperatures here in Bruce and Grey counties by mid-century that have never been experienced by humans. And if we do not reduce our greenhouse gas emissions then
we will continue to warm well beyond the end of the 21st century. However, if we act boldly to reduce our carbon emissions then it is possible we can avoid the most extreme impacts of climate change. But let me be clear, the climate of our future will still be very different from the climate of our past. So either way, we must act and we must act now; it is an emergency.

Please take this opportunity to join a world-wide chorus of leaders declaring a climate emergency. And then, having done this, let’s get on with the task of preparing us for the many changes that are coming.

Sincerely,

John T. Anderson
October 2019
Dated: Wednesday, October 16, 2019 12:50 PM

From: Al Tulloch

Re Bayview Pickleball courts The Bayview location was chosen because of its visibility, the vision for the courts is to provide exposure to pickleball for as many as possible. Bayview is also a multi use, family friendly facility with a children's playground, tennis, picnic areas, and the beautiful waterfront. A family can spend an afternoon there with their kids, or grandkids. Locating at Tomahawk takes away those opportunities and I am afraid the courts would receive minimal use. Regarding loss of greenspace, the 4 courts which take up a footprint slightly larger than one tennis court will be located adjacent to the waste water pumping station in a remote and unused portion of the park. There has been a concern over the lack of parking for years, the new parking area simply fills that need. Regarding access, the park can be accessed via Elgin or Mill and observing the amount of play the tennis courts receive I doubt these courts will be at capacity any time soon. Noise, there are already tennis courts and a children's playground, yes there will be some incremental noise. The pickleball industry has already addressed this to some degree with new quieter composite paddles and less noisy pickleballs. It is understandable that the folks bordering the park would like it this area to remain unused greenspace, However this is a Public park in an area zoned Recreational.
Name: Ron Smith

Message:

Dear Mayor, Deputy Mayor and Town Council
Re proposed pickle ball courts at Bayview Park
I would say I am neutral on pickle ball in general but I am not neutral when nearby residents to a public park wish to limit any extended enjoyment of the park to the public. The residents are complaining about insufficient notice but their real complaint might be insufficient notice to attempt to campaign against this intrusion into their little public oasis near their homes. I take exception when residents complain about increased use and enjoyment of a public park and state such irritants of increased noise and traffic. In other words they want it kept just as it is so it can be enjoyed by these residents and keep our parks less used. Keep all those irritating users out of the park that might reduce their ability to sit on their porches and not hear annoying sounds of pickle balls bouncing around. I assume the sound of the public tennis courts is bad enough. And increased users of the park bringing their cars, it’s just more of an intrusion. Do I need to remind these residents that the public own this public park? This is not a private local neighbourhood park. If the park evolves as all parks do to reflect the needs of the community and the local residents don’t agree with the evolution the option of posting a for sale sign on their property always exist. There are plenty of folks that would gladly snatch up these coveted park/bayside homes. I cycle through Bayview Park often and it is a beautiful park with fine facilities but I often find it underused. I do understand that pickle ball has increased in popularity and if it serves a recreational need that perhaps tennis did at one time. Council at that time obviously supported and funded these tennis courts to their credit. You have the opportunity now to add what seems a popular sport facility to our community and trust you will act in kind. Ron Smith Clarksburg On
Towards a Reasonable Balance:
Addressing growing municipal liability and insurance costs

Submission to the Attorney General of Ontario

October 1, 2019
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October 1, 2019

The Honourable Doug Downey  
Attorney General of Ontario  
McMurtry-Scott Building, 11th Floor  
720 Bay Street  
Toronto, Ontario  
M7A 2S9

Dear Attorney General Downey,

Municipal governments accept the responsibility to pay their fair share of a loss. Always. Making it right and paying a fair share are the cornerstones of our legal system. Citizens expect nothing less of their local governments.

But what is a challenge for municipalities and property taxpayers alike, is being asked to assume someone else’s responsibility for someone else’s mistake. Municipal governments should not be the insurer of last resort. For municipalities in Ontario, however, the principle of joint and several liability ensures that they are just that.

Joint and several liability means higher insurance costs. It diverts property tax dollars from delivering public services. It has transformed municipalities into litigation targets while others escape responsibility. It forces municipal government to settle out-of-court for excessive amounts when responsibility is as low as 1%.

There must be a better way. There must be a better way to help ensure those who suffer losses are made whole again without asking municipalities to bear that burden alone. There must be a better way to be fair, reasonable, and responsible.

