

Issue at a Glance

Municipal Insurance

May 2022

Key Takeaways

- Municipal insurance rates are rising at a pace that is not sustainable for municipalities.
- The municipal insurance space is changing with new threats such as cyber attacks and an increase in climate-related disasters.
- Ontario's joint and several liability system contributes to high insurance costs, leaving the public paying the price.

Issue

Municipal insurance rates have increased significantly in recent years. In many cases, costs have increased between 10-75%ⁱ with some municipalities facing even higherⁱⁱ costs and there are few alternative service providers to turn to. This is not sustainable for municipalities and their residents. Increasing costs related to municipal insurance premiums means challenging budgetary planning with decisions impacting local services.

The Need for Reform

There are many factors that affect the unsustainable rise in municipal insurance rates for municipalities. The examples used in this brief are not meant to provide an exhaustive list, but rather highlight some of the systemic as well as emerging challenges with municipal insurance. Finding a solution that will solve this issue for municipalities will require innovation and long-term commitment.

Joint and Several

Ontario's [Joint and Several Liability tort system](#) is one piece of the puzzle, exacerbating already high municipal insurance costs.ⁱⁱⁱ The [Negligence Act, 1990](#) directs that a person injured by two or more defendants may collect full damages from just one regardless of their proportion of liability. This means that by design, defendants in civil suits who are found to be as little as 1% at fault can still be required to pay 100% of the damages.

Joint and several liability encourages plaintiffs to unfairly target defendants who have or are perceived to have the ability to pay damages.^{iv} For this reason, municipalities have often become the targets of litigation and can be forced to offer large settlements to avoid extensive litigation. In some cases, municipalities delay or cut back services to limit exposure to liability.^v

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Ultimately whether municipalities litigate, settle or reduce exposure to liability to mitigate risk, their residents and ratepayers suffer the consequences. Reforming joint and several liability could save the municipal sector \$27 million in insurance costs.^{vi}

Cyber Attacks

Ontario municipalities are frequently the target of cyberattacks^{vii}, the scale, frequency, and sophistication of which are causing major disruptions to critical operations^{viii}. Cyberattacks in Canada increased by 50% in 2021.^{ix} One way that municipalities can prepare for this is by obtaining cyber insurance. However, since the risk of a cyberattack is high and more municipalities are making cyber-related claims with higher damages, cyber insurance rates have increased for municipalities in recent years, contributing to high municipal insurance premiums.^x

Furthermore, many municipalities are no longer able to secure cyber insurance as many providers have stopped offering this as they perceive it to be a losing proposition with the frequency of municipal cyberattacks.^{xi} Knowing that a cyber threat is likely, municipalities are in a difficult position where it is both challenging to secure coverage and if it is possible to obtain, it is extremely costly.

Climate Related Disasters

Municipalities are seeing more natural disasters as climate change has increased the occurrence of flooding, tornadoes, fires and other catastrophes.^{xii} Municipalities need to both insure their infrastructure assets, which can be severely at risk during a natural disaster, and have coverage to protect the municipality against liability for infrastructure failure.^{xiii} Claims related to infrastructure damage and liability have increased, with municipalities making more claims and for higher amounts.^{xiv} This has contributed to higher costs for municipal insurance policies, as well as changes to limit liability.^{xv}

What can be done?

There are alternative models to Ontario's joint and several liability system, some of which were reviewed by the government in 2014 through a consultation led by the Attorney General. These alternatives offer different models of reallocation of uncollectable contributions as well as liability capping to ensure reasonable limits on damages and caps on liability in certain circumstances. This ensures that a municipality is on the hook for a proportion that is not beyond two times its total proportion of damages.^{xvi}

Saskatchewan Model: Includes a reallocation provision where if the uncollectable contributions of a defendant is assigned to the remaining parties, it is done so in a way that is proportionate to the degree of fault among the defendants and plaintiff.

Multiplier Model: Limits the municipality's liability so if one defendant is unable to pay liability, this amount does not go beyond double the municipality's proportion of damages. This model would apply for road authorities only.

Combined Model: Places reasonable limits on the damages that may be recovered in certain circumstances. The Saskatchewan Model would be applied first with the Multiplier Model only applying if it was needed to ensure a municipality does not pay more than double its proportion of damages.^{xvii}

In 2019, in response to a consultation regarding joint and several liability led by the Attorney General, the Association of Municipalities of Ontario (AMO) recommended a model of full proportionate liability to replace joint and several liability.^{xviii} This would limit the liability of each co-defendant to the proportion of the loss for which they were found to be responsible. Other alternatives to the status quo that the Province could explore include giving the courts discretion to apply different forms of liability depending on the case, introducing a cap on the amount of damages available for claims for economic loss, and a hybrid system of proportionate liability and caps on damages.

Beyond joint and several liability reform, there are other mechanisms that the Province can explore to ensure that municipalities have access to insurance premiums that are predictable and sustainable for their ratepayers. For example, Ontario used to have a non-profit reciprocal insurance provider for municipalities, the Ontario Municipal Insurance Exchange (OMEX). These providers are common in other jurisdictions in Canada, however, OMEX ceased operations in 2016 with joint and several liability among the reasons that operations became challenging.^{xix} This resulted in limited provider options for Ontario municipalities.

As AMO suggested in their 2019 submission, the Province can consider if there are any provincial requirements or regulations that could better support the non-profit reciprocal municipal insurance market, and if there are actions that can be taken to better protect municipalities in Ontario in sourcing their insurance needs.^{xx}

The Province can also look at reducing municipal insurance rates through strategic investments in areas where municipalities are at risk for pricey claims. For example, the Province could increase investment to [ensure municipal infrastructure](#) is climate resilient and/or that municipalities have robust measures in place to protect them against cyberattacks.

