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MUNICIPAL COMPENSATION CASES:

TORONTO IN THE 1860's\*

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In the latter half of the nineteenth century the concept of compensation was not widely recognized in theory and rarely seen in practice. It was an era of increasingly unrestrained industrialization and capitalistic development, of free enterprise rhetoric and of aggressive profit making. In the burgeoning factories of North America there was little or no serious concern for worker or citizen protection and in Canada it was not until the end of the century that initiatives were taken by governments to change this condition and to introduce a modicum of responsibility to industrial society.

Workman's compensation became a part of that society in Ontario by the late 1880's under the guidance of the Mowat government's factory legislation and it was not until 1909 that such state intervention emerged in the Province of Quebec. In Ontario the concept was very limited and moderate at first, with ample protection for the employer. Reform came gradually in the early years of the twentieth century, in a step by step process, from compensation for injury or death incurred on the job with the onus of proof on the worker, to complete and comprehensive coverage.<sup>1</sup>

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<sup>1</sup>For a general discussion of this topic see: M.J. Piva, "The Workmen's Compensation Movement in Ontario", Ontario History, March 1975,

It is therefore somewhat surprising to learn, in the context of this development, that in the city of Toronto, as early as the 1860's, there existed a policy of compensation that seemed to be relatively commonplace. The city felt obliged to indemnify both its own municipal employees and its private citizens for a wide variety of injuries and grievances in which city services or operation were involved.

This protection came in various forms and for various situations; in some cases the city was legally liable, while in others it was not. For instance, it covered firemen who were injured in the line of duty, or indemnified their families in case of their death. It often included similar compensation for accidents incurred by city policemen and public works employees. Private citizens hurt as a result of defective streets or sidewalks were also subjects of municipal compensation, as were the owners of animals injured from the same causes. The city even moved, reluctantly on occasion, to compensate long time employees for past good service, or because of the loss of their jobs as a result of changes in the budget or the structure of administration. In total, these policies seem to be in sharp contrast to the lack of collective social responsibility seen in other areas of nineteenth century society. It was a municipal response that was in part voluntarily paternalistic and in part demanded by provincial

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pp. 39-56; A. Margaret Evans, "The Mowat Era, 1872-1896: Stability and Progress", in Edith Firth, ed., Profiles of a Province (Toronto, 1967), pp. 103-104; Terry Copp, The Anatomy of Poverty: The Condition of the Working Class in Montreal, 1897-1929 (Toronto, 1974), pp. 124-126; and R.C. Brown and R. Cook, Canada, 1896-1921: A Nation Transformed (Toronto, 1974), p. 123.

statute; one which took on both the form of ad hoc, unsystematic benevolence and occasional, grudging compliance to civil court action. All told it shows an interesting and little studied facet of nineteenth century urban life.

Compensation for firemen, both professional and volunteer, evolved as a result of a provincial law passed in 1860 that permitted city councils to pass by-laws, "for providing medals or rewards for persons who distinguish themselves at fires; and for granting pecuniary aid, or otherwise assisting the widows and orphans of persons who are killed by accident at such fires".<sup>2</sup> Toronto implemented this statute by the enactment of a by-law in 1867, which granted compensation for any widow or orphan of a city fireman killed in the line of duty, the amount and type of assistance to be decided by the Council.<sup>3</sup> But this law only formalized a practice that had been routinely carried out for many years. For instance, in 1858, one Mrs. Lepper was voted \$1,000 as a result of the working death of her fireman husband. Part of the grant was invested on her account by the city in Bank of Upper Canada stock and it was managed by Council for her and her children. In 1866 the bank failed and her stock became worthless, so the 1867 Council made up her loss of \$316.80 by paying her in four annual instalments of \$79.20 each.<sup>4</sup> In 1859 John Meehan was granted \$100 to cover the funeral expenses for his son, who had died while fighting a fire. And in 1866

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<sup>2</sup>Toronto City Council Minutes, 1867, Appendix 72.

<sup>3</sup>Minutes, 1867, Appendix 72 (By-law 445).

<sup>4</sup>Minutes, 1867, Appendix 92 (May 20, p. 78, and Aug. 18, p. 125).

Mrs. William Charlton, widow of the assistant engineer of the Fire Department who was killed at a fire on Yonge Street, was granted \$750 in aid and all municipal income taxes on the estate of her husband were dropped.<sup>5</sup> Strangely, no evidence was found during the decade to indicate that compensation was granted to firemen who had been injured, but not killed, on the job. This was rather surprising because of the assistance granted for such injury to other city employees.

There were no provincial or municipal regulations specifically covering employees other than firemen, and Toronto City Council, when passing compensation for such workers, was usually careful to point out that indemnity in these cases was based purely on the city fathers' generosity and not on any legal liability.<sup>6</sup> Indemnification was granted to policemen and public works employees only after they had petitioned for it and after an investigation of their claims had been carried out.