AMO welcomes the government’s commitment to review joint and several liability. It is a complex issue that has many dimensions. Issues of fairness, legal principles, “liability chill”, insurance failures and high insurance costs are all intertwined. Many other jurisdictions have offered additional protection for municipalities and AMO calls on the Ontario government to do the same.

What follows is a starting point for that discussion. Our paper reasserts key issues from AMO’s 2010 paper, AMO’s 2011 insurance cost survey, provides more recent examples, and details some possible solutions of which there are many options.

Municipalities are in the business of delivering public services. Municipal governments exist to connect people and to advance the development of a community. It is time to find a reasonable balance to prevent the further scaling back of public services owing to joint and several liability, “liability chill”, or excessive insurance costs.
Together with the provincial government, I am confident we can find a better way.

Sincerely,

Jamie McGarvey
AMO President
Executive Summary

AMO’s advocacy efforts on joint and several liability in no way intends for aggrieved parties to be denied justice or damages through the courts. Rather, municipal governments seek to highlight the inequity of how much “deep pocket” defendants like municipalities are forced to pay, for both in and out of court settlements.

It is entirely unfair to ask property taxpayers to carry the lion’s share of a damage award when a municipality is found at minimal fault or to assume responsibility for someone else’s mistake.

Municipal governments cannot afford to be the insurer of last resort. The principle of joint and several liability is costing municipalities and taxpayers dearly, in the form of rising insurance premiums, service reductions and fewer choices. The Negligence Act was never intended to place the burden of insurer of last resort on municipalities.

As public organizations with taxation power and “deep pockets,” municipalities have become focal points for litigation when other defendants do not have the means to pay. At the same time, catastrophic claim awards in Ontario have increased considerably. In part, joint and several liability is fueling exorbitant increases in municipal insurance premiums.

The heavy insurance burden and legal environment is unsustainable for Ontario’s communities. Despite enormous improvements to safety, including new standards for playgrounds, pool safety, and better risk management practices, municipal insurance premiums and liability claims continue to increase. All municipalities have risk management policies to one degree or another and most large municipalities now employ risk managers precisely to increase health and safety and limit liability exposure in the design of facilities, programs, and insurance coverage. Liability is a top of mind consideration for all municipal councils.

Joint and several liability is problematic not only because of the disproportioned burden on municipalities that are awarded by courts. It is also the immeasurable impact of propelling municipalities to settle out of court to avoid protracted and expensive litigation for amounts that may be excessive, or certainly represent a greater percentage than their degree of fault.

Various forms of proportionate liability have now been enacted by all of Ontario’s competing Great Lakes states. In total, 38 other states south of the border have adopted proportionate liability in specific circumstances to the benefit of municipalities. Many common law jurisdictions around the world have adopted legal reforms to limit the exposure and restore balance. With other Commonwealth jurisdictions and the majority of state governments in the United States having modified the rule of joint and several liability in favour of some form of proportionate liability, it is time for Ontario to consider various options.

There is precedence in Ontario for joint and several liability reform. The car leasing lobby highlighted a particularly expensive court award made in November of 2004 against a car leasing company by the victim of a drunk driver. The August 1997 accident occurred when the car skidded off a county road near Peterborough, Ontario. It exposed the inequity of joint and several liability for car leasing companies. The leasing companies argued to the government that the settlement had put them at a competitive disadvantage to lenders. They also warned that such liability conditions would likely drive some leasing and rental companies to reduce their business in Ontario. As a result, Bill 18 amended the Compulsory Automobile Insurance Act, the Highway Traffic
Act and the Ontario Insurance Act to make renters and lessees vicariously liable for the negligence of automobile drivers and capped the maximum liability of owners of rental and leased cars at $1 million. While Bill 18 has eliminated the owners of leased and rented cars as “deep pocket” defendants, no such restrictions have been enacted to assist municipalities.

A 2011 survey conducted by AMO 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 were $155.2 million. Liability premiums made up the majority of these expenses at $85.5 million. Property taxpayers are paying this price.

These trends are continuing. In August of 2019, it was reported the Town of Bradford West Gwillimbury faces a 59% insurance cost increase for 2019. This is just one example. AMO encourages the municipal insurance industry to provide the government with more recent data and trends to support the industry's own arguments regarding the impact joint and several has on premiums.

Insurance costs disproportionately affect small municipalities. For 2011, the per capita insurance costs for communities with populations under 10,000 were $37.56. By comparison, per capita costs in large communities with populations over 75,000 were $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.

In 2016, the Ontario Municipal Insurance Exchange (OMEX), a not-for-profit insurer, announced that it was suspending reciprocal underwriting operations. The organization cited, a “low pricing environment, combined with the impact of joint and several liability on municipal claim settlements” as reasons for the decision. Fewer choices fuels premium increases.

