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Official Report of Debates (Hansard)

Monday 16 May 2011

Journal des débats (Hansard)

Lundi 16 mai 2011

**Standing Committee on
General Government**

Fire Protection and Prevention
Amendment Act, 2011

**Comité permanent des
affaires gouvernementales**

Loi de 2011 modifiant
la Loi sur la prévention
et la protection contre l'incendie

Chair: David Oraziotti
Clerk: William Short

Président : David Oraziotti
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 16 May 2011

Lundi 16 mai 2011

The committee met at 1404 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Orazietti): Good afternoon, folks, and welcome to the Standing Committee on General Government. Our first order of business is the subcommittee report.

Mr. Levac, go ahead.

Mr. Dave Levac: Your subcommittee met on Wednesday, May 11, 2011, to consider the method of proceeding on Bill 181, An Act to amend the Fire Protection and Prevention Act, 1997, and recommends the following:

(1) That the committee meet in Toronto on Monday, May 16, 2011, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 10 a.m. on Monday, May 16, 2011.

(4) That witnesses be offered 10 minutes for their presentation, and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members.

(5) That witnesses be scheduled on a first-come, first-served basis.

(6) That the deadline for written submissions be 5 p.m. on Monday, May 16, 2011.

(7) That the research officer provide the committee with a summary of presentations.

(8) That amendments to the bill be filed with the clerk of the committee by 5 p.m. on Tuesday, May 17, 2011.

(9) That the committee meet for the purpose of clause-by-clause consideration of Bill 181 on Wednesday, May 18, 2011.

(10) That the committee live-stream the public hearings on the Legislative Assembly of Ontario's website.

(11) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Orazietti): Thank you very much, Mr. Levac.

Comments or questions on the subcommittee report? Seeing none, all those in favour? The motion is carried.

**FIRE PROTECTION AND PREVENTION
AMENDMENT ACT, 2011**

**LOI DE 2011 MODIFIANT
LA LOI SUR LA PRÉVENTION
ET LA PROTECTION CONTRE L'INCENDIE**

Consideration of Bill 181, An Act to amend the Fire Protection and Prevention Act, 1997 / Projet de loi 181, Loi modifiant la Loi de 1997 sur la prévention et la protection contre l'incendie.

**ASSOCIATION OF MUNICIPALITIES
OF ONTARIO**

The Chair (Mr. David Orazietti): The first presentation is the Association of Municipalities of Ontario. Good afternoon, gentlemen. You have 15 minutes for your presentation, as you know. Any time you do not use will be divided among committee members for questions. Start by stating your names for the purposes of our recording Hansard, and you can begin.

Mr. Peter Hume: Thank you very much, Mr. Chairman. My name is Peter Hume, and I am president of the Association of Municipalities of Ontario and a councillor in the city of Ottawa. Beside me is John Saunders of Hicks Morley, AMO's legal adviser on fire labour relations.

We all understand and appreciate the value of fire protection in our communities and the committed firefighters who work to keep our communities safe.

As employers for all emergency services, we have a role in their health and safety. As individuals and as professionals, employees have a role to make sure they are strong and healthy to be able to carry out their responsibilities.

I want to set some context before making specific amendment requests to the bill in question. There are approximately 11,000 full-time, 220 part-time and 19,000 volunteer firefighters providing fire services in 444 municipalities. There are 31 career full-time fire departments, 171 composite fire departments with at least one

full-time employee and 266 volunteer services with no full-time employees.

Although we understand that full-time firefighters serve approximately 80% of the Ontario population, you need to understand that composite and volunteer fire departments cover the geographic majority of the province in rural and northern Ontario. The usual composite situation is unionized full-time and non-union volunteers, but in Hamilton, for example, the volunteers are unionized.

This information demonstrates the diversity of municipal fire services throughout Ontario. This wide-ranging diversity needs to be a key consideration for the drafting and consideration of any legislation so that you, as legislators, do not create unintended consequences.

Having provided some context, I'd like to remind you of the genesis of Bill 181. It started as a private member's motion that received all-party support on March 10, 2011. The motion as debated reads: "That, in the opinion of this House, the Legislative Assembly of Ontario, in recognition of the role Ontario's firefighters play every day in keeping our communities safe, and in recognition of the evidence of health and safety risks to firefighters over the age of 60, and in keeping with recent Human Rights Tribunal decisions, calls on the government to introduce legislation allowing for the mandatory retirement of firefighters who are involved in fire suppression activities in the province of Ontario."

All members in the House supported the motion during the debate, and it passed unanimously, 36 to 0. But there are several differences between the motion, as adopted, and this bill.

First, the motion says "mandatory retirement"; the bill says "mandatory retirement" but also the right to ask for accommodation to work past 60. Now, we understand that part of the premise of the proposed across-the-board 60 years is health and safety reasons. It is our view that there is limited evidence that there is a health and safety risk at age 60, due to the unique physical and hazardous work of firefighters who are regularly assigned to fire suppression activities. Why at 60? The entire premise of mandatory retirement was struck down, as people are not homogenous and it was determined that it was therefore discriminatory.

Why is this legislation trying to reconstitute a practice that society really has moved away from? One of our questions is why this cannot be left to the collective bargaining process, which reflects the local situation and local circumstances for both the firefighters and the employer.

We also understand it has been asserted that this proposed legislation will reduce litigation and the associated costs of lawsuits. We do not concur that by making these changes to the act without amending the Ontario Human Rights Code this bill will stop cases from proceeding to the Human Rights Tribunal. In fact, subsection 53.1(4) creates a classic Catch-22 for municipalities. The legislation says, on one hand, that 60 shall be established as the retirement age and shall be read into collective agree-

ments, if not stated in those agreements in the next two years. However, the same proposed legislation states: "An employer shall not require a firefighter to retire if the employer can accommodate the firefighter without undue hardship, considering the cost, outside sources of funding ... and health and safety requirements, if any."

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This proposed legislation is looking to establish a mandatory retirement age of at least 60 for full-time firefighters, primarily using a health and safety rationale, and then says to the municipal employers that we should accommodate any full-time firefighter 60 or over who wishes to continue unless we can prove that there are, in part, health and safety reasons not to accommodate. This strikes us, as we hope it does you, as a bit of a circular argument.

While some will point out that it is unlikely that all full-time suppression firefighters in a given service will want to be accommodated post-60, even a small handful will test the employer's ability. No municipality will be able to afford to create or to do the training to accommodate that firefighter into a fire prevention, fire training or communications position. It would mean that the full-time firefighter would need to be accommodated in a non-fire service position within a different bargaining unit, most likely at reduced wages and benefits. This, in turn, would have a negative impact on other, younger municipal employees as the duty to accommodate the firefighter prevails over their other desires.

In our reading of the proposed legislation, it appears that only the municipality has a role in the accommodation process and that the Ontario Professional Fire Fighters Association, or other union representative, and the individual firefighter do not. If passed, it is our view that it is likely that this provision may provoke additional labour relations issues that a municipality will need to fund from their property taxes. In our view, this section of the drafted legislation could potentially create more challenges.

Therefore, we would like to propose an amendment to Bill 181: that subsection 53.1(4) be deleted from this legislation, as either the legislation will require full-time firefighters to retire at a specific age or it will not. It cannot say, as it does now, that there is mandatory retirement unless a firefighter doesn't want to.

Second, the bill addresses firefighters as defined in part IX of the act, that is, full-time firefighters who have collective agreements under this act. This is a good thing from an operational perspective, and I'll tell you why: because over 6% of the 19,000 volunteer firefighters are over 60 years of age. With respect to the senior officers in the municipal fire services, it is estimated that about 11% of the management and leadership in volunteer fire departments are over 60 years of age.

We have been advised that several northern volunteer fire services would be completely eliminated if this legislation were to apply to volunteer firefighters. Additionally, other rural, northern composite and volunteer fire services would be impacted severely if their volunteer

firefighters were also expected to retire from their volunteer fire service. On a practical and operational level, most rural, remote and northern communities cannot afford to lose 1,100 volunteers, neither from a community safety perspective nor from trying to find new volunteers and from the investment in volunteer training.

While suppression is suppression, the amount and type of suppression activity varies, not just between communities but even between fire stations in urban areas. AMO, while representing municipal employers, cannot support the idea that this legislation should apply to volunteer firefighters and thereby knowingly put Ontario communities and their residents in danger by removing their ability to have a viable volunteer fire service to protect them. We told the ministers this during the consultations, and we're pleased that they have listened.

The bill also makes amendment with respect to the duty of fair representation. We do not oppose the principled direction of the proposed legislation to have a firefighter's complaints about their representation by a fire association go before the labour relations board rather than through the courts. However, we do take issue with part of the remedial powers of the labour board under subsection 46.2(5).

The purpose of a duty-of-fair-representation provision is to address failures of the bargaining agent, the union. Subsection 46.1(1) states that the "bargaining agent ... shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the firefighters...." This legislation says nothing about the obligations of the employers.

Section 46.2 then sets up a process of inquiry into the failure of the bargaining unit to comply with its DFR obligation. Again, nothing about what the employer did correctly or incorrectly. Subsection 46.2(5) then sets out the remedies that the labour board can order when it determines that the bargaining agent has violated its DFR.

