

January 30, 2018

Draft MCSCS Regulations on Mandatory Certification and Training for Firefighters and Community Risk Assessments by Municipalities- Briefing Note

ISSUE:

On January 25, 2018, The Ministry of Community Safety and Correctional Services (MCSCS) released draft regulations under the *Fire Protection and Prevention Act* (FPPA) regarding:

- 1) Mandatory Certification and Training for Firefighters; and
- 2) Community Risk Assessments by Municipalities.

Responses to these draft regulations are due March 11, 2018.

The draft regulation on Public Reporting on Fire Responses by Municipalities has not been shared for review or consultation. We understand that it is to be released shortly and will also be due March 11, 2018.

This briefing note has been prepared to assist AMO members in the development of their municipal responses to the draft MCSCS fire regulations. Please work with your Fire Chief and fire services to develop a comprehensive response for your municipality.

BACKGROUND:

WHAT:

- In January 2017, the MCSCS established an advisory Fire Safety Technical Table (the Table) as part of a mandate commitment to provide recommendations to modernize fire service delivery.
- The Table consists of MCSCS and Ontario Fire Marshal (OFM) executive and staff, the Ontario Professional Fire Fighters Association, the Toronto Fire Fighters Association, the Ontario Fire Chiefs Association (OAFC), Fire Chiefs from full-time, composite and volunteer services, Toronto Fire Services, and for the municipal government perspective- an AMO staff member and a lower tier CAO representative.
- The Table was established to review new and emerging challenges in fire safety with a view to identifying opportunities to enhance delivery in Ontario, such as:
 - Firefighter training and professionalism (e.g., identification of specialized knowledge requirements and core competencies);
 - Public education and prevention measures, including community risk assessments;
 - Provincial standards for fire services, such as fire service dispatch; and
 - Public reporting of fire service data.
- It must be emphasized that the Table has only been advisory. MCSCS, as informed by the Table, will develop recommendations for the MCSCS Minister's final approval.

- Municipal governments under the FPPA are required to:

Municipal responsibilities

2. (1) Every municipality shall,

- (a) establish a program in the municipality which must include public education with respect to fire safety and certain components of fire prevention; and
- (b) provide such other fire protection services as it determines may be necessary in accordance with its needs and circumstances.

Methods of providing services

(2) In discharging its responsibilities under subsection (1), a municipality shall,

- (a) appoint a community fire safety officer or a community fire safety team; **or**
- (b) establish a fire department

WHY:

- The Fire Safety Technical Table was established to address public safety and firefighter safety gaps identified by the Coroner's Inquests over the last several years.
- The Table has had active discussions on modernizing fire standards for firefighters' training and certification, community risk assessment, and public reporting on fire responses.
- Third party training for technical rescues, such as the tragic ice-training incident in SW Ontario that was the subject of a 2017 Coroner's inquest, is not addressed in these draft regulations.
- There appears to be a past informal agreement made around 2012 between MCSCS, OFM, the OAFC, and fire services that Ontario would use the National Fire Protection Association (NFPA) standards going forward. Neither AMO nor its members were part of this discussion or decision.
- The [National Fire Protection Association](#) is a United States trade association, with some international members, that creates and maintains private, copyrighted standards and codes for usage and adoption by local governments.
- One of the most notable features about NFPA's code development process is that it is open and consensus-based. That means anybody can participate in the development of these important documents. More than 9,000 volunteer committee members with a wide range of professional expertise periodically review all NFPA codes and standards.