Learning from other jurisdictions is important for Ontario. The Province of Saskatchewan has implemented liability reforms to support its municipalities. As a municipal lawyer at the time, Neil Robertson, QC was instrumental in laying out the arguments in support of these changes. Now a Justice of the Court of Queen's Bench for Saskatchewan, AMO was pleased to have Neil Robertson prepare a paper and address AMO conference delegates in 2013. Much of the Saskatchewan municipal experience (which led to reforms) is applicable to the Ontario and the Canadian municipal context. Summarised below and throughout this paper are some of Robertson's key findings.

Robertson found that, regardless of the cause, over the years municipalities in Canada have experienced an accelerating rate of litigation and an increase in amounts of damage awards. He noted these developments challenge municipalities and raise financial, operational and policy issues in the provision of public services.

Robertson describes the current Canadian legal climate as having placed municipalities in the role of involuntary insurer. Courts have assigned municipal liability where liability was traditionally denied and apportioned fault to municipal defendants out of proportion to municipal involvement in the actual wrong.

This increased exposure to liability has had serious ramifications for municipalities, both as a deterrent to providing public services which may give rise to claims and in raising the cost and reducing the availability of insurance. The cost of claims has caused insurers to reconsider not only
what to charge for premiums, but whether to continue offering insurance coverage to municipal clients.

Robertson also makes the key point that it reasonable for municipal leaders to seek appropriate statutory protections. He wrote:

“Since municipalities exist to improve the quality of life for their citizens, the possibility of causing harm to those same citizens is contrary to its fundamental mission. Careful management and wise stewardship of public resources by municipal leaders will reduce the likelihood of such harm, including adherence to good risk management practices in municipal operations. But wise stewardship also involves avoiding the risk of unwarranted costs arising from inevitable claims.”

And, of course, a key consideration is the reality that insurance premiums, self-insurance costs, and legal fees divert municipal funds from other essential municipal services and responsibilities.

It is in this context that AMO appreciated the commitments made by the Premier and the Attorney General to review the principle of joint and several liability, the impact it has on insurance costs, and the influence “liability chill” has on the delivery of public services. Now is the time to deliver provincial public policy solutions which address these issues.

Recommendations

AMO recommends the following measures to address these issues:

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.

2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.

3. Implement a cap for economic loss awards.

4. Increase the catastrophic impairment default benefit limit to $2 million and increase the third-party liability coverage to $2 million in government regulated automobile insurance plans.

5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.

6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.

7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.
Insurance Cost Examples

The government has requested detailed information from municipalities regarding their insurance costs, coverage, deductibles, claims history, and out-of-court settlements. Municipalities have been busy responding to a long list of provincial consultations on a wide range of topics. Some of the information being sought is more easily supplied by the insurance industry. AMO's 2011 survey of insurance costs produced a sample size of 122 municipalities and assessed insurance cost increases over a five-year period. The survey revealed an average premium increase which exceeded 20% over that period.

All of the same forces remain at play in 2019 just as they were in 2011. Below are some key examples.

**Ear Falls** - The Township of Ear Falls reports that its insurance premiums have increased 30% over five years to $81,686. With a population of only 995 residents (2016), this represents a per capita cost of $82.09. This amount is a significant increase from AMO's 2011 Insurance Survey result. At that time, the average per capita insurance cost for a community with a population under 10,000 was $37.56. While the Township has not been the subject of a liability claim, a claim in a community of this size could have significant and long-lasting financial and service implications. The Township has also had to impose stricter insurance requirements on groups that rent municipal facilities. This has had a negative impact on the clubs and volunteers’ groups and as a consequence, many have cut back on the service these groups provide to the community.

**Central Huron** – For many years the municipality of Central Huron had a deductible of $5,000. In 2014, the deductible was increased to $15,000 to help reduce insurance costs. The municipality also increased its liability coverage in 2014 and added cyber security coverage in 2018. The combined impact of these changes represents a premium cost of $224,774 in 2019, up from $141,331 in 2010. Per capita costs for insurance alone are now $29.67.

**Huntsville** – Since 2010, the Town of Huntsville reports an insurance premium increase of 67%. In 2019 this represented about 3.75% of the town’s property tax levy. At the same time, Huntsville’s deductible has increased from $10,000 to $25,000. The town also reports a reluctance to hold its own events for fear of any claims which may affect its main policy. Additional coverage is purchased for these events and these costs are not included above.