We have no issue with the powers that are found in (a), (b) and (c). They are appropriate in the circumstances. Our issue is with regard to clause 46.2(5)(d). It requires the employer to reinstate and compensate a firefighter when the Labour Relations Board has determined the union has failed to fulfill its duty to fairly represent a firefighter. It is unfair that the employer could be ordered to compensate a firefighter as part of a remedy ordered should a union be found by the board not to have acted appropriately. As such, we would propose that this section be deleted in its entirety. Municipalities should not be held liable for actions of the unions.

From a practical point of view, these types of remedial powers exist for rights arbitrators who would be appointed should the labour board find the union has breached its duty of fair representation. For example, if a municipality had terminated a firefighter and the union refused to process the grievance of that termination to arbitration on behalf of that firefighter, the firefighter could claim to the labour board that the reason the union failed to process that termination grievance was because

the union behaved in an arbitrary, discriminatory or bad-faith manner.

If the labour board agreed with the firefighter that the union had violated its duty of fair representation, then it would order the union to process the grievance against the municipality. The rights arbitrator who would then be appointed to hear and determine that termination grievance would have all of the remedial powers currently available to them in the labour board's existing authority that are found in clause 46.2(5)(d) of the proposed bill. As such, we would propose that clause 46.2(5)(d) be deleted.

The health and safety of our firefighters is and always will be a concern for municipalities. They cannot provide the level of safety and security to communities if they themselves are not at their best. Firefighters are entering the service at 28 years of age—in the past, the entry age was much younger—so the current average age of retirement—57—could in fact become higher. Long shifts and more time off do provide greater opportunity for secondary employment, which may also impact the health of firefighters.

In summary and from our perspective, we do not see any particular merit or upside for municipal employers in this legislation. Although we understand that reducing litigation may also have been a driver for this proposed bill, it is our view that it may actually generate additional labour relations activity for the employer.

Should this bill pass, we will be monitoring litigation action closely, and if our prediction is correct, we will be back with a motion for all-party support, seeking relief for our property taxpayers from this legislation.

In conclusion, we're asking for subsection 53.1(4) to be deleted and, with respect to DFR, we are also asking for clause 46.2(5)(d) to be deleted.

We appreciate your consideration of AMO's presentation and our suggested amendments. I would be happy to respond to any questions, if there's available time.

The Chair (Mr. David Orazietti): We have a brief minute or so. Ms. Savoline, go ahead.

Mrs. Joyce Savoline: Peter, nice to see you.

Mr. Peter Hume: Nice to see you.

Mrs. Joyce Savoline: I have a couple of questions. First of all, how many municipalities are actually aware of this going forward, that have expressed something to AMO?

Mr. Peter Hume: I don't know that we can answer how many are—

Mrs. Joyce Savoline: So you haven't had a board discussion about this?

Mr. Peter Hume: This has not been something that has been long in the debate and discussion. It came upon us, as you can appreciate, rather quickly.

Mrs. Joyce Savoline: Okay. Two other very quick questions: Has this gone to the MOU table?

Mr. Peter Hume: Yes, it was before the MOU table.

Mrs. Joyce Savoline: Has any costing been done? I know we can't put exact dollars and cents to it, but have you guys done any costing as to what this might cost

municipalities? Are we talking about \$2 million or \$25 million or \$80 million or—

Mr. Peter Hume: That's part of the problem; we don't know what it would cost us. We know that Toronto, who will be presenting later, may have some idea of what effect it would have on their service, but province-wide, we don't.

Mrs. Joyce Savoline: But it's clear to say that the province has not offered up any provincial money to cover the costs of the consequences of this legislation.

Mr. Peter Hume: No, it hasn't.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you. That's time for questions and time for your presentation. We appreciate you coming in today.

Mr. Peter Hume: Thank you.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Ontario Professional Fire Fighters Association. Good afternoon, gentlemen.

Mr. Fred LeBlanc: Good afternoon.

The Chair (Mr. David Oraziotti): As you're aware, you've got 15 minutes for your presentation, and any time you do not use will be divided for members of the committee to ask questions. You can start by stating your name, and proceed when you're ready.

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Mr. Fred LeBlanc: Okay. Good afternoon. I'd like to thank the committee for this opportunity to address you regarding Bill 181, the Fire Protection and Prevention Amendment Act, 2011.

My name is Fred LeBlanc and I'm the president of the Ontario Professional Fire Fighters Association. With me today is Mark McKinnon, our executive vice-president.

This act addresses two major legislative priorities of the OPFFA, those being mandatory retirement and the duty of fair representation.

The OPFFA represents approximately 11,000 professional full-time firefighters across Ontario who perform a variety of roles within the fire service. Our members are represented through 80 locals that are chartered through the International Association of Fire Fighters. Relying upon the most recent census data, our 77 municipal locals respond to the needs of approximately 81% of Ontario's total population.

I'd like to begin my presentation with the duty-of-fair representation section of Bill 181. Ironically, DFR makes up the majority of this legislation; however, it has generated very little debate among the stakeholders or within the Legislature.

The Fire Protection and Prevention Act currently contains limited references to the Labour Relations Act. The FPPA is silent on the issue of duty of fair representation, which is common to most other unionized employees across Ontario. We have had firefighters apply to the Ontario Labour Relations Board only to find out that

they have no jurisdiction to hear their DFR complaint. Therefore, the only mechanism by which DFR complaints can be pursued by firefighters is through the civil courts, which can be very expensive and time-consuming to the firefighter, the local association and, at times, the employer.

There has been some limited history of DFR cases brought forward to the courts, but generally, they have emanated from larger locals, which presumably have a larger number of members, who can collectively finance such action. To date, we're not aware of any local being found guilty of a failure in their duty of fair representation.

However, we are now seeing a trend where members are applying to the Ontario Human Rights Tribunal for complaints that are clearly DFR matters and should be within the jurisdiction of the OLRB. While I'm confident that our local representatives conduct themselves in a manner consistent with the principles outlined in our brief and by the Supreme Court of Canada, and with the highest regard for their members, we recognize that a proper dispute resolution mechanism is warranted.

The Ontario Labour Relations Board is the expert body to deal with labour relations matters and has a great depth of knowledge and experience dealing with DFR cases. Issues arising from DFR claims should not proceed before a forum that does not possess the required expertise in the administration of collective agreements or union constitutions. Bill 181 addresses this concern by importing the OLRB process for dealing with DFR claims into the FPPA and has recognized any necessary modifications.

We recognize that moving to this process may increase DFR claim volume in the firefighter community, at least initially; however, it will ultimately and significantly reduce the financial burden associated with these claims under the current situation. This also puts unionized firefighters on a level playing field with other unionized workers across Ontario.

Bill 181 calls for an implementation date of December 1, 2011, for this section, which allows the OPFFA the opportunity to educate our membership and local leadership on any new process.

Now I'd like to address the mandatory retirement provisions, where much of the focus during second reading debate in the House, throughout the media and with the other fire service stakeholders has taken place.

When the government abolished mandatory retirement in 2005 under Bill 211, the OPFFA sought an exemption allowing for mandatory retirement to still be applied to firefighters, as defined in part IX of the FPPA, at age 60. The government did not support this exemption and instead maintained a mandatory retirement provision where a bona fide occupational requirement, or BFOR, exists.

Prior to this legislative amendment, firefighters in Ontario either relied upon contract language, municipal bylaws or the previous language of the Human Rights Code, which allowed for mandatory retirement.

Currently, two thirds of the collective agreements covering firefighters working for municipalities contain

language providing for mandatory retirement at age 60, with the exception of two contracts which provide for age 65. The remaining contracts have no language.

Since Bill 211's passage, we have had numerous firefighters raise challenges against their mandatory retirement provisions. Seven cases have now reached the Ontario Human Rights Tribunal. You'll see in the summary of these cases in our brief that the *Espey v. London* case handed down in December 2008, which can be found in the first half of our brief, plays a pivotal role in mandatory retirement for firefighters. You'll see this issue was thoroughly reviewed in this case, and Mr. David Wright, the tribunal's adjudicator, found that the collective agreement did not violate the Human Rights Code and thus supported mandatory retirement for all firefighters involved with emergency responses.

This conclusion was reached based on the following: extensive medical testimony and evidence; a collective agreement structure whereby the parties determined that mandatory retirement would apply evenly; and a pension scheme which provides unreduced pensions under these early retirement scenarios.

The concept of establishing a test for firefighters to determine their ability to continue work was discussed during this case. I've provided the tribunal's conclusion and I draw your attention to the highlighted section, where it's clear that there is no definitive test for this determination.

The Ontario Human Rights Commission did launch a reconsideration application which was dismissed on March 12, 2009, and that dismissal can be found at the second tab of our brief.

The *Espey* case reinforced the 1986 landmark decision by the Ontario human rights board of inquiry, which considered the same matter involving firefighters of varying ranks in St. Catharines, Waterloo and Windsor, and held that mandatory retirement at age 60 was bona fide in its application in all cases. I've also included the conclusion from this case, and again I draw your attention to the highlighted areas.