THE REGULATIONS:

1. The draft Mandatory Certification and Training for Firefighters and Other Persons Providing Fire Protection Services includes:

- Every municipality, and in unorganized areas where the Province is responsible for certification and training, must make sure that its fire service is responsible for compliance.
- Mandatory certification is to occur for those firefighters who are performing the fire protection service: fire suppression exterior and interior attack (if provided), pump operations, fire suppression supervision, fire public education, fire prevention, fire instruction, fire dispatch, fire investigation, technical rescue, and hazardous materials to respective NFPA standards.
- Existing firefighters can be grandfathered if they can demonstrate that they have met the standard by an alternate/previous means. Grandfathering requirements are outlined in a Fire Marshal guideline (link is below). Fire chiefs are responsible for ensuring that their Firefighters have achieved the standard by courses/exams or alternate means.
- It is proposed that these standards are to be achieved by January 1, 2019 except for the following that come into force on January 1, 2020 – fire inspection, fire instruction, fire dispatch, fire investigation, hazardous materials, and technical rescue.
- Fire dispatch certification currently is only for fire services who do dispatch themselves. It does not include 3rd party dispatch at this time.
- The OFM is updating its educational offerings and approach so that all required courses and exams can be accessed online 24/7 in 2018 free of charge. Practical exams will still need to be done in person under the direction of a certified fire instructor in each area of competence.

Analysis:

- Although a complete gap analysis of firefighters who meet the NFPA standards and/or can be grandfathered was requested throughout this exercise and MCSCS surveys were attempted, the full impact of the mandatory training and certification regulation will not be known until the regulation is consulted on and/or goes into force.
- We understand that under the proposed mandatory training and certification regulation, the minimum certification/training requirements for five categories will be for new hires only as of January 1, 2019 (for Suppression Firefighters (external/interior); Pump Operators; Fire Officers; and Fire Educators).
- The draft regulation requires only those firefighters, in the five categories noted above, hired after January 1, 2019 to be certified. However, there is concern that municipal governments will still have a significant risk of potential liability if they simply follow the proposed regulatory approach being suggested – grandfather those that can be and make sure that any new hires are certified at the specific NFPA level.
 - The magnitude of the number of fire service staff who will be able to be grandfathered is unknown.

- If municipal fire services do not make sure that everyone is certified to the new mandatory standard for all categories of fire operations, there remains a great liability risk if anything unfortunate occurs.
- Stated more clearly, no municipality is likely to want to state in a Coroner's inquest or legal suit that a firefighter was not certified to the standard despite the provisions in the regulation without indemnification from the province.
- This is a Catch-22 for municipal fire services. Municipalities essentially will need to make sure everyone is trained and certificated to the certification standard for all firefighters in the service despite the go-forward approach in the regulation.
- Although there is protection from personal liability and indemnification provisions in the FPPA (see s. 74, 75, 76), it is only for those working in fire services (municipal or provincial) and not for municipal corporations.
- It will be helpful to municipal fire services that the Fire College curriculum and testing will all be online for 2018 free of charge.
- That said, municipalities will still have unfunded staff costs for those who need to take the training and for the required testing to achieve certification. This will result in staff time costs for these required training hours. Municipalities may not have provided for the now needed training costs in their 2018 budget.
- We understand that MCSCS will consider if there is provincial funding available for implementation of this regulation, once final, however no decisions have been made to date.
- It has been said at the Table that there has been significant training over the years to these standards so this should reduce the risk exposure. This needs to be validated.
- It should be noted that not all these proposed standards can be grandfathered – only those identified in the [January 2014 OFM communique](#) can be grandfathered.
- Fire inspectors, Fire instructors, Fire Investigators, Technical Rescue, Fire Dispatchers and Hazardous Materials Personnel cannot be grandfathered. So as per the draft regulation, those currently employed or appointed in fire departments must all be certified by January 1, 2020.
- In rural and northern Ontario, there are many other non-fire services that provide fire dispatch services for the fire services (e.g. consolidated fire dispatch that does many departments' dispatch, police dispatch, answering services, taxi dispatch). The full extent of different types of fire dispatch and where it occurs is not known at this time by MCSCS or OFM.
- Only fire services that do their own dispatch will be captured by this draft regulation; however, MCSCS is looking to include other fire dispatch service providers in a future regulation. Properly trained fire dispatchers is a critical area of public safety that will be pursued by the Province as inquests have, or will, identify this as a current vulnerability for the public.
- During this draft regulation consultation, municipal fire services will need to identify clearly how achievable the mandatory certification will be for all identified positions and the additional training costs that will be necessary. The value of any additional training (number of staff per position, training time needed and associated costs) should be outlined in your response.

