



ADDITIONAL COUNCIL AGENDA

WEDNESDAY, February 12, 2014

6. DEPUTATIONS

(e) The Mikey Network

Hugh Heron, Chairman and Bob Finnigan, Vice President of The Mikey Network will provide information about “The Mikey Network” and the donation of 250 Mikey defibrillators being given to the Peel District School Board.

12. CORRESPONDENCE

(a) Information Items: I-8-I-10

I-8 An email dated February 7, 2014, from the Association of Municipalities of Ontario regarding the recent developments in Joint and Several Liability – Municipal Action Needed.

Received for information

I-9 A letter dated February 11, 2014, from Mayor McCallion regarding Private Member’s Bill, Bill 69 – “*An Act representing payments made under contracts and subcontracts in the construction industry*”.

Received for information

I-10 A letter dated February 11, 2014, from the Land and Water Program Manager from the Environmental Defence Canada regarding Mississauga’s Natural Heritage & Urban Forest, Growing the Greenbelt initiative.

Unfinished Business UB-1
Received for information

(b) Direction Item: D-2

D-2 An email dated February 11, 2014, from the Association of Municipalities of Ontario requesting municipalities register with Transport Canada to receive annual reports about dangerous goods transported by Canadian railways.

Direction Required

14. MOTIONS

- (g) That the Association of Municipalities of Ontario's entitled "The Case for Joint and Several Liability Reform in Ontario be endorsed, that the private resolution introduced by Randy Pettapiece, MPP be supported, that the Province be requested to address the alarming rise in municipal insurance premiums due to rising litigation and that a copy of the resolution be send to the Premier, the Minister of Attorney General, the Minister of Municipal Affairs and Housing, all local MPPs, the Association of Municipalities of Ontario and the Federation of Canadian Municipalities.

Direction Item D-1

Information Item I- 8

I-8

Crystal Greer

From: Ivana Di Millo
Sent: 2014/02/07 4:05 PM
To: Crystal Greer
Subject: FW: Joint and Several Liability - Municipal Action Needed

COUNCIL AGENDA
FEB 12 2014

From: AMO Communications [<mailto:communicate@amo.on.ca>]
Sent: 2014/02/07 2:57 PM
To: Ivana Di Millo
Subject: Joint and Several Liability - Municipal Action Needed

TO THE IMMEDIATE ATTENTION OF THE CLERK AND COUNCIL

February 7, 2014

Recent Developments in Joint and Several Liability – Municipal Action Needed

Two recent developments are worthy of the immediate written support of municipal councils and municipal solicitors.

The first is a private member’s resolution introduced by Randy Pettapiece, MPP for Perth-Wellington. It calls on the government to implement comprehensive reform to joint and several liability by June 2014. Debate on this motion is scheduled for February 27, 2014. While a resolution of the Ontario Legislature is not a specific legislative plan, it does capture the spirit of municipal concerns. Mr. Pettapiece has written directly to all councils seeking your support; AMO encourages your reply.

Of immediate significance, the Ministry of the Attorney General has recently written to members of the legal community seeking their input on two specific proposals under consideration. Feedback is due by February 14, 2014. The proposals include a modified version of proportionate liability that applies in cases where a plaintiff is contributorily negligent (the Saskatchewan model). Also under consideration is a limit on awards such that a municipality would never be liable for more than two times its proportion of damages (the Multiplier model). AMO supports the adoption of both of these measures.

This is a positive development for municipalities and a step in the right direction. The adoption of both reforms would be a significant incremental step to addressing a pressing municipal issue. The written support of municipal councils and solicitors is requested. Below is a draft letter for municipalities to submit to the provincial government by February 14, 2014. Please add your voice of support.

As you know, municipal governments have long advocated for liability reform because the legal regime of joint and several liability makes municipalities and property taxpayers an easy target for litigation.

It has been two years since AMO conducted the first ever municipal insurance survey, which found that municipal liability premiums had increased 22 per cent over 5 years and 4 years since AMO presented a

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comprehensive report detailing municipal challenges to the Attorney General. We have argued for some time that the heavy insurance burden and legal environment is unsustainable for Ontario's communities.

AMO Contact: Matthew Wilson, Senior Advisor, mwilson@amo.on.ca - 416.971.9856 ext. 323.

