

Subject: Rural Firefighters Employee Status

File Number: ACS2024-EPS-OFS-0002

**Report to Emergency Preparedness and Protective Services Committee on 15
February 2024**

and Council 21 February 2024

Submitted on February 6, 2024 by Paul Hutt, Chief, Ottawa Fire Services

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Ward: Citywide

Objet : Statut d'employé des pompiers en milieu rural

Numéro de dossier : ACS2024-EPS-OFS-0002

**Rapport présenté au Comité des services de protection et de préparation aux
situations d'urgence**

Rapport soumis le 15 février 2024

et au Conseil le 21 février 2024

Soumis le 2024-02-06 par Paul Hutt, chef, Service des incendies d'Ottawa

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Quartier : À l'échelle de la ville

REPORT RECOMMENDATIONS

That the Emergency Preparedness and Protective Services Committee recommend that Council:

- 1. Approve the conversion of Ottawa rural firefighters to casual employees with the City of Ottawa, and**
- 2. Direct staff to take the necessary internal administrative measures, in accordance with Human Resources policies.**

RECOMMANDATIONS DU RAPPORT

Que le Comité des services de protection et de préparation aux situations d'urgence recommande ce qui suit au Conseil :

- 1. Approuver la reclassification des pompiers en milieu rural d'Ottawa en tant qu'employés occasionnels de la Ville d'Ottawa,**
- 2. Demander au personnel de prendre les mesures administratives internes nécessaires, conformément aux politiques des ressources humaines.**

EXECUTIVE SUMMARY

As described in the discussion section and legal implications section below, Document 1 of this report is confidential and any consideration of the content of Document 1 by the Emergency Preparedness and Protective Services Committee would proceed in camera, pursuant to Procedure By-law 2022-410, Subsection 13(1)(d) labour relations or employee negotiations, and Subsection 13(1)(f) the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

The Rural Division of Ottawa Fire Services provides emergency response, public education/prevention, and community support to the residents from 20 rural fire stations across the city, in suburban and rural areas.

Rural firefighters are not currently designated as City employees. Rural firefighters and the Rural Fire Advisory Committee have long been seeking employee status similar to other casual employees with the City. More recently, last year volunteers made an application with the Ontario Labour Relations Board (OLRB) to unionize. Despite the application being denied, on several occasions, the OLRB has found that volunteer firefighters can be employees for the purpose of the *Labour Relations Act, 1995*.

Ottawa Fire Services has received an external legal opinion from Emond Harnden on this issue, a copy of which is attached as confidential Document 1.

Ottawa Fire Services recommends converting Ottawa rural firefighters to become casual employees with the City of Ottawa. Rural firefighters are trained to the industry's highest standards and provide an effective response to emergency services for residents.

Rural firefighters provide a vital service to rural residents in Ottawa. They respond in times of urgent need and fortify Ottawa Fire Services effective response during emergencies including those related to climate events. Rural firefighters are deployed to support power outages, floodings, tornadoes and severe winds, ice storms and wildland fires. These events are severely impacting rural areas of the City of Ottawa. Ottawa Fire Services will continue to monitor, evaluate, and plan for these factors when considering future levels of service in both rural and urban operations. In addition, rural division firefighters are held to the same standards as all City employees. They must adhere to all policies and be up to date on all mandatory City corporate training. Rural firefighters represent the City of Ottawa and its residents with professionalism and integrity.

It will also provide much needed recognition for first responders who risk their life and safety for the City of Ottawa. The approval of the recommendation will provide the acknowledgement for the work they do at a nominal fee to the City. Reclassifying rural operations firefighters from volunteers with the City of Ottawa as casual employees will provide labour relations stability, improve retention, and reduce financial liabilities for the City.

