

New North Briefing Note

Wildfire Cost Recovery Update, August, 2013

Status:

In May 2013, the Minister for the Environment declared that he was waiving the wildfire cost-recovery fees of six northern municipalities that had accumulated over the past few years.

No further progress has been made on this issue at this point.

Background:

The lobbying efforts of New North to the date had been directed at removing from legislation in the *Wildfire Act* the imposition that northern municipalities were responsible for fire fighting costs for fires starting within the boundaries of a municipality, in cases where the fire was threatening to move into the provincial forest, or in cases where the provincial fire authorities decided that a fire was of sufficient magnitude or seriousness to warrant use of provincial resources.

Discussion

The ministry's reasoning for refusing the request for legislative changes were on the following grounds:

1. That jurisdictionally, municipalities are required to reimburse the province for the use of provincial resources
2. Municipalities receive funding from the province, via the MOG, to provide their fire services, and fire services are universally acknowledge as a municipal responsibility
3. That, in cases where costs proved prohibitive, the ministry had the discretion to waive or reduce costs
4. As a general legal principle, in terms of how legislation is framed, a minister cannot be boxed into a corner on a matter over which he has authority or discretion: this is called "fettering," and is simply not allowed.

From a lobbying perspective, Point 4 is the most difficult to overcome. Legislation cannot be written in such a way as to take away the ability of a minister to use his discretion in a matter over which he has authority.

To this extent, it is arguable that when the minister decided, in early May, that he was waiving the cost-recovery fees, this was a signal that henceforth, fees would no longer be charged by the ministry, even if the formal machinery remained in place. In practice, we don't know what this will look like; it is likely that local fire managers will still issue invoices and the process will probably look the same as in the past.

Going Forward

The ace up our sleeve is actually the concession by the ministry to allow the Burn Permit Areas to continue to exist. The ministry had tried to have these removed in the new legislation, but intense lobbying from SARM caused the ministry to back down.

Essentially, the argument of SARM is that rural municipalities which adjoin the provincial forests, mainly along the southern fringe of the NAD, do not have the resources to combat fires in the forested parts of the municipality that extend from the provincial forest. Therefore, these areas are deemed the dual responsibility of the municipality and the province.

New North can make the same argument regarding northern municipalities: that designated areas in municipalities where the provincial forest extends into a municipality can be deemed dual responsibility areas, with resources and capabilities being shared without thought of cost-recovery. This idea has been floated by ministry officials as a promising way of moving forward, as it is consistent with the reasoning of the burn permit area concept.

Even in the event that this idea is not taken any further, the existence of the burn permit areas make it very difficult for the ministry to logically and reasonably charge northern municipalities for costs that rural municipalities inhabiting the same environmental context as northern municipalities are not charged.