

From: Gary MacIsaac
To: Dawes, Jacquie CSCD:EX
Subject: Correspondence re: Joint and Several Liability
Date: Tuesday, January 5, 2016 1:39:23 PM
Attachments: 2015-12-18 Min Fassbender Civil Liability letter.pdf

Hi Jacquie. Happy New Year to you. S.22
S.22

I have been in contact with your office and we are scheduled for a brief call on Tuesday of next week. In advance of this call I am sending along correspondence from the UBCM President to Minister Fassbender dated December 18th of last year. I expect that this correspondence will have ended up on your desk as well but wanted to call and send it along in any event.

The issue of Joint and Several Liability is highly technical (at least to me it is) and the purpose of our letter is to raise the issue with the Minister and gauge support for moving forward in an incremental fashion. I certainly don't expect any answers on the call next week but just want to explain the origin of this work and our request to consider this in a timely manner.

Thanks
Gary

Gary MacIsaac
Executive Director, UBCM
60-10551 Shellbridge Way
Richmond B.C. V6X 2W9
(604) 270-8226 ext. 105 (Richmond)
(250) 356-2956 (Victoria)

December 18, 2015



The Honourable Peter Fassbender
Minister of Community, Sport and Cultural Development
PO Box 9056 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister,

I am writing to introduce you to a topic which has been of long concern to all local governments and affiliated bodies, not only in British Columbia but across Canada. The topic is the civil liability exposure of the local government sector – dramatic changes to which were brought about largely through judicial decisions beginning in the 1980's and, building on precedent, continuing into subsequent years. The most immediate consequences for local governments were the rapid expansion of municipal liability in negligence and nuisance generally, expanded liability for economic loss specifically, vastly increased local government exposure to construction claims, and an acute disturbance to the market for municipal insurance. Premiums soared even while coverage shrank.

Much has been said – and done – in this arena by all orders of government to help cope with the upheaval brought about since the seminal Supreme Court decision in *Kamloops v. Nielsen*. The formation of the Municipal Insurance Association in 1987 was a vital early outcome. As a second example, Bill 34 of 2012 was introduced to wide-spread appreciation, a new *Limitation Act* designed to deal with a serious problem. Prior to this necessary reform, local governments faced virtually unlimited exposure to liability in negligence long past the date of events giving rise to court action, making it nearly impossible for a local government to mount a defence.

While much has been done to mitigate the effects of expanded civil liability, there remain a number of policy areas that, not being the biggest nor most contentious of matters, have been stuck in neutral for many years. Today, I draw your attention to two such issues. They are issues that can be addressed with a measured, carefully balanced response. The UBCM, working with MIABC, wishes to open a dialogue on these issues with a view to introducing corrective legislation during the next legislative session.

Local Government Act, Section 290

The first issue arises from the construction sphere. A shield protecting local governments and their taxpayers has been in place for the past quarter century. Section 290 of the *Local Government Act* provides that, where a supervising professional (a registered professional engineer or architect) assumes responsibility for certifying compliance with building code requirements, local governments may not be held liable for any damage, loss or expense resulting from an error, omission or other neglect committed by that professional.

This legislation was introduced with the laudable goal of helping get responsibilities right on construction sites. Most would agree that it is proper to be held liable for one's own actions but not for the actions of others – this being the exact point of section 290. It is also the point of the Letters of Assurance scheme that is now a built-in component of the BC Building Code. Letters of Assurance are legal accountability documents required to clearly identify the responsibilities of key players in a construction project. LOA's document the parties responsible for design and field review (i.e., inspection) of construction.

The problem is that, as drafted, there is a hole in the shield. Section 290 deals only with one early stage in the construction cycle: plan approval in advance of the issuance of a building permit. But as you may well imagine, non-compliance with regulated building requirements may occur at any step during construction. True, it is crucial that building plans for complex buildings be prepared in accordance with code requirements. But it is no less important that complex buildings be constructed in accordance with the approved plans. Curiously, where section 290 stops short of dealing with the field reviews or inspections necessary during the course of construction, the Letters of Assurance scheme deals with the entire construction cycle.

Naturally, for local governments the concern that, given this hole in the legislative shield, they can still be named in liability actions where damages have occurred following a **negligent inspection** by a supervising professional. In other words, local governments potentially remain exposed to negligent actions of others.