The Honourable John Gerretsen
Attorney General
McMurtry-Scott Building
720 Bay Street -- 11th Floor
Toronto ON M7A 2S9

Dear Attorney General:

[I or we] support the government's consideration and adoption of measures which limit the punishing impact of joint and several liability on municipalities.

The provisions of the *Negligence Act* have not been updated for decades and the legislation was never intended to place the burden of insurer of last resort on municipalities. It is entirely unfair to ask municipalities to carry the lion's share of a damage award when at minimal fault or to assume responsibility for someone else's mistake. Other jurisdictions have recognized the current model of joint and several liability is not sustainable. It is time for Ontario to do the same.

If this situation continues, the scaling back on public services in order to limit liability exposure and insurance costs will only continue. Regrettably, it will be at the expense of the communities we all call home.

For this reason, [I or we] support the adoption of both models under consideration as a significant incremental step to addressing a pressing municipal issue.

Sincerely,

Name

cc: The Honourable Kathleen Wynne, Premier of Ontario
The Honourable Linda Jeffrey, Minister of Municipal Affairs and Housing

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<input type="checkbox"/> Direction Required	<input type="checkbox"/> Resolution / By-Law
<input type="checkbox"/> Community Services <input type="checkbox"/> Corporate Services <hr/> <input type="checkbox"/> Planning & Building <input type="checkbox"/> Transportation & Works	For <input type="checkbox"/> Appropriate Action <input checked="" type="checkbox"/> Information <input type="checkbox"/> Reply <input type="checkbox"/> Report

I-9



COUNCIL AGENDA
FEB 12 2014

OFFICE OF THE MAYOR

February 11, 2014

The Honourable Kathleen Wynne
Premier of Ontario
Legislative Building – Room 281
Queen’s Park
Toronto, Ontario
M7A 1A1

<input checked="" type="checkbox"/> Receive	<input type="checkbox"/> Resolution
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<input type="checkbox"/> Community Services <input type="checkbox"/> Corporate Services <hr/> <input type="checkbox"/> Planning & Building <input type="checkbox"/> Transportation & Works	For <input type="checkbox"/> Appropriate Action <input checked="" type="checkbox"/> Information <input type="checkbox"/> Reply <input type="checkbox"/> Report

Dear Madam Premier:

At the Large Urban Mayors’ Caucus of Ontario (LUMCO) meeting on Friday, January 7, 2014, we discussed the difficulty that municipalities will face if the Private Member’s Bill, Bill 69 – *An Act representing payments made under contracts and subcontracts in the construction industry*, was to be passed. There are many reasons for our concern but what is critical is that the Bill will affect municipalities’ ability to exercise due diligence over public funds and limit our contractual freedom to negotiate with contractors and suppliers. If the Bill passes into law, there could potentially be a significant financial impact on owners, such as the City of Mississauga.

Please find enclosed the corporate report and resolution of the City of Mississauga on this important issue. There has been little, if no, consultation with municipalities on this pending legislation, which is unacceptable. Bill 69 should not be passed into law.

Sincerely,

HAZEL McCALLION; C.M., LL.D.
MAYOR

- cc: Tim Hudak, Leader of the Official Opposition
- Andrea Horwath, Leader of the New Democratic Party of Ontario
- The Honourable Linda Jeffrey, Minister of Municipal Affairs and Housing
- Mississauga MPPs
- Steven Del Duca, MPP, Vaughan
- Pat Vanini, Executive Director, AMO
- LUMCO Members
- Members of Council

Enc.



THE CORPORATION OF THE CITY OF MISSISSAUGA
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO L5B 3C1
TEL: (905) 896-5555 FAX: (905) 896-5879

I-9(a)



Corporate Report

Clerk's Files

Originator's
Files

DATE: October 9, 2013

TO: Chair and Members of General Committee
Meeting Date: October 23, 2013

FROM: Mary Ellen Bench, BA, JD, CS
City Solicitor

SUBJECT: Bill 69 - *Prompt Payment Act, 2013*

- RECOMMENDATION:**
1. That the report titled "Bill 69 – *Prompt Payment Act, 2013*" by the City Solicitor be received for information.
 2. That staff be authorized to make submissions to the Standing Committee on Regulations and Private Bills to outline the concerns with the proposed legislation as raised in this report from the City Solicitor, titled "Bill 69 – *Prompt Payment Act, 2013*".
 3. That the report from the City Solicitor, titled "Bill 69 – *Prompt Payment Act, 2013*" be forwarded to the local MPPs and the Association of Municipalities of Ontario for their information.