As you can see from the conclusions, these two cases extensively reviewed both impressionistic evidence regarding how the fire service operates, as well as medical evidence. Yet despite the 22-year gap in these decisions and the various advances in medical technology, the result is the same: Mandatory retirement is bona fide and there is no individual testing that can be supported.

When the Legislature passed Bill 211, it clearly assumed there would be necessary exceptions to the concept of ending mandatory retirement. Beyond requiring the burden of proof regarding a BFOR, the exceptions are listed under section 24 of the current code. Establishing a BFOR is done on a case-by-case basis, and we have witnessed the enormous financial burden on both the municipality and the local association of challenging these claims. While we encouraged our locals to defend their contract language and collectively we provided some financial support for the medical evidence and legal costs associated with defending their contracts before the

tribunal, we have also been directed by convention action to advocate for the legislative change before you today.

After MPP Mike Brown's motion passed unanimously in the Legislature on March 10, the OPFFA reviewed the impacts of a blanket application of age 60 for firefighters involved in suppression activities. How any proposed legislation defines "firefighters" will, in itself, define how broad the impact may be. Bill 181 utilizes the definition found in part IX of the FPPA, which applies essentially to the full-time sector. Based purely on a health and safety argument, mandatory retirement could be applied across the entire fire service, at least to the first responders within the service. However, it is important to note that in the *Espey* decision, the tribunal supported their conclusion based on more than medical evidence insofar as the support within the collective agreement and the structure of the pension plan.

As we have heard from the volunteer firefighter representatives, a more cautious approach should be applied to the volunteer sector regarding the concept of mandatory retirement, as it may have unintended consequences.

Bill 181 properly narrows the focus to those regularly assigned to suppression activities. The term "suppression" is synonymous with emergency response activities and is common in the vernacular within the firefighter community. Referring to those regularly assigned appropriately defines those who should be captured by this legislation. It takes in the obvious suppression divisions in full-time departments, and we expect that those firefighters who, for example, are training officers yet regularly respond to emergency calls in a suppression capacity would also be included for this purpose.

As well, the incident commander role, which may be argued by some as not hands-on firefighting, was thoroughly reviewed in the *Espey* case as Mr. *Espey* was a district chief and performed the role of an incident commander. I draw your attention to the highlighted area of paragraph 77 of the tribunal's decision, which addresses this issue.

Bill 181 supports and encourages local negotiation of this matter, thus reflecting the current reality for over 90% of the OPFFA members who are governed by a collective agreement with mandatory retirement language. It also importantly introduces consistency to the concept of mandatory retirement within the fire service by including the deeming provision for those areas without contract language, yet allows two years in which to negotiate the matter.

Drafting the legislation in this manner does not threaten our members' pensions. The current average age of retirement for professional firefighters in Ontario is 57. Under our pension plan, there are three ways to retire with an unreduced pension, as outlined in our brief. Allowing for local negotiations permits the parties to match their mandatory retirement age in the collective agreements with the respective pension rate, thus ensuring that no member has a penalized pension as a result of this legislation.

As well, this legislation appropriately continues the current obligation regarding the duty to accommodate

without undue hardship on the employer and the association. Accommodating firefighters has been utilized effectively in a number of cases dealing with this issue, where a firefighter wishes to remain working but the employer has removed them from the emergency response or suppression division.

In conclusion, the OPFFA strongly supports the passage of Bill 181. It addresses two major legislative concerns for our organization; it supports collective bargaining, allowing the parties to address their local needs; it will significantly reduce costly and unnecessary Human Rights Tribunal processes for both mandatory retirement and DFR cases; it will support a strong delivery of fire services by removing the reliance on older firefighters in a highly physical and stressful occupation; and we believe it also mitigates WSIB liabilities for the employers by removing firefighters who may be more prone to cardiac events from emergency response and limiting a firefighter's exposure to toxic environments.

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The OPFFA strongly believes that this legislation reflects good public policy. We appreciate the all-party support illustrated to date and we applaud the government for introducing this bill.

That concludes our presentation, and we'd be pleased to address any questions that the committee may have.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Ms. DiNovo, if you have any questions, go ahead.

Ms. Cheri DiNovo: Thank you, Mr. Chair, and thank you, Mr. LeBlanc, for your presentation. Certainly, as you know, the New Democrats are in favour of this legislation. We have been pretty upfront about that.

We just heard some testimony, however, from AMO. You didn't have time in your presentation to address that, and I wanted to give you a little bit of that time, maybe. Could you address some of their concerns, perhaps?

Mr. Fred LeBlanc: I think one of the concerns they raised was on the accommodation: that the language was potentially not as clear as it could be under Bill 181 and that the obligation should be on the firefighter, the union and the employer equally, as it appears in the current Human Rights Code. We have no problem with that. That's how we read the legislation and that's how we would conduct ourselves.

Ms. Cheri DiNovo: Okay. What about the cost?

Mr. Fred LeBlanc: The cost? We don't believe that there will be a cost to this legislation. In fact, we believe there will be savings for municipalities, not only, as I identified, in mitigation of some outstanding WSIB liabilities for potential exposure and heart attack presumptive legislation concerns. When you remove older employees from the workplace and you're hiring new employees, typically in a fire service structure they come in at a lower wage, with lower vacation and benefit entitlement etc. So we believe that there will be savings.

Ms. Cheri DiNovo: So your response, really, about the cost is that it'll balance out in terms of cost of—

Mr. Fred LeBlanc: In fact, I think there will be savings for the municipality.

Ms. Cheri DiNovo: Okay. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Berardinetti, go ahead.

Mr. Lorenzo Berardinetti: Thank you, Mr. Chair. Nice to see you, Mr. LeBlanc and Mr. McKinnon.

AMO said that people coming into the firefighter workplace are older rather than younger: like at 28. They do their period of time as a firefighter before they can retire. Is there any evidence that firefighters are coming on board later to start their careers?

Mr. Fred LeBlanc: Through our pension plan, we've received a recent report that outlined the average retirement age as being 57. But also, the entry age is 28, as AMO has identified. As I identified and you'll see in our brief, there are three ways to leave our pension plan with an unreduced pension. One is 30 years of service, so 28 would still put you at 58; leaving at your normal retirement age, whether that be age 60 or 65, still allows a 30- to a 32-year career, which is a fairly significant career.

Mr. Lorenzo Berardinetti: One last quick question, if I can, Mr. Chair. So is it fair to say it's that the best thing to proceed forward with this legislation; that it's in the best interests of the firefighters and also in the best interests of community safety?

Mr. Fred LeBlanc: Yes, absolutely. As I said, we believe that this legislation reflects good public policy.

Mr. Lorenzo Berardinetti: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much, gentlemen. That's time for your presentation. We appreciate you coming in today.

TORONTO PROFESSIONAL FIRE FIGHTERS' ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Toronto Professional Fire Fighters' Association. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. As you're aware, you have 15 minutes for your presentation. You can start by stating your names, and you can proceed when you're ready.

Mr. Ed Kennedy: I'm Ed Kennedy. I'm the president of the association. With me is Frank Ramagnano, who's my secretary-treasurer.

First, I'd like to thank the committee for this opportunity to address you regarding Bill 181, the Fire Protection and Prevention Amendment Act, 2011. This act addresses two legislative priorities of our organization, those being mandatory retirement for firefighters and the duty of fair representation.

The Toronto Professional Fire Fighters' Association represents approximately 3,000 professional full-time firefighters in the city of Toronto. Our members provide emergency service, training, prevention, inspection, public education, fire, emergency communications and vehicle maintenance. We are a local within the Ontario

Professional Fire Fighters Association and we are chartered through the International Association of Fire Fighters. We are the largest fire local in Canada and the fifth largest in North America.

Our position in regard to the duty of fair representation—for consistency, we are going to following the OPFFA order on topics. We will begin our presentation with the duty-of-fair representation, DFR, section of Bill 181. As has been stated, DFR makes up the majority of this legislation.

The Fire Protection and Prevention Act, 1997, FPPA, currently contains limited references to the Labour Relations Act. The FPPA is silent on the issue of duty of fair representation, DFR, which is common to most other unionized employees across Ontario.

On at least three occasions, we have had our fire-fighters apply to the Ontario Labour Relations Board only to find out that they have no jurisdiction to hear their DFR complaint. The only mechanism by which DFR complaints can be pursued by our firefighters is through civil courts. Pursuing such complaints through the courts can be very expensive and time-consuming to our members, the association and, at times, our employer. We have witnessed this occurring on two occasions. They were not successful and were either dismissed or withdrawn.

We're now seeing a trend where members are applying to the Ontario Human Rights Tribunal for complaints that are clearly DFR matters and should be within the jurisdiction of the OLRB. Disappointingly, the OHRT has accepted these cases and are conducting hearings. We have had a dozen HR complaints, and we believe that half of these complaints were as a result of members' perceived DFR issues.

The duty of fair representation can be summarized according to its principles as defined by the Supreme Court of Canada in the *C.M.S.G. v. Gagnon* case, 1984, and it's highlighted below.