RÉSUMÉ

Comme décrit dans les sections Analyse et Répercussions juridiques ci-dessous, le Document 1 accompagnant ce rapport est confidentiel et tout examen du contenu du Document 1 par le Comité des services de protection et de préparation aux situations d'urgence se ferait à huis clos, conformément au Règlement de procédure n° 2022-410, alinéa 13(1)(d) sur les relations de travail ou les négociations avec les employés, et l'alinéa 13(1)(f) sur les conseils qui sont protégés par le privilège du secret professionnel de l'avocat, y compris les communications nécessaires à cette fin.

La Division des opérations rurales du Service des incendies d'Ottawa fournit des services d'intervention d'urgence, de sensibilisation du public et de prévention, ainsi qu'un soutien communautaire aux résidents à partir des 20 casernes de pompiers rurales réparties dans la ville, les banlieues et les zones rurales.

Les pompiers en milieu rural ne sont actuellement pas considérés comme des employés de la Ville. Les pompiers en milieu rural et le Comité consultatif sur les incendies en milieu rural demandent depuis longtemps un statut d'employé similaire à celui des autres employés occasionnels de la Ville. Plus récemment, l'année dernière, des pompiers volontaires ont déposé une demande de syndicalisation auprès de la Commission des relations de travail de l'Ontario (CRTO). Bien que la demande ait été rejetée, la décision de la CRTO indique que la relation ressemble davantage à une relation d'emploi qu'à une relation de bénévolat.

Le Service des incendies d'Ottawa a reçu un avis juridique externe de la part du cabinet Emond Harnden à ce sujet, dont une copie est jointe en tant que Document 1 (confidentiel). Le Service des incendies d'Ottawa recommande de convertir le statut des pompiers en milieu rural d'Ottawa en tant qu'employés occasionnels de la Ville d'Ottawa. Les pompiers en milieu rural sont formés selon les normes les plus strictes du secteur et fournissent une intervention efficace aux services d'urgence pour les résidents. Les pompiers en milieu rural fournissent un service vital aux résidents des zones rurales d'Ottawa. Ils interviennent en cas de besoin urgent et renforcent l'intervention efficace du Service des incendies d'Ottawa dans les situations d'urgence, y compris celles liées aux événements climatiques. Les pompiers en milieu rural sont déployés pour prêter main forte lors de pannes d'électricité, d'inondations, de tornades et de vents violents, de tempêtes de verglas et d'incendies de forêt. Ces événements affectent gravement les zones rurales de la ville d'Ottawa. Le Service des incendies d'Ottawa continuera de surveiller, d'évaluer et de planifier en fonction de ces facteurs lorsqu'il envisagera les niveaux de service futurs dans les opérations rurales et urbaines. En outre, les pompiers de la Division des opérations rurales sont soumis aux mêmes normes que tous les employés de la Ville. Ils doivent adhérer à toutes les politiques et se tenir à jour en ce qui concerne l'ensemble des formations obligatoires de la Ville. Les pompiers en milieu rural représentent la Ville d'Ottawa et ses résidents avec professionnalisme et intégrité.

Ce changement apportera également une reconnaissance des plus nécessaires aux premiers intervenants qui risquent leur vie et leur sécurité pour la Ville d'Ottawa. L'approbation de la recommandation permettra de reconnaître le travail qu'ils effectuent à un prix modique pour la Ville. Le fait de changer le statut des pompiers en milieu rural

pour qu'ils passent de volontaires à des employés occasionnels auprès de la Ville d'Ottawa permettra de stabiliser les relations de travail, d'améliorer le maintien en poste de l'effectif et de réduire les passifs financiers de la Ville.

BACKGROUND

Ottawa Fire Services' rural firefighters are responsible for fire suppression, fire rescue, tiered medical response, water and ice rescue, auto extrication, wildland fires and incident management services. Emergency situations, such as floods, severe wind, extreme heat and cold events, and wildfires responses require skilled firefighter personnel. Ottawa's rural firefighters are well trained and have the most current equipment and apparatus at their disposal to ensure the best chance of a positive outcome during any situation.