**REPORT
HIGHLIGHTS:**

- Bill 69 is a Private Member's Bill that received First Reading on May 13, 2013 and Second Reading on May 16, 2013. The Bill was referred to the Standing Committee on Regulations and Private Bills.
- Apparently the Bill has been in the works for up to 2 years within the construction industry but there does not seem to have been much, if any, consultation with owners. Staff only became aware

I-9(b)

of the Bill in late August.

- The Bill imposes a significant limit on the freedom of contract for construction services in ways that curtails the rights of construction owners such as the City. The legislation cannot be contracted out - all contracts will be deemed to be amended in order to comply with the legislation. There is no ability for the owners and contractors to freely negotiate the most suitable payment arrangements in their projects.
- Some concerns with the proposed legislation includes: a) stringent timelines on making payments by the owner; b) restrictions on the payment certification process in favour of contractors; c) allowing contractors to request payment on the basis of reasonable estimates of work done or for services and materials to be supplied in the future in certain circumstances; d) statutory 10% holdback is the only money that can be held back, which means that the City can no longer hold warranty and other reserves to ensure quality work being completed; and e) potentially increase cost to owners.

BACKGROUND:

In late August, it came to Legal Services' attention that Bill 69, being *An Act respecting payments made under contracts and subcontracts in the construction industry*, or the *Prompt Payment Act, 2013*, has been referred to the Standing Committee on Regulations and Private Bills after receiving First and Second Reading in May 2013. Bill 69 is a Private Member's Bill introduced by Liberal MPP Steven Del Duca. At the time of this report, the Standing Committee has not established any dates or process for review and/or consultation of this Bill.

This proposed legislation was put forward based on the efforts of the construction industry, led by the Ontario caucus of the National Trade Contractors Coalition of Canada and the Ontario General Contractors Association. To staff's understanding, there has been minimal, if any, consultation with owners of constructions, such as municipalities who are major owners of construction projects.

COMMENTS:

At the heart of the proposed legislation is a significant limit on the freedom of contract for construction services in ways that restricts

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construction owners' rights. The legislation cannot be contracted out - all contracts are deemed to be amended in order to comply with the legislation. There is no ability for the owners and contractors to freely negotiate the most suitable payment arrangements in their projects. This is evident in the key provisions of the Bill, which raises the following major issues of concern:

1. Extremely short timelines to make payment:

- Under the Bill, owners must pay lien holdbacks to GCs within one (1) day of the *Construction Lien Act* no longer requiring the owner to retain the holdback. This does not allow for any reasonable circumstances whereby payment cannot be made within one day, such as the need to complete title searches to ensure that the titles are clear of liens in major projects spanning many properties prior to release of holdback payment, or the practical reality that often payment processing requires more than one day to be completed.
- Under the proposed legislation, either the contract allows for payment becoming payable at least every 31 days after the first day of services or materials, or it is deemed to be payable within 20 days upon submission of progress payment application. These timelines do not take into account the realities of the need to review work and the certification of payments process. Often, additional information is required before an owner can properly certify work. Depending on the extent of the work completed, time is required to adequately review the work and discussions between the owner and general contractors are often necessary before payment can be certified.

2. If the contract does not stipulate payment every 31 days from the day that work starts as noted above, the contractor can provide "reasonable estimates" of the work done and that would be sufficient to support payment application. The contractor can also request to be paid for services and materials that "will be supplied" to the improvement, rather than simply requesting payment for work that has been completed or materials already supplied. It is standard (and reasonable) practice that payment will only be paid

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for work actually done, not "reasonably estimated" to have been done. This also begs the question as to how work can be properly reviewed and certified for payment, when only a reasonable estimate is being provided or when future work is included.

3. Payment applications are deemed to be approved 10 days after submission by the contractor, unless the owner provides within that 10 days full particulars of the problems in writing. There are also limits placed on what an owner can refuse to certify and it is unclear as to how that would operate in reality.
4. Instead of allowing for the dispute resolution mechanisms agreed upon in a contract to apply where there are disputes over the amount of payment due, under the Bill, if payments are not made in accordance with the legislation, the contractor can suspend work or terminate the contract upon seven days' notice.

