

In the Matter of an Arbitration

Between:

The City of Vaughan

(The “Employer”)

-and-

Vaughan Professional Firefighters’ Association

(The “Association”)

Training Officer Mandatory Retirement Grievances

Arbitrator: Brian Sheehan

Appearances:

For the Employer:

Jeremy McLeish – Legal Counsel
Stephanie Arias – Paralegal
Victoria Perricciolo – Articling Student
Andrew Zvanitajs – Fire Chief
Mark Bond – Chief Human Resources Officer
Gina Lijoi – Sr. Human Resources Manager
Mina Leone – Human Resources Business Partner

For the Association:

Christine Davies – Counsel
Erin Sobat – Counsel
Andrew Anthony – President
Jason Salisny – Vice-President
Courtney Sulker – Executive Board
Stephen Lee – Grievor

Hearing conducted via Zoom on March 31, 2026

This matter involves three grievances filed by the Association, asserting that the Employer's position that Stephen Lee (the "Grievor") could not be employed as a Training Officer because he was over the age of 60 constituted a violation of the collective agreement and the Ontario Human Rights Code ("Code").

Relevant Factual Background

The Grievor, who turned 60 on November 21, 2024, was a suppression firefighter with the Employer. The collective agreement does not contain a mandatory retirement provision. However, Section 53.1 (3.1) of the Fire Protection and Prevention Act, 1997 ("FPPA"), dictates that if a collective agreement is silent with respect to mandatory retirement, the agreement is deemed to have a provision providing for mandatory retirement at age 60 for firefighters "regularly assigned to fire suppression duties."

Before turning 60, the Grievor, with the Association's support, sought to continue his employment with the Employer by being accommodated in a Training Officer role. To that end, the Grievor applied for a Training Officer position through the posting and promotional process outlined in the collective agreement. The Employer argued that the Grievor was ineligible to work as a Training Officer beyond age 60, either as a workplace accommodation or by obtaining a position through the posting process, due to his age. The core of the Employer's position is captured in the Step 2 response of Fire Chief Andrew Zvanitajs to the Accommodation Request grievance filed on behalf of the Grievor:

As you are no doubt aware, under the terms of the collective agreement, City policy, and the Ontario Human Rights Code, the City is obligated to provide a workplace accommodation to the point of undue hardship

where reasonable. The position of Training Officer is inexorably linked to suppression firefighting. Training Officers must come from the Operations Division under the requirements of Schedule B of the collective agreement, Training Officers perform physically demanding work with live fires and other training exercises, and on occasion Training Officers attend incidents to assist suppression firefighters. An accommodation as a Training Officer is not possible despite an open recruitment in that division and the mandatory retirement age of 60 must be upheld. All training officer positions are NRA 60 and have a mandatory retirement age of 60 as well. This requirement is not only tethered to the collective agreement and is a long-standing practice but is a requirement under the *FPPA*.

After turning 60, the Grievor was initially accommodated in a temporary role as a Communications Operator (dispatcher) in the Fire Communications Division. He subsequently obtained additional qualifications and was assigned to a Fire Prevention Inspector position, which he held at the time of the arbitration hearing.

The Employer's Training Division includes up to six full-time Training Officer positions, overseen by a Chief Training Officer. At present, only three of these six permanent Training Officer positions are occupied.

In addition to the permanent Training Officers, the Employer also utilizes 18 qualified Acting Training Officers, who are suppression firefighters who have passed their qualifying exams and are eligible to serve as Training Officers. These individuals fill in for absent Training Officers or are utilized when additional Training Officers are needed for recruit training, live-fire training, or other specialized training. An Acting Training Officer is eligible for promotion to a full-time Training Officer position when a vacancy arises.

Additionally, approximately 100 firefighters, known as Platoon Instructors (also called On-Shift Training Instructors), provide specialized training to suppression

firefighters during their 24-hour shifts, apart from their regular firefighting duties.

Although Platoon Instructors are not officially part of the Training Division, the training they deliver is reviewed and approved by the Division.

The current Job Description for the Training Officer position identifies the Job Purpose of the position as follows:

Responsible for developing and conducting recruit and in-service training of fire department staff and assists with training conducted by Captains and Senior Officers including pre-fire planning programs. Prepares and conducts training and testing of firefighters in basic emergency response skills, first aid, technical rescue, fire prevention, inspection and public education. Assists the Chief Training Officer in developing programs and produces lesson plans and training aids. Reports to the Chief Training Officer on results of tests and practical exercises pertaining to recruit and in-service training. Conducts testing and maintenance programs for specific equipment and records pertinent/applicable information.

The Job Description then outlines the key responsibilities of the Training Officer position and specifies the percentage of time allocated to each duty as follows:

Program Development-40%

- Develops and delivers training programs on firefighting and emergency response operations; develops and delivers training programs for firefighters on fire prevention, inspection and public education.
- Develops and delivers training programs for technical rescue, emergency first aid including Defib and responses to hazardous materials spills or leaks.
- Assists the Chief Training Officer in developing programs and produces lesson plans and training aids.
- Maintains current awareness of changing local conditions and technological changes in firefighting operations.