I'm confident that our local representatives conduct themselves in a manner consistent with the above principles and we recognize that a proper disputes resolution mechanism is necessary to offer our members protection of their rights.

The Ontario Labour Relations Board was created as an expert body to deal with labour relations matters and has great depth of knowledge and experience dealing with DFR cases. We have witnessed issues arising from duty-of-fair representation claims proceeding through a forum that does not possess required expertise in the administration of collective agreements and union constitutions. Therefore, we have had to spend a considerable amount of time and resources to first ensure that the body hearing the case understands the laws we operate under.

Bill 181 addresses this concern by importing the OLRB process for dealing with DFR claims into the FPPA and has recognized any necessary modifications, i.e., trade union to bargaining agent etc. We recognize that moving to this process may increase claim volume for our association; however it will ultimately reduce our

financial burden associated with these claims under the current form. It will also provide a cost-effective method for our members to pursue a DFR issue they may perceive. It would offer the same protection to our members as other unionized workers across Ontario.

Bill 181 also calls for the implementation date of December 1, 2011, which allows our provincial body, the OPFFA, to appropriately educate our membership and local leadership on this new process.

In regards to mandatory retirement: During the government's abolition of mandatory retirement in 2005, the OPFFA, our parent body, sought an exemption allowing for mandatory retirement to still be applied to fire fighters, as defined in part IX of the Fire Protection and Prevention Act, at age 60. The government did not support this exemption and instead maintained a mandatory retirement provision where a bona fide occupational requirement, BFOR, exists. Prior to this legislative amendment in 2005, firefighters in Ontario either relied upon contract language, municipal bylaws or the previous language of the Human Rights Code, which allowed for mandatory retirement at age 65.

Our current contract language on mandatory retirement has been in place for many years and has withstood a human rights complaint in regards to it. It's highlighted below. I don't know if you want me to read through the contract language.

There have been four cases involving our local in Toronto—two hearings held together, and a settlement was reached outside of the board. One case went to the tribunal with the complaint not being upheld against ourselves and the City of Toronto. In the final decision, the complainant withdrew their case due to the Espey decision. You'll see the one that was not upheld down below. It's *John Nearing v. Toronto*. If you don't mind, I'd like to read that decision.

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"I do not understand the applicant's position to be that the duty to accommodate requires that he receive the same level of compensation he received in his operational position. If that were the case, logic would dictate that the top-up not be time-limited. Rather, his position appears to be that if such top-up is to be offered voluntarily, then it ought to be at the rate of the job he was primarily assigned to, not his lower-paid 'base' position. The applicant was unable to point to any theory of discrimination to support this position, but rather suggested that fairness dictated the result he sought. The tribunal does not, however, have the jurisdiction to inquire into the rightness or fairness of decisions in the absence of a violation of the code."

For those reasons, the application was dismissed on June 15, 2010.

In conclusion, the TPFFA strongly supports the passage of Bill 181 as it currently is before us. It supports collective bargaining, allowing the parties to address their local needs. Toronto, with its unique size and position, has addressed their own local need, and we are happy that the legislation recognizes that. It will signifi-

cantly reduce costly and unnecessary human rights tribunal processes for both mandatory retirement and DFR cases. The TPFPA strongly believes that this legislation reflects appropriate changes in dealing with these issues.

We'd like to thank you for the opportunity to be here.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a few minutes for questions. Mr. Clark.

Mr. Steve Clark: Just on article 26 that's listed on page 3 or 4: You've got the 65 number for your group. How many are between 60 and 65 in the operations division?

Mr. Ed Kennedy: About 35.

Mr. Steve Clark: Later on today, the city is coming in. Have you had discussions with them since the private member's motion was tabled?

Mr. Ed Kennedy: Yes, we have. Well, we've had discussions with regard to the bill and what we felt about it. As far as my discussions, they were happy with it, with regard to supporting what we have currently in the collective agreement.

The Chair (Mr. David Oraziotti): Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for your submission. Thank you for all that you do for the city of Toronto, by the way.

I have no problem; New Democrats are very supportive of this bill. You've heard the AMO submission, however. Do you have any comments on their concerns?

Mr. Ed Kennedy: One of the most important ones I find is in regard to how they felt this process would be more costly. I definitely disagree. Right now, with the number of cases that we have, our association and the city of Toronto, going to the Ontario Human Rights Commission—we have 12. There is one hearing that's coming up. I think right now we have six dates currently scheduled, and probably more, from it. We're going through one currently. I think in the first week of May, there were four dates we had for another individual, and we had a couple earlier in the year. Every one of these cases, for whatever reason, seems to take six-plus hearing dates, and that gets very costly to our membership. We have legal representation there.

Mr. Frank Ramagnano: One issue I would take exception with is the exemptions that they ask for in regard to DFR. In one of the cases that we had before us when we were in civil, they just named the association, but it was quite evident that if a mistake was made, it would be the city of Toronto that benefited from that mistake and not the association. We, in turn, named them as a third party. The judge wholeheartedly agreed that just because a mistake was made, there was no way that the city should benefit from that mistake. By having the exemptions that they're requesting in DFR legislation, that's exactly what they would be doing. If the association was found guilty of something, basically they're saying, "It's the association's fault and we're clear, and we don't have to pay what we normally should have if that mistake didn't occur."

It would also move us away from where the other unions and employers are. They have that protection. That's the legislation now. We're not asking for the labour relations legislation to get changed; we're asking for the fire prevention act to get changed.

Ms. Cheri DiNovo: It also seems to me that it's the right thing to do, even if it did cost more. It would be interesting to know if the government would step up and help out, because it's certainly worth paying, even if it did cost more.

I respectfully accept your submission. Thank you.

The Chair (Mr. David Oraziotti): Briefly, Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Mr. Kennedy and Mr. Ramagnano, for coming here today, on behalf of all our members here.

We were just talking about duty of fair representation. Is it possible it could save money on both sides, the new amendments that we're recommending here, that it could save on the association's side—

Mr. Ed Kennedy: Absolutely. With regard to what I've highlighted, the number of cases that we have at the Ontario Human Rights Commission—right now, the city is probably paying as much, or more, representing themselves there. So I can see, definitely, a big savings.

Mr. Frank Ramagnano: We actually believe the city of Toronto is contemplating suing the Human Rights Commission because they believe a lot of the cases should never be before it—they don't have jurisdiction over it—to the point that the city is bringing in their own stenographer to keep track of everything. So we believe that they might be, in the future, anticipating going after the Human Rights Commission on some of the cases that were there, as well.

The Chair (Mr. David Oraziotti): Thank you very much, gentlemen. That's the time for your presentation today. Thanks for coming in.

ONTARIO ASSOCIATION OF FIRE CHIEFS

The Chair (Mr. David Oraziotti): Our next presentation is from the Ontario Association of Fire Chiefs. Good afternoon, gentlemen, and welcome to the Standing Committee on General Government. As you are aware, you have 15 minutes for your presentation. Any time you don't use will be divided among the members. You can start when you're ready—and just state your name for our recording purposes.

Mr. Kevin Foster: Thank you, Mr. Chair. My name is Kevin Foster. I'm the first vice-president of the Ontario Association of Fire Chiefs and the director of fire services and emergency management for the town of Midland. I have with me today Barry Malmsten, who is the executive director for the OAF. We appreciate the opportunity to speak with you today.

The OAF represents chief fire officers from around the province who are responsible, by statute, for the delivery of fire protection services within their communities. The chiefs are not the employer; the respective municipality is the actual employer. We are the managers.

The O AFC supports the principle of mandatory retirement that's contained in Bill 181. However, as currently presented, we believe that the proposal is incomplete and that it may create operational and financial challenges for municipalities.

There are over 460 departments in the province, employing over 30,500 firefighters. The structure and capabilities of each individual department will vary. You've had some information today in terms of departments. Over half of the departments in the province are entirely volunteer fire departments—and that includes the fire chief—of which the province has 50 departments within the northern fire protection program. Approximately 175 departments in the province are combination departments—a combination of career firefighters, part-time, as well as volunteers. Only 31 in the province are full-time or career departments that do not utilize volunteer firefighters.

As you can see, the fire service is very diverse, but the employment relationships between firefighters and the municipalities in which they serve are equally as diverse. There are career and part-time firefighters with a collective agreement under the FPPA; there are volunteer firefighters who have collective agreements under the Ontario Labour Relations Act; as well as career, part-time and volunteer firefighters who have no collective agreement at all.

When it comes to health and safety, all firefighters need to be treated the same. The Occupational Health and Safety Act and section 21 guidance notes do not offer one type of health and safety standard for a career firefighter and a separate standard for a volunteer firefighter. All firefighters are trained the same, according to the same provincial standard; they face the same dangers and they work side by side at incidents in composite departments as well as part of Ontario's mutual aid system.

We see this bill as discriminatory, as it proposes to differentiate between career firefighters covered by collective agreements established under part IX of the FPPA and all other firefighters. That means that it excludes approximately 65% of the firefighters in Ontario. Matters of health and safety should not apply only to one third of the workforce.