As noted above, given the reality of the time and discussions required prior to payment being properly certified, it would be very difficult to comply with the legislated timeframe. The ability of contractors to suspend work or terminate the contract upon such short notice could have significant impact on public works as many major construction projects have a short window of opportunity to complete due to the weather conditions in winter. Further, there will likely be additional costs to the owner and potentially significant delay to project completion for every demobilization and remobilization by the general contractor or its subcontractors if they suspend work.

5. Holdbacks other than those required under the *Construction Lien Act* will be prohibited under the Bill. This significantly limits the flexibility and ability of owners to utilize payment tools to ensure that work is completed to standard. For example, currently, the City's primary construction contracts that are administered by the Facilities and Property Management Division require certain warranty and deficiency reserves to be withheld, to protect the City if the contractor does not carry out warranty work or correct deficiencies. These reserves will be prohibited under the proposed legislation and forces the City to initiate litigation in order to enforce our claims in cases of deficiencies. Alternatively, the City

I-9(e)

could request letters of credit or additional bonding requirements prior to making an award to a contractor, which not only could lead to an increase in the bid price, but which is administratively challenging and not preferred by either the City or many contractors in the industry.

6. Under the proposed legislation, before entering into a contract, owners must provide to the contractor financial information as prescribed by the regulations in support of the owner's financial viability to carry out the work, and the contractor may request at any time for further updated financial information at which time the owner must promptly provide such information. This right is extremely broad, and there are no limits as to how often a request for update financial information would be made. As a side note, not only would this apply to public and corporate owners, but individual homeowners retaining contractors to do work on their property will also be subject to this legislation and the requirement to produce their financial records to contractors.

The above concerns have significant impact on the City and other owners of construction projects, including the Province and the broader public sector. This bill is currently being reviewed by some municipalities, but we are not aware of any municipality having taken a position on it at this time. It is recommended that this report be shared with our local MPPs and the Association of Municipalities of Ontario as this legislation has on municipalities across Ontario.

FINANCIAL IMPACT: If the Bill is passed and becomes law, there could potentially be significant financial impact on owners such as the City. There are stringent requirements with respect to payment to contractors under the legislation. Failure to comply – even for bona fide reasons – could potentially mean the suspension of work by general contractors and/or their subcontractors, which could bring upon delay in project completion and delay claims, as well as additional costs associated with demobilization and remobilization of forces to complete the work. The legislation also removes the right to include finance tools to ensure performance such as warranty and maintenance reserves, which means that owners would resort to expensive litigation if deficiencies are not resolved in accordance with the contract.

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Alternatively, owners could ask for security (such as a letter of credit or maintenance bond) as a condition of contract award to protect themselves, but that would mean additional administrative resources and potentially higher bid prices being submitted for construction projects as bidders try to recover their cost to obtain these instruments.

CONCLUSION:

Bill 69, being the *Prompt Payment Act, 2013*, is a Private Member's Bill that has significant impact on owners' rights in construction projects. It has been developed based on the construction industry's input, but unfortunately, with minimal – if any – consultation with owners of major projects in Ontario, such as municipalities. The Bill has been referred to the Standing Committee of Regulation and Private Bills, and it is proposed that the concerns as raised in this report be presented to the Committee. It is also recommended that this report be forwarded to our local MPPs and the Association of Municipalities of Ontario as this legislation may have on municipalities.



Mary Ellen Bench, BA, JD, CS
City Solicitor

Prepared By: Wendy Law, Deputy City Solicitor – Municipal Law

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Recommendation GC-0597-2013

GC-0597-2013

1. That the report titled 'Bill 69 - Prompt Payment Act, 2013' by the City Solicitor be received for information.
2. That staff be authorized to make submissions to the Standing Committee on Regulations and Private Bills to outline the concerns with the proposed legislation as raised in this report from the City Solicitor, titled 'Bill 69 - Prompt Payment Act, 2013'.
3. That the report from the City Solicitor, titled 'Bill 69 - Prompt Payment Act, 2013' be forwarded to the local MPPs and the Association of Municipalities of Ontario for their information.



environmental
defence
INSPIRING CHANGE

I-10

COUNCIL AGENDA
FEB 12 2014

Tuesday, February 11, 2014

Dear Mayor and Members of Council,

Re: Mississauga's Natural Heritage & Urban Forest Strategy, Growing the Greenbelt initiative

Environmental Defence would like to take this opportunity to congratulate you Mayor McCallion and Members of Council for your leadership regarding Mississauga's Natural Heritage and Urban Forest Strategy. Environmental Defence has been pleased to be part of the public consultation process. We feel you have a strategy that will help guide Mississauga towards greater sustainability and resiliency over the next 20 years.