Records Management-20%

- Maintains detailed records of training conducted and reports practical exercises and test results and to Chief Training Officer.
- Assists in pre-fire planning programs to highlight potentially complex operations.
- Maintains, tests and records maintenance programs for specific equipment.
- Maintains inventory of all medical related specialized equipment and drugs.

Training Delivery-35%

- Delivers training programs to all relevant staff in-class and/or in a practical setting (training yard, fire tower, off-site acquired structure, etc.).

Other Duties-5%

- Performs other related tasks and projects as assigned, which are in accordance with job responsibilities or necessary department and corporate objectives
- Responsible for ensuring compliance with the Occupational Health and Safety Act and Regulations and the Corporate Health and Safety policy and all Corporate policies and related procedures.
- Responsible for ensuring compliance with the Accessibility for Ontarians with Disabilities Act (AODA) and related policy and procedures.

The Job Description also sets out the Working Conditions associated with the Training Officer Position as follows:

- Standard office environment but is regularly required to wear all firefighting personal protective equipment when instructing live fire or practical evolutions. Infrequent travel to various facilities and centers. Interactions with the public, community partners, City departments, various divisions within VFRS and other levels of government. Ability to work outside of normal business hours, as required, and in accordance with the collective agreement. Ability to work and teach in austere or rugged outdoor settings//environment.

The Job Description does list that a qualification for the Training Officer position is that the candidate “must be able to perform all the duties of a suppression firefighter, as required”.

The Legislative and Collective Agreement Framework

The Collective Agreement

3.01-Acknowledge Exclusive Functions

The Association acknowledges that it is exclusively the function of the Corporation to:

- a) maintain order, discipline, and efficiency;
- b) hire, discharge, direct, classify, transfer, promote, demote, suspend, or otherwise discipline any employee, provided that a claim of discriminatory promotion, demotion, classification, transfer, or that a claim an employee has been discharged, suspended, disciplined without just cause may be subject to a grievance and dealt with as provided herein;
- c) maintain and enforce rules and regulations governing the conduct of the employees; and
- d) generally to manage the VFRS and, without restricting the generality of the foregoing, to determine the number of personnel required from time to time, the standards of performance for all employees, the methods, procedures, machinery and equipment to be used, schedules of work, and all other matters concerning the VFRS's operation not otherwise specifically dealt with elsewhere in this Agreement.
- e) the Corporation agrees that these functions shall only be exercised in a manner consistent with the provisions of this Agreement.
- f) the Corporation may appoint an employee to act in a position outside the bargaining unit for a period of up to one year.

4.03- No Discrimination by Virtue of Protected Grounds

The Corporation and the Association agree that there will be no intimidation, discrimination, interference, restraint or coercion exercised or practiced by either of them or their representatives or members because of race, ancestry,

place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap, or political affiliation.

Ontario Human Rights Code

5 (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability.

8 Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

24(1) The right under section 5 to equal treatment with respect to employment is not infringed where,

....

(b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;

....

24(2) No tribunal or court shall find that a qualification under clause 24(1)(b) is reasonable and *bona fide* unless it is satisfied that the circumstances of the person cannot be accommodated without undue hardship on the person responsible for accommodating those circumstances considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Fire Prevention and Protection Act, 1997

Mandatory retirement

Application

53.1 (1) This section applies to a firefighter only if the firefighter is regularly assigned to fire suppression duties. 2011, c. 13, s. 2.

Mandatory retirement provision permitted

(2) A collective agreement may contain a provision requiring firefighters to retire at a specified age of 60 or over and, if it does, a firefighter subject to the agreement shall, subject to subsection (4), retire at the specified age. 2011, c. 13, s. 2.

Existing and new collective agreements

(3) Subsection (2) applies to collective agreements that are in operation on the day section 2 of the *Fire Protection and Prevention Amendment Act, 2011* comes into force and to collective agreements that come into force after that day. 2011, c. 13, s. 2.

Deemed mandatory retirement provision

(3.1) If a collective agreement does not contain a provision requiring firefighters to retire at a specified age or if it contains a provision requiring firefighters to retire at an age under 60, the agreement is deemed to contain a provision requiring firefighters to retire at the age of 60 and a firefighter subject to the agreement shall, subject to subsection (4), retire at that age. 2011, c. 13, s. 3.

Reasonable accommodation

(4) A firefighter shall not be required to retire if the firefighter can be accommodated without undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any. 2011, c. 13, s. 2.

Human Rights Code

(5) This section applies despite the *Human Rights Code*. 2011, c. 13, s. 2.

The Expert Evidence of Dr. Hughson

In support of its position, the Union relied upon an expert opinion of Dr. Richard Hughson, Professor Emeritus and Schlegel Research Chair, Vascular Aging and Brain Health at the Department of Kinesiology and Health Sciences at the University of Waterloo. The Employer accepted that Dr. Hughson was qualified to provide an expert opinion as to whether, due to increased health risks, mandatory retirement of Training Officers at age 60 was appropriate.