**Ottawa** - In August 2018, the City began working with its insurance broker, Aon Risk Solutions (“Aon”), to prepare for the anticipated renewal of the Integrated Insurance Program in April 2019. As the cost of the City’s insurance premiums had risen by approximately 25% between 2017 and 2018, this early work was intended to ensure that any further increase could be properly accounted for through the 2019 budget process. Early indications of a possible further 10% premium increase prompted the City and Aon in late 2018 to explore options for a revised Program, and to approach alternative markets for the supply of insurance.

On January 11, 2019, an OC Transpo bus collided with a section of the Westboro Station transit shelter, resulting in three fatalities and numerous serious injuries. This was the second major incident involving the City’s bus fleet, following approximately five years after the OC Transpo – VIA train collision in September 2013.
The January 2019 incident prompted insurance providers to re-evaluate their willingness to participate in the City Program. Despite Aon’s work to secure an alternative provider, only Frank Cowan Company (“Cowan”), the City’s existing insurer, was prepared to offer the City an Integrated Insurance Program. Cowan’s offer to renew the City’s Program was conditional on revised terms and limits and at a significant premium increase of approximately 84%, or nearly $2.1 million per year. According to Cowan, these changes and increases were attributable to seven principle factors, including Joint and Several Liability:

1. Escalating Costs of Natural Global Disasters;
2. Joint and Several Liability;
3. Claims Trends (in the municipal sector);
4. Increasing Damage Awards;
5. Class Action Lawsuits;
6. New and/or Adverse Claims Development; and,
7. Transit Exposure.

Cowan also indicated that the primary policy limits for the 2019-2020 renewal would be lowered from $25 million to $10 million per occurrence, thereby raising the likelihood of increased costs for the City’s excess liability policies.

**Joint and Several in Action - Recent Examples**

The following examples highlight joint and several in action. The following examples have occurred in recent years.

**GTA Municipality** - A homeowner rented out three separate apartments in a home despite being zoned as a single-family dwelling. After a complaint was received, bylaw inspectors and Fire Prevention Officers visited the property. The landlord was cautioned to undertake renovations to restore the building into a single-family dwelling. After several months of non-compliance, charges under the fire code were laid. The owner was convicted and fined. A subsequent visit by Fire Prevention Officers noted that the required renovations had not taken place. Tragically, a fire occurred which resulted in three fatalities. Despite having undertaken corrective action against the homeowner, joint and several liability loomed large. It compelled the municipality to make a payment of $504,000 given the 1% rule.

**City of Ottawa** - A serious motor vehicle accident occurred between one of the City’s buses and an SUV. The collision occurred at an intersection when the inebriated driver of the SUV failed to stop at a red light and was struck by the City bus. This collision resulted in the deaths of the SUV driver and two other occupants, and also seriously injured the primary Plaintiff, the third passenger in the SUV. The secondary action was brought by the family of one of the deceased passengers.

The Court ultimately concluded that the City was 20% liable for the collision, while the SUV driver was 80% at fault. Despite the 80/20 allocation of fault, the City was required to pay all of the approximately $2.1 million in damages awarded in the primary case and the $200,000 awarded in the secondary case, bringing the amount paid by the City to a total that was not proportionate to its actual liability. This was due to the application of the principle of joint and several liability, as well as the interplay between the various automobile insurance policies held by the SUV owner and
passengers, which is further explained below. Although the City appealed this case, the Ontario Court of Appeal agreed with the findings of the trial judge and dismissed it.

This case was notable for the implications of various factors on the insurance policies held by the respective parties. While most automobile insurance policies in Ontario provide for $1 million in third party liability coverage, the insurance for the SUV was reduced to the statutory minimum of $200,000 by virtue of the fact that the driver at the time of the collision had a blood alcohol level nearly three times the legal limit for a fully licensed driver. This was contrary to the requirements of his G2 license, which prohibit driving after the consumption of any alcohol. Further, while the Plaintiff passengers’ own respective insurance provided $1 million in coverage for underinsured motorists (as the SUV driver was at the time), this type of coverage is triggered only where no other party is in any way liable for the accident. As a result, the primary Plaintiff could only effectively recover the full $2.1 million in damages if the Court attributed even a small measure of fault to another party with sufficient resources to pay the claim.

In determining that the City was at least partially responsible for the collision, the Court held that the speed of the bus – which according to GPS recordings was approximately 6.5 km/h over the posted limit of 60 kilometres an hour – and momentary inattention were contributing factors to the collision.