Environmental Defence is one of Canada's leading environmental organizations. We challenge, and inspire change in government, business and people to ensure a greener, healthier and prosperous life for all.

We are encouraged by your continued commitment to growing Ontario's Greenbelt into Mississauga through potential additions of the Credit River and Etobicoke Creek under the Greenbelt's Urban River Valley (URV) designation. Your diligence is appreciated and we continue to offer our technical assistance to staff as the process unfolds.

We look forward to the City of Mississauga becoming one of the first municipalities in Ontario to expand the Greenbelt on municipally owned public lands. As the Greenbelt approaches its ninth birthday this Friday February 28th, the timing couldn't be better.

In conclusion, we support the motion going forward at today's Council meeting and have one additional request. We respectfully request the City of Mississauga proclaim "Greenbelt Day", February 28th, 2014.

Thank you for your consideration and for the opportunity to address you.

Sincerely,

Erin Shapero,
Land and Water Program Manager
Environmental Defence Canada

<input checked="" type="checkbox"/> Receive	<input type="checkbox"/> Resolution
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<input type="checkbox"/> Community Services <input type="checkbox"/> Corporate Services	For <input type="checkbox"/> Appropriate Action <input checked="" type="checkbox"/> Information
<input type="checkbox"/> Planning & Building <input type="checkbox"/> Transportation & Works	<input type="checkbox"/> Reply <input type="checkbox"/> Report

Crystal Greer

From: AMO Communications <communicate@amo.on.ca>
Sent: 2014/02/11 8:06 AM
To: Crystal Greer
Subject: Urgent: Feb. 28 Deadline - Dangerous Goods Information / Canadian Railways

COUNCIL AGENDA
FEB 12 2014

Municipal CAOs and Clerks:

Please read and take action if there are Canadian Railways running through your municipality.

FCM has asked its provincial and territorial associations to forward information about registering to get annual reports about dangerous goods transported by Canadian Railways. Please read the information below.

Municipalities must register with Transport Canada to receive annual reports about dangerous goods transported by Canadian railways

The recent announcement by Transport Canada of a **new regulation** requiring Canadian railways to share dangerous goods information with municipalities is an important development for the municipal sector.

While we have been encouraging our members to register with Transport Canada in order to receive annual reports about dangerous goods transported by rail, we have been informed that a relatively few number of communities had registered as of the end of January. Railways are only required to share information with registered municipalities.

We would ask that your association consider informing your members of the need to register **by February 28th** and provide a link to **the detailed instructions** posted on our website.

If you have any technical questions, please contact FCM's **Daniel Rubinstein** at 613-907-6294.

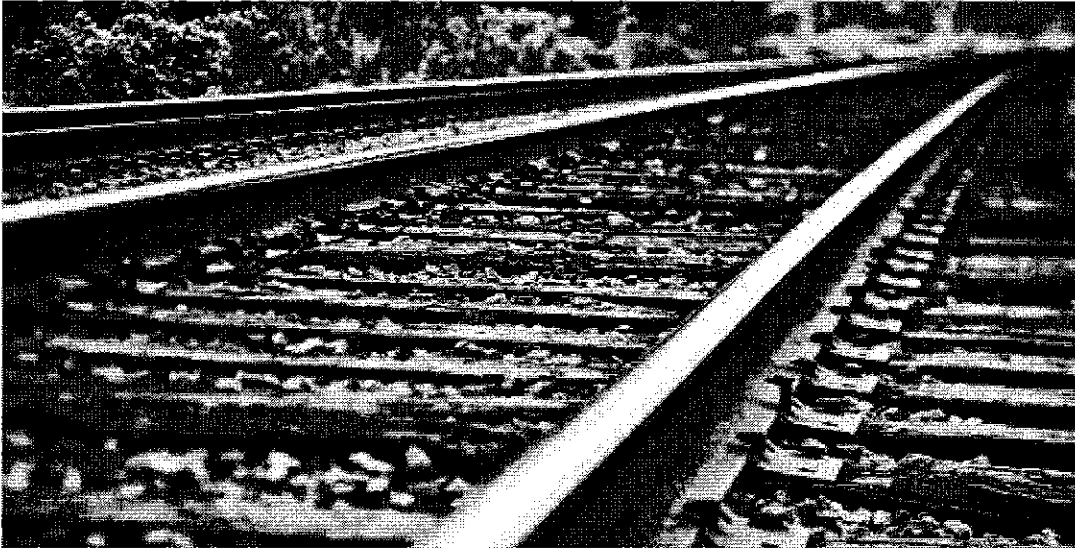
Thank you.