The following is Dr. Hughson's summary of his expert opinion:

Suppression firefighting and incident command positions impose high physical and psychological stress elevating risk for sudden cardiac death that justifies maintaining a mandatory retirement age. The position of Training Officer for the Vaughan Fire and Rescue Service does not, in my opinion, impose either physical or psychological stress that would justify mandatory retirement at age 60 years. Factors intrinsic to suppression firefighting that make this job high risk for sudden cardiac death including sleep disruptions, noise, extended durations of high physical workload and psychological stress, and exposure to heat, smoke, particulate matter and toxins would be removed, or greatly reduced, for a Training Officer. The work tasks for the Vaughan Fire and Rescue Service Training Officer, as they have been described to me, would impose no greater burden than other jobs for the City of Vaughan that might combine inside and outside work for which there is no mandatory retirement age.

(Emphasis Added)

Analysis and Disposition

It is accepted that the Employer's position reflected a sincere effort to protect the health and safety of its employees and to fulfil its legislative obligations. It is also acknowledged that the Training Officer position is inextricably linked to suppression firefighting. Those points noted, a review of the relevant facts and the jurisprudence suggests that the Employer's position requiring mandatory retirement at age 60 for Training Officers cannot be upheld.

There are two interrelated legal issues that need to be addressed. The first issue is whether Training Officers are "regularly assigned to fire suppression duties", such that the deemed mandatory collective agreement provision pursuant to Section 53.1 (3.1) of the FPPA would be applicable to such Officers. There is little factual basis to suggest that Training Officers are regularly assigned fire suppression duties. At the highest, the evidence suggests that, on occasion, a Training Officer may assist at a significant fire

incident and may be present for live-fire scenarios as part of training exercises. Such activity does not equate to being “regularly assigned to fire suppression duties”. A review of the job description for the Training Officer position further supports the conclusion that Training Officers are not “regularly assigned fire suppression duties” within the meaning of section 53.1 (3.1) of the FPPA.

The second issue is whether mandating that Training Officers retire at age 60 nevertheless constitutes a *bona fide* occupational requirement (BFOR) for the purposes of Section 24(2) of the Code. The Ontario Human Rights Tribunal (“Tribunal”) in Espey v. London (City), 2008 HRTO 412, addressed the broad question of whether a mandatory retirement collective agreement provision for suppression firefighters violated the Code. There was no dispute in that case that the collective agreement provision mandating retirement at age 60 constituted *prima facie* discrimination. The relevant question was whether that ostensibly discriminatory provision could be justified as a BFOR under Section 24(2) of the Code; if so, it would not give rise to a finding of a violation of the Code. The Tribunal’s decision is particularly relevant to the case at hand because it relied heavily on the expert evidence from Dr. Hughson to support the determination that the requirement for suppression firefighters to retire at age 60 did constitute a BFOR. Specifically, the Tribunal accepted that there was an increased risk of cardiac events for firefighters engaged in fire suppression, particularly while on duty, and that this risk increased with age.

Reference is also made to the decision in Baker v. Cambridge (City), 2011 HRTO 1167. The fact scenario in that case differed slightly from the facts in the Espey case, as the City of Cambridge modified its mandatory retirement policy to allow an exception for

a suppression firefighter who met certain fitness tests. The applicant in that case refused to undergo such testing, arguing that imposing it constituted age discrimination. In reaching the decision that the Employer's policy constituted a BFOR, the Tribunal again relied extensively on the expert opinion of Dr. Hughson.

As previously outlined, Dr. Hughson's expert opinion in this case is that the "position of Training Officer for the Vaughan Fire and Rescue Service does not, in my opinion, impose either physical or psychological stress that would justify mandatory retirement at age 60." Therefore, against that backdrop and considering the duties and working conditions associated with the Training Officer position, it is concluded that mandating Training Officers to retire at age 60 does not satisfy the criteria for constituting a BFOR under the Code.

I reach this conclusion based only on the duties performed by Training Officers in the City of Vaughan, and the frequency in which those duties are performed. There is no dispute that fire services across the province utilize training staff differently, and the frequency in which those other staff perform fire suppression duties is not before me. Accordingly, this decision is limited in scope and should not be read as being applicable to all training officers across the province.

In light of the above findings, the following remedial measures are ordered:

1. A declaration that the Employer breached the collective agreement by refusing to process the Grievor's request to be considered for the Training Officer role.
2. The Employer is to facilitate a posting/promotional process through which the Grievor and other interested members may

demonstrate their qualifications for the Training Officer role as set out in Schedule B of the collective agreement.

3. If the Grievor is successful in demonstrating his qualifications for the Training Officer role and receives a Training Officer position through the above posting/promotional process, the parties are directed to discuss the issue of remedy.

I remain seized to address any issue regarding the implementation of the above remedies.

This Award is issued in Mississauga this 22nd day of April 2026.

"Brian Sheehan"

Brian P. Sheehan