

APPENDIX C

TO: UBCM Members
FROM: UBCM Executive
DATE: September 20, 1997
RE: LIABILITY ACTION PLAN: PRIORITIES TO
RESTORE THE BALANCE OF PUBLIC LIABILITY

ITEM #7(a)

October 22, 1997

**B.C. COMMUNITIES
AGENDA**

1. UBCM LIABILITY ACTION PROGRAM LAUNCHED IN 1985

In July 1985, UBCM launched a three-point Liability Action Program in response to the municipal liability crisis at that time. The three points were:

- legislation;
- risk management; and
- insurance.

2. PROGRAM RESULTS TO DATE HAVE ADDRESSED CERTAIN ISSUES

The Liability Action Program results include:

- the investigations into self-insurance resulted in the Municipal Insurance Association of BC
- the risk management program commenced by UBCM is now in the hands of MIA.
- the legislative objectives contained in Bill 30 (1987), that included:
 - indemnification of elected officials;
 - person protection from liability;
 - protection for failure to enforce building bylaws;
 - protection for public works nuisance cases; and
 - provision to put notice on title.

Subsequent stages of legislative reform have resulted in:

- *Fire Service Act* amended removing Section 26(2) [the mandatory two-month inspection of public buildings]. (1989)
- *Municipal Act* Section 699 and 700 amended to allow Fire Departments to undertake rescue initiatives without the threat of being liable. (1989)
- liability protection for building approvals where a professional had given assurances of Code compliance. (1990)
- amendments to the *Electrical Safety Act* and the *Fire Services Act* to remove unintended liability. (1992)
- enhanced contaminated sites protection (1996)

Although UBCM “relinquished” prime responsibility for self-insurance and risk management in 1987, UBCM has remained a primary advocate for legislative reform. UBCM has, however, become the sponsor of the Certified Professional Program for architects and engineers with special Building Code expertise. The Liability Action Program was integrated into the Modernizing the Municipal Act process in the early 1990’s but with the new legislative reform process underway this year, it is important to ensure it is not swept aside.

Building Inspection liability issues were squarely dealt with in the 1994 Convention approved “Foundations of Building Regulations. A joint local -provincial committee produced a report on Building Liability but it did not lead to legislation.

3. BUILDING INSPECTION IS THE PRIORITY

By any measure of local government concern, the question of building inspection liability remains a major issue:

- In 1993, UBCM received ten resolutions (see C17 to 26) and over 60 letters of support for the removal of what has become an unlimited, transferable warranty for building inspections. There were 4 resolutions on building liability in 1993 and more in 1995.
- Again in 1997, numerous resolutions have been received. All these resolutions have been examined in the context of the ongoing Liability Action Plan (see Appendix B for specifics).

Recently, as part of the current Safety Systems Review, UBCM and others have attempted to heighten the need for a definition of the roles and responsibilities of those involved in the building system.

4. OTHER RELATED DEVELOPMENTS

The Building Standards Branch of the Ministry of Municipal Affairs and Housing was eliminated as a consequence of Fall 1996 cutbacks. The policy role of the Branch is to continue in a limited way but matters such as Building Code interpretation are no long available. This leaves a major void.

The Building Officials Association received legislative recognition in 1997. UBCM not only supported this legislation but is contract administrator for BOABC.

5. THE RECOMMENDATIONS

That legislation be introduced to restore the balance of public liability in terms of building inspections as previously approved and advanced as set out in Appendix A.

That resolutions C44 to C51 be endorsed.

And that UBCM give priority to evaluating the legislative basis of the certified Professional Program as a matter for continuing involvement in the program.

LIABILITY ACTION PROGRAM

The elements of the Liability Action Program legislative reform package contains:

Fire Department Act: Amend the Fire Department Act Section 2, 3, 5 and any other parts that require that a municipality has to maintain a two-platoon system.¹

All-Terrain Vehicles: Request the provincial government to amend the regulations and establish a registration and identification for off-highway vehicles.²

MUNICIPAL ACT

Nuisance Actions: Amend Section 755.3 to extend the nuisance provisions to the normal operation of a drainage system or natural water course.