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D-2(a)

[Skip to main content](#)

Register for information about dangerous goods



Information for Chief Administrative Officers (CAOs) of FCM member municipalities.

This important bulletin is provided on behalf of Transport Canada and the Railway Association of Canada.

To receive annual reports about dangerous goods shipments by railways operating in your municipality, please review and follow the instructions below **no later than February 28, 2014**.

Background

On November 20, 2013 the Minister of Transport announced a new regulation intended to improve emergency planning by local governments and first responders. Protective Direction No. 32 responds to one component of FCM's call to action on rail safety, and complements FCM's ongoing work to:

1. improve emergency response,
2. ensure local risks are incorporated into rail regulations and operating practices, and
3. increase insurance requirements for Canadian railways and shippers.

What is Protective Direction No. 32?

Protective Direction No. 32 requires all railway companies operating in Canada to provide yearly aggregate information on the nature and volume of dangerous goods they transport by rail through a municipality.

D-2(b)

Class 1 railways (i.e. CN and CP), which ship all classes of dangerous goods, are required to include quarterly breakdowns within annual reports. This breakdown is intended to allow local first responders to identify trends and seasonal variations. All other railways (i.e. short line railways) are required to provide immediate notification if new classes of dangerous goods are shipped for the first time during a given year, in addition to the annual reporting requirement.

Step One: Register with Transport Canada

In order to receive this annual reports, Protective Direction No. 32 requires the CAO or equivalent to designate one (1) Emergency Planning Official responsible for:

- Ensuring the information is used only for emergency planning or response;
- Disclosing the information only to those persons who need access for these purposes; and
- Keeping the information confidential.

Each municipality can decide if the designated Emergency Planning Official should be the local Fire Chief, Emergency Management Director or other official with responsibility for emergency management. Alternatively, municipalities may designate a member of a regional emergency management organization. Municipalities are also responsible for informing Transport Canada of changes to the name and/or contact information of the Emergency Planning Official.

The CAO is required to provide Transport Canada, through the Canadian Transport Emergency Centre (CANUTEC), the name of its designated Emergency Planning Official by providing the following information: the name, title, organization, address, e-mail address fax number, telephone number and cell phone number of the Emergency Planning Official that he or she designated.

This information must be sent to CANUTEC at the following address:

Canadian Transport Emergency Centre (CANUTEC)

Place de Ville, Tower C 330 Sparks Street, 14th Floor,

Ottawa, Ontario, K1A 0N5

Attention: Mr. Angelo Boccanfuso, Director of CANUTEC

Or by email to CANUTEC@tc.gc.ca

Municipalities are asked to register with Transport Canada no later than February 28, 2014 to facilitate reporting in April 2014. Transport Canada will give railway companies the information provided by registered municipalities. The railway companies are only obligated to provide dangerous goods information to those municipalities that have registered with CANUTEC.

Step Two: Non-Disclosure Statement

Protective Direction No. 32 requires that the information be kept confidential and used only for the purpose of emergency planning or response. To streamline this process and prevent delays in reporting, the Railway Association of Canada has developed a [template Non-Disclosure Statement](#).

This Non-Disclosure Statement does not need to be provided to Transport Canada through CANUTEC. Rather, railway companies operating in your municipality will be in contact with your

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community's designated Emergency Planning Official in March 2014 regarding the Non-Disclosure Statement. Any questions about this process should be directed to Kevin McKinnon, Director, Regulatory Affairs at the Railway Association of Canada at (613) 564-8101.

Step Three: Receive Annual Reporting

After a municipality has followed steps one and two above, railway companies will be obligated to provide annual reports on the nature and aggregate volume of dangerous goods shipped through the municipality. Railways will provide reports on 2013 calendar year data to registered municipalities in April 2014. In the interim, municipalities may choose to contact railways operating in their community and request preliminary information.

For more information

If you have any questions about Protective Direction No. 32 or CANUTEC please contact Transport Canada at CANUTEC@tc.gc.ca.