To shorten the length of the trial by approximately one week and accordingly reduce the legal costs involved, the parties had earlier reached an agreement on damages and that the findings regarding the primary Plaintiff would apply equally to the other. The amount of the agreement-upon damages took into account any contributory negligence on the part of the respective Plaintiffs, attributable to such things as not wearing a seat belt.

**City of Ottawa, 2nd example** – A Plaintiff was catastrophically injured when, after disembarking a City bus, he was struck by a third-party motor vehicle. The Plaintiff's injuries included a brain injury while his impairments included incomplete quadriplegia.

As a result of his accident, the Plaintiff brought a claim for damages for an amount in excess of $7 million against the City and against the owner and driver of the third-party vehicle that struck him. Against the City, the Plaintiff alleged that the roadway was not properly designed and that the bus stop was placed at an unsafe location as it required passengers to cross the road mid-block and not at a controlled intersection.

Following the completion of examinations for discovery, the Plaintiff's claim against the Co-Defendant (the driver of the vehicle which struck the plaintiff) was resolved for $1,120,000 comprising $970,000 for damages and $120,000 for costs. The Co-Defendant's policy limit was $1 million. The claim against the City was in effect, a “1% rule” case where the City had been added to the case largely because the Co-Defendant’s insurance was capped at $1 million, which was well below the value of the Plaintiff’s claim.

On the issue of liability, the pre-trial judge was of the view that the City was exposed to a finding of some liability against it on the theory that, because of the proximity of the bus stop to a home for adults with mental health issues, the City knew or should have known that bus passengers with cognitive and/or physical disabilities would be crossing mid-block at an unmarked crossing. This, according to the judge, could have resulted in a finding being made at trial that the City should
either have removed the bus stop or alternatively, should have installed a pedestrian crossing at this location.

The judge assessed the Plaintiff's damages at $7,241,000 exclusive of costs and disbursements which he then reduced to $4,602,930 exclusive of costs and disbursements after applying a reduction of 27.5% for contributory negligence and subtracting the $970,000 payment made by the Co-Defendant's insurer.

Settlement discussions took place and the judge recommended that the matter be resolved for $3,825,000 plus costs of $554,750 plus HST plus disbursements.

**Joint and Several Liability in Action - Other notable cases**

**Deering v Scugog** - A 19-year-old driver was driving at night in a hurry to make the start time of a movie. She was travelling on a Class 4 rural road that had no centerline markings. The Ontario Traffic Manual does not require this type of road to have such a marking. The driver thought that a vehicle travelling in the opposite direction was headed directly at her. She swerved, over-corrected and ended up in a rock culvert. The Court found the Township of Scugog 66.7% liable. The at-fault driver only carried a $1M auto insurance policy.

**Ferguson v County of Brant** - An inexperienced 17-year-old male driver was speeding on a road when he failed to navigate a curve which resulted in him crossing the lane into oncoming traffic, leaving the roadway, and striking a tree. The municipality was found to have posted a winding road sign rather than a sharp curve sign. The municipality was found 55% liable.

**Safranyos et al v City of Hamilton** - The plaintiff was leaving a drive-in movie theatre with four children in her vehicle at approximately 1 AM. She approached a stop sign with the intention of turning right onto a highway. Although she saw oncoming headlights she entered the intersection where she was struck by a vehicle driven 15 km/h over the posted speed limit by a man who had just left a party and was determined by toxicologists to be impaired. The children in the plaintiff's vehicle suffered significant injuries. The City was determined to be 25% liable because a stop line had not been painted on the road at the intersection.

**Mortimer v Cameron** - Two men were engaged in horseplay on a stairway and one of them fell backward through an open door at the bottom of a landing. The other man attempted to break the first man's fall and together they fell into an exterior wall that gave way. Both men fell 10 feet onto the ground below, one of whom was left quadriplegic. The trial judge determined both men were negligent, but that their conduct did not correspond to the extent of the plaintiff's injuries. No liability was attached to either man. The building owner was determined to be 20% and the City of London was found to be 80% liable. The Court awarded the plaintiff $5 M in damages. On appeal, the City's liability was reduced to 40% and building owner was determined to be 60% liable. The City still ended up paying 80% of the overall claim.

**2011 Review of Joint and Several Liability – Law Commission of Ontario**

In February 2011 the Law Commission of Ontario released a report entitled, “Joint and Several Liability Under the Ontario Business Corporations Act”. This review examined the application of
joint and several liability to corporate law and more specifically the relationship between the corporation and its directors, officers, shareholders and stakeholders.

