



City of
Peterborough

TO: The Chairman and Members of the Committee of the Whole

FROM: Ken Doherty, Director of Community Services

MEETING DATE: October 16, 2006

SUBJECT: Report CSD06-007
Update on Presumptive Legislation for Ontario Firefighters

PURPOSE

A report to provide additional information on Presumptive Legislation for Ontario Firefighters as requested by Council on August 8th, 2006

RECOMMENDATION

That Council approve the recommendation outlined in report CSD06-007 dated October 16, 2006, of the Director, Community Services as follows:

That Council receive the information report on Presumptive Legislation for Ontario Firefighters.

BUDGET AND FINANCIAL IMPLICATIONS

There are no costs associated with the recommendation presented.

BACKGROUND

This report responds to Corresp06-015 submitted to Committee of the Whole on July 31, 2006 from the Professional Firefighters Association; a delegation from Greg Simmons presented to Council on August 8, 2006; and a Motion from Council "that the CAO bring back a report in respect to Presumptive Legislation for Ontario Firefighters."

In recent months various local professional firefighter associations, in conjunction with the Ontario Professional Firefighter Association (OPFFA), have been making

presentations to local councils and members of the Ontario provincial legislature seeking support for changes to the Workplace Safety & Insurance Board (WSIB) policy regarding the adjudicative treatment of cancers relating to professional firefighters.

On May 4, 2006, Bill 111, a Private Members Bill, was presented in the Ontario Legislature for first reading. The focus of this bill is to create two rebuttable presumptions relating to health conditions among current and former firefighters. Firstly, the Bill seeks to treat certain types of cancer and degenerative neurological disorders as presumed occupational diseases, provided the person worked as a firefighter during prescribed periods of time. Secondly, the Bill seeks to treat heart damage, suffered by a firefighter while attending a fire or emergency or within twenty-four hours thereafter as heart damage presumed to have occurred as a result of the person's employment as a firefighter. On October 2, 2006 Members of all three parties gave unanimous support to the second reading of the Workplace Safety and Insurance Amendment Act (Bob Shaw), 2006.

Current WSIB Practice Relating to Occupational Disease

Concurrently, the Workplace Safety and Insurance Board (WSIB) has had the Occupational Disease Advisory Panel (ODAP), comprised of stakeholders and health professionals reviewing how the WSIB should address workplace diseases for the purposes of compensation under the Workplace Safety and Insurance Act (the "Act").

According to the ODAP report, WSIB entitlement to compensation for alleged occupational disease presents challenges that typically do not arise with work-related personal injury claims. For example, the symptoms of a disease may not occur until several years after the employee has left the workplace. This time delay makes it difficult to determine whether there is a causal connection between a specific workplace, or type of work, and the disease. In addition, many diseases have a variety of potential causes, which may be unrelated to the workplace.

While the Act does not clearly distinguish between workplace injuries and workplace diseases for the purposes of determining a person's entitlement to compensation, it does contain special provisions, in Schedules 3 and 4 concerning entitlement for certain diseases. Currently if an employee presents a covered disease or condition listed in Schedule 4, along with proof of having worked in the defined industrial process compensation is typically awarded. In the case of Schedule 3 diseases, the person's condition is presumed to be work-related unless the employer can rebut the presumption.

Although most diseases that can potentially be caused in the workplace are not listed in the schedules many are covered by WSIB policies that are approved by the WSIB Board of Directors. These policies guide adjudicators by defining working conditions that may cause occupational diseases.

Currently, WSIB provides entitlement for some forms of cancer (brain, kidney, bladder, lymphoid leukemia) and degenerative neurological disorders and is based on a case-by-

case evaluation of the evidence including the nature of work performed and the workplace. The WSIB policy is attached as Appendix A.

The case-by-case review process used by WSIB for claims for serious illnesses has provided protections for firefighters and we understand WSIB is monitoring scientific evidence linking firefighting and cancer. The City of Peterborough should continue to support the prompt and efficient processing by the Workplace Safety and Insurance Board with no undue delay in time or unreasonable burden of paperwork of every legitimate claim filed by full-time firefighters working for the City of Peterborough.