Any questions about FCM's National Rail Safety Working Group can be directed to [Daniel Rubinstein](#), 613-907-6294.

Page Updated: 07/02/2014

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D-2(c1)

Transport Canada

[Home](#) > [Media Room](#) > [Backgrounders](#) > [Protective Direction No. 32](#)

Protective Direction No. 32

I, Marie-France Dagenais, Director General of the Transport Dangerous Goods Directorate, being a person designated by the Minister of Transport to issue Protective Directions under section 32 of the *Transportation of Dangerous Goods Act, 1992*, and considering it necessary to deal with an emergency that involves a danger to public safety, do hereby direct that

- 1) Any Canadian Class 1 railway company that transports dangerous goods must provide the designated Emergency Planning Official of each municipality through which dangerous goods are transported by rail, with yearly aggregate information on the nature and volume of dangerous goods the company transports by railway vehicle through the municipality, presented by quarter;
- 2) Any person who transports dangerous goods by railway vehicle, who is not a Canadian Class 1 railway company, must provide the designated Emergency Planning Official of each municipality through which dangerous goods are transported by railway vehicle with:
 - a) yearly aggregate information on the nature and volume of dangerous goods the person transports by railway vehicle through the municipality; and
 - b) any significant change to the information provided in (a) as soon as practicable after the change occurs;
- 3) A Canadian Class 1 railway company that transports dangerous goods and a person who transports dangerous goods by railway vehicle are not required to provide an Emergency Planning Official(s) with the information in items 1 or 2 of this Protective Direction if:
 - (a) the Emergency Planning Official is not listed on the list of Emergency Planning Officials maintained by Transport Canada, through CANUTEC, that is provided to the railway company or the person;
 - (b) the Emergency Planning Official or the Chief Administrative Officer of a municipality, by request made in writing to CANUTEC, informs CANUTEC that it no longer wants to be provided with the information; or
 - (c) the Emergency Planning Official has not undertaken or agreed to:
 - (i) use the information only for emergency planning or response;
 - (ii) disclose the information only to those persons who need to know for the purposes referred to in (i); and
 - (iii) keep the information confidential and ensure any person to whom the Emergency Planning Official(s) has disclosed the information keeps it confidential, to the maximum extent permitted by law.
- 4) A Canadian Class 1 railway company who transports dangerous goods and a person who transports dangerous goods by railway vehicle must provide in writing to Transport Canada, through CANUTEC, contact information including the name, title, address, e-mail address, fax number, telephone number and cell phone number, of the person(s) who will be liaising with a municipality's Emergency Planning Official, and must immediately notify CANUTEC in writing of any changes to the contact information;

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5) A Canadian Class 1 railway company who transports dangerous goods and a person who transports dangerous goods by railway vehicle must provide any information shared under items 1 and 2 to Transport Canada, through CANUTEC.

6) A Chief Administrative Officer of a municipality may request Transport Canada, through CANUTEC, that the name of its designated Emergency Planning Official be added to the list of Emergency Planning Officials referred to in item 3(a) by providing the following information: the name, title, organization, address, e-mail address fax number, telephone number and cell phone number of the Emergency Planning Official that he or she designated. This contact information will be shared with any Canadian Class 1 railway company who transports dangerous goods and any person who transports dangerous goods by railway vehicle.

For the purposes of this Protective Direction, information to be provided to CANUTEC is to be provided to the following address:

Canadian Transport Emergency Centre (CANUTEC)
Place de Ville, Tower C
330 Sparks Street, 14th Floor,
Ottawa, Ontario, K1A 0N5
Attention: Mr. Angelo Boccanfuso, Director of CANUTEC
Or by email to CANUTEC@tc.gc.ca

This Protective Direction No. 32 takes effect immediately upon signing. It remains in effect for three years from the date of signing or until cancelled in writing by the Director General of the Transport Dangerous Goods Directorate, Transport Canada.

SIGNED AT OTTAWA, ONTARIO, this 20th day of November 2013.

Marie-France Dagenais
Director General, Transport Dangerous Goods Directorate

Explanatory note

For the purposes of this Protective Direction

"Chief Administrative Officer" means the person holding the most senior staff position within a municipal organisational structure or band council, whether that office bears that title or an equivalent one.