Rural operations firefighters represent 40 per cent of OFS resources and provide service to 80 per cent of Ottawa landmass in partnership with urban operations. The rural division is comprised of almost 500 rural firefighters and includes 16 rural and four composite fire stations. Rural firefighters include officers, lieutenants, captains, auxiliary personnel, and firefighters.

Rural firefighters are currently comparable to City of Ottawa employees in many aspects. They are paid hourly rates and receive economic increases. They wear an Ottawa Fire Services uniform that is indistinguishable from career firefighters. Both rural and urban firefighter recruits must pass the same physical testing as part of the qualifications. The City of Ottawa maintains ground insurance coverage for accident and sickness. This will not change as a result of the recommendations. There are annual performance reviews and in cases of promotions, they are assessed on the basis or attendance standards. They are subject to all City of Ottawa policies including discipline in accordance with the City's disciplinary policy. The policies and procedures of Ottawa Fire Services also incorporate references to resigning, retiring, or termination.

Currently rural firefighters are not designated as employees. The City of Ottawa classifies rural firefighters as volunteers. The City has other volunteer positions which are unpaid and do not require an equivalent level of qualification as compared to rural firefighters. Rural firefighters in Ottawa Fire Services are National Fire Protection Association trained and certified to the same standard as urban firefighters. Relevant legislation defining volunteer firefighters include the Fire Protection and Prevention Act, the *Ontario Labour Relations Act, 1995*, and the Employment Standards Act.

Rural firefighters deliver city-wide fire education and prevention programs like the Wake up! Get a Working Smoke Alarm program door to door, the Fire Smart program, and the After the Fire program. They provide a critical front-line, emergency response services to residents, businesses, and visitors to protect loss of life, property, and the environment with an emphasis on quality services, efficiency, effectiveness, and safety.

DISCUSSION

Meeting considerations

Document 1 of this report provides information regarding labour relations and the receiving of advice that is subject to solicitor-client privilege. Any consideration of the subject matter contained in confidential Document 1 by the Emergency Preparedness and Protective Services Committee would proceed *in camera*, pursuant to Subsection 239(2) of the *Municipal Act, 2001* and Procedure By-law 2022-410, Subsections 13(1)(d) and 13(1)(f) that permit meetings to be closed if the subject matter being considered relates to labour relations and the receiving of advice that is subject to solicitor-client privilege.

Volunteer Firefighters

The Rural Fire Advisory Committee meets regularly with Ottawa Fire Services to discuss their perspective of rural firefighters. In 2019, this committee approached the City to reiterate that the employment status of rural firefighters is a significant concern. During those discussions, the committee aimed to enhance compensation for rural firefighters, advocating for benefits such as access to vacation pay. Additionally, rural firefighters were granted eligibility to participate in the Ontario Municipal Employees Retirement System (OMERS).

While rural firefighters wanted to maintain the volunteer firefighter status pursuant to the Fire Protection and Prevention Act for purposes of the City's concurrent employment exemption, they also wanted to be treated as City employees to access training through the City of Ottawa's Learning Centre, and to access the City's recreational facilities at employee rates for members and families, and to access the City's internal job postings. Ottawa Fire Services has successfully addressed and resolved these concerns for rural firefighters.

Rural firefighters, in collaboration with the Rural Fire Advisory Committee, are pursuing employment status similar to that of other casual employees within the City of Ottawa. The Ottawa Fire Services aims to formalize the recognition of rural firefighters as

employees, aiming to address eligibility concerns for participation in the OMERS pension and vacation pay. This initiative aligns with the provisions outlined in the Ontario Employment Standards Act.

Concurrent employment

The City of Ottawa Concurrent Employment Policy has an exception to allow City employees to be rural firefighters of the City. There are currently 105 City employees appointed to a rural firefighter position.