Nuisance Actions: Add Section 755.5 to state that a municipality is not liable for damages in any way arising from the provision of any service or function or the exercise of any power authorized by this Act, unless the municipality is guilty of gross negligence, and willful and deliberate misconduct.

Limitation Periods: Amend the Municipal Act Section 754 to ensure that the following elements are included in the limitation section: (a) the period should be clear and reasonable as to time; (b) the beginning of the period should be stated; and (c) there should be an "ultimate limitation" regardless of when the period starts and for building inspection claims the ultimate limitation period from the date of final inspection be five years.

Limitation Periods: Defend Municipal Act Section 755 to ensure that the two-month limitation period is retained.³

Limitation Periods: Add to section 755 to clarify that the two month period begins on the first date on which the damage physically occurs, whether or not it is discovered and that lack of knowledge of the requirements of this section shall not constitute a reasonable excuse within the meaning of this section.

Bylaw Compliance: Ensure that responsibility for bylaw compliance remains with owners/builders and allow local government to establish a development compliance certification process for professionals (engineers and architects) as under the Vancouver Charter.

Immunity from Liability: Amend to ensure that local governments are granted immunity from liability when a professional conducts a building inspection field review.

Good Samaritan Act: Amend to provide a defense against liability for fire service officers who render emergency rescue or medical services.

Federal Fisheries Act: Continue to press the Minister of Fisheries and Oceans to introduce a "dispute" resolutions process similar to that employed under the Environmental Protection Act, which would resolve conflicts between local government and the federal government without recourse to the Courts.

Other General Liability Issues: (part of the original legislative program)

Structured Settlements: Introduce legislation to provide for structured settlements for those who have suffered injury or incapacity.⁴

Joint and Several Liability: Abolish the principle of joint and several liability so that the co-defendant is liable only in proportion to their degree of responsibility.

Prejudgment Interest: Provide for interest for non-economic losses in personal injury cases only after sufficient medical information has been provided to the defendant.

Strategic Lawsuits Against Public Participation (SLAPP suits) - enact legislation that provides safeguards against lawsuits which are solely designed to threaten to limit public participation

¹ Status: proposal made and discussions have commenced.

² Some progress can be noted as part of a recent Motor Vehicle Act regulation requiring ATV drivers to be licensed.

³ The Executive has developed a proposal and discussions will commence with the Law Reform Commission and continue with the Attorney General, Minister of Municipal Affairs, Recreation and Housing and the Benchers of the Law Society of B.C.

⁴ Bill 66 that made such a provision was introduced but not passed at the 1989 legislative session.

RESOLUTION	TOPIC	COMMENT
C44	Municipal Act amendments to reduce building inspection liability.	In accord with the Liability Action Plan.
C45	Expand Municipal Act liability protection from plan checking to inspections.	In accord with the Liability Action Plan.
C46	Reduce the ultimate limitation period to 10 years.	This is in keeping with current policy to reduce the limitation period; however UBCM has previously advocated a 5-year limit.
C47	Eliminate “several” liability in specific circumstances. Design professionals to maintain adequate insurance.	In accordance with the existing Liability Action Plan. In accord with the recommendations in Foundations for Building Regulation
C48	Claims against local government for use of substandard materials. Legislative changes will provide for the advancement of education and certification standards.	In accord with the recommendations in Foundations for Building Regulation
C49	Similar liability protection as under the Vancouver Charter.	In accordance with the Liability Action Plan.
C50	No assumption of liability for plan checking or inspections (also see C45 from same sponsor).	In accordance with the Liability Action Plan.
C51	Similar liability protection as under the Vancouver Charter (also see C49 from same sponsor).	In accordance with the Liability Action Plan.