Policemen and their families often received aid for work related injury or death. One applicant, a widow of a police sergeant, asked for and received money for the fare back to Ireland.<sup>7</sup> In another and more discussed case, that of Constable Robert Blair, the petition for compensation originated in 1859 with the city's Board of Police Commissioners:

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<sup>5</sup>Minutes, 1859, Appendix 5; Minutes, 1866, Appendix 109, Appendix 39 (April 15, p. 64 and Nov. 26, p. 202).

<sup>6</sup>Minutes, 1859, Appendix 60; Minutes, 1867, Appendix 93 (Aug. 8, p. 114 and Sept. 9, p. 134).

<sup>7</sup>Minutes, 1859, Appendix 60; Minutes, 1866, Aug. 27, p. 150; and Minutes, 1868, Appendix 55 (April 20, pp. 47-48 and June 29, p. 77).

... praying to be allowed something for his support as he is totally unfit to earn a livelihood ... that he was dangerously wounded while on duty as a policeman, from the effects of which he has never recovered, and cannot in any probability recover; and that in consequence he is now removed from the Police Force as unable to perform the duties of the office, and that he cannot now earn his livelihood in any way.

... that provision in some way or other should be made for a faithful servant who had become disabled in the zealous discharge of the public service; and ... that such consideration when judiciously given will be found to be not only an act of justice to the individual, but a vast benefit to the public, who will gain by the increased zeal of the police in times of difficulty or danger, for the men will fear nothing in the course of their duty when they know that if injured they will be honourably and liberally cared for.

The Commission recommended a yearly allowance of \$120, paid in \$10 monthly instalments.<sup>8</sup>

This recommendation was granted, and when, the next year, Blair died from his wounds, the Council of that year debated suitable assistance for the constable's eight year old orphan son. A continuation of the \$10 stipend for another year was suggested, along with \$40 for funeral expenses and a sum of \$200 for the child's support to be set aside and paid to his guardian in annual instalments of \$40. This settlement was eventually agreed upon a month later after an attempt to increase the grant to \$400 failed.<sup>9</sup>

This type of personal involvement by the city in the lives of its injured workmen can also be seen in relation to the public works department.

The Board of Works has had under consideration the application for pecuniary assistance of Mrs. Ann Leary, widow of the late

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<sup>8</sup>Minutes, 1859, Appendix 60.

<sup>9</sup>Minutes, 1860, Appendix 81 and Appendix 115 (July 27, p. 165).

Patrick Leary, whose death resulted from the amputation of his leg, broken by the falling in of the banks of the excavation of the Main Sewer on Queen Street.

The Board having made an enquiry and satisfied itself of the pressing wants of the Petitioner and her four children, and with a view of mitigating in some slight degree their sorrow at the loss of their earthly protector, as well as minister to their every day wants, respectfully recommends an appropriation of \$300 be made to carry out the object herein referred to, \$99 of which amount, if granted, will be disbursed for funeral expenses and the service of 3 medical men ....<sup>10</sup>

Again the city administration granted the request.<sup>11</sup>

However, that administration could also watch over its compensation recipients and cut off their award should their behavior ever be found wanting. Such was the case of Hugh McLennan, who had ended up on crutches following the cave-in of the Yonge Street sewer in which he had been working. In 1860 he was granted a weekly allowance of \$4.50 a week. But in 1861, when McLennan was found guilty of "irregular and disorderly conduct to the great annoyance of persons living in his locality", the weekly allowance was terminated.<sup>12</sup>

On occasion the Corporation also granted indemnity to employees in gratitude for long service or for loss of employment, though it was not a common practice. In 1861, for instance, a draughtsman for the Board of Works was awarded one month's salary as compensation for the loss of his job, which was caused by a drastic reduction in the city's services, brought on as a result of financial problems in 1861.

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<sup>10</sup>Minutes, 1868, Appendix 70.

<sup>11</sup>Minutes, 1868, Sept. 14, pp. 110-111.

<sup>12</sup>Minutes, 1860, Appendix 155; Minutes, 1861, Appendix 67.

A few years later the engineer of the City Jail was also given aid for similar reasons. Such compensation could be passed on to surviving relatives of old employees, as in the case of the Britton sisters, who were given \$200 to support them and a seven year old brother, as gratuity for the long and faithful service of their late father, a collector for St. Andrew's Ward.<sup>13</sup>

By far the most common compensation case that the city faced, year after year, was that for injury to private citizens received as a result of faulty streets and sidewalks. The petitions for redress in this area were a feature of the minutes of nearly every council meeting throughout the decade, and no other type of indemnity was awarded as often. The relatively large number of these indemnifications was a result not only of the notoriously bad condition of Toronto's roads and walkways, but also of the threat of legal action from those injured. Under a provincial law passed in 1850:

... if the Municipal Corporation of any ... City or Incorporated Town shall fail to keep in repair any such Road, Street, or Highway within the limits thereof, such default shall be a misdemeanor for which such Corporation shall be punished by fine in the discretion of the Court before whom the conviction shall be had; and such Corporation shall be also civilly [sic] responsible for all damages which may be sustained by any party by reason of such default, provided the action for the recovery of such damages be brought within three months after the same shall have been sustained ....<sup>14</sup>

Claims for such compensation were routinely investigated by

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<sup>13</sup>Minutes, 1861, Appendix 107 (Sept. 2, pp. 178-179); Minutes, 1866, Appendix 115 (Jan. 18, 1867, p. 227) and Appendix 50 (June 25, p. 120). Such compensation was often refused by Council, as in the case of the City Chamberlain after 35 years of service (Minutes, 1867, March 4, p. 44) or that of the venerable police magistrate, George Gurnett (1861, Appendix 147; 1862, Jan. 13, p. 256.)

<sup>14</sup>Statutes, Province of Canada, 1850, 13 & 14 Vic., c. 15, p. 1165.



the city. The examination covered the condition of the accident site, the actions and responsibility of the claimant, the extent of the claimant's injuries (usually checked by a city appointed doctor), and the precise liability of the Corporation in each case.<sup>15</sup> Most claims were paid without legal action, but some were denied and defended in court by the city solicitor.<sup>16</sup> In some cases the city lost these suits and was forced, grudgingly, to grant compensation. One of the largest awards made during the period as a result of a civil suit occurred in 1870, and the response of Council was interesting and perhaps somewhat predictable.

... in the case of Richard Thos. Pocknell against the City of Toronto an award has been made amounting to \$780, which amount is in compensation for injuries sustained by said Richard Thos. Pocknell, and damages to his horse and buggy, caused by the upsetting of the latter over a pile of earth on the 31st last October [1869], the pile of earth being the result of some repairs then in progress on Richmond St.

The Board [of Works] is surprised at the largeness of the amount awarded, and reluctantly recommends its payment; at the same time, is of opinion that some one or more of the officials has been derelict in the discharge of his or their duties, and recommends that the Council should, in such manner mark their sense of the neglect, that on the occurrence of a similar case, in which the City, through the carelessness of its employees shall be subjected to the payment of costs, such offence shall be visited with a penalty ....<sup>17</sup>

Therefore, if negligence could not be proven against the claimant, perhaps the employee involved should bare the responsibility, and some of the costs!

Usually, however, legal action was not necessary and the Council's awards were settled out of court. This type of settlement was

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<sup>15</sup>Minutes, 1865, Appendix 15; Minutes, 1866, Appendix 73 (June 25, p. 121); Minutes, 1870, Appendix 109 (Dec. 19, p. 175).

<sup>16</sup>Minutes, 1865, Appendix 89 (Feb. 20, pp. 31-32); Minutes, 1868, Appendix 53 (June 29, p. 78).

<sup>17</sup>Minutes, 1870, Appendix 45.

generally less generous, as most compensation grants to citizens ran between \$30 and \$110 during the decade.<sup>18</sup> Also covered under the legislation was injury to animals, such as horses and oxen, caused by defective roads.<sup>19</sup> Sheep received additional protection under an 1866 provincial law that forced municipalities to compensate for death or injury caused by the packs of semi-wild dogs that roamed city streets.<sup>20</sup>

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This examination of urban compensation evolved as part of a broader study of society in Toronto during the 1860's. It is therefore limited in both time and area. A fuller understanding of the topic would require a survey of other Ontario and Canadian cities during the period of the 1860's and during earlier decades. Such an inquiry could be very useful, not only in analyzing this aspect of urban society, but also in coming to grips with a relatively neglected factor of Canadian urban history - the interaction between a city's administration and its citizens, and the impact that a city's government and laws had on the lives of the people who lived within its boundaries.

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<sup>18</sup>Minutes, 1859, Appendix 7; Minutes, 1866, Appendix 73 (June 25, p. 121) and Appendix 52 (Jan. 29, p. 23); Minutes, 1870, Appendix 64 (July 18, p. 104) and Appendix 109 (Dec. 19, p. 175). Often this type of award was granted on the understanding that it was made "without prejudice to the city" - the city's legal liability was not to be inferred simply by the act of compensation. For instance, see Minutes, 1870, Appendix 109 (Dec. 19, p. 175).

<sup>19</sup>Minutes, 1861, Appendix 87 (July 15, p. 150); Minutes, 1867, Appendix 113 (Nov. 18, p. 165).

<sup>20</sup>Minutes, 1867, Appendix 100 (July 15, p. 110); Statutes, 1866, 29-30 Vic., c. 55, pp. 339-342. See also Statutes, 1865, 29 Vic., c. 39, pp. 168-171.