Prior to the report’s release, AMO made a submission to the Law Commission of Ontario to seek to expand its review to include municipal implications. The Law Commission did not proceed with a broader review at that time, but the context of its narrower scope remains applicable to municipalities. In fact, many of the same arguments which support reform in the realm of the *Business Corporations Act*, are the same arguments which apply to municipal governments.

Of note, the Law Commission’s\(^1\) report highlighted the following in favour of reforms:

**Fairness:** “it is argued that it is unfair for a defendant, whose degree of fault is minor when compared to that of other defendants, to have to fully compensate a plaintiff should the other defendants be insolvent or unavailable.”

**Deep Pocket Syndrome:** “Joint and several liability encourages plaintiffs to unfairly target defendants who are known or perceived to be insured or solvent.”

**Rising Costs of Litigation, Insurance, and Damage Awards:** “Opponents of the joint and several liability regime are concerned about the rising costs of litigation, insurance, and damage awards.”

**Provision of Services:** “The Association of Municipalities of Ontario identifies another negative externality of joint and several liability: municipalities are having to delay or otherwise cut back services to limit exposure to liability.”

The Law Commission found that the principle of joint and several liability should remain in place although it did not explicitly review the municipal situation.

**2014 Resolution by the Ontario Legislature and Review by the Attorney General**

Over 200 municipalities supported a motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called for the implementation a comprehensive, long-term solution in 2014. That year, MPPs from all parties supported the Pettapiece motion calling for a reform joint and several liability.

Later that year the Ministry of the Attorney General consulted on three options of possible reform:

1. **The Saskatchewan Model of Modified Proportionate Liability**

Saskatchewan has adopted a modified version of proportionate liability that applies in cases where a plaintiff is contributorily negligent. Under the Saskatchewan rule, where a plaintiff is contributorily negligent and there is an unfunded liability, the cost of the unfunded liability is split among the remaining defendants and the plaintiff in proportion to their fault.

2. Peripheral Wrongdoer Rule for Road Authorities

Under this rule, a municipality would never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages.

3. A combination of both of the above

Ultimately, the government decided not to pursue any of the incremental policy options ostensibly because of uncertainty that insurance cost reductions would result. This was a disappointing result for municipalities.

While these reviews did not produce results in Ontario, many other common law jurisdictions have enacted protections for municipalities. What follows are some of the options for a different legal framework.

Options for Reform – The Legal Framework

To gain a full appreciation of the various liability frameworks that could be considered, for comparison, below is a description of the current joint and several liability framework here in Ontario. This description will help to reader to understand the further options which follow.

This description and the alternatives that follow are taken from the Law Commission of Ontario's February 2011 Report entitled, “Joint and Several Liability Under the Ontario Business Corporations Act” as referenced above.2

Understanding the Status Quo and Comparing it to the Alternatives

Where three different defendants are found to have caused a plaintiff's loss, the plaintiff is entitled to seek full payment (100%) from any one of the defendants. The defendant who fully satisfies the judgment has a right of contribution from the other liable parties based on the extent of their responsibility for the plaintiff's loss.

For example, a court may find defendants 1 (D1), 2 (D2) and 3 (D3) responsible for 70%, 20%, and 10% of the plaintiff's $100,000 loss, respectively. The plaintiff may seek to recover 100% of the loss from D2, who may then seek contribution from D1 and D3 for their 70% and 10% shares of the loss. If D1 and/or D3 is unable to compensate D2 for the amount each owes for whatever reason, such as insolvency or unavailability, D2 will bear the full $100,000 loss. The plaintiff will be fully compensated for $100,000, and it is the responsibility of the defendants to apportion the loss fairly between them.

The descriptions that follow are abridged from pages 9-11 of the Law Commission of Ontario's report. These are some of the key alternatives to the status quo.

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2 Ibid. Page 7.
1. Proportionate Liability

a) Full Proportionate Liability

A system of full proportionate liability limits the liability of each co-defendant to the proportion of the loss for which he or she was found to be responsible. Per the above example, (in which Defendant 1 (D1) is responsible for 70% of loss, Defendant 2 (D2) for 20% and Defendant 3 (D3) for 10%), under this system, D2 will only be responsible for $20,000 of the $100,000 total judgement: equal to 20% of their share of the liability. Likewise, D1 and D3 will be responsible for $70,000 and $10,000. If D1 and D3 are unable to pay, the plaintiff will only recover $20,000 from D2.