There is a straightforward remedy. It is to amend section 290 to parallel the LOA scheme and deal with the field reviews (inspections) and functional testing that are, alongside plan approval, critical to achieving code compliance during construction.

Local Government Act, Section 288

The second issue concerns the legislative shield in place on the subject of “nuisances” (a civil wrong where Property B is injuriously affected by things such as noisy animals, overhanging trees limbs, noxious odours, vibrations, dust or escaped water on Property A). The law of nuisance is another area where judicial decisions, as opposed to government policy, have significantly altered the exposure of local governments to claims. BC was the scene of one seminal case, the 1979 decision in *Royal Anne Hotel Co. v. Ashcroft (Village)*.

However, as distinct from negligence actions, governments are more inclined to protect local governments from claims grounded in nuisance. When judicial interpretation began eroding the local government nuisance immunity derived from English common law, legislatures across Canada reacted by shoring up statutory protection, reasoning that local governments should not be unduly “punished” for providing services, such as storm drainage, for the public good. In BC, the result was the immunity contained in section 288 of the *Local Government Act* (similar legislation applies to Vancouver).

The problem is that section 288 is more narrowly conceived than legislation in some other provinces. Under BC legislation, the legislative shield provides that a local government and its taxpayers are immune from actions based on nuisance if the damages to Property B arise:

- in relation either to sewer, water and drainage systems or to dikes and roads, and
- due to breakdown or malfunction

The narrowness of BC legislation is defined with respect both to *subject* and *cause*.

Contrast this with legislation in Saskatchewan. The *subject* of nuisance protection is broad: “any public works, including streets, or from the operation or non-operation of a public utility”. The term “public utility” is further defined to include a broad range of works and services intended for local public benefit. The Alberta legislation is very similar. Further, in relation to *cause*, the Alberta and Saskatchewan statutes forego the narrow specification found in section 288. In our neighbouring provinces, a local government is “not liable in an action based on nuisance, or on any other tort that does not require a finding of intention or negligence, for any loss or damage.”

Section 288 has been on the statute books for almost 30 years and has not been seriously reviewed since initial adoption. We believe that there are amendments that should be made to section 288 that (a) are consistent with the original intent of the legislation to reinforce the nuisance shield, (b) can protect the interests of local governments and taxpayers while still balancing the interests of affected property owners, and (c) reflect advances in this sphere made more recently in other provinces.

We are open to, and available for, further dialogue around the two issues raised above. Perhaps we can discuss this further the next time that we meet. The protection of local governments from judicially-expanded liability is important to UBCM members – though we realize that great care must be taken to consider the interests of individuals who have suffered damage or harm. We want to work toward balanced remedies.

Yours truly,

A handwritten signature in dark ink, appearing to read "Al Richmond". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Chair Al Richmond
UBCM President

cc: Chair Teunis Westbroek, Municipal Insurance Association of BC

From: [Dawes, Jacquie CSCD:EX](#)
To: [Gedney, Vanessa R CSCD:EX](#)
Subject: FW: Draft MCSCD-UBCM Memorandum of Agreement
Date: Monday, February 1, 2016 4:27:56 PM
Attachments: MOA- Draft UBCM Revisions November 5th.pdf

Jacqueline Dawes
Deputy Minister

From: Jared Wright [mailto:jwright@ubcm.ca]
Sent: Thursday, November 19, 2015 2:26 PM
To: Faganello, Tara CSCD:EX
Cc: Dawes, Jacquie CSCD:EX; Paget, Gary CSCD:EX; Brazier, Heather M CSCD:EX; Jensen, Chris A CSCD:EX; Gary MacIsaac; Glen Brown; Jared Wright
Subject: Draft MCSCD-UBCM Memorandum of Agreement
Dear Assistant Deputy Minister Faganello,
On behalf of Gary MacIsaac, please find attached a draft Memorandum of Agreement with proposed UBCM amendments for your review.
In brief, we have proposed three changes pertaining to scope, governance, and timelines.
s.21

st

We look forward to our call tomorrow with Deputy Minister Dawes and further discussion.
Kind regards,
Jared

Jared Wright
Director of Advocacy and Government Relations
Union of British Columbia Municipalities
525 Government Street, Victoria, BC
V8V 0A8
(w) 250-387-0891
(c) 604-836-4270



