



**SECOND REPORT
OF THE
STANDING COMMITTEE ON LAW AMENDMENTS**

**Second Session
Fifty-fifth Legislative Assembly
of the
Province of New Brunswick**

April 26, 2005

MEMBERS OF THE COMMITTEE

Mr. Carr, Chairman
Mr. Betts, Vice-Chairman
Hon. Mr. Green
Mr. C. LeBlanc
Mr. Stiles
Mr. Sherwood

Mr. MacDonald
Mr. R. Boudreau
Mr. McGinley
Mr. Murphy
Mr. Burke
Ms. Weir

April 26, 2005

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the Second Report of the Standing Committee on Law Amendments for the session.

The Report is the result of your Committee's deliberations on Bill 2, *Volunteer Protection Act*, and Bill 5, *An Act to Amend the Workers' Compensation Act*, which were introduced in the Legislative Assembly during the previous session of the Legislature and referred to your Committee for its consideration.

I would like to thank the members of the Committee for their contribution in carrying out our mandate.

And your Committee begs leave to make a further report.

Respectfully submitted,

Jody Carr, M.L.A.
Chairman

April 26, 2005

To The Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

Your Standing Committee on Law Amendments begs leave to submit this their Second Report of the session.

On July 30, 2003, during the First Session of the Fifty-fifth Legislature, Bill 2, *Volunteer Protection Act*, was introduced in the Legislative Assembly by Mr. S. Graham, Leader of the Opposition and Member for Kent. The proposed legislation is intended to encourage volunteerism by protecting volunteers from liability for damages caused when acting within the scope of their responsibilities. On August 1, 2003, by Resolution of the House, consideration of Bill 2 was referred to the Standing Committee on Law Amendments.

On August 5, 2003, during the First Session of the Fifty-fifth Legislature, Bill 5, *An Act to Amend the Workers' Compensation Act*, was introduced in the Legislative Assembly by Mr. S. Graham, Leader of the Opposition and Member for Kent. The proposed legislation attempts to accomplish two main objectives: firstly, to extend loss of earnings benefits to volunteer firefighters who are unemployed; secondly, to legislate the presumption that certain types of cancers are occupational diseases, the dominant cause of which is the employment as a firefighter. On August 7, 2003, by Resolution of the House, consideration of Bill 5 was referred to the Standing Committee on Law Amendments.

On January 29, 2004, your Committee met with officials from the Department of Justice to discuss the merits of Bill 2 and officials from the Department of Training and Employment Development to discuss the merits of Bill 5. On September 17, 2004, your Committee held further deliberations on both Bills. On October 7 and November 30, 2004, your Committee held further deliberations on Bill 5, which included meeting with representatives from the Workplace Health, Safety, and Compensation Commission (WHSCC); the New Brunswick Association of Fire Chiefs; and the Atlantic Provinces Professional Fire Fighters Association.

Your Committee wishes to note that both Bill 2 and Bill 5 have since died on the Order and Notice Paper as the First Session of the Fifty-fifth Legislature came to an end when the Legislative Assembly was prorogued on December 2, 2004. Nonetheless, the mandate of your Committee to review the subject matter of the Bills remains in effect. Your Committee is pleased to offer its recommendations.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Bill 2, *Volunteer Protection Act*

The objective of Bill 2, *Volunteer Protection Act*, is to protect volunteers from being personally liable for damages caused by them, if the damages were incurred while the volunteer was performing his or her duties, and the volunteer's actions were not caused by such factors as criminal misconduct or gross negligence. Generally, the Bill attempts to provide legal protection to people who give their time and efforts, free of charge, to worthwhile causes and organizations.

Your Committee is in agreement that the intent of the Bill is admirable and the contributions of volunteers should be applauded and protected. Your Committee supports initiatives designed to encourage volunteerism and agrees in principle that the Legislative Assembly should seek to remove obstacles that may discourage New Brunswickers from volunteering. However, your Committee does not recommend the enactment of Bill 2. Your Committee is in agreement that Bill 2, in its current form, does not adequately accomplish its objectives and requires revision.

Your Committee therefore recommends that Bill 2, *Volunteer Protection Act*, not be proceeded with.

Bill 5, *An Act to Amend the Workers' Compensation Act*

The first objective of Bill 5 is to create loss of earnings benefits for all volunteer firefighters, whether they are employed in another profession or not. To accomplish this objective, the Province, who is deemed by the Bill to be the employer of all volunteer firefighters, shall select an amount to represent the average earnings of volunteer firefighters. Once the average earnings are determined, if a volunteer firefighter suffers an injury arising out of his or her employment as a firefighter, the volunteer is entitled to compensation based on the amount selected as the average earnings.

Currently, if a volunteer firefighter is injured in the course of volunteering as a firefighter, the volunteer is entitled to compensation based on the amount he or she receives at their regular employment. If the volunteer is unemployed, the compensation would not include loss of earnings benefits, as the volunteer would generally only be entitled to medical and rehabilitation benefits. Therefore, if Bill 5 is enacted, all volunteers, whether employed or unemployed, would be entitled to loss of earnings benefits. However, volunteers who have a salary at their regular employment which is higher than the amount selected by the Province as the average earnings of volunteer firefighters, may, in certain circumstances, receive inadequate compensation.

The second objective of Bill 5 is to create a presumptive provision stating that if full-time firefighters are diagnosed with certain types of cancers, it will be deemed to be an occupational disease, the dominant cause of which is the employment as a firefighter. The presumption only applies to a worker who has been a full-time firefighter for a minimum period of time prescribed by regulation and has been regularly exposed to the hazards of a fire scene. As for volunteer firefighters, the Bill requires the WHSCC to conduct research and prepare a report to determine if the cancers listed in the Bill can be characterized as occupational diseases for volunteer or part-time firefighters.

Your Committee is in agreement that firefighters, whether they be full-time, part-time or volunteer, provide an invaluable service to the Province of New Brunswick. These individuals risk their lives in the face of danger to protect all New Brunswickers, and if an injury or illness arises in the course of their contribution, all the necessary steps should be taken to ensure that these individuals are adequately compensated for their efforts. As such, your Committee, given the evidence presented, supports in principle the presumptive provision related to certain types of cancers for full-time firefighters, and is also of the opinion that further research should be conducted with respect to its application to volunteer firefighters. However, your Committee does not recommend Bill 5, in its current form, as it does not adequately accomplish its objectives, particularly those related to the loss of earnings provisions, and requires revision.

Your Committee therefore recommends that Bill 5, *An Act to Amend the Workers' Compensation Act*, not be proceeded with.