b) Proportionate Liability where Plaintiff is Contributorily Negligent

This option retains joint and several liability when a blameless plaintiff is involved. This option would cancel or adjust the rule where the plaintiff contributed to their loss. As in the first example, suppose the plaintiff (P) contributed to 20% of their $100,000 loss. D1, D2 and D3 were responsible for 50%, 20% and 10% of the $100,000. If D1 and D3 are unavailable, P and D2 will each be responsible for their $20,000 shares. The plaintiff will remain responsible for the $60,000 shortfall as a result of the absent co-defendants’ non-payment (D1 and D3).

c) Proportionate Liability where Plaintiff is Contributorily Negligent with a Proportionate Reallocation of an Insolvent, Financially Limited or Unavailable Defendant’s Share

In this option of proportionate liability, the plaintiff and remaining co-defendants share the risk of a defendant's non-payment. The plaintiff (P) and co-defendants are responsible for any shortfall in proportion to their respective degrees of fault.

Using the above example of the $100,000 total judgement, with a shortfall payment of $50,000 from D1 and a shortfall payment $10,000 from D3, P and D2 must pay for the missing $60,000. P and D2 have equally-apportioned liability, which causes them to be responsible for half of each shortfall - $25,000 and $5,000 from each non-paying defendant. The burden is shared between the plaintiff (if determined to be responsible) and the remaining defendants.

d) Proportionate Liability with a Peripheral Wrongdoer

Under this option, a defendant will be proportionately liable only if their share of the liability falls below a specified percentage, meaning that liability would be joint and several. Using the above example, if the threshold amount of liability is set at 25%, D2 and D3 would only be responsible for 20% and 10%, regardless of whether they are the only available or named defendants. However, D1 may be liable for 100% if it is the only available or named defendant. This system tends to favour defendants responsible for a small portion of the loss, but the determination of the threshold amount between joint and several liability and proportionate liability is arbitrary.

e) Proportionate Liability with a Reallocation of Some or All of an Insolvent or Unavailable Defendant’s Share

This option reallocates the liability of a non-paying defendant among the remaining defendants in proportion to their respective degrees of fault. The plaintiff’s contributory negligence does not
impact the application of this reallocation. Joint and several liability would continue to apply in cases of fraud or where laws were knowingly violated.

f) Court Discretion

Similar to the fraud exception in the option above, this option includes giving the courts discretion to apply different forms of liability depending on the case.

For example, if a particular co-defendant's share of the fault was relatively minor the court would have discretion to limit that defendant's liability to an appropriate portion.

2. Legislative Cap on Liability

Liability concerns could be addressed by introducing a cap on the amount of damages available for claims for economic loss.

3. Hybrid

A number of jurisdictions provide a hybrid system of proportionate liability and caps on damages. Co-defendants are liable for their portion of the damages, but the maximum total amount payable by each co-defendant is capped to a certain limit.

The Saskatchewan Experience

As referenced earlier in this paper, the Province of Saskatchewan responded with a variety of legislative actions to assist municipalities in the early 2000s. Some of those key developments are listed below which are abridged from “A Question of Balance: Legislative Responses to Judicial Expansion of Municipal Liability – the Saskatchewan Experience.” The paper was written by Neil Robertson, QC and was presented to the annual conference of the Association of Municipalities of Ontario in 2013. Two key reforms are noted below.

1. Reforming joint and several liability by introducing modified proportionate liability: “The Contributory Negligence Act” amendments

The Contributory Negligence Act retained joint and several liability, but made adjustments in cases where one or more of the defendants is unable to pay its share of the total amount (judgement). Each of the parties at fault, including the plaintiff if contributorily negligent, will still have to pay a share of the judgement based on their degree of fault. However, if one of the defendants is unable to pay, the other defendants who are able to pay are required to pay only their original share and an additional equivalent share of the defaulting party's share.

The change in law allows municipalities to reach out-of-court settlements, based on an estimate of their degree of fault. This allows municipalities to avoid the cost of protracted litigation.

Neil Robertson provided the following example to illustrate how this works in practise:

“...If the owner of a house sues the builder for negligent construction and the municipality, as building authority, for negligent inspection, and all three are found equally at fault, they would each be apportioned 1/3 or 33.3%. Assume the damages are $100,000. If the builder has no funds, then the municipality would pay only its share ($33,333) and a 1/3 share of the builder’s defaulting share..."
(1/3 of $33,333 or $11,111) for a total of $44,444 ($33,333 + $11,111), instead of the $66,666 ($33,333 + $33,333) it would pay under pure joint and several liability."