**DRAFT MEMORANDUM OF AGREEMENT
ON LOCAL GOVERNMENT COMPENSATION AND
FINANCE**



Between the
**BRITISH COLUMBIA MINISTER OF COMMUNITY, SPORT
AND CULTURAL DEVELOPMENT**
and the
UNION OF BRITISH COLUMBIA MUNICIPALITIES (UBCM)

s.13,s.17

s.13,s.17

DRAFT

s.13,s.17

165465

Tubman, Tammy CSCD:EX

From: Sasha Pryn timer <sprynn@ubcm.ca>
Sent: Wednesday, December 2, 2015 11:39 AM
To: Minister, JAG JAG:EX
Cc: ralph.goodale@parl.gc.ca; JAG Policing and Security Branch JAG:EX; Hoskins, Jeannie JAG:EX; Minister, CSCD CSCD:EX
Subject: Letter from UBCM President Al Richmond
Attachments: 2015-12-02_Minister Anton re DNA Analysis Costs.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: FYI/File

Good morning,

Please find attached a letter from UBCM President, Al Richmond.

Please do not hesitate to contact me should you have any questions or concerns regarding the attachment.

With best regards,
Sasha

Sasha Pryn timer
Office Coordinator
Union of BC Municipalities
525 Government St, Victoria, BC V8V 0A8
e: sprynn@ubcm.ca
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10/10/2016

10/10/2016

December 2, 2015

The Honourable Suzanne Anton
Attorney General and Minister of Justice
Parliament Buildings
Victoria, British Columbia
V8V 1X4

RE: DNA Analysis Costs to Local Governments

Dear Minister Anton,

I am writing with regard to your decision to transfer a portion of provincial costs resulting from the recent federal-provincial *Agreement Respecting Biological Casework Analysis 2014-2024 (BCAA)* to local governments with populations greater than 5,000. I am concerned both with the process leading to this decision and its fairness. I also believe that there are matters of jurisdiction and authority that have not been addressed by the Ministry of Justice in its handling of this decision.


It is anticipated that this decision will allow the Province of British Columbia to maintain its historical base financial contribution, while transferring the majority of additional costs to local governments. In 2016/17 alone, \$2.90 million in unexpected costs will be shifted onto municipalities with populations greater than 5,000. Given the impact of this transfer, the lack of any consultation with the Union of BC Municipalities prior to sending out bills to local police agencies is a significant oversight. The Province has committed itself to a funding approach without any knowledge of the ability of local governments to pay for these services. Not only does this create additional pressure on local finances, the decision flies in the face of the "One Taxpayer" principle so often invoked by the provincial government.

While all provinces and territories are faced with the same cost pressures related to DNA analysis services, I am not aware of any other province, other than British Columbia, that is shifting a portion of these costs to local government. If it does not make sense for local governments in Alberta or Saskatchewan to be contributing to these fees, I would suggest that is also true in British Columbia. From our perspective, the provincial and federal orders of government have an obligation to fund DNA analysis services, and cost shifting to local government is not acceptable. Given the lack of rationale by the Ministry of Justice for its decision, the cost shift to local government is both unwarranted and unfair.

Finally, I would also add that it remains unclear by what authority the Ministry of Justice has directed the Organized Crime Agency of BC to send bills for DNA analysis services to local governments. Has this decision been authorized through an Order in Council? If so, please indicate the regulation and its effective date.

In light of these concerns, I am requesting that you reverse the decision of the Ministry of Justice to fund a portion of its DNA analysis services costs under the BCAA by passing these along to local governments. I would be pleased to discuss this matter further and meet with you at your convenience.

Sincerely,



Al Richmond
President
Union of BC Municipalities

CC: *The Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness
Canada*

*The Honourable Peter Fassbender, Minister of Community, Sport, Cultural Development
and Minister Responsible for Translink*

Lori Wanamaker, Justice Reform and Deputy Solicitor General, Ministry of Justice

*Clayton J.D. Pecknold, Assistant Deputy Minister and Director of Police Services,
Policing and Security Branch, Ministry of Justice*

Holland, Jodie CSCD:EX

165492.

From: Sasha Pryn timer <sprynn@ubcm.ca>
Sent: Friday, December 11, 2015 10:00 AM
To: Minister, CSCD CSCD:EX
Subject: RUSH-Letter from UBCM President
Attachments: 2015-12-10 Min Fassbender MOU.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Minister's Response

Good morning,

Please find attached a letter from UBCM President, Chair Al Richmond.