"Emergency Planning Official" means the person who coordinates emergency response planning for a municipality, who may also be a First Responder for that community

"municipality" means a corporate body constituted under the applicable provincial or territorial legislation, in each province or territory, relating to the creation of municipal administrations, be they designated as cities, towns, villages, counties or by other names and includes aboriginal communities with their own First Responders. In cases where a territory is governed by two tiers of municipal administrations, the expression refers to the tier which has the primary responsibility for emergency planning, meaning either to the lower tier or the upper tier administrations but not both. The decision as to which tier is to receive the information provided under this Direction is to be made locally and the name of the appropriate designate is to be communicated in accordance with this Direction.

"nature" means class, UN number and name of the dangerous good.

"volume" means the number of car loads of a dangerous good.

D-2(f)

The parties will agree between themselves prior to the exchange of information on the standard provisions governing the extent to which the information received under items 1 or 2 may be disseminated.

Date modified: 2013-11-20

Motion (g)



WHEREAS the joint and several provisions of the *Negligence Act*, also known as the 1% rule, provide that where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering the loss or damage, and mean that a party which is only 1% at fault may be required to pay the plaintiff's entire judgment particularly in cases where the other defendant is unable to meet a court ordered award,

AND WHEREAS municipalities are viewed by the courts as "deep pocket" defendants with large public resources at their disposal through the power of property taxation, with the result that municipalities have often become the targets of litigation when other defendants do not have the means to pay high damage awards;

AND WHEREAS municipalities exist to connect people to their community and to provide the infrastructure and social and recreational opportunities which advance the development of a community, and these large awards make it very difficult to find a reasonable balance between the amenities residents and others want and the risk of litigation, regardless of the level of due diligence carried out by the municipality;

AND WHEREAS joint and several liability is problematic not only because of the disproportional burden on municipalities that courts award, but also because the fear of large court awards pressures municipalities to settle out of court to avoid expensive litigation for amounts that often represent a greater percentage than the degree of municipal fault, and encourages plaintiffs to add municipalities as defendants even in questionable circumstances, due to the likelihood that a plaintiff can build an argument that a municipality is 1% responsible for an event that happens within municipal boundaries;

AND WHEREAS many municipalities face extremely high deductibles on their insurance coverage and many municipalities cannot even obtain liability coverage because of the impact of the 1% rule on insurance costs;

AND WHEREAS AMO prepared a case for Joint and Several Liability Reform that was presented to the Province in 2010, asking the Province of Ontario to address joint and several liability because of the impact of rising insurance premiums, rising awards, and the unfairness to local property taxpayers burdened with these awards under the 1% rule;

AND WHEREAS British Columbia, Saskatchewan and 38 states in the U.S.A. have enacted some form of proportionate liability;

AND WHEREAS the provisions of the *Negligence Act* that provide for joint and several liability were never intended to place the burden of insurer of last resort on municipalities and were in place when court awards were smaller and long before the social safety net of publicly funded health care, the Ontario accident insurance benefits program, new forms of private insurance coverage, WSIB, employer funded benefits, homeowners insurance, title insurance and other such programs existed;

Motion(g)

AND WHEREAS AMO estimates that in the last four years alone municipalities have faced insurance premium increases of \$35 million, and it is unfair and unrealistic for the Provincial government to allow the rapid rising insurance premiums to continue;

AND WHEREAS MPP Randy Pettapiece, Perth Wellington, recently introduced a Private Members' resolution in the Ontario Legislature asking the government to "protect taxpayers from high property taxes by implementing a comprehensive, long-term solution to reform joint and several liability insurance for municipalities by no later than June 2014" and debate on the resolution is scheduled for February 27, 2014;

NOW THEREFORE BE IT RESOLVED THAT:

1. That the AMO report entitled "*The Case for Joint and Several Liability Reform in Ontario*" dated April 1, 2010 be endorsed;
2. The Private Resolution introduced by MPP Randy Pettapiece be supported, and the government be requested to protect property taxpayers from higher taxes by implementing a comprehensive, long-term solution to reform joint and several liability and introduce a system based on proportionate liability for municipalities, by no later than June 2014;
3. That the Province be requested to address the alarming rise in municipal insurance premiums due to rising litigation and claim costs;
4. A copy of this Resolution be sent to Randy Pettapiece, MPP Perth-Wellington, the Premier of Ontario, the Minister of Attorney General, the Minister of Municipal Affairs and Housing, all local Members of Provincial Parliament, the Association of Municipalities of Ontario and the Federation of Canadian Municipalities.