This model will be familiar to municipal leaders in Ontario. In 2014, Ontario’s Attorney General presented this option (called the Saskatchewan Model of Modified Proportionate Liability) for consideration. At the time, over 200 municipal councils supported the adoption of this option along with the “Peripheral Wrongdoer Rule for Road Authorities” which would have seen a municipality never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages. These two measures, if enacted, would have represented a significant incremental step to address the impact of joint and several to Ontario municipalities.

2. Providing for uniform limitation periods while maintaining a separate limitation period for municipalities: “The Limitations Act”

This act established uniform limitation periods replacing many of the pre-existing limitation periods that had different time periods. The Municipal Acts in Saskatchewan provide a uniform one-year limitation period “from time when the damages were sustained” in absolute terms without a discovery principle which can prolong this period. This helps municipalities to resist “legacy” claims from many years beforehand. This act exempts municipalities from the uniform two-year discoverability limitation period.

Limitation periods set deadlines after which claims cannot be brought as lawsuits in the courts. The legislation intends to balance the opportunity for potential claimants to identify their claims and, if possible, negotiate a settlement out of court before starting legal action with the need for potential defendants to “close the books” on claims from the past.

The reasoning behind these limitations is that public authorities, including municipalities, should not to be punished by the passage of time. Timely notice will promote the timely investigation and disposition of claims in the public interest. After the expiry of a limitation period, municipalities can consider themselves free of the threat of legal action, and continue with financial planning without hurting “the public taxpayer purse”. Municipalities are mandated to balance their budgets and must be able to plan accordingly. Thus, legacy claims can have a very adverse effect on municipal operations.

Here in Ontario, there is a uniform limitations period of two years. Municipalities also benefit from a 10-day notice period which is required for slip and fall cases. More recently, the applicability of this limitation deadline has become variable and subject to judicial discretion. Robertson’s paper notes that in Saskatchewan, courts have accepted the one-year limitations period. A further examination of limitations in Ontario may yield additional benefits and could include the one-year example in Saskatchewan and/or the applicability of the 10-day notice period for slip and fall cases.

Other Saskatchewan reforms

Saskatchewan has also implemented other reforms which include greater protections for building inspections, good faith immunity, duty of repair, no fault insurance, permitting class actions, and limiting nuisance actions. Some of these reforms are specific to Saskatchewan and some of these currently apply in Ontario.
Insurance Related Reforms

Government Regulated Insurance Limits

The April 2019 provincial budget included a commitment to increase the catastrophic impairment default benefit limit to $2 million. Public consultations were led by the Ministry of Finance in September 2019. AMO wrote to the Ministry in support of increasing the limit to $2 million to ensure more adequate support those who suffer catastrophic impairment.

In 2016, the government lowered this limit as well as third-party liability coverage to $200,000 from $1 million. This minimum should also be increased to $2 million to reflect current actual costs. This significant deficiency needs to be addressed.

Insurance Industry Changes

In 1989 the Ontario Municipal Insurance Exchange (OMEX) was established as a non-profit reciprocal insurance provider for Ontario’s municipalities. It ceased operations in 2016 citing, “[a] low pricing environment, combined with the impact of joint & several liability on municipal claim settlements has made it difficult to offer sustainable pricing while still addressing the municipalities’ concern about retro assessments.”3 (Retro assessments meant paying additional premiums for retroactive coverage for “long-tail claims” which made municipal budgeting more challenging.)

The demise of OMEX has changed the municipal insurance landscape in Ontario. That joint and several liability is one of the key reasons listed for the collapse of a key municipal insurer should be a cause for significant concern. Fewer choices fuels cost. While there are other successful municipal insurance pools in Ontario, the bulk of the insurance market is dominated by for-profit insurance companies.

Reciprocal non-profit insurers are well represented in other areas across Canada. Municipalities in Saskatchewan, Alberta, British Columbia are all insured by non-profit reciprocals.

The questions for policy makers in Ontario:

Are there any provincial requirements or regulations which could better support the non-profit reciprocal municipal insurance market?

What actions could be taken to better protect municipalities in Ontario in sourcing their insurance needs?

How can we drive down insurance costs to better serve the needs of municipal property taxpayers?

3 Canadian Underwriter, August 11, 2016 https://www.canadianunderwriter.ca/insurance/ontario-municipal-insurance-exchange-suspends-underwriting-operations-1004098148/
Conclusion

This AMO paper has endeavoured to refresh municipal arguments on the need to find a balance to the issues and challenges presented by joint and several liability. It has endeavoured to illustrate that options exist and offer the reassurance that they can be successfully implemented as other jurisdictions have done.

Finding solutions that work will require provincial and municipal commitment. Working together, we can find a better way that is fair, reasonable, and responsible. It is time to find a reasonable balance.