I refer back to my previous statement about career firefighters and volunteer firefighters working together at the same incident in a composite department or in a mutual aid system. Midland, my department, is one such example. At all major incidents, there are both career and volunteer firefighters present. Theoretically, let's just look at that. If, during, the incident, one career firefighter and one volunteer firefighter were both to turn age 60, the intent of the legislation, as it's drafted, would be that the career firefighter should no longer be able to assist, but the volunteer firefighter should be able to continue.

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The health and safety of all firefighters is important. Therefore, we strongly recommend that the proposed legislation be expanded to provide the option of negotiating or establishing a retirement age for all firefighters,

not just those with collective agreements under the FPPA.

A bill which mandates a single retirement age for all fire departments may negatively impact public safety. Mandatory retirement at age 60 would have a large impact on some volunteer departments. It's estimated that 6% of the volunteer firefighters in Ontario are over age 60. In many smaller municipalities, these firefighters are the only people available during the day in order to respond to an emergency incident. In full-time departments, that number is approximately 1%. It still has an impact, but to a much smaller extent.

Let me give you an example of where one volunteer department sits in the province. The township of Otonabee-South Monaghan over the next five years will see 17.5% of its fire service forced out. That will include their fire chief, two district chiefs, one captain, fire prevention, training officer, two fire captains, as well as three firefighters.

From a position of managerial and supervisor responsibilities, the volunteer fire service would be significantly impacted, as 11% of officers are over 60, whereas 3% are over 60 in full-time departments. These are the leaders and the most experienced persons in the departments.

For this reason, the O AFC recommends that the legislation be permissive, to allow for the establishment of a suitable retirement age. Allow municipalities to establish a retirement age, or not, that works for their local circumstances and for their firefighters, and they should not have a deemed mandatory requirement. Rather, reinstitute the validity of the applicable language that is currently included in existing collective agreements. Provide the ability to negotiate an acceptable age into a collective agreement, and when negotiation fails to reach an agreement, the matter can be dealt with through the arbitration process, like all other negotiable items which remain in dispute. Establish a suitable age requirement in a fire department establishing and regulating bylaw, or another suitable municipal bylaw, or a municipal policy, if a collective agreement is not present.

While all municipalities and career firefighters participate in the OMERS pension plan, not all have a normal retirement age of 60. The costs of converting existing firefighters to the NRA 60 will be significant, and the costs for municipalities to transition to the NRA 60 will significantly increase for each new firefighter.

One third of collective agreements do not have the mandatory retirement age in them. Bill 181, as drafted, would force all other municipalities to have a retirement age of 60. This could impose a huge cost on the municipalities and on firefighters. Such costs should be determined by the affected parties as part of the collective bargaining process and should not be forced upon them.

We're also concerned for future firefighters, because recruit firefighters are typically older today, in their late 20s and some even into their 40s, whereas years ago, when firefighters who are currently retiring at the age of 57 were hired, they were much younger, in their late teens or early 20s. New recruits today may not have full pensions by the time they are 60.

The duty of fair representation deals with the dispute between the bargaining agent and one of its members. This is not a collective agreement dispute between the union and the employer, and is a dispute outside the control of management. Although the OAFCA is not the employer, we believe that any costs of the remedy for a contravention should be borne between the union or the individual member and not the municipality.

We are concerned that the added costs of such an award on the employer could impact the flexibility that they have to finance enhancements of fire protection and fire department operations.

In operational terms, it is extremely difficult to define and categorize firefighters as suppression or non-suppression and as regularly assigned to such activities. The fire service has been designed to be flexible so that firefighters in other fire service roles, such as fire prevention, training and even chief officers, may be called upon to be an active contributor at an emergency scene.

Particularly in small composite departments, many individuals wear many hats. In Midland, for example, both our training officer and fire prevention officer have emergency incident responsibilities and, when off duty, do return to general alarms. Midland would be a norm for that type of department, not an exception. Small composite departments often use all their off-duty staff for major incidents.

The current wording will lead to continual disputes and costly arbitrations as firefighters, associations and municipalities debate who and what activities are regularly assigned. We recommend that the legislation be applicable to all firefighters.

Employers should be relieved from the requirements of duty to accommodate beyond the retirement age. Fire service personnel in Ontario are predominantly working in emergency response. There are few positions in a fire department that are not emergency-response related. The few that do exist typically require a very different skill set. This means that it is impossible for the fire department to accommodate a large number of retirees in their operations.

This clause, as worded, may create lifelong firefighters who are unable to perform tasks for which they were hired, meaning that taxpayers would be burdened with the cost of staff with little or no return for their tax dollars, and also limit the municipalities' flexibility in financing enhancements in fire protection, including additional or replacement personnel.

In closing, the Ontario Association of Fire Chiefs supports the intent of Bill 181 but maintains that the items noted need to be addressed in the interest of health and safety of all firefighters, municipalities and the public.

Thank you, Mr. Chair. I'll try to address any questions that you may have.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We have a very brief minute or so here for questions. Mr. Clark, go ahead if you've got something.

Mr. Steve Clark: I guess I'm just a bit confused. You agree with the intent of 181, but you feel it's incomplete;

that there may be some operational and financial issues. I understand that.

Help me out. I was in a hall on Saturday, and I talked to some volunteers. A 68-year-old drives the truck to the scene during a fire during the day because, obviously, it's a small volunteer force. How are you saying that this is going to change the way that they deal with it? They've got 40 volunteers; six of them are over 60 years old. Give me your interpretation on how that's going to create an operational challenge to that particular municipality.

Mr. Kevin Foster: In our recommendation, if the legislation is permissive to permit the municipality to determine what is in the best interest for them in terms of providing fire protection services with those individuals. That's what our recommendation is.

Mr. Steve Clark: What if they determine that the way they operate now is the way they want to operate? How do you see that this is going to curtail them from doing that?

Mr. Kevin Foster: Sorry; how they operate now would curtail them?

Mr. Steve Clark: Yes. They have six people who are over 60 for a volunteer fire department. How do you see that this present legislation, the way it's worded, is going to curtail the fact that they operate with six firefighters over the age of 60 right now?

Mr. Kevin Foster: I think what the current legislation does is restrict the municipality from actually determining what is in the best interest of fire protection delivery for their municipality.

Mr. Steve Clark: So you're saying that they have to change the way they operate based on this legislation?

Mr. Kevin Foster: No, but what the legislation does is it actually does not permit them to make the change—keeping in mind that the intent is to deal with the health and safety matter if the health and safety matter of a career firefighter is the same as that of a volunteer firefighter. If that is the intent, then currently the municipality is not permissive to be able to address that concern, if they have that within their municipality.

Mr. Steve Clark: So if they were permitted to handle things the way they do now, you'd be supportive? If volunteer departments in municipalities could operate the way they are, if they were allowed to be permitted under permissive legislation, you'd support that?

Mr. Kevin Foster: Yes.

The Chair (Mr. David Oraziotti): Okay. That's the time for your presentation. Thanks for coming in today, gentlemen.

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FIRE FIGHTERS ASSOCIATION OF ONTARIO

The Chair (Mr. David Oraziotti): Next presentation: Fire Fighters Association of Ontario. Good afternoon, sir, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time you don't use will be divided among committee

members. You can start by stating your name, and you go ahead. Thanks.

Mr. Dave Carruthers: Thank you, Mr. Chair. My name is Dave Carruthers. I'm currently the secretary of the Fire Fighters Association of Ontario. I'm pleased to address the committee this afternoon.

The Fire Fighters Association of Ontario is an organization that has its roots in this province dating back almost 112 years. From its inception, it has been the mandate of the FFAO to promote opinions regarding the best appliances for modes of firefighting and all other matters affecting the progress and welfare of volunteer firefighters in the province of Ontario.

Our executive has followed the progression of Bill 181 and has petitioned our membership for their thoughts on how this proposal will affect the average volunteer fire department in Ontario. Some of these comments are as follows:

"There are numerous fire departments in the north that are already suffering, and 'grey' hair is becoming more and more prevalent. Smaller communities would know the strengths and weaknesses of their members and would accommodate their needs. If people don't feel up to doing the job they will probably retire or find something else to do within the fire service.

"Let's remember the spirit of the volunteer fire service and the communities they serve."

That's from Rob Simpson.

"This if passed will be the end of our department. Because of our isolation and high unemployment it has been a nightmare for the past 10 years trying to maintain a minimum number of firefighters. Our experience is in our more senior volunteers, and they are all that keeps the department functioning.

"If we were to lose this expertise there is no telling what quality of service we could deliver.

"This would be coming at a very bad time when a lot of departments are also feeling the effects of low recruitment and retention."

That's from Mike Henderson.

"Competence and physical ability should be the criteria for setting a 'retirement' age for volunteer firefighters. Age should not be a consideration."

That's from Barry Baltessen.

