

CAs lobbying to change Ontario negligence law

BY BRIAN CHRISTMAS

Accountants don't want to be left holding the bag any more. Ontario chartered accountants have embarked on a campaign to reform the law governing how much liability they will bear if a negligence lawsuit is brought against one of their clients. They want to be on the same legal footing as jurisdictions in most of the United States and other countries.

The current system potentially could leave them 100 per cent responsible for a financial claim brought against a client company even though their role in the complaint might be negligible.

This system, known as "joint and several" liability, has been around since at least the 1930s and is considered outdated and inappropriate by chartered accountants. It has become a more pressing issue in this litigious age and especially in the post-Enron world that is seeing

aggrieved investors more inclined to sue companies that go awry.

If a court upholds an investor's claim and a financial judgment is made but the offending company has no assets to pay, "joint and several" liability puts the accountants and their firm on the hook.

"That is resulting, quite candidly, in some deals not being done here," said Brian Hunt, chief executive officer of the Institute of Chartered Accountants of Ontario (ICAO). Rather than consummating financial deals in Canada, some firms are taking them to the U.S., he said.

Most U.S. states don't have "joint and several" but rather a system known as proportionate liability, which makes accounting firms liable for only the percentage of a negligence claim that a court has found them to have been responsible for. ICAO has begun lobbying the Ontario government to get that kind of system enacted there with a goal to having it adopted across Canada.