The Fire Protection and Prevention Act does not say that volunteer firefighters are not employees, in fact the definition of firefighter in section 1(1) implies that they are. There are therefore two types of firefighter employees under the Act: volunteers and professionals. Rural firefighters are deemed to be volunteer firefighters and are exempted from the City's Concurrent Employment Policy which prohibits dual roles. The City of Ottawa's Concurrent Employment Policy includes a provision that permits City employees to also serve as rural firefighters for the City. Presently, there are 105 City employees holding positions as rural firefighters.

Contrary to the notion that volunteer firefighters are not considered employees, the Fire Protection and Prevention Act implies their inclusion in the definition of firefighter in section 1(1). Consequently, the Act recognizes two categories of firefighter employees: volunteers and professionals. Rural firefighters fall into the classification of volunteer firefighters and, as such, are exempt from the City's Concurrent Employment Policy, which typically prohibits holding dual roles.

For consideration

Ottawa Fire Services seeks to recognize rural firefighters as casual employees of the City of Ottawa, while maintaining their volunteer firefighter status under the Fire Protection and Prevention Act. This dual approach aims to integrate rural firefighters into the City's workforce while respecting the regulatory framework and accommodating the Concurrent Employment Policy.

Striking this balance ensures the integration of rural firefighters as follows:

1. Recognize rural firefighters as casual employees of the City of Ottawa (Option 1)
2. Retain status as volunteer firefighters under Fire Protection and Prevention Act for City's Concurrent Employment Policy
3. Pressure will be absorbed within existing base operating budget

Based on the 2024 compensation and benefits calculations, the budget pressure estimate includes:

Table 1 - Benefit calculation

Benefit	Cost
Vacation pay (4 per cent)	\$140,000
OMERS employer contribution	\$60,000
CPP employer contribution	\$200,000
EI employer contribution	\$80,000
Total	\$480,000

Option 1 - Recognize rural firefighters as employees

Staff recommend that the city recognize rural firefighters as employees. Rural firefighters would be casual employees in order to receive benefits including pension and benefits through Ontario Municipal Employees Retirement System, vacation pay, Canada Pension Plan and Employment Insurance.

These employees will retain status as volunteer firefighters under the Fire Protection and Prevention Act given that case law indicates a volunteer firefighter is also an employee for the purposes of the Act.

Staff are recommending option one, to reclassify rural firefighters as casual employees with the City of Ottawa.

Options not pursued

Option 2 – Address compensation without recognizing rural firefighters as employees

Ottawa Fire Services could attempt to address these concerns without recognizing rural firefighters as casual employees by instead providing them with vacation pay and other benefits. This would likely be a temporary short-term solution to mitigate the immediate risks but only provides further rationale with respect to employee status and would likely result in full recognition of rural firefighters as employees. For these reasons, this option is not recommended.

Option 3 - Status quo

Should the City maintain status quo, there are financial implications from accruing liabilities in eligible OMERS pension and Employment Standards Act provisions for

vacation pay. In addition, should the City maintain status quo, it is anticipated there will be continued discontent amongst rural firefighters.

Staff's recommendations align with the 2023 to 2026 Term of Council Priorities by ensuring emergency services response models will meet demand and improve results. Maintaining a composite fire service with both career and volunteer firefighters is essential for Ottawa Fire Services to uphold response time standards and control costs effectively. Additionally, preserving skilled rural firefighters is a top priority for Ottawa Fire Services, given its status as Canada's largest composite service.

FINANCIAL IMPLICATIONS

The conversion of City rural firefighters to casual employees will create an estimated pressure of \$500,000 on an annual basis. The pressure will be absorbed within the overall Emergency and Protective Services budget.

LEGAL IMPLICATIONS

There are no legal impediments to the implementation of the report recommendations. However, the City Clerk and City Solicitor, in consultation with the Chief of Ottawa Fire Services, have recommended that the confidential Document 1, which includes the legal opinion with respect to employment status of rural firefighters be presented to Committee and Council in closed session if there are questions. The comments set out below explain the underlying legal authority and further rationale for this recommended approach.