"As an active member of a volunteer fire department for the last 19 years, I have been lucky to work beside our elders in the community. I see as a suppression responder the" proposed "retirement age is 60. I know that there are numerous members of other departments who are at this age or older and are still very active and fit. I have a policy within our department that there is a job for everyone and if the member is fit and can still do the job then they will continue unless otherwise noted. We expect a team effort and the newly trained younger firefighters will be more than willing to handle the suppression side of our core services. Having the experience of the veterans at any age is a benefit to our entire department. I believe that the member will know when their limitations are exceeded and they are more than happy to

step down at that time. I trust I am among many others who feel the same!"

That's from Andrew Peplinski.

"Age should not be the deciding factor. Level of physical fitness should be the deciding factor.

"A firefighter who is under the age of 60 and not in good physical condition is not only a hazard to himself but to his fellow firefighters. At this time there are young firefighters who, because of their physical fitness, should not have the job."

That's from Dennis Ainsley.

On a personal basis, as a recently retired chief with 32 years' service, I can assure you that there are very few volunteer firefighters who are regularly assigned suppression duties. This is due to many factors, including, but not limited to, fewer fires occurring each year; the time of day, with regard to those working out of town; shift workers; daycare requirements—even when the firefighter is at home and the call comes in, he may not have daycare for his children; and other volunteer duties within the community. My experience indicates to me that the majority of those in the volunteer fire service are well aware of their limitations. Most, if not all, will resign their position prior to reaching the point where they can no longer perform to an expected level of performance.

We ask that a retirement age be negotiable with each municipality, which is the actual employer. This would allow each municipality to determine its own level of service and the ability to utilize its staffing as they are needed.

I'd like to thank the committee for the opportunity to speak today. I've left copies of all the comments received from our various members, not all of which are totally against this legislation. At this time, I'd welcome any questions or comments that you may have.

The Chair (Mr. David Oraziotti): Thank you, Mr. Carruthers, for your presentation today. Ms. DiNovo, if you have any questions, you're up first.

Ms. Cheri DiNovo: Thank you, Mr. Carruthers, and thank you for your honesty. I just scanned through these letters, and there's quite a mixed bag here. I mean, there are a lot of people who are very much in favour of this legislation, and they're volunteer firefighters—there's one here I think I know, too. It says, "At age 60 you need to give your body rest and time to enjoy the next stage." One person says that he's definitely in favour of this legislation. So I thank you for including the range; you weren't selective. There's a lot of support for this legislation in these letters from your membership.

The other thing that I would like to say too is that of course we in the New Democratic Party are very concerned about volunteer firefighters, and their health and safety as well. I thank you for bringing their concerns forward to us.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Levac, go ahead.

Mr. Dave Levac: Hi, Dave. It's good to see you again. It's been a while, but good to see you, and dealing

with Bill Burns and Dave Thomson and the guys; I appreciate that.

I just wanted to make sure that I was clear on something. You can negotiate now with your municipalities in terms of anything in a collective agreement, should you have one. You're allowed to do that in negotiations. So collectively, the Fire Fighters Association of Ontario does not have a problem with the fact that they've been exempted from this legislation and that they're not being forced to retire at 60—but you still have the capacity to negotiate that in a collective agreement, correct?

Mr. Dave Carruthers: That's quite fair.

Mr. Dave Levac: So that's not a problem for the association nor the individual.

Mr. Dave Carruthers: Not as I see it, no.

Mr. Dave Levac: Right.

There's another piece of clarity I wanted to make sure that we came to, and that is that volunteer fire departments—and I don't have the actual statistics—probably have a more difficult time maintaining during the day anyone—if you decide to say, “Okay, everybody over 60, you're gone,” that would be a bigger problem for volunteer fire departments during the day than it would be for professional firefighters who are already hired, on-scene. They have that schedule in there, right?

Mr. Dave Carruthers: For the most part, that's very true. Other than shift workers who may be at home during the day, for the most part, with volunteer firefighters who are working during the day, we have found in the last 10 years that it is becoming more and more difficult for a volunteer firefighter to leave their place of permanent employment to attend to an emergency for two reasons: one, the employer does not like to see people taking off during the day and maybe or maybe not coming back, depending on the state of the emergency; and the second thing is that more and more firefighters, although they like to stay as local as possible, are travelling as much as an hour to an hour and a half away from home in order to obtain permanent, full-time employment, and therefore they are not available at all during the day.

Mr. Dave Levac: One last, final comment to support what Mr. Clark was asking of the previous deputant: The status quo as it is now for the volunteer fire department, through your perspective, would be acceptable?

Mr. Dave Carruthers: I believe so, yes.

Mr. Dave Levac: Thank you very much, Mr. Chairman.

The Chair (Mr. David Oraziotti): Mr. Clark or Ms. Savoline?

Mrs. Joyce Savoline: I just want to put it in a nutshell, because I think we're asking the same thing and getting slightly different wording for the answer. With this new legislation, what changes for the volunteer firefighter that you feel is not good?

Mr. Dave Carruthers: If everything applied across the board to every firefighter in this province, it would devastate a number of the more northern fire departments in the province. Many of them are comprised of volun-

teers, 50 years-plus, and if you took 50% of their members away because they were over the age of 60, it would devastate that municipality's ability to respond to emergency situations.

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Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much. Mr. Clark, do you have anything further?

Mr. Steve Clark: No, that's good.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We appreciate you coming in today.

MISSISSAUGA FIRE FIGHTERS ASSOCIATION, IAFF LOCAL 1212

The Chair (Mr. David Oraziotti): The Mississauga Fire Fighters Association: Good afternoon, folks. Welcome to the Standing Committee on General Government. As you know, you have 15 minutes for your presentation. Whoever may be speaking, just state your name before you begin and you can start when you're ready. Thanks.

Mr. Chris Varcoe: My name is Chris Varcoe, and I'm president of the Mississauga Fire Fighters Association. It is my pleasure to be joining you all here today to speak to Bill 181, the Fire Protection and Prevention Amendment Act, 2011. I'm joined here today by, on my right, secretary Mark Train of Local 1212 in Mississauga, and vice-president Ryan Coburn on my left.

The Mississauga Fire Fighters Association represents some 700 members. We provide fire protective services to the nearly 750,000 residents in Canada's sixth-largest city. Our members are responsible for fire suppression, fire prevention, public education, training, mechanical operations, emergency communications and clerical.

We wish to thank the committee for allowing us the opportunity to address you today. This bill addresses two significant issues for professional firefighters in Ontario and within our home local, Mississauga.

I'll speak to the mandatory retirement portion of the bill first. This portion of the bill has certainly generated the most discussion, both in the Legislature and the fire halls. This has been a legislative priority of the OPFFA for several years now, and we are pleased that this bill has come forward to address our concerns.

For virtually the entire history of the Mississauga Fire Fighters Association, the retirement age has been 60. This was always clear to our members, and although for decades it did not exist in the collective agreement, it was considered the expected practice and referenced in the department's own policies and procedures.

Approximately five years ago, a member approached the city wishing to stay beyond his 60th birthday. This was subsequently approved, and since then, there have continued to be sporadic requests to extend. The association has always been opposed to this, but has lacked the collective agreement language to challenge the practice.

We were recently successful in negotiating the language into our collective agreement and are working to ensure that our members retire from suppression activities at the appropriate age of 60. We have carefully examined this issue and strongly believe that this bill strikes an appropriate balance to ensure fair treatment for all firefighters, the citizens of Mississauga and the province as a whole.

We have considered several sources of reference to reinforce our position, including, but not limited to, the Ontario Human Rights Tribunal case of *Espey v. London* and the medical evidence introduced therein, as well as the IAFF-IAFC peer fitness trainer reference manual, second edition, 2008. Further anecdotal evidence has also been relied upon.

The concept of firefighters leaving suppression duties at age 60 is rooted in medical consideration and public safety. It has been determined that the propensity to have a cardiac event increases dramatically at age 60 as a result of the tasks required to be performed on the fire ground or during training exercises. This includes the physical demands as well as the emotional and mental stresses placed on those on scene and in command positions.

We have quotes taken from the IAFF-IAFC peer fitness trainer reference manual that cite some bullet points:

“Emergency firefighting duties have been found to be associated with a risk of death from coronary heart disease that was markedly higher than the risk associated with non-emergency duties.

“Measurements of heart rate response taken during normal firefighting tasks have been shown to be at, or near, maximal levels.

“The cardiovascular strain resulting from the performance of work at this high level of intensity is profound.”

In *Espey v. London*, substantial expert medical evidence was received that fully supports the position of requiring firefighters to retire from suppression duties at age 60. OHRT Vice-Chair David Wright noted in his decision that the medical evidence demonstrated that firefighters were in fact unique, in that a medical emergency sustained on the fire ground had impact on more than just the firefighter, him or herself. In fact, if a medical emergency or cardiac event were to occur, it would directly impact other firefighters and reduce the department’s ability to continue with their primary assignment, as the operational objective would then adjust to focus on rescuing the firefighter. This would have the effect of placing the other firefighters in jeopardy and expose the public to undue loss as firefighting operations would cease and a rescue operation would commence.

