Item	03
Manager's Report No.	30
Council Meeting	02/11/25

TO: CITY MANAGER NOVEMBER 8, 2002

FROM: CITY SOLICITOR

SUBJECT: UBCM RESPONSE TO DISCUSSION PAPER ON CIVIL LIABILITY

PURPOSE: To respond to Council's request for information on the UBCM Response.

RECOMMENDATION:

1. **THAT** Council receive this report for its information.

REPORT

At its regular meeting of October 21, 2002 Council received as an item of correspondence a letter from the UBCM to all Municipalities and Regional Districts relating to the Province's Discussion Paper on Civil Liability. *Attached* was a copy of the UBCM's letter to the B.C. Attorney General setting out the UBCM's position on several issues of importance to local governments in this Province, including a) joint and several liability; b) the ultimate limitation period; and c) vicarious liability and non-delegable duty.

Council requested a report on the UBCM response.

As a general comment, the UBCM's position on the matters discussed in its letter, in staff's view, reflect the best interests of the City of Burnaby as well.

JOINT AND SEVERAL LIABILITY

Under current B.C. law, where more than one defendant is found liable for the plaintiff's loss, the Court must allocate liability (by percentages) between the defendants. However, under the doctrine of joint and several liability, the plaintiff can recover all or any part of its judgment against one or more of the defendants as it sees fit, without being limited by the percentages of liability. It is then left to the defendant(s) who has paid the plaintiff to seek to recover the proportionate shares from the other defendants.

This can of course result in the situation where the plaintiff recovers the full judgment against a defendant found only 5% at fault, leaving it up to that defendant to try to recover the 95% from the other defendants.

Understandably, plaintiffs look to recover from "deep pocket defendants", a category into which local governments generally fall.

The UBCM recommends that joint and several liability be replaced with several and proportionate liability, whereby defendants are liable to the plaintiff only for their proportionate shares.

ULTIMATE LIMITATION PERIOD

Under the *B.C. Limitation Act*, the limitation periods for most types of claims involving municipalities are either 2 or 6 years.. However, there are provisions that delay the commencement of the running of the limitation period, such as the person having the right of action being a minor, or the person having the right of action not being aware of the facts giving rise to the right of action.

A scenario where the latter situation is particularly problematic is in the case of building approval/inspection negligence claims. If, for example, a building is negligently constructed on inadequate foundations or fill, the resulting damage may take years to develop and even longer to become readily apparent. The acts of negligence would have occurred during construction (and in the case of local government involvement, at the building permit or inspection stage) and yet the running of the limitation period may be postponed for years. With staff turnover and lack of full record keeping it becomes more and more difficult to investigate and defend such claims as the years, and even decades, pass. This, in combination with joint and several liability, works a real hardship on municipalities, as the original owner, builder, architect, and sub-contractors may have long ceased to exist, leaving the municipality as the only party against whom the plaintiff can easily recover.

The current ultimate limitation period is 30 years. The UBCM is recommending that this be reduced to 10 years, except in limited cases where fraud is involved.

VICARIOUS LIABILITY AND NON-DELEGABLE DUTY

Under current law, employers may be held vicariously liable for the acts of their employees, even if those actions are wrongful, intentional, and would not be condoned by the employer, provided that those acts take place during or are connected with that person's employment.

The UBCM is recommending that local governments not be responsible for the intentional misconduct of employees that would not, under any circumstances, be condoned or accepted by the employer.

The doctrine of non-delegable duty arises in the context of vicarious liability. At common law, a principal is not liable for the negligent acts of its independent contractor, unless there was negligence in the hiring of that contractor. In the case of duties imposed by statute, however, the Courts have held

that the duty is non-delegable, in the sense that if the body charged with the performance of the duty (e.g. to maintain highways) elects to contract the work involved to a third party, the principal (normally a level of government or government body) cannot, vis a vis the public, transfer liabilities related to the performance of the work to the independent contractor. The principal will be vicariously liable for the contractor's negligence regardless of the care taken in selecting the contractor.

The UBCM is recommending that the doctrine of non-delegable duty be abolished and that local governments not be held vicariously liable for the acts of their independent contractors where no fault can be attributed to the local government in the selection of the contractor.

CONCLUSION

The recommendations made by the UBCM to the Attorney-General would, if implemented, work to the benefit of all local governments in the Province, including the City of Burnaby.

Bruce Rose
City Solicitor

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Attachment

Copy: Chief Building Inspector

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