Please do not hesitate to contact me should you have any questions or concerns regarding the attachment.

With thanks, and best regards,
Sasha

Sasha Pryn timer
Office Coordinator
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165174

December 10, 2015

Honourable Peter Fassbender
Minister of Community, Sport and Cultural Development
PO Box 9056 Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister Fassbender,

I wish to thank you for taking the time to meet with our Executive on November 27th. We appreciated the opportunity to discuss a range of priorities, as well as your commitment to future collaborative engagement on these issues.

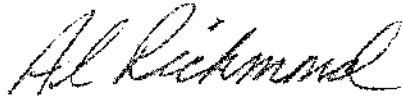
Following our meeting with you, the UBCM Executive reviewed and discussed the proposed Memorandum of Understanding (MOU) on Compensation. The Executive has consistently maintained the need to see concurrent progress on our respective priorities of compensation and *Strong Fiscal Futures* (SFF). This position is partly founded on a year's worth of efforts with ministry staff and the Honourable Coralee Oakes to develop a draft MOU that contemplated work on both the SFF priority of creating an Infrastructure Bank and reviewing compensation. The current proposed MOU's exclusive focus on compensation, and failure to commit to action on the Infrastructure Bank, contradicts UBCM's long-standing position.

In addition, the Executive believes that the proposed MOU on excluded compensation is too narrow in scope, and that a more comprehensive framework of analysis is required. The proposed changes from a previous draft MOU will be insufficient to garner a true understanding of cost drivers. Specifically, I would reference UBCM policy and previous UBCM conversations with the Province with regard to arbitrated settlements and their impact on local government expenses.

We sincerely wish to build upon, and strengthen, our existing relationship with the Province. We also want to pursue a mutually beneficial shared agenda that supports local government fiscal accountability and sustainability. However, the one-sided nature of the current MOU fails to reflect that partnership approach. As such, the Executive has re-affirmed the need to see concurrent progress on both compensation and *Strong Fiscal Futures*.

We are open to, and available for, further dialogue around our shared priorities as they pertain to strengthening the local government finance system and improving taxpayer value.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Richmond". The signature is fluid and cursive, with the first name "Al" being more prominent.

Chair Al Richmond
UBCM President

Colliness, Shari D CSCD:EX

From: Robbins, Lia CSCD:EX
Sent: Monday, November 9, 2015 11:04 AM
To: 'mchiang@ubcm.ca'
Subject: Electoral Area Directors Forum 2016

Hello Marylyn,

I wanted to get in touch as we received your letter and invitation for Minister Fassbender to attend the Electoral Area Directors Meeting on Tuesday, February 2nd between 1:00-1:30pm. I am pleased to let you know that Minister Fassbender will be able to attend on this day and during this time. I have held this time in Minister Fassbender's calendar and look forward to receiving further details closer to the date. In the meantime, please don't hesitate to let me know if you have any questions.

Thank you!
Lia

Lia Robbins | Administrative Coordinator
Minister's Office of Community Sport & Cultural Development
Minister Responsible for Translink
Room 310 – Parliament Buildings
Tel: 250 387-6478
Website: www.gov.cscd.bc.ca

Colliness, Shari D CSCD:EX

From: Robbins, Lia CSCD:EX
Sent: Tuesday, November 24, 2015 11:59 AM
To: 'Marylyn Chiang'
Subject: RE: Minister Fassbender - Electoral Area Directors Meetings

Thanks Marylyn,

I will be in touch once I have confirmation that PS Linda Reimer is able to attend.

Thank you,

Lia Robbins | Administrative Coordinator
Minister's Office of Community Sport & Cultural Development
Minister Responsible for Translink
Room 310 – Parliament Buildings
Tel: 250 387-6478
Website: www.gov.cscd.bc.ca

From: Marylyn Chiang [<mailto:mchiang@ubcm.ca>]
Sent: Tuesday, November 24, 2015 11:58 AM
To: Robbins, Lia CSCD:EX
Subject: Re: Minister Fassbender - Electoral Area Directors Meetings

Hi Lia,

That's unfortunate about Minister Fassbender. We would be interested in having Linda Reimer in place.