2. The draft Community Risk Assessment by Municipalities includes:

- The process to identify, analyze, evaluate and prioritize public safety risks to inform the municipal decision-making on the provision of fire protection services, fire safety education and fire prevention programs as required by the FPPA.
- This risk assessment must be done within five years of the regulation coming into force and at then each year thereafter.
- The draft regulation outlines the mandatory profiles of community attributes that must be considered in the development of the risk assessment.
- A copy of the Community Risk Assessment must done in the form as set out by the OFM and be filed with them once completed.

Analysis:

- The Table did work well to get the draft Community Risk Assessment regulation as balanced and flexible as possible – and that the assessment is focused on the needs and circumstances of each community.
- We understand that this standardization is similar to the voluntary simplified risk assessment from the OFM that municipalities have been using to date.
- We understand that the OFM will be providing support and assistance for small rural and northern municipalities in completing these Community Risk Assessments.
- As municipal councils have up to five years to implement this regulation, a change in the date of the regulation coming into force does not need to be requested.

COMMENTARY:

- The nature of the magnitude of how many firefighters need to be trained, certified and/or grandfathered is not known by the OFM.
- The full nature of the risk or financial exposure for municipal governments and their fire services is not known at this time from these draft FPPA regulations.
- To date, no additional provincial funding has been offered by the Province to help manage the costs of mandatory training and certification.
- There is no commitment from MCSCS/provincial government to provide municipal governments with protection from litigation as part of the entire package surrounding these regulations as discussed by the Table as a quid pro quo for mandatory certification. The Province of Quebec government provided this protection to local governments in a similar mandatory training and certification situation.
- Municipal governments will have the on-going pressure to determine the level and nature of fire services in their communities through these regulations. The level of fire services is a local decision under the FPPA (s. 2(1), 2(2)) as only fire safety education and fire prevention programs that must be provided by each municipal government.

- 2018 is a municipal election year. As consistent with prudent planning and municipal election legislation, all municipal councils need to assume that as of July 2018 they may have a lame duck period. Given this and that the proposed draft regulation is to come into force by January 1, 2019, there may not be enough time before July 2018 or at the initial council meeting on or after December 1st, 2018, to make decisions (e.g. training funding) to ensure full implementation of the Mandatory Training and Certification regulation. For this reason, a later effective date is needed.

Suggested Recommendations for Municipal Responses:

- That the provincial government provide liability indemnification for all municipal governments who comply with these new regulations at least 12 months before the training and certification regulation comes into force.
 - If they do not provide this liability indemnification, it will be necessary for the province to provide the new funding that would be required to train and certify all firefighters to achieve the standards before the mandatory training and certification regulation comes into force.
- Municipal fire services will need to identify clearly how achievable the mandatory certification will be and the additional training costs that will be necessary. The value of any additional training (both time and costs) should be outlined in your response.
 - If the province does not provide liability indemnification, MCSCS should make the required training funding available to municipal fire services for all the identified NFPA professional qualifications at least at least 12 months before the training and certification regulation comes into force
 - If the province does provide liability indemnification to accompany these regulations, the province should provide sufficient funding to municipalities to cover the new training and certification costs for those designated positions at least at least 12 months before the training and certification regulation comes into force for those positions.
 - If sufficient provincial funding is not provided to municipal governments, the province will be knowingly creating a new unfunded mandate on municipalities.
- That the Mandatory Training and Certification regulation not come into force until at least July 1, 2019, preferably January 1, 2020, to allow municipal councils and their fire services to make all the necessary training funding decisions. It will also enable the provincial government to provide the necessary funding for training and liability indemnification 12 months prior to the regulations coming into force.