Conclusion

The high cost of municipal insurance is not sustainable for Ontario municipalities resulting in extensive municipal budgetary pressures. While threats to municipalities are evolving and changing, the municipal insurance system has not evolved to account for these changes. The province should work in collaboration with the municipal sector to investigate increasing costs to municipal insurance rates and alternatives to the current regime.

Ideal solution

Our members would like to see the Province:

1. Collaborate with the municipal sector to investigate increasing costs to municipal insurance rates and find equitable solutions.

- ⁱ Association of Municipal Managers, Clerks, and Treasurers of Ontario (AMCTO): 2021 Pre-Budget Submission. February 2021. https://amcto.com/AMCTO/media/amcto_images/AMCTO-Pre-Budget-Submission-2021-Final.pdf
- ⁱⁱ Association of Municipal Managers, Clerks, and Treasurers of Ontario (AMCTO): 2021 Pre-Budget Submission. February 2021. https://amcto.com/AMCTO/media/amcto_images/AMCTO-Pre-Budget-Submission-2021-Final.pdf
- ⁱⁱⁱ Association of Municipalities of Ontario (AMO): “Building a Recovering to Strengthen of All of Ontario: A Provincial-Municipal Partnership for a Safe and Prosperous 2021”. February 2021. [AMO2021ProvincialPreBudgetSubmission20210219.pdf](https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2019/TowardsaReasonableBalanceAddressingGrowingMunicipalLiabilityandInsuranceCosts20191001.pdf)
- ^{iv} Law Commission of Ontario. “Joint and Several Liability Under the Ontario *Business Corporations Act*.” February 2011. <https://www.lco-cdo.org/wp-content/uploads/2011/05/joint-several-liability-final-report.pdf>
- ^v Association of Municipalities of Ontario (AMO): “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs”. October 2019. <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2019/TowardsaReasonableBalanceAddressingGrowingMunicipalLiabilityandInsuranceCosts20191001.pdf>
- ^{vi} Association of Municipalities of Ontario (AMO): “Local Share: Imagining a Prosperous Future for our Communities”. May 2017. <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/LocalShare/Reports/LocalShareProposedActionPlan20170525.pdf>
- ^{vii} Some recent examples include the [County of Elgin](#) (2022), [City of Clarence Rockland](#) (2021), [City of Stratford](#) (2019), and [The Nation Municipality](#) (2019).
- ^{viii} Stephanie Tran, Sharan Khela and André Côté: “Secure Smart Cities: Making Municipal Critical Infrastructure Cyber Resilient”. April 2022. <https://www.cybersecurepolicy.ca/secure-smart-cities>
- ^{ix} Intact Public Entities: “Escalating Cost of Municipal Claims”. 2022. https://www.intactpublicentities.ca/storage/media/files/News/Escalating_Cost_of_Municipal_Claims_2022.pdf
- ^x Intact Public Entities: “Escalating Cost of Municipal Claims”. 2022. https://www.intactpublicentities.ca/storage/media/files/News/Escalating_Cost_of_Municipal_Claims_2022.pdf
- ^{xi} Judy Dezell in interview with TVO “Ontario Municipalities Under Cyber Threat”. April 2022. <https://www.tvo.org/transcript/2699161>
- ^{xii} Nick Dunne, “Why are municipal-insurance rates skyrocketing in Ontario?”. TVO. April 2021. <https://www.tvo.org/article/why-are-municipal-insurance-rates-skyrocketing-in-ontario>
- ^{xiii} Daniel Henstra and Jason Thistlethwaite, “Climate Change, Floods and Municipal Risk Sharing in Canada”. Institute on Municipal Finance and Governance. 2017. https://munkschool.utoronto.ca/imfg/uploads/373/1917_imfg_no_30_online_final.pdf
- ^{xiv} Intact Public Entities: “Escalating Cost of Municipal Claims”. 2022. https://www.intactpublicentities.ca/storage/media/files/News/Escalating_Cost_of_Municipal_Claims_2022.pdf
- ^{xv} Insurance Bureau of Canada and the Federation of Canadian Municipalities: “Investing in Canada’s Future: The Cost of Climate Adaptation at the Local Level”. February 2020. <http://assets.ibc.ca/Documents/Disaster/The-Cost-of-Climate-Adaptation-Report-EN.pdf>
- ^{xvi} AMCTO: “Issue at a Glance: Joint and Several Liability”. August 2019. <https://www.amcto.com/getattachment/1f47958b-adf3-4f2a-9139-4bb15cd42bc5/.aspx>
- ^{xvii} AMCTO: “Issue at a Glance: Joint and Several Liability”. August 2019. <https://www.amcto.com/getattachment/1f47958b-adf3-4f2a-9139-4bb15cd42bc5/.aspx>
- ^{xviii} Association of Municipalities of Ontario (AMO): “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs”. October 2019. <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2019/TowardsaReasonableBalanceAddressingGrowingMunicipalLiabilityandInsuranceCosts20191001.pdf>
- ^{xix} Association of Municipalities of Ontario (AMO): “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs”. October 2019. <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2019/TowardsaReasonableBalanceAddressingGrowingMunicipalLiabilityandInsuranceCosts20191001.pdf>
- ^{xx} Association of Municipalities of Ontario (AMO): “Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs”. October 2019. <https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Reports/2019/TowardsaReasonableBalanceAddressingGrowingMunicipalLiabilityandInsuranceCosts20191001.pdf>