Confidential Document 1 contains legal analysis and advice that pertains to the employment status of rural firefighters. As such, the information in Document 1 falls within the exception to the requirement that meetings be open to the public as contemplated by Subsections 13(1)(d) and (f) and of City Council's Procedure By-law (By-law 2022-410) and is also exempt from disclosure pursuant to Subsections 6(1)(b) as well as 52(3) and 12 of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Subsection 13(1)(d) of By-law No. 2022-410 provides that Council may, by resolution, close a meeting or part of a meeting to members of the public if the subject matter to be considered is labour relations or employee negotiations and Subsection 13(1)(f) for the receiving of advice that is subject to solicitor-client privilege, including communications necessary for that purpose. Subsection 52(3) of MFIPPA excludes records that are related to employment/labour relations matters that the City has an interest and Section 12 of MFIPPA exempts a record that is subject to

solicitor-client privilege or that was prepared by or for counsel employed or retained by the City for use in giving legal advice or in contemplation of or for use in litigation.

Confidential Document 1 will remain confidential and not reported out as it continues to include information that would be excluded/exempt under Subsection 6(1)(b) of MFIPPA as the record reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

COMMENTS BY THE WARD COUNCILLOR(S)

There are no comments associated by Ward Councillors associated with this report as this is a City-wide item.

CONSULTATION

Consultations have been held with rural firefighters under the umbrella of the Rural Fire Advisory Committee in relation to the recommendations of this report. This Committee has terms of reference, hosts regular meetings, and has an organization structure. Ottawa Fire Services is committed to consulting and collaborating with the rural firefighters and the Rural Fire Advisory Committee to ensure the safety of all residents in Ottawa.

ACCESSIBILITY IMPACTS

Ottawa Fire Services serves the needs of the diverse and growing community and follows the City's accessibility legislative framework. This includes adherence to the requirements of the Accessibility for Ontarians with Disabilities Act (2005) and the Integrated Accessibility Standards Regulation, 191/11, and meeting the requirements of the City of Ottawa's Accessibility Policy.

DELEGATION OF AUTHORITY IMPLICATIONS

There are no new delegated authority requirements associated with the recommendations in this report.

ENVIRONMENTAL IMPLICATIONS

There are no specific economic implications associated with the recommendations in this report.

INDIGENOUS, GENDER AND EQUITY IMPLICATIONS

There are no specific indigenous, gender and equity implications associated with the recommendations in this report.

RISK MANAGEMENT IMPLICATIONS

There are risk implications. These risks have been identified and explained in the report and are being managed by the appropriate staff. Risk implications and associated mitigation strategies are identified and explained in this report.

RURAL IMPLICATIONS

Ottawa Fire Services management believe that finding labour relations stability will positively influence rural operations. The current instability in labour relations could result in fracturing of the Ottawa Fire Services' rural operations and create inconsistency in practices amongst stations. The longer-term consequences could impact service delivery.

The intent of these report recommendations is to proactively influence the principle of stability of employment in the rural division. Staff believe these changes will build employee engagement, foster retention of rural firefighters, and continue to effectively serve the rural community.

TERM OF COUNCIL PRIORITIES

Staff's recommendations contribute to the Term of Council Priority "A city that has more affordable housing and is more liveable for all" by ensuring emergency services response models will meet demand and improve results. This report provides a framework for effective management of the resources to continue to align emergency services and crisis response models for the community.

DISPOSITION

Upon approval by Council, the General Manager of Emergency and Protective Services and the Chief of Ottawa Fire Services will work with the Finance and Corporate Services Department to implement the necessary reclassification for Rural Firefighters and Officers as soon as practicable.

Ensuring transparency and accountability, the reclassification of rural firefighters will be followed by a report to Council. This commitment to reporting back demonstrates the due diligence of Ottawa Fire Services in keeping Council informed and demonstrating

our commitment to making well-informed decisions and maintaining an open line of communication on matters of significance.

SUPPORTING DOCUMENTATION

Confidential Document 1