Part 77 of the *Espey* decision states:

“Suppression firefighters’ work, including that of incident commanders, is dangerous and critical for public safety. It requires speed, quick reaction, endurance, and causes physical and mental stress.... A firefighter’s heart attack, angina, stroke, or ruptured aortic aneurysm will have significant effects on the ability of the fire service to

deal with emergencies as required, in addition to serious consequences for the firefighter involved and his or her colleagues. A cardiac event while a firefighter is carrying out emergency duties may have disastrous health and safety consequences. I am prepared to accept, as was the board of inquiry in *Hope*, supra, at paras. 36063-36064, that the consequences of cardiac events make it reasonable for the respondents to ‘insist that firefighters not be in the position of having a substantial risk of a cardiac event.’”

Also noted is the fact that incident commanders, should they become incapacitated, would have this effect as well, jeopardizing the health and safety of those on scene.

As with all departments, in Mississauga firefighter safety is paramount, even in the dangerous environments where we often find ourselves. Considerable time and effort is afforded to building in safety protocols to firefighting operations. From rapid intervention teams to safety officers to advanced entry control measures, safety is a number one priority. In Mississauga, our own policies and procedures reflect this. In our incident management system policy, four tactical priorities are identified that define the operational priorities for fire ground officers and assigns them the responsibility to accomplish these tasks. It is clear that firefighter safety is the primary focus.

The four tactical priorities that we operate by are:

- (1) protect, remove and provide care to endangered customers;
- (2) stabilize the incident;
- (3) conserve property and the environment during and after incident operations; and
- (4) provide for short-term services that stabilize and begin to normalize the customers’ lives.

Note that while it’s not in the four listed, firefighter safety is ongoing and always the primary responsibility of the IC and the supervisors.

Our association believes that the public deserves to be protected by a fire department that will do everything in its ability to ensure those responding are most capable of delivering their services safely. To ignore medical evidence that demonstrates serious risk would be difficult to justify if something were to go wrong. We recognize that any person at any age can sustain some form of medical emergency or cardiac event. However, the evidence presented does make a compelling case that, statistically speaking, the chance of this occurring becomes significantly greater after the age of 60.

The decision also pointed to the fact that the increase in risk for a cardiac disease increased significantly with age. In *Espey*, it was found that “The evidence in this case, however, is clear that age is a very significant contributor to risk of cardiac events, in general, among firefighters, and among officers. It is clear that there is a significantly increased risk of cardiac disease around the age of 60, in both men and women, and that this continues to increase with age.” We have a “furthermore” quote that you can follow as well.

In Mississauga, the possibility of physical testing has been raised by the employer and rejected by the association. The corporation had proposed to introduce some form of physical testing that would be acceptable to all parties. It would identify if the individual met a set point standard to remain in the capacity of suppression activities past age 60. This has been subsequently examined and determined to not be valid. The Espey decision clearly indicates that while some form of medical testing exists that would assist in determining the risk factor for cardiac events in those over the age of 60, it has not been determined how this testing would apply to firefighters. The next quote excerpted from the decision outlines that portion of the argument.

In summary, the passage of this bill would have the effect to clearly establish through legislation the mandatory retirement age of firefighters in the province for our association and for others across the province. It will avoid the excessive costs of defending our collective agreement on a case-by-case basis in front of the Ontario Human Rights Tribunal and be decisive in enforcing what currently exists in the vast majority of collective agreements in the province.

We believe this represents good public safety policy and will ultimately reduce the burden of WSIB obligations for the employers by removing firefighters from an environment that exposes them to toxic atmospheres and increased risk for cardiac events due to the nature of firefighting.

The DFR portion of the bill, the duty of fair representation, has received little debate anywhere, from in the fire halls to in the Legislature itself. I've often been asked several questions from different members of provincial Parliament, their staff and municipal politicians as to why the OPFFA and our associations would be asking for this type of scrutiny.

When the FPPA was enacted in 1997, the act provided little reference to the Labour Relations Act and remained silent on the DFR. It should be noted that access to the Ontario Labour Relations Board is common to most other unionized employees in the province.

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In Mississauga, we had a firefighter appeal to the OLRB to challenge the representation he received and was denied on the basis of being a firefighter. This resulted in him subsequently appealing to the OHRT to have his concerns heard. This was costly, time-consuming and ultimately a misuse of that body's time. It was ultimately dismissed.

Another recent example was a member who felt his interests were not being represented properly, and he, too, opted to proceed. In this instance, he proceeded civilly against the local. This case was abandoned at the discovery stage, but still, costs were excessive for the local to defend itself and also for the individual.

When we consider the effect of our members not having access to the OLRB, often cost, time and an appropriate venue are at the top of our concerns. In our own situation, we are fortunate to have a large member-

ship and can therefore, to some degree, absorb the cost of being challenged either civilly or at the OHRT. This is not the case for smaller locals.

Mississauga is the third-largest local in the province. Should a smaller local be challenged, a much smaller membership would be forced to shoulder the load of defending the allegations. The costs are often the same, whether spread over the 700 members in Mississauga or a dozen members of a small local.

We recognize the OLRB as an expert body designed to deal with these issues as a result of its significant understanding of the Ontario Labour Relations Act and its experience in the labour relations environment. We further recognize that there may be more challenges to the DFR brought forward in the early days of this legislation; however, they will be dealt with in a quicker and far less costly manner. This provision allows firefighters to access a provincial board, similar to other unionized workers across the province.

In closing, the Mississauga Fire Fighters Association strongly supports the passage of Bill 181. It will provide a consistent framework to guide municipalities around the mandatory retirement age while still permitting the collective bargaining process to continue in locals that lack the language. The DFR language will permit a cost-effective method to firefighters who wish to challenge the representation they have received. Both of these measures are important to all professional firefighters and represent good public policy.

We are encouraged by the all-party unanimous support that this has received to date and we thank the government for introducing this bill.

Thank you very much for the opportunity. I'd be pleased to answer any questions you may have.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Ms. DiNovo, go ahead.

Ms. Cheri DiNovo: Thank you very much for your presentation. As you've heard before, we're in support as well.

I just wanted to ask—and again, I'm getting you to do our work for us a little bit here, but you've heard some concerns raised about the municipalities' concerns. I think we've dealt with the cost a bit, but perhaps you could say a few words about those volunteer firefighting departments out there and the impact upon them. We've heard from deputants on that.

Mr. Chris Varcoe: I'm not exactly sure. I'm not quite sure what they're asking for in the legislation, how the proposed legislation would appear that they're not included—they're asking not to be—and the explanation of the devastation that would occur if they were actually included. So I'm not entirely clear as to what's being asked.

Ms. Cheri DiNovo: Right—in terms of their protection, I guess, and the cost envisioned.

Again, I just thank you for the good work that you do. With any hope at all, we'll get this passed this session.

Perhaps you could also say a few words about AMO and their concerns about cost.

Mr. Chris Varcoe: Certainly. From our position, we believe that, as far as the mandatory 60, costs will be reduced for the cities. As mentioned earlier, when people leave at age 60, younger employees are hired to take their place. They begin at a lower wage, with lower vacation entitlement and whatnot. As well, there will be less exposure to the toxins in the environment that can cause illnesses down the road. Stress and the physical demands as well can limit the burden to the municipalities.

Ms. Cheri DiNovo: Okay. Thank you very much.

Mr. Chris Varcoe: You're welcome.

The Chair (Mr. David Oraziotti): Thank you very much. That's time for your presentation. We appreciate you coming in today.

CITY OF TORONTO

The Chair (Mr. David Oraziotti): Our next presentation is the city of Toronto. Good afternoon, folks. Welcome to the Standing Committee on General Government. As you are aware, you've got 15 minutes. Whoever may be speaking, just state your name for recording purposes, and you can begin when you're ready.

Mr. Darragh Meagher: Good afternoon. My name is Darragh Meagher. I'm director of employment law with the city of Toronto. I'm joined by Daryl Fuglerud, deputy fire chief, Toronto Fire Services; and Michael Wiseman, manager of benefits and employee services for the city of Toronto. I'm pleased to be able to provide the city of Toronto's perspective on Bill 181 this afternoon.

First, I'd like to provide you with a brief summary of the composition of the Toronto Fire Services so that you'll understand the potential impacts of the legislation for TFS. TFS has approximately 3,200 employees, of which approximately 3,100 are considered firefighters under the FPPA. Approximately 2,800 of those firefighters are assigned to operations or suppression service duties. There are approximately 200 firefighters who are assigned to support services and may be assigned to attend fire scenes in the course of their duties or may be involved in training activities.

The city of Toronto is largely supportive of the principle of mandatory retirement for suppression firefighters and of the principle of duty of fair representation being addressed through the legislation. However, there are some concerns that we'd like to bring to the attention of the standing committee regarding the manner in which these principles are addressed in the legislation. To some extent, I think the concerns that you're going to hear from us will echo the concerns that you've heard from AMO already today.

In relation to the issue of mandatory retirement, the city of Toronto and the bargaining unit representing its firefighters, the Toronto Professional Fire Fighters' Association, spent a great deal of time dealing with that particular issue and have been able to negotiate a provision of the collective agreement that we believe meets the needs of both parties in that regard. In a nutshell, the city and Local 3888 have agreed that the essential duties of

firefighters in suppression are such that there's a significant risk that an employee will be unable to perform those duties past the age of 65 and that employees who are in a position in that division should be required to retire at that age. The parties specifically acknowledge through their collective agreement that this requirement was a reasonable and bona fide qualification due to the nature of the employment. So we've established an age in our collective agreement.