WSIB has advised that since May 2006, WSIB has approved, province-wide, 121 claims for a variety of cancers such as brain cancer, bladder cancer, colorectal cancer, kidney cancer, nasal cancer, leukemia and non-Hodgkin's lymphoma. As of May 2006, there were still 53 pending claims throughout the province. WSIB reports that the allowance for these types of firefighter cancer claims are higher than other occupational groups. Since 1999, 85% of firefighter brain cancer claims have been allowed in comparison to the average rate for all other occupational groups of 49%. In addition, 83% of firefighter non-Hodgkin's lymphoma claims have been allowed in comparisons to the average allowance rate of 26%.

At this time the cost implications for the City of Peterborough of the proposed changes related to Presumptive Legislation and the WSIB Act are unknown. They could, however, include new monitoring/recording systems and a significant increase in the number of claims over time. Regardless of the additional costs, City staff are quite concerned that the proposed legislation will create an adversarial relationship between the City as Employer and the members of the local Firefighter Association as employees. The onus will be on the City to gather and maintain documentation to refute claims rather than the current practice of supporting staff while WSIB investigates the claims.

Position of the Occupational Disease Advisory Panel (ODAP)

In February 2005, the ODAP issued their Final Report. A Panel was established in 2001 by the WSIB Board of Directors to assist WSIB in implementing an Occupational Disease Response Strategy. Its members represented employers, workers, researchers, the Ministry of Labour and WSIB.

The focus of the panel was to develop guidelines for the application of legal and scientific principles to be used in adjudicating occupational disease claims. After a lengthy process it became apparent that consensus was not possible between the employee and employer groups. As a result, the Chair of the ODAP panel was asked by the Chair of the WSIB to write a report and make recommendations. The recommendations included:

- That because occupational diseases may have more than one contributory cause that WSIB adopt a test of "significant contribution " when determining entitlement;

- That the standard of proof in determining entitlement of occupational disease be the “balance of probabilities”;
- That the adjudication of occupational disease claims include considerations of employment history, exposure assessments, and individual medical history;
- That the WSIB continue to adjudicate occupational disease on a case-by-case basis.

The City of Ottawa resolution is asking for a review that has already recently been completed. (Appendix B). A number of municipalities, both large and small, have supported the Ottawa Resolution and/or proposed legislation.

Position of Association of the Municipalities of Ontario (AMO)

On June 29, 2006 the City of Peterborough was part of a delegation which met with Assistant Deputy Minister of Labour to present a draft of AMO’s position on Bill 111, it was AMO’s position that Bill 111 should not be passed because of the WSIB already has a mechanism to adjudicate claims by fire firefighters for any occupational disease. It is AMO’s position that claims for firefighters ought to be adjudicated and determined in the same manner as all other claims for occupational disease – on a case-by-case basis and, in accordance with the balance of probabilities, with evidence of a causal relationship.

Position of the Ontario Municipal Human Resource Association (OMHRA)

Due to existing WSIB measures for awarding compensation to firefighters for occupational disease and the potential financial impact, OMHRA’s recommended that, if municipal Councils are approached by the OPFFA or a local association, that they receive the motion as information and not endorse the proposed changes to the Act.

Local WSIB Claims and Fire Experiences

During 2001-2005, the City of Peterborough has had no reported formal claims for cancer or neurological disorders. However, in June 2006 six claims for cancer and heart disease were registered by the Peterborough Professional Firefighter Association on behalf of five retired firefighters.

The following chart illustrates the volume of responses by local firefighters for the past three years. Peterborough firefighters also assisted with the chemical fire in Coburg on April 25, 2005.

Fire Events	2004	2005	2006 (to Aug 8)
Loss of \$0	93	122	68
Loss of more than \$0 under \$10,000	46	36	8
Loss of more than \$10,000, less than \$50,000	14	13	2
Loss of more than \$50,000	5	4	3
Total Fires	158	175	81

All of which is respectfully submitted,

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Appendix A – *Workplace Safety and Insurance Act, 1997* Policy
Appendix B – City of Ottawa Resolution