Thank you for your help with this.
Marylyn

From: "Robbins, Lia CSCD:EX" <Lia.Robbins@gov.bc.ca>
To: "mchiang@ubcm.ca" <mchiang@ubcm.ca>
Sent: 11/24/2015 11:50 AM
Subject: Minister Fassbender - Electoral Area Directors Meetings

Hi Marylyn,

I wanted to get in touch as due to unforeseen commitments and travel in Minister Fassbedner's schedule, he will no longer be able to attend the Electoral Area Directors Meeting on Tuesday, February 2nd. If you'd like, I can check with our Parliamentary Secretary, Linda Reimer to see if she can attend and speak on behalf of Minister Fassbender? Please let me know if you think this would be suitable and our office will get in touch with her office to make the arrangements.

We appreciate your understanding.

Thank you,

Lia Robbins | Administrative Coordinator

Minister's Office of Community Sport & Cultural Development

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Room 310 – Parliament Buildings

Tel: 250 387-6478

Website: www.gov.cscd.bc.ca

Colliness, Shari D CSCD:EX

From: Robbins, Lia CSCD:EX
Sent: Friday, December 11, 2015 11:27 AM
To: 'Marie Crawford'
Cc: Schmidt, Birgit CSCD:EX
Subject: RE: Next UBCM Executive Meeting

Hi Marie,

Thank you for sending over these details, that's great. As always it's difficult to know the exact schedule for Minister Fassbender until closer to however, I feel as though 8:30-9:30am would be ideal for Minister Fassbender so that he can potentially attend other meetings/events that day. Would this work for everyone on your end?

Thank you,

Lia Robbins | Administrative Coordinator
Minister's Office of Community Sport & Cultural Development
Minister Responsible for Translink
Room 310 – Parliament Buildings
Tel: 250 387-6478
Website: www.gov.cscd.bc.ca

From: Marie Crawford [<mailto:mcrawford@ubcm.ca>]
Sent: Friday, December 11, 2015 10:33 AM
To: Robbins, Lia CSCD:EX
Cc: Schmidt, Birgit CSCD:EX
Subject: Re: Next UBCM Executive Meeting

Hi Lia
Thanks for connecting early in advance of the January meeting.

We usually do Committee meetings all day Thursday, and Friday is when the Executive meets as a full board, so yes Friday is the best day for UBCM Executive to meet with the Minister. Can we tentatively say 8:30 am and you can get back to me as to whether this time might work with the Minister's schedule? We will meet all of Friday morning up until about 12 noon so there is some flexibility. The meeting will be held at ^{s.15}

Look forward to hearing back, and thanks for reaching out.

All the best,
Marie

From: "Robbins, Lia CSCD:EX" <Lia.Robbins@gov.bc.ca>
Date: Friday, 11 December, 2015 10:19 AM
To: again <mcrawford@ubcm.ca>
Cc: "Schmidt, Birgit CSCD:EX" <Birgit.Schmidt@gov.bc.ca>
Subject: Next UBCM Executive Meeting

Hi Marie,

I have noted that the next UBCM Executive Meeting will be held on Thursday, January 21st and Friday, January 22nd. I wanted to reach out and see if and when Minister Fassbender would be required to attend one of these meetings. As an FYI, Minister Fassbender will not be in town on the Thursday, so the Friday is our preference if possible.

Thank you and I look forward to receiving details from you.

Have a great day,
Lia

Lia Robbins | Administrative Coordinator
Minister's Office of Community Sport & Cultural Development
Minister Responsible for Translink
Room 310 – Parliament Buildings
Tel: 250 387-6478
Website: www.gov.cscd.bc.ca

Colliness, Shari D CSCD:EX

From: Robbins, Lia CSCD:EX
Sent: Monday, January 11, 2016 3:10 PM
To: 'lcookson@ubcm.ca'
Subject: Minister Fassbender - AVICC AGM

Hello Liz,

I wanted to get in touch as Minister Fassbender has confirmed that he would welcome the opportunity to attend and speak at the AVICC AGM & Convention in Nanaimo on Friday, April 8th. I have blocked time off in his calendar to speak at 3:50pm as well as potentially attend the Welcome Reception that evening. I will need to get further details and confirmation from the Minister on how long he plans to stay in Nanaimo for.

In the meantime, could you let me know what is needed in order to register the Minister? Additionally, there will be one staff member (to be determined) who will travel and attend with the Minister. Is there a designated hotel in the area that guests are staying at?

Thanks very much and I look forward to hearing back from you.

Lia

Lia Robbins | Administrative Coordinator
Minister's Office of Community Sport & Cultural Development
Minister Responsible for Translink
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