SUBJECT: Correspondence from the City of Greater Sudbury respecting Proposed Workplace Fatalities Family Bill of Rights - (HUR09016) - (City Wide)

RECOMMENDATION:

(a) That Council refer the resolution to the Ministry of Labour and request municipal consultation in the event there are impacts on municipalities; and

(b) That Item S be removed from the Audit and Administration Committee outstanding business list.

EXECUTIVE SUMMARY:

The City of Greater Sudbury has requested support from other municipalities for its resolution passed on June 10, 2009 in support of the Proposed Workplace Fatalities Family Bill of Rights. At the September 16th meeting, Council referred this resolution to Executive Director, Human Resources & Organizational Development for a report, in consultation with appropriate departments.
This Bill of Rights proposes creating specific rights for the family of victims of workplace fatalities and serious injuries, and specifically to be involved in all aspects of governmental investigations into the circumstances surrounding the fatality or injury. As written, the resolution contains a number of recommendations that would make family access to information easier but could ultimately hinder an investigation and interfere with constitutional and other legal protections. Family is not defined and it is unclear that there are any limits to the family’s involvement in investigations. Investigation and response to workplace accidents could be impeded if actions have to be delayed pending attendance of a family member.

The appropriate organizations have been coordinating their efforts in this area since 2004. The Fatalities and Immediate Response (FAIR) Partnership is committed to providing timely and comprehensive assistance to survivors following a traumatic workplace fatality. The partners work together to: notify the family when a decision about charges is made and the matter is going to court; provide basic information to the family and survivors about services available to them, and, to provide advice and assistance in accessing information through Freedom of Information and Protection of Privacy Act (FIPPA). The partnership includes the Ministry of Labour, Workplace Safety and Insurance Board, Office of the Worker Advisor and Threads of Life Family Support Group.

For the reasons above, it is recommended that Council refer the resolution to the Ministry of Labour and request municipal consultation in the event there are impacts on municipalities.

**ANALYSIS/RATIONALE:**

The City of Hamilton recognizes the importance of keeping families of victims of workplace fatalities or serious injuries apprised of investigations into the circumstances surrounding the fatality or injury. Access to information helps the family cope with their tragedy and assists them on their journey of healing. The resolution provided by the City of Greater Sudbury proposes to address this need.

The province’s health and safety organizations have also recognized this need for information. In 2004, the Workplace Safety & Insurance Board (WSIB), the Ministry of Labour (MOL), Threads of Life, and the Office of the Worker Adviser (OWA) formed the Fatalities and Immediate Response (FAIR) Partnership. Its goal is to provide timely and comprehensive assistance to survivors following a traumatic workplace fatality or serious injury. The partnership notifies the family when a decision about charges is made and the matter is going to court. It also provides basic information to the family and survivors about other services available to them and provides advice and assistance in accessing information through Freedom of Information and Protection of Privacy Act.

Other municipalities were canvassed on their response to the request from the City of Greater Sudbury. To date, only a number of smaller municipalities have responded to the request with a mix of carried and defeated motions to support the resolution.
From a legal perspective, it is unclear if all the recommendations are intended to apply to the Ministry of Labour (MOL) investigation, or if they are meant to apply to the municipalities’ (employers’) own meetings and investigations. If it applies at the employer level, then the requirements to provide reports and afford participation to family members could impact the speed needed to address ongoing safety concerns, could interfere with operations, as well as litigation and solicitor client privilege and other persons’ privacy interests.

Family is undefined in the resolution. Many people are estranged from their families and often people choose others for their executors and power of attorney. So, not every matter will require family involvement yet the resolution requires regular or constant involvement and updates.

Family interests may be different than MOL interests so allowing the family to attend interviews may turn a regulatory investigation into a civil litigation process. It may also interfere with constitutional and other legal protections for those involved.

In the absence of clarity in the resolution in respect to the issues above, it is appropriate to refer the resolution to the Ministry of Labour and request municipal consultation in the event there are impacts on municipalities.

**ALTERNaTIVES FOR CONSIDERATION:**

- endorse the resolution as written.
- reject the resolution as written.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Unknown

**POLICIES AFFECTING PROPOSAL:**

None

**RELEVANT CONSULTATION:**

Legal Services provided their analysis of the resolution. Members of the Ontario Municipal Health and Safety Representatives Association were canvassed on their respective municipality’s response to the resolution.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. □ Yes ☐ No
Diversity and peace are supported.

Environmental Well-Being is enhanced. □ Yes ☐ No

Economic Well-Being is enhanced. □ Yes ☐ No

Does the option you are recommending create value across all three bottom lines? □ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? □ Yes ☐ No