



OPFFA

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

OFFICE
637 King Street West
Toronto, ON M5V 1M5
(905) 681-7111
Fax: (905) 681-1489

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OPFFA Members

Re: Occupational Disease Lawsuit Update

I am writing to you, on behalf of the entire OPFFA Executive Committee, to provide an update on recent developments in the ongoing civil litigation between the OPFFA and Paul Atkinson, Colin Grieve and others. The update is enclosed.

The update is being provided for informational purposes only. For clarity, I will define some key terms referred to in the update:

- Mareva Injunction – a court action designed to freeze the assets of a defendant pending the determination of the plaintiff's claim.
- Shapiro – the lawyer named as a defendant in the civil action and who was connected to Atkinson and Grieve through the use of his trust account
- Norton Rose Fulbright – the law firm originally retained by the OPFFA in this civil action. Rahool Agarwal is the lead lawyer in the case and was previously a partner at Norton Rose Fulbright
- Lax O'Sullivan Lissus Gottlieb – the current law firm retained by the OPFFA in this civil action. Rahool Agarwal moved to Lax O'Sullivan Lissus Gottlieb in December 2018 and continues to be the lead lawyer in the case.
- Professional Firefighters Advocates Inc. ("PFAI") - a company controlled by the defendants

I note that the update does not provide information relating to the criminal prosecution of Atkinson and Grieve. We have been advised that the trial in the criminal proceeding is scheduled to begin on January 13, 2020 for five weeks.

Undoubtedly many will have more questions on the matter, but we ask you to remain patient. The process is long but as this is now moving more rapidly we will provide more frequent updates to you.

Individuals may direct any communication arising from this through their local executive boards.

Thank you.

In solidarity,

Rob Hyndman

President, Ontario Professional Fire Fighters Association

PRESIDENT
Rob Hyndman
(705) 626-2586
rhyndman@ontariofirefighters.org

EXECUTIVE V/P
Mark Train
(416) 801-5358
mtrain@ontariofirefighters.org

SECRETARY TREASURER
Brent Heppell
(905) 715-6530
bheppell@ontariofirefighters.org

All Correspondence to OPFFA Office

PRESIDENTS EMERITI
Fred LeBlanc
fleblanc@iaff.org

Jim Lee
jlee@iaff.org

Patrick DeFazio
(613) 731-9914
pdefonz@rogers.com

Jack Fenton
thekingandi@cogeco.ca

DISTRICT V/P's

Steve Buckingham, District 1
(416) 554-0156
sbuckingham@ontariofirefighters.org

Ann Bryan, District 2
(613) 583-3473
abryan@ontariofirefighters.org

Colin Hunter, District 3
(519) 993-1829
chunter@ontariofirefighters.org

Dan VanderLelie, District 4
(905) 320-0038
dvanderlelie@ontariofirefighters.org

Sean Beer, District 5
(519) 476-5348
sbeer@ontariofirefighters.org

Peter Osterberg, District 6
(705) 365-8434
posterberg@ontariofirefighters.org

Eric Nordlund, District 7
(807) 627-1709
enordlund@ontariofirefighters.org

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OPFFA v Atkinson et al.
Recent developments – September 2018 to present

1. September 2018: Motion by Shapiro to have claim dismissed for expiry of the limitation period
 - In May 2018 the OPFFA amended its claim to allege two additional causes of action against Shapiro: knowing assistance in breach of fiduciary duty and knowing assistance in breach of trust (*i.e.*, Shapiro knew that Atkinson and Grieve were breaching their legal duties to the OPFFA, and Shapiro assisted the scheme nonetheless).
 - Shapiro alleged that the new causes of action were barred by the limitation period, and that the entire amended claim against Shapiro constituted an “abuse of process”.
 - The motion was heard on September 27, 2018. The decision was released on October 5, 2018. The OPFFA successfully defeated Shapiro’s motion. The OPFFA was awarded \$10,000 in costs.

2. October/November 2018: Mareva motion
 - The OPFFA’s Mareva injunction motion was scheduled to be heard on December 5, 2018. In that motion, the OPFFA is seeking to freeze the assets of Atkinson, Grieve and PFAI (the holding company they used to receive payments from WSIB claimants).
 - Rob was originally lead witness for the OPFFA for the motion. When Rob became unavailable for cross-examinations, the Court gave us permission to re-file our evidence with Ann Bryan as lead witness. The Court also agreed to move the date of the motion to February 21, 2019.
 - We also supplemented the record with additional sworn affidavits from WSIB claimants who gave testimony at the Atkinson and Grieve preliminary inquiry.
 - The record also included evidence that Atkinson and Grieve have their own personal holding companies, and that Atkinson owns two investment properties through his holding company.

3. January 8, 2019: Atkinson and Grieve deliver responding materials
 - Atkinson and Grieve delivered their responding evidence on January 8, 2019. (By that time, our counsel Rahoo Agarwal had moved firms to Lax O’Sullivan Lissus Gottlieb.)
 - Atkinson and Grieve’s materials consisted of sworn affidavits from each of them denying the scheme and the allegations made by the WSIB claimants. They produced letters of agreement that had apparently been signed by WSIB claimants agreeing to pay them/PFAI directly. There was also an affidavit from Brian George supporting Atkinson and Grieve.
 - On reviewing the materials, our lawyers discovered that two of the letters of agreement Atkinson and Grieve had attached to their materials appeared to have been forged.

4. January 14, 2019: OPFFA’s reply materials
 - The OPFFA had a right to reply to Atkinson and Grieve’s materials with additional evidence.
 - The OPFFA retained two experts to review the letters of agreement our lawyers identified as possible forgeries. The experts concluded that the documents were not authentic. They prepared short reports which were included in the reply materials.
 - We also included reply evidence from Fred Leblanc and three of the WSIB claimant witnesses.

5. February 2019: Atkinson and Grieve's counsel gets off the record
 - The Court agreed to give Atkinson and Grieve the opportunity to respond to the OPFFA's expert reports.
 - On the due date for their response, we were notified that their lawyers had decided to remove themselves as lawyers of record. As a consequence, Atkinson and Grieve were now self-represented.
 - In light of those developments, the Court adjourned the motion again to March 19, 2019.
6. February 28, 2019: cross-examinations
 - Atkinson and Grieve were scheduled to be cross-examined on their affidavits for the Mareva motion on February 28, 2019.
 - Atkinson attended the cross-examinations, but Grieve did not. We proceeded with the cross-examination of Atkinson. During cross-examination, Atkinson admitted that he had created one of the documents that the OPFFA's lawyers had identified as a possible forgery.
7. March 2019: Mareva injunction hearing
 - The hearing proceeded on March 19, 2019. Atkinson attended. Grieve did not attend, but made a request that the hearing be adjourned.
 - At the hearing, the judge advised that his preference was to adjourn the motion.
 - The judge agreed that adjourning would be unfair to the OPFFA. Accordingly, he agreed to freeze the PFAI Defendants' assets in the "interim", i.e., from that date until the next court date.
 - As a result, Atkinson and Grieve's assets (as well as the houses held by their spouses and investment properties owned through Atkinson's personal holding company) are currently frozen, subject to (a) reasonable living expenses, and (b) reasonable legal fees (standard exceptions for freezing orders).