In addition, though, the collective agreement also addresses the accommodation of firefighters who want to work past that age, by providing that, in the event an individual wants to continue to work past age 65, the city will reassign the employee to a position outside of the suppression role, firstly to a comparable position in another division of the fire services in accordance with the requirements of the code. So we've attempted to establish an age and, as well, to deal with the individual who wants to continue working past that age.

The city's concern is the impact that the proposed legislation may have on its fire services. Specifically, there's a concern that the legislation may give rise to undue pressures on both the city and Local 3888, the TPFPA, in bargaining. The TPFPA may perceive that they have to achieve a mandatory retirement age of 60 through bargaining and that it will be difficult for interest arbitrators, who ultimately have the say if the parties aren't able to come to agreement, to withhold such a provision from collective bargaining through interest arbitration.

Adopting a mandatory retirement age of 60 in the city of Toronto would give rise to some significant challenges if fire services wouldn't have the capacity to place affected employees in non-suppression duties. The implications of such a change for the city would be significant. At present, there are approximately 90 employees in the suppression role who may be required to retire if such a provision was incorporated into the collective agreement between the city and Local 3888. Alternatively, the city could potentially grandparent those employees over 60 and implement mandatory retirement on a go-forward basis. However, both of those circumstances would give rise to implementation issues.

Introduction of a mandatory retirement age at 60 would put the city in a situation somewhat similar to the one that it was in post-amalgamation, at which time the composite collective agreements that governed its employees from various pre-amalgamation municipalities had different retirement ages, so the potential would be that you would end up with employees at different ages performing the same duties side by side but subject to different mandatory retirement ages. For an employer who is subject to the duty of accommodation under the Human Rights Code or this proposed legislation, that situation is of significant concern, and that's the situation that the city was successful in resolving through collective bargaining with its partner, Local 3888.

In terms of the specifics of the legislation, the city has some concerns with the manner in which the legislation

provides that it would apply. By virtue of the inclusion of this provision in part IX of the FPPA, it won't apply to managers or those firefighters who've been designated under subsection 54(4) of the act, both of whom are excluded from the bargaining units and not subject to a collective agreement. But subsection 53.1(1) provides that it will apply to firefighters who are regularly assigned to fire suppression duties, and that definition is somewhat problematic. It doesn't provide sufficient guidance, in the city's view, as to how the legislation would apply to firefighters in support divisions who may regularly attend a fire scene or who regularly are assigned to train firefighters. The city's concern is that the legislation may give rise to different interpretations and disputes which will result in litigation.

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Firefighters in non-suppression functions also attend the fire ground. It's not clear at this stage whether the proposed legislative change is intended to be limited to firefighters employed in performance of suppression duties or whether it's intended to apply to all firefighters. Without clarification, the legislation might be interpreted as unintentionally including those individuals, which would potentially include mechanics, fire prevention staff, health and safety staff etc.

In order to address the concern, the city would propose a minor amendment to section 53.1 which would provide that the legislation would apply not to firefighters who are regularly assigned to fire suppression duties but to firefighters who are directly engaged in fire suppression duties, including training related to those duties. We think that that clarification would provide greater clarity as to what the intention was.

As far as the duty to accommodate is concerned, section 53.1(4) contemplates that an employer is required to accommodate those employees who don't wish to retire, regardless of age. The current wording requires that the employer "shall not require the firefighter to retire if the employer can accommodate the firefighter without undue hardship..." I understand that you've heard from AMO, and as well, I understand Mr. LeBlanc had some comments that I think the city would be generally supportive of in relation to that issue.

One issue that I would raise, though, is that the workplace parties in the legislation, as I understand it, would continue to be subject to the provisions of the Human Rights Code, and there's a fair amount of jurisprudence as to what the duty to accommodate means in the context of the application of that legislation. I don't imagine that anybody is suggesting that those same duties wouldn't apply to those parties who are applying this legislation. One concern may be that if this legislation carries forward with a further duty to accommodate, people who are subsequently trying to address the application of the legislation may perceive that there is some further duty of accommodation that exists under this legislation, beyond what's contemplated by the Human Rights Code. It may be sufficient to simply leave the duty to accommodate questions to what already exists under the Human Rights Code.

As far as the duty of fair representation is concerned, there are favourable elements to that proposal. The duty of fair representation gives employees the right to challenge their union if the union fails to advance a grievance to arbitration that they believe has merit. The grievance continues, for the most part, to be owned by the union or the association, and it's not required to take all grievances to arbitration. The duty of fair representation as proposed would provide a framework through which an employee could seek review of their association's decisions in that regard, and that's the advice that we provided ministry staff when we were consulted in relation to this proposal.

We have one concern with the language of the actual bill, as it's proposed, and that relates to section 46.2(5)(d). It's one of the remedy provisions that provides that the remedy for an employee who is terminated and whose association breaches the duty of fair representation would be—that the board might direct reinstatement. In the city's view, the remedy for an employee in that situation is that the association should be directed to bring the grievance forward to arbitration. An arbitrator would then conduct a full hearing and determine whether reinstatement was appropriate. The workplace parties, and not the government, would bear the costs associated with the hearing, because the parties pay for an arbitrator, whereas if the matter was dealt with at the board it would be the board that would conduct the hearing. That's presumably consistent with the actual intent of the government, I would submit, in proposing this amendment.

As an alternative, the city would propose that if there wasn't a will to delete section 46.2(5)(d), that it be amended in order to make it clear that whatever remedy the board would apply as a means of addressing the contravention of the duty of fair representation would be what was necessary in order to remedy the breach. So rather than providing that in section 46.2(5), "The board shall determine what, if anything, the bargaining agent, the employer or any other person shall do or refrain from doing with respect to the contravention," the legislation would provide that the board shall determine what actions, if any, the bargaining agent, the employer or any other person is required to take or refrain from taking to remedy the contravention. In the city's submission, that change would direct the board to only reinstate where it would be required in order to remedy the contravention, and presumably, that would be a rare occurrence.

Thank you again for the opportunity to make submissions to you in relation to this matter. If you have any questions, I'm happy to attempt to address them.

The Chair (Mr. David Oraziotti): Thanks. We have a few minutes. Thank you for your presentation. Mr. Levac, go ahead.

Mr. Dave Levac: First, thank you for your presentation. I can assure you that there are plenty of staff, and the parliamentary assistant is sitting right here, so the recommendations and concerns you raised will be evaluated for sure.

Two things I'd like to talk to you about: You had given me the numbers of suppression. By a quick cal-

ulation, about 400 to 425 positions are available for somebody to accommodate to. During natural attrition, there would be some spaces available for people to move into. Are you presenting us with the worst-case scenarios when you talk about the collective agreements, the 65—like, you're making assumptions? Are you going to the worst-case scenarios when you make those assumptions, when you present to the ministry here, so that they understand that if all else was really bad, this is what would happen? I'm getting a sense that the legislation says that you carry on doing what you're doing right now. Because of the way it's written, your collective agreement is sacrosanct.

Mr. Darragh Meagher: Yes.

Mr. Dave Levac: I just needed to make sure I understand that.

Mr. Darragh Meagher: What we're saying is that if we were to try and accommodate this change through our collective bargaining process now—I'm simply trying to give a sense of the scale at which the city would have to try and accommodate employees who would require a move from suppression. Presumably—

Mr. Dave Levac: Right. But the numbers are there, right?

Mr. Darragh Meagher: The numbers are there, yes.

Mr. Dave Levac: Okay.

The Chair (Mr. David Oraziotti): Thank you. We're going to move on. Ms. Savoline, go ahead.

Mrs. Joyce Savoline: In addition to what I'm understanding to be some administrative glitches and some issues that way, have you done any costing as to what

this might cost your municipality? Obviously, it would be an estimate, but I'm just trying to get a sense of what this may cost the property taxpayer.

Mr. Darragh Meagher: I don't think we've had the opportunity at this point in time to undertake any costing as to the impact.

Mrs. Joyce Savoline: Is it safe to say it will be a cost?

Mr. Darragh Meagher: Again, any change that would give rise to this, as I understand it, would arise as a consequence of the collective bargaining process. How the parties were to implement that change would, through that process, be within their control. It's possible that they might, in that process, address the cost concerns. I think, frankly, it's undeniable that they'll have to.

As far as implementing a change like this, I don't know that it's absolutely necessary that it will give rise to a cost. If one is going to move mandatory retirement in suppression in the city of Toronto from 65 to 60, I think there are likely to be some costs associated with that.

But, again, one thing that I think is positive in the legislation is that it does leave that process to the parties through collective bargaining.

Mrs. Joyce Savoline: Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today. That's time for your presentation.

Mr. Darragh Meagher: Thank you.

The Chair (Mr. David Oraziotti): Thank you, folks. That's all the presentations today. Committee is adjourned.

The committee adjourned at 1538.

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